



Draft Civil Aviation Bill: An effective regulatory framework for UK aviation

Volume 4: Summary of Responses to the Consultation
*Regulating Air Transport: Consultation on Proposals to
Update the Regulatory Framework for Aviation*

Presented to Parliament by the
Secretary of State for Transport,
by Command of Her Majesty
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1. Introduction

1.1 In December 2009, the then Government published the consultation *Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation* seeking views on proposals to modernise the Civil Aviation Authority's (CAA's) regulatory framework. The proposals applied to the whole of the UK, with the exception of the section on airport byelaws, which is a devolved matter for Northern Ireland and Scotland. Key proposals were:

- New **general objectives for the CAA** to ensure that the interests of the consumers and the environment are at the forefront of CAA decision-making, while maintaining the emphasis on safety.
- New powers for the CAA to secure the **publication of information on airline and airport performance** in line with its general objectives, provided that this does not create an undue burden.
- Other updates to the **CAA's governance, funding and enforcement framework** to bring it into line with modern regulatory practice.
- Reforms to the **Air Travel Organisers' Licensing (ATOL) scheme** to provide greater clarity for consumers about whether or not their holiday is financially protected against the insolvency of a travel company.
- To rationalise the way in which **airport byelaws** are made, which includes a requirement for airport operators to consult with interested parties while preparing byelaws.
- Giving the CAA the ability to make **medical data on air crew** available for medical research purposes.

1.2 The consultation document was published on the Department's website. Over 300 stakeholders were notified of the consultation publication. Of this, over 200 were sent hard copies with a further 29 sent to general aviation organisations at their request. The consultation ran for 13 weeks, closing on 18 March 2010.

1.3 A summary of responses to the 'Reforms to the ATOL scheme' section of the consultation was published on 23 June 2011. This document can be found on the Department for Transport website at the following address:

<http://assets.dft.gov.uk/consultations/dft-2011-17/dft-2011-17-annex-g.pdf>

1.4 In total, 132 responses were received to the consultation.

1.5 We received fifty-eight responses from members of the general aviation (GA) community. Forty-four of these came from individuals and the rest from representative organisations. (See Annex A for a full list of those that responded.) GA responses were largely in agreement with each other, and often addressed broad principles with which the consultation was concerned rather than specific questions. These issues have been summarised separately, in section 6 below.

1.6 The remainder of the responses were broken down as shown in Table 1.1.

Table 1.1: Responses to consultation (not including general aviation)

Representation	Number of responses
Airline	7
Airport Consultative Committee	6
Airport operator	9
Consumer	6
Environmental	8
Local representation	9
Other	10
Regulator	3
Travel industry*	17
Total	75

* Travel industry category covers organisations such as travel agents (not airlines)

1.7 This report summarises the responses to the specific questions asked in the consultation document as follows:

Section 3 – Part 2: Giving the CAA a Clear Statutory Focus for the 21st Century:

- New objectives for the CAA;
- The CAA’s Consumer Role;
- The CAA’s Environmental Role;
- Ensuring that proposed objectives fit with the CAA’s existing functions;
- Giving the CAA new information powers.

Part 2 of the consultation document also proposed giving the CAA a separate Safety Objective. However, there were no consultation questions on this measure as the proposal was consistent with the CAA’s existing safety duties.

Section 4 – Part 3: Modernising the CAA’s Governance, Funding and Enforcement Arrangements:

- The CAA’s governance arrangements;
- The CAA’s funding arrangements;
- The CAA’s enforcement powers.

Section 5 – Part 5: Other Reforms to the Civil Aviation Regulatory Framework:

- Proposals for the rationalisation of the Secretary of State’s airport byelaw confirmation function;
- Medical data sharing.

Section 6 – The general aviation response.

Annex A – List of those responding.

1.8 Questions 5.4, 7.3 and 8.3 invited views on the costs and benefits of various proposals. There was widespread reluctance to put forward such comments, the usual response being that there was insufficient material in the consultation paper to provide a basis for doing so. Accordingly, these questions are not included in the summary below.

1.9 For most questions there were some respondents (the number varying from case to case) who did not express a view, or who made observations that did not amount to a 'yes' or 'no' (if the question lent itself to a 'yes' or 'no' answer). In what follows any references to 'a majority of respondents', or some such term, should be taken to mean 'a majority of those respondents who expressed a view'.

1.10 This report does not attempt to summarise all of the comments made by respondents. However, all comments were considered, whether or not they are mentioned specifically in this report. Where responses did not correspond directly with the questions posed, but took a more general approach, they have been considered under the most appropriate questions or as part of the wider policy development process where appropriate.

1.11 In June 2011, the Government launched a further consultation on the details of reforms to the ATOL scheme, based on those in the 'Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation' and taking account of the points made in response to it.

1.12 Aside from these ATOL reforms, this Government has decided to make legislative changes building on some of the other reforms in this consultation. In order to continue the process of industry and other stakeholder engagement the Government is including these in the draft Civil Aviation Bill published today. The proposals that are being taken forward in this way are:

1.13 The CAA's environmental and consumer information, guidance and advice functions – The Government proposes to create a new duty for the CAA to publish or arrange for others to publish, in a format which permits comparisons, such information and advice as the CAA considers appropriate: (i) to assist users of air transport to compare services and make more informed choices; and (ii) to inform the public about the environmental effects (including emissions and noise) of civil aviation in the UK and measures taken to limit adverse environmental effects. The CAA may also publish best practice guidance and advice for the aviation sector aimed at either improving service standards for users or limiting the adverse environmental effects of civil aviation in the UK. The CAA must consult on its policy for carrying out these new functions and have regard to a cost-benefit principle.

1.14 Role of the Secretary of State for Transport and HM Treasury in the appointment of CAA executive directors – The Government proposes that the CAA's non-executives appoint its chief executive (with the approval of the Secretary of State), and the chief executive appoints the other executive members and determines their remuneration packages with approval of the Chair and at least one other non-executive member. The Secretary of State would still appoint the Chair, any Deputy Chair and the other non-executive members. HM Treasury would no longer approve the remuneration of any of the CAA Board members.

1.15 Charging scheme notice periods – The CAA’s charging schemes, whereby it recovers costs from industry, come into force annually after consultation with the Secretary of State. The CAA is not required to consult charge payers, although in practice it does so. Currently the CAA must allow 60 days before a published scheme of charges comes into force. This delay can adversely affect the accuracy of the budgetary information on which the CAA can base its charging scheme. Accordingly, the Government proposes to reduce the 60 day period to 14 days and introduce a statutory obligation on the CAA to consult charge payers.

1.16 The CAA's enforcement powers – The Government proposes to enable the CAA to make use of civil sanctions as an alternative alongside existing criminal penalties to allow for a more appropriate and proportionate enforcement regime.

1.17 Full details of the proposals, the case for them, and the impact that they are expected to have, are contained in the draft Civil Aviation Bill and its supporting documentation.

2. Executive summary

2.1 This document provides a summary of responses to the formal consultation *Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation*.

Overview of responses

Giving the CAA a clear statutory focus for the 21st century

New objectives for the CAA

2.2 The majority of respondents who commented on the proposals to set new objectives for the CAA in respect to the consumer, safety and the environment supported the propositions.

The CAA's Consumer Role

2.3 The majority of those who responded to the proposals relating to the CAA's responsibility to the consumer supported the majority of the proposals. Where respondents did not agree it was in many cases because respondents thought that the air transport market should be treated in the same way as any other competitive market.

2.4 The main division of opinion was on the proposal that funding to support the proposed new consumer objective should come from the airport licensing regime. Airlines, airport operators and general aviation respondents generally opposed the proposition.

The CAA's Environmental Role

2.5 There were two main options proposed for giving the CAA an environmental objective. Option 1, to give the CAA a general environment objective, was supported by respondents, although a significant minority opposed it; and Option 2, to give the CAA a discretionary power in regard to environmental factors, only received minority support.

2.6 The majority of respondents, whether supporting option 1 or, option 2 were in favour of guidance being issued by Government to help the CAA interpret its environment objective.

2.7 Opinion was divided on the proposal that any new funding requirement arising from a new environment objective should be met through the CAA's existing charging arrangements. Respondents suggested that the costs of carbon emissions were already covered elsewhere, or that the level of the new regime was unclear.

Ensuring that proposed objectives fit with the CAA's existing functions

2.8 There was division of opinion on the questions relating to the fit of the proposed set of common objectives with certain existing CAA functions. Airlines and airport operators tended to be opposed because they suggested that existing

provisions and incentives already exist to encourage consideration of environmental objectives.

2.9 Where questions related to the divergence of interests of users of airspace and air traffic services, the majority of respondents focused on how access would be determined. General Aviation respondents were very concerned about the cost implications of proposals.

Giving the CAA new information powers

2.10 There was guarded support for giving the CAA new information gathering and publishing powers. Respondents who agreed with the proposals as well as respondents who disagreed with the proposals expressed reservations or concerns about proportionality and the costs of collecting data.

Modernising the CAA's governance, funding and enforcement arrangements

2.11 The proposals for modernising the CAA's statutory remit gained widespread support from those who responded to them.

The CAA's governance arrangements

2.12 Where respondents did not agree with the governance proposals, this was because they wanted to see external scrutiny of appointments and remuneration.

The CAA's funding arrangements

2.13 The majority of those who responded to the proposal to remove the statutory sixty days' delay period and replace it with a duty to consult charge payers agreed with very little comment. Where there was disagreement or comment on the proposals, these related to length, obligations or basis of the duty to consult.

The CAA's enforcement powers

2.14 There was a low response to the questions relating to the CAA's enforcement powers. The majority who did respond supported the principle of giving the CAA the power to make use of civil sanctions as an alternative alongside existing criminal penalties although opinion differed as to how the CAA should use the civil sanctions powers. On the question of costs, the majority were opposed to the recovery of costs from the industry.

Other reforms to the Civil Aviation Regulatory Framework

Proposals for the rationalisation of the Secretary of State's airport byelaw confirmation function

2.15 Very few respondents commented on the proposals. Where comments were given they focused on the importance of ensuring that any new process would be democratic.

Medical data sharing

2.16 The majority agreed with the proposal for making medical data on air crew available for medical research.

3. Giving the CAA a clear statutory focus for the 21st century

3.1 Part 2 of the consultation paper sets out proposals for modernising the CAA's statutory remit by giving it new objectives. It posed various questions, to which the responses are summarised below.

New objectives for the CAA

3.2 Chapter 4 sets out proposals for modernising the CAA's statutory remit by giving it new objectives.

Q4.1 Do you think the three proposed general objectives (in respect to the consumer, safety and the environment) taken together cover the public interest in aviation? If you think other interests should be addressed, please set these out and explain why.

3.3 There was a substantial majority in favour of the proposed objectives, apart from the GA respondents, although several respondents said that safety should be paramount. However, some airlines expressed doubts:

“having no central objective weakens the CAA's accountability and increase risks of interpretation. An overarching but specific objective could be expressed as follows: “To promote the safe and sustainable development of air transport to meet the demands of consumers and the economy.”

“consumer needs other than safety are best served by placing a more direct obligation on the CAA to secure the competitive provision of services by airlines and at airports”.

Q4.2 Are there any economic issues not covered which you think should be reflected in the CAA's new objectives?

3.4 Overall, a majority (with and without the GA respondents) replied that there were economic issues not covered which should be reflected in the new objectives. Some airline and airport respondents argued that promotion of the UK aviation industry should be an objective:

“... aviation is a major contributor to the UK economy...focusing solely on the ultimate consumer's interest could result in a failure to take account of other key issues, such as employment...the CAA's consideration of the wider economic implications of its activity warrants an explicit reference in the CAA's duties”.

“The CAA should explicitly take into account the wider social and economic benefits that air transport brings to the UK”.

“we would like to see the CAA have an objective to promote the economic role of airports, especially those in the regions”.

3.5 Some views were also expressed from an environmental viewpoint:

“the CAA should be required to respond to any policy and directives encouraging alternative forms of transport such as rail”.

Q4.3 We think the CAA as a whole should have a duty to have regard to the principles of Better Regulation. In addition, for all its non-economic regulatory functions, we think the CAA should have a duty to have regard to the Regulators’ Compliance Code. This is consistent with the Government’s Better Regulation agenda and will align the CAA’s regulatory practice with that of other regulators. Do you agree with these proposals?

3.6 These proposals gained broad assent, with no substantial opposition. However, amongst the comments, a small number of airlines and representative organisations argued that:

“Rather than simply “having regard to” the Better Regulation, the CAA should be required to ensure that all its activities and decisions are consistent with Better regulation principles, i.e. that they are transparent, accountable, proportionate, consistent and targeted”

“the CAA also has responsibility for enforcement of prescriptive consumer protection legislation, which adds a separate dimension to the context against which better regulation principles would otherwise apply. Its response to breaches of that legislation should indeed be proportionate. But it should not be put in the position of interpreting – in order to meet better regulation principles – whether the legislation itself was proportionate to the problem it sought to address”

Q4.4 We propose to extend the duties under Part 4 of the Regulatory Enforcement and Sanctions Act 2008 (to review and remove any unnecessary burden; and to produce an annual statement on this) to the CAA’s air traffic services economic regulation functions. Do you agree with this proposal?

3.7 This proposal gained general support.

“Yes. In consultation with industry, CAA should review its regulations periodically to determine if it can reduce the regulatory burden on the industry consistent with its statutory mandate. Publication of the results of the review is consistent with the principles of Better Regulation because it would increase the accountability of the agency and the transparency of its decision making”

“We agree that with the proposal to extend the duties under Part 4 of the Regulatory Enforcement and Sanctions Act 2008 to the CAA’s air traffic services economic regulation. The regulatory burden faced by the aviation industry should, where possible, be reduced”

Q4.5 Do you agree that no further legislative changes are needed to ensure that the CAA is transparent about how it discharges its proposed new objectives? If you do not agree, please explain what more is needed.

3.8 There was general agreement to the proposition that legislation was not needed. A few expressed a different view, arguing that:

“there is no reason why an independent body should be either effective or efficient merely because it is independent... “the Government should take a more active role in setting meaningful performance indicators...industry is best placed to scrutinise the efficiency of the CAA...the role of industry needs to be incorporated into the new framework. Currently UK industry is disadvantaged...in having to pay too high a cost for regulation.”

“There needs to be an effective disputes procedure where affected parties may seek an independent and swift review of policies considered unfair and unwise. [This] must be at an affordable cost to protect the small consumer.”

The CAA’s Consumer Role

3.9 This chapter sets out proposals ‘to ensure that the CAA has the consumer’s interest firmly in mind as it undertakes its regulatory activity’.

Q5.1 We are proposing that the main focus for the CAA in pursuing its consumer objective should be on the ‘end users’ of air transport services. This primarily means passengers but also includes freight consumers and the end users of services provided by general aviation, for example, pupils at flight schools. Do you agree with this proposal?

3.10 Overall, a significant majority of responses agreed with this proposal, apart from GA respondents, who almost unanimously opposed it. However, some airlines disagreed with the proposal:

“the inability of end users or their representatives to participate effectively in the regulatory process...and...the extent to which the commercial interests of airlines will be exposed to abuse by monopoly suppliers if the regulator does not take those interests sufficiently into account...it seems incredible that the CAA should not be required...to take account of the interests of airlines.”

“the CAA’s principal duty should be to promote competition in the market, which would include competition between airlines, competition between and at airports, and competition between other service providers. It is through competition that the interests of consumers will best be served... it [is] inappropriate...for the CAA’s duties and powers to extend into parts of the market which are already operating competitively.”

Q5.2 Do you agree that the principles set out in 5.31 are the right ones for the consumer objective and should be reflected in legislation?

3.11 The majority of respondents agreed with the proposals. A handful of airlines and representative organisations did not agree suggesting that the market should be operated as any other competitive market:

“The examples given indicate that the Government expects the CAA to intervene in competitive air transport markets. We see no reason why air transport markets should be treated any differently from other competitive UK markets, where there is no sectoral regulator. The CAA’s focus should be on infrastructure, where competition cannot be relied on...”

“Such consumer interests, when they arise, tend not to be unique to the UK. As such, EU legislation tends to be available...the CAA should be guided by these Regulations and NOT by the additional powers of the Secretary of State”

Q5.3 The Government is not proposing to take legal powers to issue guidance to the CAA in respect of its proposed new consumer objective. Do you agree with this? If not, please explain why.

3.12 There was some division of opinion (including within the GA respondents), though overall the majority favoured (often without comment) the proposal not to take legal powers. A number of airports agreed with the proposal:

“We believe that guidance should be formulated by the CAA with input from the industry and Passenger Focus”.

“Yes, provided that the CAA does not breach...the convention that a non-elected body should not take decisions on issues of political sensitivity.”

3.13 A small number of respondents questioned giving an unelected regulator decision making powers that might override national or public interest:

“.....whether the Government should nevertheless give up the right to issue guidance in exceptional and carefully defined circumstances, notably where the CAA might otherwise take a decision, because of its statutory duties, which was clearly against the national interest”

“..consumer issues might well fall within areas which should not be left to an unelected regulator to decide.”

“ the CAA has such a long history of support for the aviation industry (in accordance with its original remit) that it may need strong guidance to protect the wider public interest”

Q5.5 Do you agree that the CAA should be given additional concurrent competition powers over 'airport services' which are not provided directly or solely by the airport operator? If not, please explain why.

3.14 A majority of those who responded were in favour of this proposal (a substantial majority apart from the opposition from the GA community). Airport operators were amongst those who supported it:

“We agree that the CAA should be given additional concurrent powers over airport services. The threat of investigation and other measures should act as an incentive to improve and provide good service in those areas where a number of different providers have responsibility. However, it is important for these rules to be applied equally at all airports”

“would appear to be a sensible fit with [the CAA’s] existing duties and powers”

“can help to address structural issues that interfere with the cost-effective provision of airport services that are not provided directly or solely by the airport operator. However, [the power should be exercised in a way] consistent with applicable laws, such as the EU’s ground handling directive. [And, given the costs involved] the CAA should exercise this power sparingly”

3.15 A small number of respondents did not agree, suggesting either that the CAA had no competence in the area or that this might impact on competition:

“there are areas of competitive supply which should be treated in the same way as other areas of the UK economy if such problems arise. This would be an unwarranted and disproportionate extension of the regulator’s remit”.

“In many instances the CAA have no competence to act and, in any event, should maintain focus on core “safety” issues”

3.16 Further analysis of the consultation responses and the Government’s decisions regarding concurrent competition powers is available at:
<http://www.dft.gov.uk/pgr/aviation/airports/reviewregulationairports/decisiondocumentcaa.pdf>.

Q5.6 Do you agree that funding to support this proposed new consumer objective should come from the airport licensing regime? If no, how should this be funded?

3.17 Opinion was divided on this proposal, those against being most airline and airport respondents, together with most GA respondents:

“...objects in the strongest possible terms to the [proposal]. There is an implied – and quite incorrect assumption – in this that the costs can be recharged by airports to others in the aviation supply chain that operate at airports. The competitive nature of much of the UK airports sector means that [that] cannot be assumed.”

“It would be inherently wrong to defray the costs via the airport licensing fee which, in turn, would then be passed on to all passengers, including that great proportion of non-UK residents who will derive no benefit.”

3.18 A few respondents made suggestions for alternative methods of finance:

“at the very least, costs should be apportioned between airports and other parts of the supply chain, principally airlines. If the Government can collect Air Passenger Duty (APD) from international airlines, then the CAA can do likewise for pursuing this objective. The Government has previously said that APD is one of the most cost effective taxes to collect.”

“The proper approach should be (1) the costs of achieving the objective should apply to all parties – whether airports, airlines or other relevant providers and (2) the element which remains to be charged to airports must be charged to ALL airports...”

3.19 General aviation respondents opposed the proposal and criticised the lack of alternative approaches considered, but also said that:

“based strictly on your stated proposals the charges...should be levied on the end user/consumer, via charges at airports. NOTE: that we do not support the imposition of any such charges at smaller aerodromes or to GA users of larger aerodromes”

Q5.7 Do you agree that Passenger Focus should have a legal duty to consult on its budget? If not, what alternative would you recommend?

3.20 This proposal received general but not unanimous support. Those opposing generally suggesting that budgets should be set between the regulator and Government:

“Passenger Focus or an alternative representative body (such as Air Transport Users Council (AUC) with a statutory basis...) would...have to be accountable for the money it spent. But it would be in an impossible position in having to consult an industry that might have an interest in restricting its activities on behalf of consumers...Its budget should be a matter of discussion between it and the CAA...Legislation should also cover the possibility of disagreement [with] the CAA...[with] the right of appeal to the Secretary of State”

“the Regulations will be the ultimate arbiter between the Consumer and the Aviation Industry. Any discussion [about a] budget should be set between consultation with the Regulator and/or the relevant government department or Minister. By creating a clear separation on budgetary issues, this will remove the suggestion of “control” over the Consumer agenda. We would suggest that this proposal reflects a fear from the Aviation Industry that passenger Focus will run rampant on the Consumer Objectives”

The CAA's Safety Role

Part 2 of the consultation document also proposed giving the CAA a separate Safety Objective. However, there were no consultation questions on this measure as the proposal was consistent with the CAA's existing safety duties.

The CAA's Environmental Role

We have looked at two main options for giving the CAA an Environment Objective:

Option 1 (preferred): to give the CAA a General Environment Objective alongside the proposed Safety and Consumer Objectives, which would require the CAA, where possible and appropriate, to have regard for environmental factors and to seek environmental improvements.

Q7.1 For Option 1 – Do you agree that the CAA's general Environment Objective should require the CAA, where possible and appropriate, to have regard for environmental factors and seek environmental improvements? If you think there are environmental issues which would not be addressed by this proposal but should be, please set these out and explain why.

3.21 Overall, this proposal was supported (for example by most airport operators), though with a significant minority against it (even if the GA respondents, who mostly opposed it, are considered separately). However, some of those in favour expressed qualifications:

"We support Option 1...there is already an extensive regulatory framework – including EU and national policy, alongside local planning requirements – that addresses aviation's environmental impacts. It will therefore be important for the Government to define clearly, through guidance, how it envisages the CAA interpreting its new environmental objective. We believe that the focus of the CAA's role in seeking environmental improvements should be to assist the Government in the delivery of its environmental objectives."

"(i) it is important to have a clear separation between regulation and service provision by industry...We think it is for the CAA to set the framework but actual delivery of environmental improvements is for the aviation industry...and (ii) we suggest more thought is given to the relationship between the role of the CAA and Government guidance...(iii) costs...are not estimated with any confidence. We would be concerned if extra costs were imposed without added value being demonstrated"

"In principle we agree but currently fail to see a satisfactory methodology whilst retaining independence. The CAA should encourage innovation in respect of environmental matters in the context of its safety primacy – this has not been reviewed by this consultation"

3.22 The majority of airline respondents opposed the proposal on the basis that Government, and not the CAA, should be the policymaker:

“gives the CAA powers that are inappropriate. Government sets environmental policy in the UK and aviation standards are agreed internationally. The proposal blurs the boundary between policy and regulation and creates a serious risk of multiple and conflicting regulation. The cost impact on industry could be severe”

3.23 A number of local authority respondents disagreed with the whole approach in section 7 wanting instead to see a root and branch review of the role of the aviation regulator:

“Notwithstanding our overriding objection in principal to both of these options this authority is of the opinion that the detail in Option 1 is ambiguous. The proposal as announced by the Secretary of State on 19th January 2009 to ensure that the aviation regulator would be given a new environmental duty (even though we doubt that the CAA is the right organisation to discharge this responsibility) is supported. However the proposals as now set out represent a downgrading of this commitment. The description of the new responsibilities as “general environmental objective” could result in the CAA having to do little more than demonstrate an intention. The word duty confers an obligation and responsibility. The council considers that this is particularly important in relation to the planned expansion of Heathrow in which the Secretary of State identified the CAA as having a central role in the release of any capacity beyond the current annual level of 480,000 air transport movements (ATMs).”

“The proposals do nothing as they stand to identify a single regulatory body which will have clear ownership of an overarching environmental duty for aviation. This lack of clarity has in no small part been responsible for the current air quality non compliance issues that affect Heathrow now and in the foreseeable future. In this council's view anything less than a direct duty for the regulator for aviation will be ineffective and simply serve to maintain the status quo.”

“The proposals add nothing to the current policy vacuum that surrounds delivery of the government's 2050 target for carbon reduction. The recent Climate Change Committee report has highlighted the need for government to reduce Air Traffic Movements from the growth that was identified as being necessary to plan for in the 2003 Air Transport White Paper. This may well require at some point in the future the aviation regulator to be free to take enforcement action in the future so as to limit growth at some airports. The aviation regulator therefore needs a clear mandate to act without undue interference and or influence from industry and / or government departments.”

Q7.2 For Option 2 – Do you think that the CAA should have discretion in relation to its general environment objective and that this should be a second order issue for the CAA below its safety and consumer priorities? If so, please explain why.

3.24 Only a minority of respondents endorsed this option (where GA respondents are considered separately). However, it was largely supported by airline respondents:

“Several authorities at the international, EU and national level already have the authority to prescribe environmental policies and regulations. To avoid a proliferation of ‘environmental’ agencies with potentially overlapping requirements, the CAA should not be given an independent environmental role. Rather, it should apply existing policies and regulations when exercising its statutory duties in consultation with other agencies, where appropriate”

“...the CAA should have a degree of discretion in relation to the proposed general environment objective. This should be a second order issue for the CAA below its safety and consumer priorities”

Q7.4 We would also welcome stakeholders’ views and evidence on which of these two options would be most appropriate for the CAA and why.

3.25 A majority of those who expressed a view favoured Option 1, in line with the answers to Q7.1 and 7.2 above. That majority was larger without the GA responses, which strongly favoured Option 2, some GA respondents saying that the CAA should concentrate on safety regulation. The CAA themselves supported Option 1, saying that it was:

“more appropriate than both the more discretionary Option 2, which would not appear to give the environment the necessary priority in CAA’s considerations, and the more stringent alternative approach set out in paragraph 7.27 which would appear to run the risk of placing an inappropriate and disproportionate emphasis on environmental considerations (with associated costs for industry).”

Q7.5 Do you agree that the Government should give the CAA guidance to help it interpret its Environment Objective? If you do agree, please set out what you think this guidance should cover and why.

Q7.6 Do you agree that the Secretary of State should have new powers to direct the CAA in regard to its Environment Objective? If yes, do you agree that the proposals set out in 7.38 and 7.39 are the right ones? Please explain.

3.26 Responses to these two questions have been grouped together because they tended to cover the same points.

3.27 There was quite a strong majority in favour of guidance (including a majority amongst GA respondents who expressed a view). There was also a smaller majority in favour of a power to give directions, though this was less narrow if the opposition recorded by GA respondents were to be considered separately.

3.28 A number of those favouring both options wanted better guidance and direction to be issued by Government:

“In the immediate future better guidance is needed on how to manage the sometimes competing objectives of minimising emissions (and airline fuel costs) and noise. We note in this context [the] recommendation [by Sir Joseph Pilling in his report of his strategic review of the CAA] that...the CAA’s primary responsibility is to the public rather than the aviation industry....More generally, guidance is needed from central government on acceptable limits for environmental impacts at airports. We would not consider it appropriate for the CAA to have to make environmental judgements on, for example, noise or emissions at an airport level, but we can envisage a role for the CAA in regulating these impacts in line with government policy...Clear guidance from DfT will be essential in determining whether or not the proposed environment objective for the CAA is meaningful or whether...it remains largely unused....”

“there is already an extensive regulatory framework – including EU and national policy, alongside local planning requirements – that addresses aviation’s environmental impacts. It will therefore be important for the Government to define clearly, through guidance, how it envisages the CAA interpreting its new environmental objective. We believe that the main thrust of this guidance should be to assist the CAA in helping the Government to meet its environmental objectives for aviation ...we agree...that such a direction could be concerned with how the CAA should make environmental trade-offs in a given circumstance...we can envisage [that it might be] appropriate for [such] judgements to be taken by the Government since ultimately they relate to national policy issues and wider societal values”

3.29 A very small number, whilst agreeing overall, wanted guidance and the power of direction to be kept to a minimum:

“However, such powers are likely to be used very sparingly and it seems right that guidance should be sufficient in the vast majority of cases”

“Generally, we believe that the power of the Secretary of State to issue directions to the regulator should be kept to a minimum as such directions have the potential to undermine the independence of the regulator. This would apply to environmental issues as much as to other issues, so guidance would appear to be sufficient”

Q7.7 Do you agree that any new funding requirements arising from a new Environment Objective should be met through the CAA’s existing charging arrangements?

3.30 Opinion was divided on this issue, airlines and general aviation respondents being against it, but others (for example, environmental and consumer groups) supporting it. The reasons for opposing the proposals were generally that the costs of carbon emissions were already being covered elsewhere or that for general aviation owner/operators, costs could not be passed on:

“...the Government’s own Emissions Cost assessment in 2008...concluded that UK-departing flights already more than cover their external costs through...Air Passenger Duty...From 2012, when aviation enters the EU Emissions Trading Scheme, airlines will also be paying for a substantial proportion of their carbon footprint through the carbon markets... does not accept that where the polluter already more than covers its external costs, an additional burden should be applied.”

“...airlines should not be held responsible for [greenhouse gas] emissions that are caused by the failure of others to act, including the failure of governments to make timely investment in Air Traffic Management modernisation”.

“We believe the addition of an environmental priority to the existing funding mechanism will provide little more than well-paid jobs for CAA Environmental Advisors at the expense of the “industry” We suspect that this burden will fall most heavily on the individual GA pilot/operator, who cannot pass the additional costs through to the fare-paying passenger.”

3.31 Among those supporting the proposal, a small number qualified that support because the level of any new charging regime was felt to be unclear:

“Although we support [the proposal], we are concerned with these (and other charging proposals) [in] the consultation. [It] is worryingly vague about the resulting extra costs...it is clear however, that the industry, and particularly airports will have to pay these costs by way of various levies. The degree of accountability offered by existing charging system is minimal, with little effective challenge by users against the costs incurred by a monopoly regulator”

“...it is essential that the additional costs represent true value added”

“conditional upon being assured that the CAA will fulfil its objective in a manner that supports delivery of the Government’s environmental objectives”

Ensuring that proposed objectives fit with the CAA’s existing functions

Q8.1 Do you agree that the principles of the proposed Environment Objective (Option 1) should apply to the CAA’s planning and management of airspace?

3.32 There was some division of opinion on this question (including amongst the GA respondents), though airlines tended to be opposed to the proposition. Environmental and consumer groups were typically in favour of the proposal:

“Yes, this is essential. Decisions taken within the Directorate of Airspace Policy have substantial environmental impact in terms of noise, visual intrusion and climate change through aviation’s activities and these in turn impact substantially on the public interest”

“In particular the CAA (DAP) must ensure that routing and terminal airspace procedures take due account of environmental concerns including, but not limited to, noise.”

3.33 Where respondents did not agree with the proposal, this was often because they considered the existing provisions to be sufficient:

“CAA’s Directorate of Airspace Policy already requires the sponsors of an Airspace Change Proposal to demonstrate that...the impact on the environment has been assessed and a widespread base...of consultees has been engaged...believes that the existing provisions are adequate...safety and the environment should not be confused and safety should always retain primacy.”

“The planning and management of airspace already takes account of a wide range of environmental issues, which are rightly a major aspect of the process”

“No. This is the role of Government”.

Q8.2 Are there any areas where the interests of the ‘end user’ and ‘intermediary users’ would diverge in respect of airspace?

3.34 The majority of respondents to this question focused on how access to airspace would be determined and the impacts of divergent uses on the public and in some cases did not understand the definitions:

“We are uncertain of what these definitions mean and need a detailed analysis of how airspace management might change in these proposals. GA is continually losing class G Airspace, the lifeblood of the activity. We have serious concerns that under these proposals GA will be further disadvantaged...As elsewhere, this consultation is inadequately presented to make meaningful comment”

“In terms of airspace the end user is all groups who require access to and benefit from airspace. The CAA should focus on the users of airspace rather than the interests of individual passengers.”

“There could be conflicts between the interests of users (of commercial aviation) and the general aviation community where extensions of controlled airspace to facilitate commercial aviation traffic flows were concerned. There are also environmental consequences to the general public in such circumstances, since the major sectors of general aviation traffic can be forced into noise corridors, and/or to fly lower and thus noisier to those below, to pass around controlled airspace.”

Q8.4 Do you agree that the principles of the proposed Environment Objective (Option 1) should apply to the CAA’s economic regulation of air traffic services?

3.35 The majority of environmental groups supported the proposal citing the significance of environmental impact from decisions about air traffic management:

“Yes – we believe that environmental impacts should be considered in all parts of the CAA’s operation... We consider it appropriate that NATS’ own commitments on the environment be appropriately supported through an environmental duty for the CAA with respect to its economic regulation of air traffic services.”

“Yes but we are concerned that the possibility of influencing the environmental performance of airports through the specific licence conditions has been ruled out. It is true that the CAA would only be able to use such influence with three major airports but since they are so dominant in the market we do not feel that they would suffer any significant disadvantage compared with airports that are not subject to economic regulation.”

3.36 A number of airports and airport operators did not support the proposal suggesting that significant incentives already exist to encourage consideration of environmental objectives:

“There is already significant incentive to encourage air traffic services to make changes to operations for environmental gains. In addition, Single European Sky Air Traffic Management Research (SESAR) already has an overarching objective to reduce the environmental impact of each flight which is legally substantiated by existing and future EU regulation therefore any involvement by CAA would duplicate effort and subsequently increase cost.”

Q8.5 Are there any areas where the interests of the ‘end user’ and ‘intermediary users’ would diverge in respect of the CAA’s economic regulation of air traffic services?

3.37 Those who responded mostly did not see any divergence of interest:

“The recipients of the service provided by air traffic control are the airspace users, most notably the airlines. ...it is unnecessary to extend the focus to the passenger level...”

“Air traffic services are another prime example where the air carriers, rather than the passengers on board, are the end users. They are the ones who pay for the privilege of using it, and who bear the costs of so doing. The air carriers needs are also those of their passengers. It is vital, therefore, that the CAA treats air carriers as the “end users” in its role of regulating air traffic services. By so doing, the CAA will be providing equal treatment to not only passenger flights but also those that carry freight only.”

3.38 The general aviation community were very concerned about the proposals, and any cost implications:

“If the CAA was to impose the full cost of the vastly expanded objectives, then the end user would object to such additional costs being recovered from

“travel” for example or Student pilots having to pay still further taxes when self-sponsored airline pilots already pay tuition from “after tax” income and pay VAT on their training”

Q8.6 What would be the costs and benefits of changing the existing regime for the regulation of air traffic services to make it clear that the CAA should focus exclusively on the interests of ‘end users’ where their interests diverged from those of ‘intermediary users’.

3.39 There was a low level of response to this question and the small number that did respond thought that there would be no benefits in changing the charging regime:

“We believe that there would be no benefit associated with the proposals and [they] may increase costs faced by the industry.”

Giving the CAA new information powers

Q9.1 Do these proposals to give the CAA new information gathering and publishing powers achieve the right balance between supporting the public and avoiding unnecessary regulatory intervention? Please give reasons for your answer.

3.40 Those who responded generally agreed that giving the CAA new information gathering and publishing powers would achieve the right balance between supporting the public and avoiding unnecessary regulatory intervention, although some expressed reservations about the costs of collecting data:

“concerned that any change to the existing information gathering and publication should be subject to industry consultation. The current proposal that such consultation should only take place where there is a significant change to the information sought is not acceptable”

“Information supply by airports can be easy or difficult, depending on whether it collects such data as part of its normal business operations...where such information is not normally collected...then provision...could be costly and time-consuming...”

3.41 Concerns about proportionality and the costs of collecting data were also raised by those respondents who did not agree with the proposal:

“...is particularly concerned about the potential impact of new information gathering and publishing powers. The CAA needs to bear in mind that many airports do not have the spare resource or systems available to provide significant amounts of additional information. To the extent that additional costs will accrue as a result of such information requirements, these costs will not be capable of being passed on to end-users (airlines) – except in the case of the price-regulated airports. Again, the issue of the level playing field is important, and any information requirements must fall equally on all airports, not just on (say) those falling within the new licensing regime.”

“No. This is disproportionate and unnecessary. It would be wrong to publish information for the UK only when there is a single EU market. It is for the EU to publish such information, as they already do for delays.”

4. Modernising the CAA's governance, funding and enforcement arrangements

The CAA's governance arrangements

Do you agree with our proposals to:

Q10.1 Remove the statutory requirement for HM Treasury to approve the remuneration of CAA Board members?

Q10.2 Amend the legislation so that the Secretary of State will in future only: (1) appoint and determine the remuneration of the Chair, any Deputy Chair and any non-executives and (2) approve the appointment of the Chief Executive? (Subject to certain requirements set out at 10.12, the appointment and remuneration of the Chief Executive and other executives would therefore become the responsibility of the CAA.)

Please give reasons for your answers.

4.1 These proposals gained widespread support from those who responded on them although a number of respondents wanted to ensure transparency and accountability:

"We are not clear how the remuneration of CAA executive members will be open to scrutiny and industry stakeholders might be expected to hold the CAA to account if they felt that remuneration levels were inappropriate. We welcome this suggestion of industry's role, but there needs to be a mechanism in place."

"Yes, subject to there being effective controls in place to prevent any inappropriate rewards."

4.2 Where respondents did not agree, this was because they wanted to see external scrutiny of appointments and remuneration:

"An external independent authority should pronounce on Board salaries"

"Independent verification would avoid both the accusation of "a cosy club" and be a constraint against possible excess..."

"If the cost of administering regulation is to be met even in part by fees levied on the consumer then an independent scrutiny of the budget (including Board remuneration) is essential."

The CAA's funding arrangements

Q11.1 We are proposing to remove the statutory sixty days' delay period and to replace it with a duty to consult charge payers. Do you agree with this proposal? Please give reasons for your answer.

4.3 This proposal was widely agreed, with little comment, by those who responded. Where respondents did comment, they focused on the length and obligations of the proposed duty to consult:

"Agreement is provisional on the following two points:

- 1. the consultation period is a minimum of 12 weeks, and that*
- 2. the decision emanating from such consultation is provided at least 60 days before the date of effectiveness."*

"We are content that adequate consultation can replace the delay period but consider that environmental groups should also be consulted so that they can be satisfied that environmental protection is adequately funded by the industry."

"...whilst welcoming the introduction of a consultation procedure, we are not convinced that [it] is...sufficient to allay all stakeholder concerns... There may still be occasions when, for whatever reason, stakeholders would require the opportunity to present their arguments directly to the Secretary of State. We suggest that a delay period of thirty days would be sufficient for this purpose without imposing a significant burden on any party.'

"Agreed. However, we are concerned that the future Consumer Objective agenda would be 'driven' by the 'charge payers', that is, the Aviation Industry. If the purpose of the new Consumer objective is to create transparency, and the method of funding, and being 'held to account' by 'charge payers' remains, we would then suggest that publication of (demonstrating 'transparency' and 'accountability') of the minutes of meetings is appropriate!"

4.4 A handful of respondents (particularly from general aviation) were opposed to the proposal on the basis that consultation might not be adequate:

"An obligation on the CAA only to consult on its charges would provide a relatively weak incentive on the CAA to properly budget and set charges. This obligation should be strengthened by obligations on the CAA not to distort competition when levying charges and to publish a detailed explanation supporting its budget, the overall level and the structure of its charges"

"No. Historically the CAA have not been transparent in their costing procedures. It has been a case of notification and application, without some form of debate period this could lead to excessive cost escalation"

"No. CAA performance in this area does not merit that privilege."

The CAA's enforcement powers

Q12.1 To what extent does the CAA's current enforcement activity comply with the Macrory principles of better regulatory enforcement, as described in the box beneath paragraph 12.4?

4.5 Opinion was divided in a relatively low response (airlines, for example, did not comment). Several airport operators agreed that CAA's current enforcement activity did not comply with Macrory principles:

"The sanctions undertaken by the CAA do not generally comply with [Macrory] principles... [in that] enforcement...is criminal sanctions. However, the fact that the CAA cannot use civil sanctions means that some functions of sanctions are not adhered to, for example sanctions should be responsive and considerate and proportionate. We support the proposal to give the CAA the ability to issue civil sanctions."

4.6 Another view proposed a role for the passenger protection body:

"Outside the ATOL scheme, the CAA has not, to [our] knowledge, applied any formal sanctions in relation to breaches of consumer protection legislation...the CAA's main explanation for this is that sanctions currently available to it are not suited to proportionate enforcement in this area. But the result is that it's current enforcement activity in relation to consumer protection legislation does not, in [our] view, satisfy the Macrory principles..."

"For the future, [we believe] that the Government should consider introduction of a formal mechanism for appeal by the passenger representative body to the Secretary of State in the event that it does not consider the CAA to be enforcing legislation effectively. Such a mechanism would need to be framed to ensure that the right of appeal was not routinely invoked every time the CAA came to a different judgement than the passenger representative body. [We believe] that a framework for this purpose could be built around the Macrory principles."

4.7 Conversely, some general aviation respondents supported the status quo:

"The CAA's current approach accords with these principles. As regards both GA and air transport, the sanctions are effective and are typically used with sensitivity and discretion."

"The range of options open to CAA is currently sufficient to deter and punish. There should be no change to the procedure for applying the sanctions currently available. Changes to a system of civil sanctions creates an opportunity for a regulator to generate income without a requirement to prove guilt to an independent body."

Q12.2 Should the CAA have access to a broad range of civil sanction powers in addition to its existing civil enforcement powers? What would be the potential costs and benefits of doing this?

4.8 On the whole, those who responded were in favour (though there was little comment on costs and benefits):

“Yes. Criminal sanctions are disproportionate and inappropriate for certain offences, particularly breaches that are minor or administrative in nature. Allowing CAA to impose civil sanctions will give it the flexibility needed to tailor the penalty to the offence involved. The Secretary [of State] should consult with the industry before prescribing specific civil sanctions for non-compliance.”

“...the use of such sanctions must be robustly and effectively underpinned by clear and correct guidance which will inform both the CAA and the industry, and by clear and unambiguous advice...Where the CAA is unable to satisfy itself or the industry that it is able to act on that basis, any enforcement action by the CAA must be subject to the rigour of the courts.”

4.9 A number of general aviation respondents were opposed to the proposals suggesting that the CAA already had a sufficient range of powers:

“NO. We have no confidence that the RES Act 2008 can be properly applied in the context the individual GA pilot and aircraft operator. The Act is framed primarily as a regulation mechanism for businesses. In principle we are opposed to shifting the burden of proof away from the regulator. In practice we perceive serious potential problems [revolving] around safety, reporting and detection for GA pilot and aircraft operator. We do see some opportunity to use civil sanctions effectively. Where, for example, an airport exceeds its licence terms, or an aircraft breaks its noise limit on departure (overseas airlines routinely ignore these) there is currently no legal basis for a fine.”

4.10 Some had other doubts:

“we do not believe that the CAA should have powers to impose financial penalties on carriers. If powers are to be introduced, then financial penalties should only be employed if discussions with carriers about any shortcomings become exhausted”

Q12.3 Which areas of civil aviation law would be appropriately enforced using civil sanctions? Are there any areas, such as safety, where civil sanctions would not be appropriate? (We have provided a list at 12.17 of circumstances where we believe that criminal sanctions are most appropriate.)

4.11 There was overall a low response to this question. Of those who did express a view, the majority agreed with the proposals in the consultation paper (although the

general aviation respondents generally said that no change should be made). A number of additional suggestions were made:

“We believe any offences related to administration should be subject to a civil sanction. We support the view that criminal sanctions continue to be raised in many of the areas noted in paragraph 12.17 of the consultation document but certain offences are unlikely to merit criminal sanctions and further definitions are required to clarify these.”

“It may be easier to provide for civil sanctions for all of the relevant legislation, thus enabling the CAA to pick the right tool for the problem at hand, rather than being constrained in their choice of tool. For example, breaches of safety legislation need a strong response, but civil action can allow a greater focus on preventing future harm and thus should not always be ruled out. It may be appropriate to retain criminal penalties for safety-related problems for their deterrence effect.”

4.12 Other respondents suggested areas where civil sanctions would not be appropriate:

“...civil sanctions are [not] appropriate for enforcement of safety regulation. The implementation of civil sanctions for anything beyond administrative offences (for example failure to produce documents) would erode the open safety reporting culture that is a key feature of UK’s aviation community. The information obtained as a result of this culture is invaluable to maintaining UK’s high record of aviation safety.”

“We strongly support the sentiments expressed at 12.14 and 12.15. In addition, we would make the point that the sentiments in those paragraphs seem to be slightly at odds with those in the first bullet point of the list at 12.17 i.e. the first bullet seems to imply that a safety matters warrants criminal enforcement per se whereas we believe that a safety matter will generally only warrant criminal enforcement if it falls into the other listed categories of e.g. it involved fraud or dishonesty, there is a prior history of breaches, or there was a deliberate attempt to break the law.”

“We wish to draw attention to what SHOULD NOT be enforced using civil sanctions. It is essential, to preserve intact the current aviation safety culture, that safety regulation matters should not be covered by such sanctions. Where the seriousness of the alleged offence so indicates, the criminal courts provide the appropriate remedy, and in extremis, licenses can be revoked..... This is the end of the open safety reporting culture, which supports the UK’s good GA safety record. Section 12.15 of the proposal provides assurances of CAA intent not to use civil sanctions against individuals for cases of safety regulation, except for gross negligence. The citizen has heard similar fine words before, concerning areas such as speeding, parking, rubbish collection etc. History suggests that such sanctions will be used if they are available, too often in an insensitive and counter-productive manner.”

Q12.4 Which of the various types of sanctions (as set out in the box beneath paragraph 12.6) would be appropriate and effective for the CAA to use?

4.13 Most of those who responded (a relatively small number) felt that the CAA should have all the listed sanctions available to them although there was some difference of opinion from within the general aviation respondents. For example, some favoured no change and others argued that safety offences should not be subject to civil sanctions:

“All of the proposed sanctions, except that we would caution against the manner in which a variable monetary penalty might be used. Where the CAA acts as Economic Regulator with a duty to ensure the financiality and viability of the businesses it regulates, the power to impose fines based on for example a percentage of turnover...creates an intrinsic conflict between the role of the CAA as economic regulator and industry policeman.”

“the range of civil sanction powers set out in the Regulatory Enforcement and Sanctions Act 2008 and in this consultation. This will...bring the CAA into line with...other regulators. In addition to these civil sanctions..... would support the CAA having powers to compel information from companies if they are being investigated (e.g. for a breach of consumer protection legislation); and to order companies to pay compensation to the consumer when it is clear they are entitled to it.”

Q12.5 Do you agree that the CAA should be given an express power to bring proceedings?

4.14 Most respondents agreed, although there was some difference of opinion amongst general aviation respondents:

“The CAA should have powers to bring civil proceedings but not criminal proceedings [because]...the CAA will not need to bring criminal proceedings in order to enforce its civil powers; the Secretary of State is already considering granting the CAA sufficient statutory powers to make civil proceedings in the courts unnecessary; andbelieves that the principles of justice, neutrality, transparency and non-discrimination are best observed if the prosecuting authority is separate from the regulatory authority.”

“Only if the addition of the power is likely to lead to greater efficiency and consequential cost savings within the administration of the CAA.”

Q12.6 Should the CAA in future recover the costs of its formal enforcement activity from industry rather than from the taxpayer? If so, how should it recover these costs in an equitable way?

4.15 The majority view (including general aviation respondents) was against recovery of costs from the industry:

“...given the significant increase in the powers proposed to be given to the CAA...it is appropriate for the costs of the CAA’s formal enforcement activity to be funded through general taxation...this...would act as an important protection against the over-zealous application of regulatory powers.”

“We are extremely concerned that these proposals seem purely intended to provide savings for Treasury, rather than offering a coherent approach to funding of enforcement processes. ...more than half of all UK citizens use air services from the UK...Treasury should continue to fund the enforcement regime, on the basis that the benefits clearly and directly accrue to Treasury.”

“NO. The recent trend to allow regulators to fund their enforcement activity from ‘the industry’ provides a clear perverse incentive, for regulators to do more enforcement activity...the individual pilot and aircraft operator is again being conflated with ‘the industry’. Our members are mainly ordinary individuals, without industrial-scale budgets to pay for CAA enforcement activities directed at airlines, as well as their own activities.”

4.16 Where respondents agreed that costs should be recovered from industry, suggestions were made about the penalty regime:

“Costs of enforcement should be factored into the scale of penalties so that it should be largely self-financing.”

“ these costs should be borne by each sector of the industry in proportion to its share of the enforcement activity.”

5. Other reforms to the civil aviation regulatory framework

Proposals for the rationalisation of the Secretary of State's airport byelaw confirmation function

Q14.1 Do you agree with our proposed six-step process outlined for making new airport byelaws? If not, what are your reasons and what alternative approach would you suggest?

5.1 Very few respondents answered the questions on airport byelaws. A number of airport consultative committees supported the proposal and endorsed the role that they would play in the process:

"...welcomes the modernization of the airport byelaw making procedure, particularly the proposed requirement to engage with interested parties in the early stages of considering whether a byelaw is needed before consultation is undertaken on proposals. The role of airport consultative committees in this process should not be overlooked..... suggest therefore that specific reference is made to airport consultative committees as one of these interested parties that should be considered in the early stages of considering a new or amended byelaw. As regards publicity for advertising proposed byelaws it would be helpful if the greater guidance could be given as to where the formal press notices should be published so as to ensure comprehensive coverage of the proposed byelaw."

5.2 However, a number of airport operators did not want to see any change suggesting this would lead to confusion:

"believe that the proposed process is neither necessary nor likely to benefit airports or local stakeholders. The current system is well understood by those involved and changing the process may cause confusion. The six step process is likely to extend a further three steps if reservations are raised during consultation."

Q14.2 Do you agree that the publication of model byelaws will retain appropriate democratic accountability within the process for making airport byelaws? (See also Q14.5). If not, why, and what alternative approach would you suggest?

5.3 Very few respondents gave views on this question. Of these, mainly airport operators, did not agree stating that the proposal would remove democratic accountability:

"No. We believe that the proposals would, if implemented, reduce the level of democratic accountability and perceived independent scrutiny associated with the process for making and administering airport byelaws. In particular, ...the

removal of democratic involvement and independent scrutiny of new byelaws will lead stakeholders to seek judicial redress in substitution for the scrutiny once provided by the Secretary of State.”

5.4 Where respondents did agree, they were not sure how the process would work:

“We agree that the process will retain democratic accountability because it requires the airport operator to consult local stakeholders and the Secretary of State on its proposals. However, we have a slight concern as to how this would work as byelaws are local to individual airports.”

Q14.3 Do you agree with our proposals on resolving challenges (see 14.16)? If not, why, and what alternative approach would you suggest?

5.5 Among those who responded to this question roughly half agreed with the proposed approach for resolving challenges. Those that agreed generally had nothing to add, although a couple of respondents proposed that information be provided to the Secretary of State over and above that given to a consultee:

“To ensure the Secretary of State is aware of concerns (particularly where a proposed byelaw departs from the model), the airport operator should potentially be required to submit a summary of responses, the proposed action and the justification to the Secretary of State.”

5.6 Where there was not agreement it was either because the respondents, mainly airport operators, did not recognise any process for resolving challenges or thought that the system should be independent of them:

“... the best way to avoid challenges is to ensure that the system of byelaw administration is seen to be independent of airport operators. Challenges are unlikely to be resolved through the consultation mechanism which gives stakeholders no means by which they may obtain a definitive or independent decision or judgment in respect of a proposed byelaw. Instead, stakeholders are likely to seek judicial review of the administration of contested byelaws increasing the costs to airports.”

“We do not believe that consultation provides any mechanism for resolving challenges.”

Q14.4 Do you agree that in cases where proposed airport byelaws follow the model airport byelaws, or only vary slightly from them, these byelaws should no longer require the Secretary of State’s confirmation? (And that the Secretary of State’s involvement should be limited to where he can add the most value, such as, in relation those byelaws that vary significantly from the model airport byelaws). Please explain the reasons for your answer.

5.7 Only a small number of respondents answered this question and only a handful disagreed with the proposal. Where respondents disagreed it was mainly

because they thought that byelaws would be very likely to vary significantly from model byelaws:

“It is unlikely that it will be possible for local byelaws to vary only slightly from the model byelaws..... Airport byelaws have local effect because they are intended to respond to local conditions. For example, local byelaws for Heathrow are different from those of Southampton and Stansted in at least two key respects (relating to taxis and tunnels). A national system of model byelaws is unlikely to adequately address local issues and, in that respect, the concept of a centrally imposed system of model byelaws at a local level is inappropriate. Under the existing system, the Secretary of State provides a valuable public service by reviewing and adjudicating on new byelaws in a visible, democratically accountable and manifestly independent way.”

Q14.5 Do you agree that the provision of:

- published model airport byelaws;
- the requirement for airport operator to consult interested parties when developing new byelaws; and
- the ability for the validity of airport byelaws to be challenged in the courts

would provide sufficient protection to the public against the risk of flawed byelaws? If not, why not and can you suggest how our proposals could be adjusted to provide sufficient protection?

5.8 Of the few respondents who answered this question, the majority thought that there would be sufficient protection to the public against the risk of flawed byelaws. However, in many cases they caveated this by suggesting that the new system would be less democratic than the existing system:

“We believe that both the existing system of airport byelaw administration and the proposed new system would adequately protect the public against the risk of flawed byelaws. However, we believe that the proposed new system would be perceived by key stakeholders and airport users as being less democratic, less independently scrutinised and more costly and bureaucratic than the existing system.”

Medical data sharing

Q15.1 Do you agree in principle that making medical data on air crew available for research (which is anonymised for research purposes) is beneficial, given the safeguards provided by the Data Protection Act 1998? (See paragraphs 15.6-15.7 and the draft Impact Assessment for more information). Please explain the reasons for your answer.

5.9 The vast majority of respondents agreed with the proposal for making medical data on air crew available for research, although some suggested that its usefulness might be limited:

“We agree with the principle that making anonymised medical data on air crew available for research purposes would be beneficial. Some excellent research has been performed using aircrew mortality data, however this data is unlikely to identify other potentially debilitating conditions which do not result in death”

5.10 Only one respondent, who did not represent any organisation, thought medical data should not be available for research:

“I object strongly to the proposal for medical data collected by the CAA to be used for any purpose other than that for which they are collected – to ensure as far as reasonable that pilots, controllers and other persons are fit to perform their duties. They should not be made available to third parties except for the same purpose where legally necessary – for example to European Aviation Safety Agency (EASA). The CAA should not make medical data collected from required medical examinations etc. available for research unless it is directly related to aviation safety.”

6. The general aviation response

6.1 As noted at the outset, the responses from the general aviation community were numerous. They were also largely in agreement with each other, though they were not always directed at individual questions in the consultation but rather at the broad principles with which it was concerned. It therefore seems most appropriate to outline the broad general aviation response in this separate section. (General aviation views on some specific questions have been mentioned in the analysis above.)

6.2 The general aviation response was consistently hostile to the consultation. There was criticism of its conduct; it was argued that the time allowed for response was too short (13 weeks). There was also consistent criticism that the consultation largely ignored general aviation, despite its size. General aviation respondents argued that general aviation represents 13% of the UK's aviation business worth £1.4 billion annually and employs many thousands of people. It was also argued that the consultation's emphasis on a consumer role for the CAA did not take proper account of general aviation, which should be seen as an 'end user', with equal importance to others; the proposals were accused of favouring *"the commercial interests of multinational companies not the general public"*.

6.3 It was further argued that the CAA should be a regulatory body concerned only with safety. However, it should be recognised (the responses said) that safety was now regulated on a European basis, with European Aviation Safety Agency (EASA) in the lead, and that the subordinate role of the CAA should be recognised.

6.4 There was widespread suspicion voiced in the responses that the proposals would lead to an expansion of controlled airspace, at the expense of general aviation activities. And it was claimed that the provision of civil enforcement powers for the CAA would inhibit the existing culture of open safety reporting, because people who had previously been willing to report safety problems would in future stay silent for fear of enforcement action being taken against them.

6.5 There was also widespread suspicion that the enhanced CAA role outlined in the proposals would be expensive and that the costs would fall on general aviation:

"The proposal to get the industry to pay for the new activities of protecting the consumer and the environment is incorrect. These are public benefits and should be borne by the public in general from central funds and not from the industry. The proposal will, in real terms, mean that the CAA will dramatically increase its charges...owner/pilots such as myself will be left with disproportionate amounts to pay."

6.6 A number of general aviation respondents said that the consultation should be withdrawn and re-started.

Annex A: List of those who responded

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Aberdeen Airport Consultative Committee
Advantage Travel Centres
Air Transport Users Council (AUC)
Air Travel Insolvency Protection Advisory Committee (ATIPAC)
Air Travel Trust (ATT)
Aircraft Owners and Pilots Association (AOPA)
Airport Operators Association (AOA)
Association of ATOL Companies (AAC)
Association of British Travel Agents (ABTA)
Association of Independent Tour Operators (AITO)
Association of Licensed Aircraft Engineers
Aviation Environment Federation (AEF)
BAA Airports Ltd
Bird & Bird LLP
Birmingham International Airport Consultative Committee
Board of Airline Representatives UK (BAR-UK)
Bristol Airport
British Air Transport Association (BATA)
British Airways (BA)
British Gliding Association
British Helicopter Association (BHA)
British Microlight Aircraft Association (BMAA)
Cameron balloons
Campaign for National Parks (CNP)
Campaign to Protect Rural England (CPRE)
Carnival UK
Citizens Advice Bureau
Civil Aviation Authority
Consumer Council for Northern Ireland
DHL
English Heritage
Euro Seaplace Services Limited
European Low Fares Airline Association (ELFAA)
Eventia (Regulation Committee)
Expedia
Flightbookers Limited
Gatwick Airport
Gatwick Airport Consultative Committee
Gatwick Area Conservation Campaign
Gatwick Can Be Quieter
General Aviation Alliance (GAA)
General Aviation Awareness Council
Historic Aircraft Association
Holidaytravelwatch
Honeyguide Wildlife Holidays

Leicestershire Aero Club Limited
Light Aircraft Association (LAA)
Local Authorities Coordinators of Regulatory Services (LACORS)
London Assembly (Environment Committee)
London City Airport Consultative Committee
London Luton Airport Consultative Committee
London Luton Airport Operations Ltd (LLAOL)
London TravelWatch
Luton and District Association for the Control of Aircraft Noise (LADACAN)
Manchester Airports Group
National Air Traffic Services Ltd (NATS)
Natural England
Newcastle International Airport Ltd
Office of Fair Trading (OFT)
On The Beach Ltd
Passenger Shipping Association
Regional Development Agencies
Rolls Royce
Ryanair
Scottish Passenger Agents' Association
Stop Stansted Expansion
Strategic Aviation Special Interest Group (SASIG)
Thomas Cook
Trading Standards Institute
Travel Trust Association
Travelling Naturalist
TUI Travel
UK Airport Consultative Committees Liaison group
UK Cards Association
United Airlines Ltd
Virgin Atlantic
Wandsworth Borough Council
West Midlands Joint Committee
West Windsor Residents' Association
Which?
White Hart Associates LLP
Wycombe Air Park Action Group
Youth & Education Support (Flyers)

The Department for Transport also received a response to the consultation questions from 45 individuals.

The list above includes those who responded to Part 4: Reforming the scope of the Air Travel Organiser's Licensing (ATOL) Scheme. A summary of responses to this section of the consultation was published on 23 June 2011. This document can be found on the Department for Transport website at the following address:

<http://assets.dft.gov.uk/consultations/dft-2011-17/dft-2011-17-annex-g.pdf>