



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

Volume 1: Policy Paper

Presented to Parliament by the
Secretary of State for Transport,
by Command of Her Majesty
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Foreword

Aviation provides the UK with the international connectivity for us to succeed in a global economy. It enables people to travel for business, for employment, for leisure and to visit their friends and family, and it enables the rapid movement of goods to and from markets overseas. It is a large and dynamic industry: with a turnover of around £26 billion in 2009;¹ goods worth £113 billion were shipped by air freight between the UK and non-EU countries in 2010² and, in the same year, UK airports handled 211 million passengers³ and served nearly 400 international destinations.⁴

The Government wants to see a successful and competitive aviation industry. We are taking forward the work of the South East Airports Taskforce to improve our major airports within the constraints of existing runways. In the longer term, we have committed to producing a sustainable framework for UK aviation by 2013 which supports economic growth and addresses aviation's environmental impacts.

Of course, in a global industry, a degree of both domestic and international regulation is necessary to provide safe and secure travel; to mitigate environmental effects; to ensure basic rights for disabled and other passengers; and in some instances to protect consumers against the risk of airports exploiting their market power.

This draft Bill is designed to modernise key elements of the regulatory framework for civil aviation in the UK, to enable the sector to make a full contribution to economic growth without compromising high standards. Much of our aviation regulation is governed by 1980s legislation and needs to be brought into the 21st century.

This draft Bill offers a package of reforms to make both regulation and the sanctions which support it flexible, proportionate, targeted and effective. It proposes removing unnecessary regulation and unnecessary intervention by central government. It devolves more responsibility to the independent specialist regulator, the Civil Aviation Authority (CAA), while ensuring that the CAA is accountable and weighs the costs and benefits of its decisions. The draft Bill proposes that the costs of regulating the aviation sector should be principally covered by the aviation industry, not general taxation. Above all the draft Bill puts the consumer first. Concerning the economic regulation of airports with substantial market power, and where regulation adds real value, the CAA's primary duty will be to consumers, that is passengers and owners of cargo both present and future. In addition the draft Bill gives the CAA a role in promoting better public information about airline and airport performance, to assist

¹ Turnover is from ONS Annual Business Survey 2009 Revised, Section H: Transport and Storage, adding SIC 51 (air transport) and SIC 52.23 (service activities incidental to air transportation), found at <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-229068>.

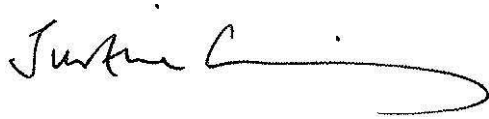
² CHIEF Non-EU data, HMRC, <https://www.uktradeinfo.com/index.cfm?&hasFlashPlayer=true>.

³ UK Airport Statistics 2010, CAA, <http://www.caa.co.uk/default.aspx?catid=80&pagetype=88&sqlid=3&fld=2010Annual>.

⁴ DfT analysis of CAA airport statistics on passenger air transport movements shows UK airports served 383 international destinations in 2010. These destinations had the equivalent of at least a weekly service from the UK, i.e. at least 52 departures a year.

the consumer in selecting services, and about the environmental effects of aviation and measures taken to mitigate adverse effects.

Today, I can announce that an opportunity has now arisen to introduce the Bill earlier than expected. Nevertheless, I am keen however that the Transport Committee and stakeholders have an opportunity to consider the Bill before then, therefore I have published the draft Bill today.

A handwritten signature in black ink, appearing to read 'Justine Greening', with a long, sweeping underline that extends to the right.

The Right Honourable Justine Greening MP
Secretary of State for Transport

23 November 2011

1. Introduction: Summary of the proposals

Publishing the draft Bill for pre-legislative consideration

Why we have this document

1.1 This document presents for pre-legislative consideration a draft Bill to help implement the Government's plans for **modernising key elements of the regulatory framework for civil aviation in the United Kingdom**. This is established through:

- reforming the framework for airport economic regulation, which includes replacing the current 'one size fits all' approach with a modern licensing regime that puts the protection of passengers' interests at its heart and supports efficient, passenger-focused investment in airport facilities;
- modernising the framework and functions of the aviation regulator – the Civil Aviation Authority (CAA) – updating its governance and enforcement functions and giving it a role to ensure better consumer information and better public information about the environmental effects of aviation; and
- transferring certain aviation security functions from the Secretary of State to the CAA as part of wider work to reform aviation security regulation and deliver savings to general taxation. The Secretary of State would, however, remain responsible for aviation security policy and issuing aviation security Directions to the industry.

1.2 Included with the draft Bill are the associated Explanatory Notes (Volume 2) and summaries of the impact assessments (Volume 3). The full impact assessments can be accessed on the Department for Transport website.

1.3 Volume 4 is the Summary of Responses to the previous Government's consultation on certain proposals to update the regulatory framework for aviation, except those relating to the ATOL scheme. On 23 June 2011 the Government published the *Summary of responses to Part 4: Reforming the Scope of the Air Travel Organisers' Licensing (ATOL) scheme*.⁵

Pre-legislative scrutiny and the legislative process

1.4 In March 2011, the Government announced that legislation to implement airport economic regulation reforms would be introduced early in the next Parliamentary session. The Government also stated that it planned to publish a draft Bill containing the reforms for pre-legislative scrutiny before it was introduced into Parliament.

⁵ <http://assets.dft.gov.uk/consultations/dft-2011-17/dft-2011-17-annex-g.pdf>

1.5 An opportunity has now arisen to introduce a Civil Aviation Bill into Parliament near the beginning of 2012. This would give greater certainty of the new system for airport economic regulation being in place by the time that the current price controls at Heathrow, Gatwick and Stansted expire at the end of March 2014. The Bill proposes a flexible licensing regime with the consumer's interest at its heart, and the Government does not wish the CAA to be obliged to set price controls for the period 2014–19 under the current system. Therefore, the Government intends to take up this opportunity as soon as possible. However, the Government still wishes to publish the draft Bill today to provide an opportunity, albeit shorter than normal, for the Transport Committee and stakeholders to consider the proposals.

1.6 Bills are introduced in either the House of Commons or House of Lords for examination, discussion and amendment. When both Houses have agreed on the content of a Bill it is then presented to the monarch for approval (known as Royal Assent). Once Royal Assent is given a Bill becomes an Act of Parliament and is law. For further details see the UK Parliament's webpage.⁶

1.7 It is possible that the scope of the Bill may be extended before it is introduced. One area which could be included is the reform of the Air Travel Organisers' Licence (ATOL), following the consultation recently concluded on measures which would modernise the scheme and better protect consumers in the 21st century holiday market.

Scope of the draft Bill

1.8 As described in detail below, the key features of the draft Bill include:

- Reforming the framework for airport economic regulation:
 - The regulator's statutory duties;⁷
 - Deciding which airports should be subject to economic regulation;
 - Licensing regime;
 - Enforcement;
 - Appealing key regulatory decisions; and
 - Powers for the CAA to enforce competition law.
- Modernising the CAA's governance and operations:
 - Empowering the CAA to appoint its Executive Directors;
 - Balancing a new consultation obligation with shorter notice periods for the CAA's charging schemes;
 - Enabling the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions;

⁶ www.parliament.uk/.

⁷ Note these statutory duties are limited to the CAA's airport economic regulation functions. They do not apply to its other regulatory functions, for example such as safety.

- Giving the CAA an explicit power to carry out criminal proceedings as part of its enforcement work; and
- Giving the CAA a role in promoting better public information on customer service and environmental effects.
- Transferring certain aviation security functions from the Secretary of State to the Civil Aviation Authority. Over-arching responsibility for aviation security policy would remain with the Secretary of State.

Why we need legislation

How we got to where we are now

1.9 A 2006 House of Commons Transport Committee report recommended the Department for Transport conduct a strategic review of the CAA's functions, including those related to airport economic regulation.⁸

1.10 Further background information on each of the policy areas is provided in the relevant sections below.

⁸ See page 64 of <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmtran/809/809.pdf>.

2. The proposals and their intended effects

Reforming the framework for airport economic regulation

2.1 In May 2010 the Government announced its intention to reform the framework for airport economic regulation to benefit passengers and support investment in better facilities.⁹ In the absence of new runways at Heathrow, Gatwick and Stansted this is vital to the Government's aim to improve the passenger experience at our major airports.

How we got to where we are now

2.2 In 2008 the previous Government announced a review of the framework for airport economic regulation.¹⁰ Advice from an independent panel of experts¹¹ and the responses from three separate evidence gathering exercises – including a public consultation in 2009¹² – indicate that the current regulatory framework is not fit for purpose and needs to be reformed. The Competition Commission also concluded in its market investigation into BAA airports that the current regime distorts competition between airlines and should therefore be reformed.¹³

2.3 The main criticisms of the current economic regulation framework are as follows:

- Unnecessary central Government involvement in key regulatory decisions, which the expert regulator is better placed to take;
- Regulation is disproportionate and cannot be targeted to the individual circumstances facing airports;
- The regulatory process is burdensome and inefficient;
- The regulator's priorities are not clear and the regulator is not clearly accountable for its decisions; and
- The regulator lacks ability to respond in real time to events – be they ash, snow or anything else – as they emerge.

⁹ The airport economic proposals reference in the 2010 Queen's speech is available at <http://www.number10.gov.uk/news/queens-speech-airport-economic-regulation-bill/>.

¹⁰ <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/press/speechesstatements/statements/stateeconomicregairport>.

¹¹ <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/aviation/airports/reviewregulationairports/expertpanelopinion>.

¹² The call for evidence was published in March 2008 and is available at <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/aviation/airports/reviewregulationairports/callforevidence>. Emerging thinking was published in November 2008 and is available at <http://www2.dft.gov.uk/pgr/aviation/airports/ccinvestigation.pdf>. The public consultation was published in March 2009 and is available at <http://www2.dft.gov.uk/consultations/archive/2009/ukairports/index.html>. The previous Government's response to the public consultation was published in December 2009 and is available at <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/aviation/airports/reviewregulationairports/decisiondocument/>.

¹³ http://www.competition-commission.org.uk/rep_pub/reports/2009/fulltext/545.pdf.

2.4 Reform to the framework of the economic regulation of airports is also prompted by the significant changes that have taken place in the aviation sector since the enactment of the Airports Act 1986, including large increases in passenger volumes, the expansion of regional airports and entry by low-cost airlines. Finally the current airport regulatory framework is also at odds with the *Principles for Economic Regulation* published by the Government in April 2011.¹⁴

The proposals

2.5 Effective competition is a crucial enabler of growth. Competitive markets are the best way in the long run to deliver the goods and services that consumers want at minimum cost. Effective competition also incentivises firms to invest and improve efficiency, choice and service quality.

2.6 In most sectors of the UK economy the degree of competitive rivalry between firms and the threat of competition law is sufficient to protect consumers from the risk of firms exploiting their market power, for example by charging unreasonably high prices or by providing unreasonably low levels of service quality.

2.7 However in some sectors of the economy – typically those which used to be state-owned monopolies and where circumstances limit the prospect for effective competition – economic regulation is needed to protect consumers. Such regulation has typically capped the prices that dominant companies can charge in order to promote efficiency, while providing them a fair return on their investments. In the UK economic regulation is carried out by independent expert regulators in the following sectors: gas and electricity (Ofgem), water (Ofwat), telecoms and post (Ofcom), rail (ORR) and airports and air traffic services (CAA).¹⁵

2.8 There are approximately 70 airports currently operating in the UK, whose turnover exceeded £1million per financial year in at least two of the last three financial years.¹⁶ Three airports are currently ‘designated’ and subject to price cap regulation by the CAA: Heathrow, Gatwick and Stansted. The remaining airports operate in a commercial environment where their prices and levels of service quality are determined by market forces rather than an economic regulator. Despite only three airports being subject to price cap regulation a significant proportion of UK passengers use these airports: in 2010 60% of UK passengers (around 116 million) travelled to or from one of the three designated airports, with 34% of UK passengers (around 66 million) travelling to or from Heathrow.

2.9 As part of this, Government’s aim to improve the passenger experience at our major airports and fully address the shortcomings of the current economic regulation regime identified in the section above, the Government plans to:

¹⁴ <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/p/11-795-principles-for-economic-regulation>. Annex 4 of the airport economic regulation impact assessment provides full details of how the current framework conflicts with the Principles and how the proposed reforms will adhere to them.

¹⁵ In addition in Northern Ireland the Northern Ireland Utility Regulator regulates the gas electricity and water sectors and in Scotland the Water Industry Commission for Scotland regulates the water industry.

¹⁶ As defined in Part 4 of the Airports Act 1986.

- (a) Replace the CAA's current multiple priorities with a primary focus on furthering passengers'¹⁷ interests.
- (b) Transfer responsibility for deciding which airports should be subject to economic regulation from the Secretary of State to the CAA.¹⁸ Decisions will be taken against clearly specified criteria to ensure airports are only subject to economic regulation where the benefits of regulation outweigh the costs.
- (c) Replace the current 'one size fits all' approach to economic regulation with a modern flexible licensing regime where licence conditions can be tailored to the specific circumstances facing individual airports.
- (d) Introduce new civil enforcement powers, including financial penalties (up to 10% of turnover), which will enable the CAA to tackle poor performance more speedily and effectively.
- (e) Introduce a new system of appeals to improve accountability of key regulatory decisions.
- (f) Provide powers for the CAA to investigate and remedy anti-competitive behaviour in the provision of airport services at all UK airports.

2.10 We expand on each of these points below. The proposed regulatory framework is also fully consistent with the Government's *Principles for Economic Regulation* and should contribute, where appropriate, towards our wider agenda to promote economic growth and to reduce or remove regulation.

2.11 The Government has recently consulted on options to reform the competition regime.¹⁹ We will need to consider what adjustments might be appropriate to the Civil Aviation Bill before it is introduced.

(a) The regulator's statutory duties

2.12 The CAA has a discrete set of duties for the purpose of airport economic regulation, which are distinct from its other regulatory functions (for example those relating to safety). Currently the CAA has four equal duties and these have been criticised by industry and the Competition Commission for their lack of clarity. For example stakeholders are unclear as to how the CAA weighs up its four equal – and potentially conflicting – duties.

¹⁷ The primary duty applies to passengers and owners of cargo, but we sometimes use the term 'passengers' as shorthand for 'passengers and owners of cargo'.

¹⁸ Under Part 4 of the Airports Act 1986 an airport requires a permission to levy charges from CAA if they meet the turnover threshold, £1million per 'financial year' in at least two of the last three 'financial years', of the Act. Under the 1986 Act an airport that holds a permission to levy charges is subject to economic regulation. This is despite the fact that only the airports which are 'designated' by the Secretary of State are subject to price and service quality regulation. For the purpose of this paper we use the term 'economic regulation' in the more traditional sense – that is, to refer to firms whose price and/or service quality are regulated.

¹⁹ <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/11-657-competition-regime-for-growth-consultation.pdf>.

2.13 It is essential that the CAA's priorities are clear. The Government therefore proposes to replace the four duties with a single primary duty to further the interest of consumers (that is passengers and owners of cargo both present and future), wherever appropriate by promoting competition. This is consistent with the Government's *Principles for Economic Regulation* which state that the role of economic regulators should be focused on protecting the interests of end users.

2.14 The primary duty will be supplemented by a set of further duties which cannot, individually or collectively, override the primary duty. Rather they aim to set out factors that the CAA should consider in giving effect to its primary duty.

2.15 The proposed changes to the CAA's statutory duties should sharpen the focus on passengers, support efficient investment and increase transparency by providing greater clarity to stakeholders about why the CAA has taken the decisions it has.

(b) Deciding which airports should be subject to economic regulation

2.16 One of the key criticisms of the current regime is that the Secretary of State currently decides which airports should be designated for price cap regulation. To rectify this situation, the Government proposes to empower the independent regulator to take this decision against clearly specified criteria set out in the legislation.

2.17 This will ensure that central government is rightly removed from the process of deciding which airports should be subject to economic regulation and that such decisions are taken by the body that has the expertise and capability to do so. This should provide a more stable and objective framework, enabling those affected by economic regulation to anticipate the context for future decisions and make investment decisions with confidence.

2.18 Consistent with the Competition Commission's recommendations,²⁰ the draft legislation for the airport economic regulation reforms has been carefully designed so that it should not preclude the development of competition at airports – for example in the form of competition between terminals – in the future.

(c) Licensing regime

2.19 The Government proposes to replace the current uniform approach to regulation – where designated airports are subject to mandatory 5 year price caps – with a modern licensing regime where licence conditions can be tailored to the specific circumstances facing individual airports.

2.20 By allowing for more proportionate regulation the new regime would enable the CAA to take steps to reduce the degree or scope of economic regulation imposed on individual airports if it believed this would benefit passengers. For example, it could move away from setting price controls and decide to monitor prices while regulating certain aspects of service quality instead. The new regime would also enable the regulator to impose longer regulatory periods if it considered it

²⁰ The *BAA airports market investigation* (see http://www.competition-commission.org.uk/rep_pub/reports/2009/fulltext/545.pdf) which reported in March 2009.

appropriate, which could encourage investment by allowing greater certainty over prices and consequently greater certainty regarding the return on investment decisions.

2.21 The reforms would give the CAA stronger and more flexible powers to respond to important passenger issues. The CAA could impose licence conditions which better target these issues, such as a general licence condition requiring acceptance of a code of practice relating to operational resilience (which could include resilience against severe weather) if the CAA considered it appropriate.

(d) Enforcement

2.22 A regulatory regime functions most effectively when intervention is timely, penalties are proportionate, action is effective and the process is widely understood. The Government proposes to modernise the CAA's powers to enforce compliance by introducing all of these features. Under the new regime, a stepped series of contravention and enforcement notifications will be available, with rights for the party subject to the enforcement action to have their representations considered. Where there is or is likely to be an urgent need to address an immediate risk of serious economic or operational consequences of a licence contravention, a fast track process by way of an urgent enforcement order will allow the CAA to seek compliance and remedial action. Penalties, capped at 10% of turnover, will enable the CAA to penalise airports more effectively for poor performance. This will allow for a more effective, transparent and dissuasive regime, the aim being for continuous compliance from licensees.

(e) Appealing key regulatory decisions

2.23 One of the criticisms of the current regime is the poor accountability over key regulatory decisions. At present judicial review is the only way to challenge the Secretary of State's decision about which airports should be designated for price cap regulation and the CAA's decision on the price cap and service quality metrics that should apply. Although the CAA must refer all price controls to the Competition Commission for review, the Commission's recommendations are not binding.

2.24 We propose to improve accountability by introducing a system of appeals for key regulatory decisions and remove the automatic reference of all price controls to the Competition Commission. This automatic reference has been criticised because it can create regulatory uncertainty and lead to unnecessary costs and delays. Given that the Competition Commission will be acting as an appeal body we think it would be inappropriate for it to be involved in the decision making process as well.

2.25 We propose that the CAA's decisions to impose and modify licence conditions (which could involve for example the introduction of a new price cap) should be appealable by the licence holder and materially affected airlines to the Competition Commission. We are not persuaded that the Secretary of State should have rights to appeal these decisions. The CAA has been consulting on the establishment of a consumer advocate panel for air passengers. However, given this body would not be statutorily independent of the CAA, we do not think it would be appropriate to give this body appeal rights either.

2.26 Given the competitive nature of the airline industry the commercial interests of airlines will often align with their passengers' interests. In such cases appeals brought forward by airlines should therefore be motivated by factors that may also further passengers' interests. However, at other times airlines' and passengers' interests do not align. As a result, we have designed the appeals regime so that it deters, and where appropriate dismisses, any appeal that is not in passengers' interests. We are currently giving further thought to whether this appeals regime should make formal provision for the licence holder and materially affected airlines to 'intervene' in an appeal. Broadly speaking an intervener is given formal rights to participate in an appeal process, as a party to the proceedings, in order for their views to be heard and considered by the appeal body.

2.27 We propose that the CAA's decisions about which airports should be subject to economic regulation should be appealable to the Competition Appeal Tribunal by any person whose interests are materially affected and by the Secretary of State.²¹ We also propose to make the CAA's decisions about the imposition of sanctions appealable to the Competition Appeal Tribunal.

(f) Powers for the CAA to enforce competition law

2.28 In its recent consultation, *A Competition Regime for Growth*, the Government confirmed its view that economic regulators should retain their powers to enforce competition law and make market investigation references in the sectors for which they are responsible, alongside the Office of Fair Trading (OFT). However, the CAA does not currently have such powers in the airports sector.²² The Government therefore proposes to give the CAA concurrent powers to enforce competition law and make market investigation references to the Competition Commission in the airports sector.²³ The CAA will also be given powers to conduct market studies. These provisions will cover all airports in the UK, not just those which are subject to economic regulation.

Moving to the new regime

Implementing the first licences

2.29 The Government has decided that the CAA should issue the first licences, since the CAA has the relevant operational expertise. The Government has included a provision in the draft Bill for the Secretary of State to issue guidance to the CAA which the CAA must have regard to when making its decisions. We expect guidance could include matters relating to resilience licence conditions. However, the CAA will be free to draft licences as it sees fit, taking into account its primary and further duties (including the proposed financing duty).

²¹ In order to aid compliance with European legislation (Airports Charges Directive) we are currently proposing that the Secretary of State is granted a right of appeal.

²² The CAA does have concurrent competition powers in relation to air traffic services.

²³ We may need to change the concurrent competition powers clauses (Chapter 2) in the draft Bill in light of changes to the cross-sector concurrency arrangements as proposed in the Government's consultation *A Competition Regime for Growth*. See <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/11-657-competition-regime-for-growth-consultation.pdf>

2.30 This approach does not alter the Government's opinion that there are good reasons to include licence conditions that strengthen the financial resilience of dominant airports, with appropriate derogations (a derogation being a suspension of a licence condition) where these cut across financing in existence at the time the Bill is enacted. Where a financial resilience licence condition is subject to derogation, the draft Bill proposes a two stage test to be satisfied before the regulator can propose to remove a derogation, so as to provide some additional certainty as to the circumstances whereby those derogations might be removed.

2.31 The Government has asked the CAA under section 16(1) of the Civil Aviation Act 1982 to provide an indicative licence and a broad timetable for work to develop the first licences, to be informed by discussions with stakeholders. This material would accompany the Bill through Parliament to facilitate informed scrutiny about the contents of the Bill. Further information is set out in the section 16 letters which can be viewed on the CAA's website.²⁴

Extending the price control

2.32 In March 2011 the CAA announced its decision to extend the price controls at Heathrow and Gatwick by one year. The price controls will now expire on 31 March 2014, which is the same date that Stansted's price control is due to expire. This extension provides a better opportunity for the next round of regulatory settlements to be set under the proposed new regime.

Competition Commission reference

2.33 The current regime for economic regulation requires the CAA to make a reference to the Competition Commission regarding the designated airports' price controls.

2.34 As part of the transition to the new regime, in a letter sent to the Chair of the CAA²⁵ in March 2011, the previous Secretary of State stated that he was presently minded to exercise his power under the Airports Act 1986 to direct that there should be no reference to the Competition Commission for the next price review. This remains the Government's position. When exercising discretion in accordance with the 1986 Act, the Secretary of State will take into account all relevant matters at the time when a decision is expected to be taken in the first quarter of 2012.

Other transitional measures

2.35 To ensure a smooth transition to a new regime other transitional measures are also being considered with a view for inclusion in the Bill when it enters Parliament. These include provisions which enable airports to retain their status as statutory undertakers.

²⁴ See www.caa.co.uk/docs/5/20110929S16Letter.pdf and www.caa.co.uk/docs/5/20110812S16Letter.pdf.

²⁵ <http://www.caa.co.uk/docs/5/ergdocs/20110314HammondHuttonAviationBill.pdf>.

European legislation

2.36 European legislation on airport charges – the Airport Charges Directive (ACD) (Directive 2009/12/EC) – has now been transposed in the UK. This has resulted in minor changes to Part 4 of the Airports Act 1986, which we envisage will be repealed in full when the proposed Bill is enacted. We believe these draft legislative provisions on airport economic regulation are consistent with the relevant obligations placed on the UK by the ACD subject to deciding to what extent the legislation should apply to airports operated by the Crown.²⁶ However, for the avoidance of doubt the policy intention is that the UK Border Agency²⁷ should not be subject to economic regulation (and we see no legal objection to this).

Disclosing Information

2.37 The draft Bill enables the CAA to obtain information from a person where this is reasonably required for the purpose of carrying out its regulatory functions. Schedule 6 provides for certain restrictions in relation to disclosure (for example, that it must not be disclosed during the lifetime of the individual) except in specified circumstances, including information that may be disclosed under other statutory provisions. Schedule 6 contains a provisional list of such statutory provisions.

Modernising the CAA's governance and operations

2.38 We have concluded that the legislative framework of the CAA, established almost three decades ago, needs to be updated so that its governance and operation reflect best practice and fit the regulator for the tasks that face it. These changes include:

- (a) Empowering the CAA to appoint its Executive Directors;
- (b) Balancing a new consultation obligation with shorter notice periods for the CAA's charging schemes;
- (c) Enabling the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions;
- (d) Giving the CAA an explicit power to carry out criminal proceedings as part of its enforcement work; and
- (e) Giving the CAA a role in promoting better public information on customer service and environmental impacts.

²⁶ The Crown includes government departments (but not local authorities). The Crown will need to be bound to the extent that the legislation is giving effect to ACD requirements. Usually, Acts of Parliament do not bind the Crown unless they expressly say they do. The government does not own or operate any commercial airports but operates a number of aerodromes used only for military purposes.

²⁷ In respect of its present functions.

How we got to where we are now

2.39 A 2006 House of Commons Transport Committee report²⁸ recommended that the Department for Transport should conduct a fundamental review of the CAA. In 2007 the previous Government commissioned Sir Joseph Pilling to conduct such a review. His report, published in June 2008,²⁹ contained recommendations for change and further work which have informed the measures contained in this Bill.

2.40 In December 2009, the previous Government published a consultation document on this work,³⁰ which received 132 responses. As this document notes in Chapter 2, a summary of responses in relation to reforms to the ATOL scheme was published in June 2011. The summary of responses to the remaining sections of the consultation is being published alongside this publication today. See Volume 4.

2.41 The Government has chosen to legislate only where it believes that it can ensure that changes made do not increase the overall regulatory burden.

The proposals

(a) Empowering the CAA to appoint its Executive Directors

2.42 The CAA has undergone a number of governance reforms following the Pilling Review mentioned earlier; for example, it now has a non-executive Chair and a full-time Chief Executive, in line with recognised good practice. However, other reforms need primary legislation.

2.43 Ministers' involvement in the appointment and remuneration of the CAA's board level Executive Directors is inappropriate. This draft Bill would amend legislation to allow the CAA's non-executives to appoint its chief executive (with the approval of the Secretary of State), and the chief executive to appoint the other executive members and determine 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.

²⁸ House of Commons Transport Committee, *The Work of the Civil Aviation Authority Thirteenth Report of Session 2005–06*, HC 809, published 8 November 2006, available at <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmtran/809/809.pdf>.

²⁹ Department for Transport, *Report of the strategic review of the CAA*, ISBN 9781906581275, published 2008, available at <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/aviation/domestic/pillingreview.PDF>.

³⁰ Department for Transport, *Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation*, ISBN 9781848640535, published December 2009, available at <http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/consultations/closed/regulatingairtransport/>.

(b) Balancing new consultation rights with reduced notice periods for the CAA's charging schemes

2.44 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 Bill reduces the 60 day period to 14 days and introduces a statutory obligation on the CAA to consult charge payers.

(c) Enabling the Secretary of State to give the CAA civil sanctions powers to enforce existing offences

2.45 The Government believes that the sanctions available to the CAA for certain offences are not always commensurate with the offence. The existing range of options is limited. It can either warn informally, or at the other end of the spectrum it can seek criminal penalties for serious non-compliance. In the year to April 2011 the CAA prosecuted 29 such cases, mainly in regard to safety. The CAA can also use its licensing powers under the Air Navigation Order 2009 to ensure compliance with safety regulations.

2.46 Industry stakeholders note that criminal sanctions, on which the CAA primarily relies to secure compliance, are disproportionate and inappropriate in relation to certain offences, particularly breaches of a relatively minor or administrative nature. This can give rise to a 'compliance deficit' where such offences are simply not prosecuted on the basis that it would be disproportionately expensive to do so. Non-statutory enforcement measures, such as written warnings, may not suffice to ensure compliance. The Bill will therefore 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.

(d) Giving the CAA an explicit power to carry out criminal proceedings as part of its enforcement work

2.47 Currently, the CAA undertakes enforcement activity in respect of breaches of civil aviation regulation on behalf of, and financed by, the Crown under an arrangement that the CAA will provide assistance and advice in connection with any of the Secretary of State's functions under section 16 of the 1982 Act. The draft Bill provides that the CAA's enforcement power, including prosecution, will be part of its own remit under section 20 of the 1982 Act. It is intended that a charging scheme will transfer costs of this enforcement work from general taxation, via the industry, to the users of the aviation sector.

(e) Giving the CAA a role in promoting better public information on customer service and environmental impacts

2.48 The Government has a stated aim of improving the transparency of information and encouraging, supporting and enabling people to make better choices for

themselves.³¹ The CAA has at present only very limited powers to require the aviation industry to provide information of benefit to consumers and the wider public.

2.49 This section of the draft Bill is designed to improve the information available about air transport. It creates 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 in order to: (a) assist users of air transport to compare services and make more informed choices; and (b) 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 must consult on its policy for carrying out these new functions and have regard to a cost–benefit principle.

Transferring certain aviation security functions from the Secretary of State to the CAA

2.50 In the UK the Secretary of State for Transport is responsible for aviation security policy and there are no proposals to change that position. Aviation security regulation is necessary to protect our citizens, businesses and the economy. The UK is also obliged to regulate aviation security through its membership of the International Civil Aviation Organisation (ICAO) and European Union (EU).

2.51 Whilst the aviation community pays for the costs of other aspects of aviation regulation (such as safety and economic regulation) in line with the ‘user pays’ principle, the costs of aviation security regulation are currently met from general taxation.

How we got to where we are now

2.52 Aviation security regulation has grown to meet the evolving threats to the UK. This function, which is founded on analysis of the threats, has been established and developed by the Secretary of State through the work of aviation security officials in the Department for Transport. Now that the machinery for producing threat assessments, through the Government’s Joint Terrorism Analysis Centre, is well established, it is possible to site the regulatory functions closer to the relevant sector.

The proposals

2.53 The Government believes that efficiencies could be gained through having a single regulator for all UK civil aviation specific responsibilities, and it would mean that the aviation industry had to deal with only one regulatory body, rather than two as at present. In parallel to this proposed transfer, the Government has been consulting³² on changes to the regulatory approach for aviation security, to align it more closely with that already in place for aviation safety, which is a long-standing responsibility of the CAA.

³¹ Department for Business Innovation and Skills and Cabinet Office, *Better Choices Better Deals: Consumers Empowering Growth*, April 2011, available at <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/b/11-749-better-choices-better-deals-consumers-powering-growth.pdf>.

³² <http://assets.dft.gov.uk/consultations/dft-2011-21/dft-2011-21-consultation.pdf>.

2.54 The transfer of aviation security regulation functions is expected to deliver general taxation savings estimated at £24.6m in present value terms over ten years. This cost, if transferred to the passenger, would equate to approximately £0.02 per passenger movement per year, based on the 211 million passengers who moved through UK airports in 2010.

2.55 The proposed new functions of the CAA include the review of aviation security directions, advice and assistance to industry on security measures and monitoring and enforcing compliance with EU and domestic requirements. It is proposed to transfer property, rights (including employment contracts), powers, duties and liabilities from the Secretary of State to the CAA that are relevant to the aviation security regulatory functions.

2.56 The Secretary of State would remain responsible for aviation security policy and for making aviation security directions under the Aviation Security Act 1982. The Secretary of State would also continue to have the power to direct the CAA as to the performance of its functions in the interests of national security and this would apply equally to the CAA's new security functions. This change will also bring aviation security within an operationally focused organisation, helping to develop further the security regulation function.