

DEPARTMENT FOR TRANSPORT

Better regulation for aviation security

Summary of responses to the consultation
and Next Steps

June 2012

EXECUTIVE SUMMARY

Introduction

In July last year the Government consulted on proposals to modernise the regulatory regime for aviation security. The Government believes that the current arrangements are in need of modernisation to bring them into line with better regulation principles, promote innovation and efficiency and ensure the best possible passenger experience. The consultation paper set out a proposed way forward which the Government believes would achieve this while maintaining and improving security standards. This outcome focused risk-based approach (OFRB) would be managed through the progressive introduction of a Security Management System (SeMS)¹ developed and operated by each responsible organisation, building on international risk management best practice, particularly in aviation safety regulation.

The OFRB approach to security would give operators the flexibility and responsibility to design security processes that deliver specified security outcomes, rather than requiring them, as at present, to comply with prescriptive security requirements.

A key part of SeMS is a change from inspection-led activity by the Regulator² to security audit-led activity. Under SeMS, industry operators would have internal quality assurance processes in place, including systematic internal monitoring and testing procedures, and the Regulator would audit the quality assurance processes and outputs, complemented with some inspections (observation) and covert testing.

This document summarises the 116 written responses to the consultation received from a range of aviation industry stakeholders and interested organisations. It also records our analysis of further evidence - from the CAA, other regulators and our European partners - received since the consultation, and outlines the Government's plans for taking forward the reform proposals.

Overview of responses

There was almost unanimous agreement that a SeMS based on the model of the existing aviation Safety Management System (SMS) was appropriate for aviation security. The opportunity to develop local mitigation measures specific to the operation, rather than the existing requirement to comply with

¹ A SeMS is an organised, systematic approach to managing security. It provides the necessary organisational structure, accountabilities, policies and procedures; it requires security management to be embedded into the day-to-day activities of the organisation.

² For the purposes of this document, the term 'Regulator' means the authority undertaking the functions of compliance monitoring & enforcement and giving advice and assistance to industry and the Secretary of State. These functions are currently performed by the Department for Transport, but the Civil Aviation Bill, which is currently before Parliament, provides for these and certain other functions to be conferred on the Civil Aviation Authority (CAA). The Secretary of State will remain responsible for aviation security policy and giving aviation security directions to industry. A fuller explanation of the proposed change of responsibilities can be found at Annex B

detailed specified measures, was welcomed. EU regulatory requirements were seen by some as constraining the scope for local action and by others as requiring a separate security management process altogether. Others thought that an OFRB approach would be impractical unless it applied to both the UK's More Stringent Measures (MSMs) and the EU baseline measures. There was broad agreement that process assurance by the Regulator, as a complement to more traditional observational monitoring, would be an appropriate method of assessing compliance.

On timing, opinion was divided on whether cargo operators and in-flight suppliers should adopt the SeMS approach at a later date rather than in the initial roll-out. Respondents who favoured phasing argued that it would allow confidence in the new regime to build, while others argued that phasing would lead to a disjointed approach and cause confusion. There was broad support for the phased introduction of OFRB, although the suggested 3-year roll-out timetable was thought to be challenging and in practice would be dictated by the pace of EU regulatory reform. There were concerns that differing implementation timetables across the industry could result in passenger confusion.

Most respondents agreed that the level of detail in a SeMS should be proportionate to the scale of the business operation concerned, but there was a view that standardisation would avoid possible confusion and ensure a level playing field.

There was cautious agreement to the use of key performance indicators in raising security performance, with concerns about the administrative burden, confidentiality and the production of league tables. Similarly, while there was full support for the principle of sharing best practice so as to raise overall security performance, there were concerns about confidentiality and possible adverse effects on competition. Almost all respondents agreed that the Confidential Human Factors Incident Reporting Programme (CHIRP) should be extended to cover aviation security, but there were concerns about malicious reporting and reporting based on a less than full understanding of the underlying threat picture.

There were mixed views on the suggestion that security performance information should be made available to other aviation industry operators, with those in favour saying it would generate confidence in the new system while others were concerned about the release of sensitive material that could be misinterpreted.

Most respondents either thought that the impact assessment did not accurately represent the costs and benefits of the proposal (the suggested 1% potential efficiency saving was seen as unlikely, while costs were expected to increase, at least initially), or felt unable to comment because they had insufficient information about the basis on which it was constructed.

A fuller summary, and the Government's response, is in Section 2.

Conclusion

We believe that the proposed reform would deliver bespoke solutions focused on achieving security outcomes and objectives. Such an approach would maintain the UK's existing high security standards while providing a regulatory environment that would enable further enhancement of security. The reform would also encourage innovation and provide the industry with further scope to focus on improving the passenger experience and identify efficiency savings.

However, analysis of the consultation responses, and wider evidence from other sources, suggests that the move to a full OFRB regime needs to be undertaken gradually. The successful development and implementation of a SeMS would lay the necessary foundation to ensure that an OFRB approach is effective.

Next steps

The responses to the consultation were overwhelmingly positive but respondents raised a number of issues which need to be taken into account in developing the new approach. We value this input and will continue to work closely with stakeholders while addressing these issues. This will be an evolutionary process. We envisage that SeMS roll-out and EU engagement will extend over the next 3-5 years. After a period of SeMS consolidation within the industry, we expect to be in a strong position to make the case for changes to the EU regulatory framework that would allow adoption of the OFRB approach. More immediately:

- We will set up an industry expert advisory group to inform the further development of this project.
- To underpin the new OFRB approach we will encourage the use of SeMS in each industry organisation. We are currently working with industry on the development of SeMS methodology and its supporting documentation.
- We will pilot the SeMS process with a number of industry entities starting, once the Olympics have finished, with London City airport. These pilots will be reviewed at each stage to ensure that the objectives are being achieved and any lessons learned are being applied.
- When the pilots have been concluded and the Secretary of State is satisfied that the SeMS process is sufficiently robust and will deliver its intended benefits, we will encourage more operators to adopt it. We propose that initially this will be done on a voluntary basis, and will be subject to a full assessment of an operator's capability to develop and manage such an approach.

Recognising that the full benefits of OFRB – in particular a high degree of flexibility for operators in the design of security processes – will require changes to European legislation, we will use the pilots to build the evidence base necessary to engage with our European partners and make the case for change. In the meantime, where possible, we will look to enable more flexibility in the way that the UK's More Stringent Measures are met as and when they are reviewed.

1. INTRODUCTION

The consultation document *Better Regulation for Aviation Security*³, published by the Department on 14 July 2011, sought views on proposals to modernise the regulatory regime for aviation security. The consultation ran for just over 16 weeks, closing on 7 November.

Under the proposals, the highly centralised and prescriptive nature of the current regime would in time be replaced by an OFRB approach. The foundation of the OFRB approach would be a SeMS developed and operated by each responsible organisation. SeMS would be similar to the SMS regime used for aviation safety.

The proposals are part of the Government-wide approach to maintaining and improving aviation security. The Government's objective is to provide the aviation industry with the freedom to design security processes that deliver specified security outcomes, rather than having to follow detailed rules. This freedom would encourage the industry to take ownership of security considerations, incentivise it to innovate and give more freedom to integrate security within day-to-day business activities.

This document summarises the views of those who responded to the consultation, and also sets out the Government's next steps in taking forward the regulatory proposals. A breakdown by category of respondents is at Annex A, at the end of this document.

The consultation paper also explained that the proposed reform of aviation security regulation is part of a wider package of reforming measures, the other main component of which is set out in the Civil Aviation Bill which is currently before Parliament and which, amongst other things, confers certain aviation security functions currently carried out by the Department for Transport (DfT) on the CAA⁴. This was not part of the consultation, but consideration of the impacts of this on the regulatory reform objectives has been taken into account in the Next Steps part of this paper. Further background on the Bill's reform of aviation security functions is included in Annex B.

Consultation process

The consultation document was published on the Department's website and announced by a Ministerial statement in Parliament. Over 800 stakeholders were notified of the publication. During the consultation period a series of events took place with industry stakeholders at which the proposals were discussed and clarified.

In order to structure responses, the consultation document posed 19 questions. These asked if the reader agreed or disagreed with the statement

³ <http://assets.dft.gov.uk/consultations/dft-2011-21/dft-2011-21-consultation.pdf>

⁴ <http://services.parliament.uk/bills/2012-13/civilaviation.html>

in the question and if any significant considerations needed to be taken into account. 116 written responses were received.

We are grateful to the organisations and individuals that took the time to respond to the consultation. Their constructive views and comments have been carefully considered and are helping to inform development of the regulatory reform proposals. A summary of the responses is set out in Section 2.

In parallel to the consultation, the DfT has also sought to understand and learn from the experiences of other regulators who have undertaken similar reforms. A summary of the evidence that this process gathered is in Section 3.

2. THE QUESTIONS AND SUMMARY OF RESPONSES

Q1 Do you agree or disagree that a Security Management System (SeMS) is appropriate for aviation security?

Q2 Do agree or disagree that the model of the Safety Management System (SMS) is a suitable foundation for a Security Management System?

There was almost unanimous support for the introduction of a SeMS approach based on the SMS model, which was seen to give industry flexibility and responsibility in deciding appropriate local security measures. A number of operators said they already applied the principles of such an approach as part of a 'fully safe operation' culture or as required by International Air Transport Association (IATA) membership.

The general view was that SeMS and SMS needed to be integrated, but not all aspects of the SMS model were seen as appropriate for security, given the unpredictability and changing nature of the security threat and the impact on risk. The two systems were, however, recognised to be tools, not an end in themselves. Any validation process would need to be complemented by an appropriate audit and inspection regime - which would require different capabilities and competencies on the part of the Regulator to those employed at present.

"Yes, we strongly agree that the SeMS approach is the appropriate framework for future provision of aviation security." UK airline operator

"...we are supportive of the principle of more outcome focussed and risk-based arrangements to aviation security." Trade Union

The present security system was seen by some as unsustainable and the UK's MSMs as inconsistent with the OFRB approach; the retention of MSMs would be seen as a lack of confidence on the part of the Regulator in the SeMS process and the local approach to risk mitigation, and would detract from the new holistic approach. Responses acknowledged that a SeMS would not be a bolt-on but part of the core management culture of an operator, supported by quality assurance, which together could assure the Regulator that risks were mitigated. The possibility of manpower and financial efficiencies from self-managing security risks was recognised and the financial benefit of adopting OFRB was seen as a major factor for small airports – the extent to which this would offset regulation costs was unclear.

"We believe the present security regime does little to incentivise industry to go beyond the directed process; does not encourage innovation; and is a barrier in responding to an evolving threat." UK airline operator

Some respondents qualified their support for the OFRB approach. A small minority opposed it on the grounds that the present centrally directed system

had shown itself to be highly effective and should not be changed, or took the view that security and safety were not analogous. Another view was that while an OFRB approach would be appropriate for MSMs, a different and separate approach would be required in respect of EU baseline measures, which would be both cumbersome and expensive.

“...to consider moving away from a tried and tested system that works, to an untested one, there has to be compelling evidence/reasons to show that the proposed new arrangements would be as safe, if not safer, than the existing ones. Unfortunately no such evidence/reasons have been given. ...Indeed we go further than this, and say that the proposed arrangements will likely reduce security.” Trade Union

The Government’s response

The Government remains committed to the proposed reform of aviation security regulation, which we believe will provide a regulatory environment that will enable and encourage the enhancement of security. We understand the need for continued oversight of the industry but believe that OFRB regulations which are supported by a SeMS would achieve the objectives set out in the original consultation paper, principally, to maintain and improve security standards and to adopt the principles of better regulation.

We firmly believe that such an approach would maintain the UK’s existing security standards and provide a regulatory environment that would enable further improvement. In addition, the reform would encourage innovation and offer the industry scope for a clearer focus on improving the passenger experience. It would represent a significant change for all concerned, and so the timescales and approach to implementation of OFRB will be carefully considered.

Q3 Do you agree or disagree that industry is best placed for the risk assessment and design of appropriate mitigating measures?

There was a broad welcome for the opportunity to develop local mitigation measures, specific to the operation, in response to local risk assessment based on centrally provided threat information, rather than simply implement centrally specified security measures as at present. Fuller access to threat intelligence was seen by some as key to the development of appropriate measures, allowing threats to be better understood. Some thought that, in addition, expert advice from the centre or common risk assessment criteria would be needed upon which to base local judgements. There was also a view that operators would need guidance from the Regulator in setting up internal monitoring and control systems in order to ensure that their measures were sufficiently robust.

“Although the industry is capable of the risk assessment and design of appropriate mitigating measures, it will require better information and communication from Government so that the most current threats to

aviation are fully understood thus allowing the most appropriate measures to be put in place as part of the SeMS.” UK airport operator

Some respondents expressed concern that the variety of local security measures across the UK that would result from an OFRB approach would be confusing to carriers and suppliers using different airports and result in disparity in the way national risks were mitigated. The EU basic requirements were seen by some as severely restricting the scope and design of local measures and would need to be modified to allow the necessary local flexibility. This flexibility was seen by some as important in allowing a quick response to threat development.

“Whilst agreeing that the move from government regulation to a risk based approach is a positive development, there is a concern that although industry per se is able to assess risks and impact of changes, the variable requirements across all UK airports may make it difficult to have a uniformly agreed approach. This would lead to significant disparity in the way each airport elects to mitigate its risks through the variety of embedded controls available.” UK airport operator

The Government’s response

It is the responsibility of Government to determine the threat picture. By its nature some sensitive threat information cannot be shared. However, the Government recognises that to enable the industry to take more responsibility for and ownership of security risk management, risk information must be shared in a sensible and realistic manner. Work is underway to develop a format to share threat and risk information in a pragmatic fashion. Both the Department and the CAA will work closely with the industry in the development of mitigation measures.

We expect that security arrangements under a future OFRB approach would deliver a less disruptive, more efficient and generally slicker experience for the passenger and other airport users, as airport operators refine the way in which they mitigate risks and seek to improve the passenger experience while ensuring a safe and secure operation.

We are already engaging with our European partners on proposals to reform European aviation security requirements. We say more about this in Section 4 below.

Q4 Do you agree or disagree that a Security Management System is the best system for delivering and integrating both EU regulatory requirements and outcomes of local risk assessments undertaken within an outcome focused, risk-based approach?

There was broad agreement that a SeMS regime would be suitable for delivering EU requirements but there was a frequently expressed concern that the highly prescriptive nature of EU regulations would severely limit the scope

of local mitigation measures. Integration of EU requirements and local mitigation measures was seen by some as essential to a SeMS-based OFRB approach, which would be impracticable without it. There was also a view that while SeMS was a good system it was not necessarily the best by which to deliver and integrate both EU regulatory requirements and outcomes of local risk assessment.

“...it is essential to integrate both EU regulatory requirements and outcomes for local risk assessments and in fact it would be impractical to propose a system without that integration.” UK airport operator

“...if the SeMS approach is restricted in scope to the UK MSM only, the return on investment in this approach will be diluted to the degree where we would question the viability of the scheme, and encourage Government to look at a means to include all baseline measures currently directed on UK carriers by all current regulating bodies.” UK airline operator

Some respondents saw early engagement with the European Commission as crucial to establish whether there was sufficient flexibility in EU basic requirements to allow industry to act locally. Significant modification of EU rules was envisaged by some, although this was acknowledged to be an uncertain and lengthy process.

The Government’s response

The EU aviation security requirements – the common basic standards - make up about two-thirds of all UK aviation security requirements. Given the degree of prescriptive detail they contain there would be very little scope to apply an OFRB approach to them. As explained in our response on Question 3, we have begun discussions with European partners about reforming them. We say more about this in Section 4 below.

Q5 Do you agree or disagree that the first iteration of a Security Management System should be submitted to the Regulator for validation?

Almost all respondents thought validation should take place, saying that this would give confidence and assurance across the industry, secure consistency and allow best practice to be shared. There was an expectation that the Regulator would provide detailed guidance, and feedback, and a suggestion that the Regulator might provide a basic SeMS template. Some respondents went further, suggesting that preparation of the SeMS should be a collaborative exercise in which the operator and Regulator worked together.

“Strongly agree, as a means of assuring the approach is on track. The absence of any assurance in the early stages will represent a significant risk.” UK cargo consignor

Those who disagreed pointed to the mutual recognition requirements of the quality control standards set by EU Regulation 300/2008. A number of respondents commented on the need for the Regulator to set clear criteria for SeMS validation, which would need to be able to take account of local circumstances, as would the Regulator. Responses also pointed to the need for the Regulator to develop new skills in order to fulfil the validation role.

“If the DfT seek to ‘validate/approve’ air carriers security systems it is difficult to ascertain how this proposal would be applied to air carriers from other European member States without contravening the principles of Regulation (EC) 300/2008...” Overseas airline operator

The Government’s response

The successful development and implementation of a SeMS would lay the necessary foundation to ensure that an OFRB approach is effective. The Department intends to work closely with the industry in developing the SeMS concept. Guidance will be provided but we believe that it should be for operators to ensure that their SeMS is effective as they build their security culture and continuous improvement processes. To this end they will wish to consider seeking some external challenge to complement their internal procedures. While the Regulator would want to evaluate the effectiveness of a SeMS - and we shall consider further what form these arrangements might take - it would be the responsibility of operators to maintain and update their SeMS, which we expect to be a living document. Implemented effectively, the introduction of a SeMS should not be an additional regulatory burden to industry. The guidance for SeMS is being designed to enable a SeMS to be integrated into existing management systems. The draft guidance will be tested in forthcoming SeMS pilots. We say more about this in Section 5.

Q6 Do you agree or disagree that directed parties under the Aviation Security Act 1982 should be given a statutory security responsibility?

There was broad, if qualified, agreement that operators should be given a statutory security responsibility, which was seen as avoiding inconsistency in responsibility at airports across the country. One respondent saw this as a significant departure from current arrangements and suggested that further work was needed to clarify accountability when responsibility for mitigation measures was shared. On the same theme, other responses said that accountability at airports, with their multi-agency operations, should be limited to issues for which the operator was directly responsible – policing and airline security, for example, were security elements outside the direct control of an airport. There was also a view that organisational responsibility would be more appropriate than individual, and a suggestion that the concept of ‘best endeavours’ protection should be extended. Other responses said that responsibilities were already defined in EU and national legislation, including corporate manslaughter laws, and that further measures were not needed.

“For any SeMS to be effective the penalties for non-compliance must be meaningful and robust. There must be the accountability to go with the ability to take more control.” Trade Union

“It is difficult to see how a senior employee from any one company can take personal responsibility for a multi-agency security plan where accountability for the delivery of some of those functions is outside of his or her control.” UK airport operator

The Government’s response

A SeMS would set out the responsibilities within the organisation for deciding how risks would be met. It is intended to emphasise the responsibility of the industry to provide effective aviation security processes and would identify a senior responsible individual in each directed entity. This would ensure ownership of responsibility for maintaining the levels of security needed to address the risks to aviation security, and continued development of the security culture. It is envisaged that this would form part of the SeMS design.

Q7 Do you agree or disagree that airports and airlines should adopt the Security Management System approach first, with cargo operators and in-flight suppliers being included at a later date?

Respondents were evenly split on the timing of the extension of SeMS to cargo operators and in-flight suppliers. Those in favour of a phased approach argued that the existing cargo security system needed to be fully matured before being included in the SeMS approach, that phasing would allow confidence in the new regime to build, that a trial was needed first to demonstrate to the Commission compatibility with the EU basic standards, and that what were described as the *“overly onerous requirements on passengers”* should be dealt with first. The resources and competencies of the Department and the Regulator, which, in this instance, we take to mean the CAA, were seen as key factors that would determine the rate of roll-out.

“The cargo regime should evolve to maturity before SeMS is considered.” UK airport operator

Those in favour of immediate full integration questioned the need for any delay and called for a ‘full-plane’ approach, since cargo was transported in passenger planes. Others thought that cargo security lagged behind passenger security and would be improved by integration. They argued that phasing would lead to a disjointed approach and cause confusion to all parties, but suggested careful roll-out.

“We disagree with the possibility of staggered implementation. We believe that in order for the highest possible security to be maintained we need to all be prepared and input at the same time. It may take longer to implement however, all aspects of aviation security will be united from day 1.” Cargo operator

The Government's response

We envisage a cautious approach to the development and roll-out of SeMS, beginning with an airport pilot later this year, as explained in Section 5 below. Thereafter much will depend on the readiness, and willingness, of individual operators to adopt a SeMS, and the development of capacity within the Regulator. Since many airports and airlines already operate elements of a SeMS the expectation is that they would be among the first to be included in the roll-out programme. But we will undertake an assessment of the capability of other industry operators to use this model, including the cargo sector, with a view to wider roll-out.

Q8 Do you agree or disagree that all airports and airlines covered by the National Aviation Security Programme (NASP) should be required to implement all the components of a Security Management System (SeMS) but with the level of detail required proportionate to the scale of their operation?

Some respondents answered this point in relation to both SeMS and to recasting regulations into OFRB. There was broad agreement that there should be proportionate implementation. Those in favour thought that proportionate implementation was implicit within a SeMS, which would reflect the complexity of activity and risk profile of an organisation. Under present arrangements, process and equipment, including aircraft type, were felt to dictate the security requirement rather than risk. A one-size-fits-all approach was considered inappropriate, whereas OFRB would provide the flexibility needed for the diverse aviation industry.

“Provided that all the elements of SeMS are covered by the operator, it will naturally occur that the underlying detail of that SeMS for each carrier will be different and proportionate to the scale of operation.”
Overseas airline operator

The opposing view was that the scale of operation was not important – one plane could be said to be more at risk than several. There needed to be some standardisation to avoid confusion and to ensure a level playing field.

“...we believe that there is a need for consistency in relation to the detail required. The security challenges being faced do not relate to the ‘scale of the operation’...” Trade Union

The Government's response

A SeMS should not be regarded as an end in itself but merely a statement of the organisation and process by which an operator can deliver and maintain the required security outcomes and achieve compliance with regulations. We would expect the elements and structure of a SeMS to follow a basic template, but equally would expect the detail to reflect the scale and nature of an operation.

Q9 Do you agree or disagree that the timetable for transition is realistic?

(The busiest airports and large operators from April 2013, medium-scale airports and operators from April 2014, smaller airports and operators from April 2015)

There was a broadly positive response to this question although the proposed timetable was seen as challenging. Some thought that the timetable would be dictated by the pace of integration with EU regulations, which was seen as a pre-requisite to effective roll-out. While there was broad support for the principle of phased transition, there was a view that differing timetables for implementation could result in passenger confusion. A number of issues were identified in responses:

- the timetable for roll-out was largely dependent on the resources of the Regulator, who might need more time and resources than airports to prepare;
- the extent of buy-in by all the agencies involved, including the police and the UK Border Agency
- those who wanted to move more quickly should be allowed to do so; small airports, with potentially the greatest opportunity for cost savings, should be allowed to go first; consideration should be given to allowing a staged roll-out within individual companies.

“The proposed timetable is as good as any other, the key issue is that airports falling into the different categories may be amending their approach at different times. Naturally this has the propensity to lead to some confusion on the part of passengers, particularly frequent fliers...” UK airport operator

“The implementation of a fully integrated SeMS will take a substantial amount of time, even for stakeholders with readily available resources. As such it is paramount that DfT considers a gradual and patient approach when establishing its mandates for the implementation of SeMS (OFRB).” Overseas airline operator

The Government’s response

Our priority is to maintain and improve security standards by enabling industry to integrate security fully into its business and existing management systems. We remain committed to adopting the principles of better regulation and to creating a regulatory framework that will enable industry to take innovative approaches to delivering its security responsibilities, which in turn should enable the industry to operate more efficiently and provide a better experience for passengers.

It remains our intention to phase in the introduction of an OFRB approach but the timetable for doing so will differ from that suggested in the consultation. In our response on Question 7 above we explain that the initial focus will be on the staged development and roll-out of SeMS (under the current regulatory framework) having regard to the readiness of the industry and the time

needed to develop capacity within the Regulator. In Section 4 below we set out our plans for building on that with the phased introduction of OFRB.

Q10 Do you agree or disagree that reporting on key performance indicators (KPIs) could be a useful process in raising security performance? If you agree, what would represent an appropriate set of KPIs?

There was cautious agreement to the suggested introduction of KPIs. One airport saw them as useful in monitoring trends but of limited value as a measure of the overall effectiveness of security delivery; the level of risk needed to be reported too. There were mixed views on the data requirements: that there should be a consistent requirement across the industry, that they would need to be adjusted for the various industry sectors, that they should be commensurate with the size of an organisation and set to reflect each individual SeMS, and a view that comparison across operators would be difficult if not impossible. Some respondents suggested that KPIs could be seen as a burden and inconsistent with the SeMS concept of local responsibility, and possibly result in box ticking and target chasing. There were concerns about confidentiality and the production of league tables, which could create the impression that some airports were less safe than others and result in loss of confidence on the part of passengers. Respondents pointed out that KPIs were already required for internal financial and operational performance, and questioned their part in the collaborative OFRB approach that involved both operator and Regulator, suggesting that they would border on a direct and inspect regime.

“KPI’s can be useful to monitor trends; they may not be an absolute measure of effective security delivery.” UK airport operator

“This proposal would place an unnecessary administrative burden on air carriers with no security benefit.” An airline operators’ association

The Government’s response

Reporting against performance indicators would be an essential feature of a SeMS and the OFRB approach. It could help to raise standards and provide the Regulator with data that would enable compliance activity to be focussed on where it is needed most.

The information to be provided, and the frequency, is something that we will discuss with industry in order to ensure that sufficient data is collected without creating unnecessary burdens.

Q11 Do you agree or disagree that rectification measures should be included in the reporting process? If you agree, should this form part of the initial incident report, or should rectification measures reporting take place at a separate time?

There was broad agreement that rectification measures should be included in the reporting process as this would ensure that the Regulator was actively involved. But the development of such measures was thought to require a full understanding of the cause of the incident and implied greater access to threat assessment information. On timing, rectification was seen as a process - while measures should be reported, so far as possible, in the incident report, they might need to be refined or developed, in which case further reporting, including on progress, would be appropriate.

Those who disagreed pointed out that information sharing already took place and that it was not necessary to regulate on the issue; rectification measures would form an essential part of the internal monitoring and inspection process underpinning an operator's SeMS. There was a comment that any talk of penalties would threaten to drive security lapses underground.

"...rectification measures should only be included when appropriate. If ...rectification measures had to form part of the initial incident report, this may delay the submission...as it may not always be possible to develop and test rectification measures immediately. Sometimes it may require further study to come up with an effective solution." Overseas Trade Union

The Government's response

Our expectation is that rectification measures would be reported to the Regulator as part of the follow-up to incident reporting. As the organisation responsible for achieving the specified security outcome, the operator would wish to take ownership of the process by which it is achieved and maintained. We shall consider further the timing and nature any such reporting would take.

Q12 Do you agree or disagree that there should be a mechanism for the industry to share best practice and lessons learned?

There was full but qualified agreement with the suggestion that there should be a mechanism for sharing best practice. While this was seen as benefiting the overall security programme there were concerns about the disclosure of confidential information and possible adverse effects on competition; anonymity would be important and no confidential data should be published. Some said the process should be facilitated by the Regulator – parallels were drawn with safety and the CAA - would need to take account of specific security sensitivities and should not result in the production of league tables. One response, while agreeing in principle, said that commercial considerations would be likely to limit the disclosure of information and hence the value of any exchange. Another response suggested that the dissemination of best practice already took place via security inspectors and that no new mechanism or regulation was needed.

"A mechanism for sharing best practice would be to the benefit of all. The regulator may be best placed to facilitate such a process" UK airport operator

“This mechanism is already in place as the inspectors share and spread best practice across the industry. Of course this could be done in a more systematic way. Therefore we think using the inspectors would be the best way to achieve the goal being sought. Of course this would have a resource implication for the inspectors.” Trade Union

The Government’s response

We would expect that continuous improvement, which is implicit in the decentralised SeMS/OFRB approach, would stimulate demand for information exchange. The Regulator and the industry would together want to consider both the nature of the information to be exchanged, having regard to commercial considerations and the need to avoid creating unnecessary burdens, and the case for doing so.

Q13 Do you agree or disagree that there should be an extension of the Confidential Human Factors Incident Reporting Programme (CHIRP) scheme to cover aviation security?

There was qualified agreement with the proposal to extend the CHIRP scheme to aviation security, and a suggestion that it need not be limited to human factors but could be extended to include physical. It was seen as simple yet effective but open to abuse and malicious reporting. While the application to safety was seen as fairly clear cut there was felt to be scope for subjective judgements in the case of security, the more so as the rationale for measures might not be fully understood. There was a view that extension should not take place until the SeMS model had been fully introduced. One response said that for such a programme to work effectively feedback would need to be provided for the reporting individual, and added that incidents should be published in anonymised form. An opposing view was that data sharing should not take place, that confidential reporting should be kept within internal processes.

“We strongly agree that there should be an extension of the CHIRP scheme to cover aviation security...the CHIRP process is seen by staff as an invaluable tool by which they can raise concerns...” Trade Union

“Agreed - provided there is a mechanism to control the risk of malicious reporting from disgruntled employees, former employees, customers or competitors.” Cargo consignor

The Government’s response

The Government agrees that access to CHIRP should be introduced for aviation security. The successful operation of CHIRP elsewhere, most relevantly in the area of aviation safety, confirms that effective safeguards can be put in place to deal with abuse and malicious reporting.

The aim of expanding CHIRP is to contribute to the enhancement of aviation security. The Government believes that CHIRP would complement the

requirement to report against performance indicators – a key tenet of the SeMS approach.

Q14 Do you agree or disagree that process assurance is an appropriate method of compliance?

Process assurance was seen by almost all respondents as an appropriate method of monitoring performance in that it would encourage a targeted risk-based approach, self management and output checks, and lead to a robust security regime. Respondents said that process assurance would need to be carried out against the validated SeMS and would require guidance on what was expected; the CAA's safety model was suggested as a basis. Some respondents said that effective introduction would require a culture shift on the part of the Regulator since process assurance should not be confused with quality assurance. But another view was that quality assurance encompassed process assurance in that it covered all aspects of security management.

“Process assurance is a recognised, tried and tested method of compliance monitoring used widely, including to manage aviation safety.... It is an acceptable and appropriate means of delivering the consistently high standard of safety also from the field of aviation security, as is now proposed. We foresee one significant issue, which is the attitude and consistency of approach taken by the appointed auditors.” UK airline operator

Those disagreeing said that SeMS should be seen as a culture, as was the case with SMS, not a process, and that merely checking paperwork would give no guarantee of delivery. There was a concern about the cost burden on small businesses and a suggestion that failure to comply might be due to resource/budgetary constraints rather than process failure.

“Process assurance is just checking that the paperwork is in order; it does not ensure that on the ground security is being enforced.” Trade Union

The Government's response

The intention is that process assurance should be the principal method by which industry performance would be monitored under the SeMS/OFRB approach. It would help to encourage a risk-based approach and better internal quality control, which would lead to a more robust security regime. It would begin with developing SeMS and continue through SeMS evolution, complemented by security audits, inspections and tests carried out by the Regulator.

As part of its work on the development of SeMS guidance the Department is drawing on the CAA's experience in the field of aviation safety management. We intend to design process assurance requirements so that they are not unnecessarily burdensome. We recognise that this would be a cultural shift for the Regulator as much as for the industry.

Q15 Do you agree or disagree that the new regulatory approach gives greater scope for equipment manufacturers, the industry and process design specialists to work together to deliver whole-system security solutions?

There was broad agreement that the new approach would create market incentives, encouraging and enabling manufacturers to create solutions and to invest in research and development. Some respondents thought that the Regulator would need to set baseline standards and ensure that hardware and software developments were available to all. Some thought that publication of an approved equipment list would be helpful, provided the approval process did not stifle innovation and was not drawn out. Some saw value in a centralised EU-wide approval list. Others said that the full benefit could only be realised by extending the SeMS approach across the EU, since the need to comply with EU regulations reduced the opportunity to innovate.

“This is agreed in principle. However, the regulatory environment must be such that equipment manufacturers are incentivised to invest in costly R & D.” UK airline operator

Those disagreeing thought that the present regime ensured a mass market with associated economic benefits. Others feared that the result of the new approach could be costly tailored solutions that could confuse passengers, while ability to pay could create a two-tier industry. Other responses thought there would be little real change in practice.

“... since OFRB allows stakeholders to design processes that best meet the needs of the organization ... this means that there are virtually an unlimited number of options for processes and/or technologies to be used to arrive at the same security outcome. This in theory would result in a much more difficult environment for equipment manufacturers and other solutions providers to determine exactly what the industry requires from them. As a result we may see more customized solutions which by necessity may drive up costs.”
Overseas airline operator

The Government’s response

The Government, and once the aviation security provisions of the Civil Aviation Bill are enacted, the CAA will look to encourage market incentives where possible. We intend to work with industry to identify effective ways of sharing best practice without compromising their commercial or competitive positions.

We will aim for future regulatory regimes (EU and domestic) to provide the scope for industry and equipment manufacturers to develop whole-systems security solutions where they judge it to be worthwhile, effective and in the interests of passengers. We believe that the new approach would encourage

innovation and that product and process improvements would cascade through the industry to the eventual benefit of all.

Q16 Do you agree or disagree that the Regulator should make security performance information available to other aviation industry operators? If so, what form should this take?

There were mixed views in response to this question. Those in agreement said that it would generate confidence in the new system, identify trends, show what could be achieved and motivate others. Some said that the material should be anonymised so as to protect the source and there was a view that material should be shared only once the new approach was established and there was confidence in it.

“We believe the sharing of industry best practice will benefit industry, Government and the travelling public.” An airline operators’ association

Those disagreeing raised concerns about who would receive the information - the source would need to be protected, that some of it could be sensitive and that there was scope for misunderstanding without an appreciation of the underlying threat issues. There was also the view that security performance was a matter for discussion between the operator and Regulator, that sharing information with other operators could lead to unfair publicity and give rise to competition issues, and in some cases could lead to complacency in those who thought, by comparison, that their performance was good.

“I think this is dangerous and could lead to complacency if some operators are led to believe they perform better than others.” Airfreight logistics provider

“Ensure confidentiality of information and that it is not used for commercial advantage” UK cargo forwarder

The Government’s response

We believe that the capture and sharing of appropriate security performance information would contribute to a progressive improvement in security. It would be for the Regulator, working with industry, to decide what information to make available, in what form and through what forum, having regard to commercial and wider security considerations.

Q17 Do you agree or disagree that providers of covert testing and other similar services should be accredited by the Regulator?

There was strong support for the suggestion that providers of covert testing should be accredited. This was seen as essential to ensure consistent and common testing standards, and for the credibility of testers. Consistency on the part of the Regulator was thought to be equally important and would help

secure a standardised approach to covert testing. An approved list of testers published by the Regulator was seen as beneficial.

“This is essential if the testing is to have credibility both with government and with stakeholders.” UK airline operator

The Government’s response

We will consider the case for accrediting providers of services related to the delivery of aviation security requirements, including covert testers, and discuss with industry. It is attractive in that it would ensure a level of consistency and provide some assurance to industry as to the credibility of providers.

Q18 Do you agree or disagree that training programmes should be reported against and monitored as part of the Security Management Systems (SeMS)?

There was general agreement that training programmes should be reported against and monitored, although some saw this as being necessary only if outcomes were assessed as inadequate. But there was concern that monitoring should not reinforce the present prescriptive approach. Some respondents thought that operators should have the freedom to develop their own training programmes as part of the new devolved SeMS and that to monitor training went against the principle of the OFRB approach. Other respondents thought that training should be directed or that training bodies should be regulated and the syllabus prepared in co-operation with industry.

“Training must be a key element of a SeMS however the prescriptive nature of current training should be reviewed to adopt a more competency based approach where training requirements can be assessed against an individuals performance rather than a prescribed programme.” UK airport operator

“Disagree. Training should be Directed, to ensure consistent training across the board.” UK airport operator

The Government’s response

We intend that training programmes should be addressed in operators' SeMS in view of the fact that the training of staff is an ongoing process that requires continual analysis and testing if skills and knowledge are to be maintained and improved. This would, in time, also allow for security training requirements to be moved to the OFRB approach so that competency and performance would become more important than a standard syllabus and set of processes.

Q19 Do you agree or disagree that the Impact Assessment provides an accurate representation of the costs and benefits of the proposals?

A number of respondents felt unable to comment on the accuracy of the figures used in the preliminary Impact Assessment (IA) because, they said, they did not have access to cost information across the industry or the basis of the estimates used. The general view was that the IA was premature and could not properly be constructed until the outcomes of the new approach were more fully understood. One airline operator thought that while an OFRB approach was expected to deliver operational efficiencies and improve customer service, and produce short term cost savings for airlines through reduced insurance fees, it was not expected to produce any long term substantial operational savings. Other respondents thought that industry would be incentivised to drive down costs and that, intuitively, cost savings would be made. Others thought that continuance of the prescriptive EU basic measures would prevent improvement in terms of operational efficiency and so would limit the scope for cost savings.

The suggested 1% potential efficiency saving on the part of industry was generally seen as unlikely, indeed it was thought that the new approach could encourage greater capital expenditure, possibly resulting in a net cost increase at smaller airports, although one airline saw the potential for significant cost saving at some smaller airports. The 3.5% discount rate used in the IA was thought to be out of step with recent experience and not a realistic reflection of the cost of capital.

“We do not have sight of costs and benefits across the spectrum of industry, and therefore are unable to comment on the accuracy of these specific figures. However, from an intuitive business perspective, we believe costs will reduce, and resources will be managed more effectively.” UK airline operator

“OFRB security will deliver operational efficiencies and improve customer service but we do not believe that there will be cost savings, especially in the short-term.” UK airline operator

The Government’s response

The consultation document made clear that the IA was an initial assessment. We will revisit it in the light of the SeMS pilots and will keep the impacts under regular review in order to ensure that the reforms are achieving the desired outcomes, without imposing unnecessary burdens.

3. FURTHER EVIDENCE AND CONSIDERATIONS

As part of the review of aviation security regulation we have looked at recent reform activity by other aviation regulators so that we might understand and learn from their experience.

Aviation safety

One such reform that is relevant to the aviation security proposals is the CAA's experience of introducing a similar regime for managing safety risks - the safety management system (SMS).

The SMS concept has evolved from a regulatory regime of compliance auditing. Many years of creating prescriptive rules, often in response to an accident or incident, have made aviation very safe. However, with the ever increasing volume of air traffic SMS has been brought in to ensure continued improvement of safety.

The CAA recognised that there were challenges both for itself as Regulator and for the industry in the introduction of SMS. For the industry, a key challenge was their individual perceptions of what a SMS requires. For the CAA it was to change what was looked for in audits and the need to develop expertise to do so effectively.

The CAA's experience was that bigger organisations, with more resources, tended to implement SMS more readily than smaller organisations, who tended to be more resource constrained and to have less experience of analogous management and governance processes. They also found that larger organisations often had some SMS activity in their internal governance processes, which meant that implementing SMS was more of a re-structuring than starting from scratch. In addition, the CAA found that larger organisations had a strong motivation to eliminate undesirable events and viewed SMS as an aid to enhancing their preventive measures and improving operational performance.

The drive for SMS is based in International Civil Aviation Organisation (ICAO) regulations, later extended to a wider range of aviation activity by the European Aviation Safety Agency (EASA). The CAA recognised that there has also been a drive for the SMS approach from other industries. Aviation services supplying to the oil and gas industries, for example, have been required by those industries' safety management rules to implement SMS. The SMS practices of those industries has also provided some experience and learning points for aviation's implementation of SMS.

Organisations have been aware for many years that they would have to implement SMS. This has been a gradual process and is only now reaching a satisfactory level of maturity. The CAA's lessons learned from the implementation of SMS are likely to be valuable for aviation security. The Chief Executive of the CAA, in giving evidence to the House of Commons

Public Bill Committee during its scrutiny of the Civil Aviation Bill on 23 February 2012, said:

"We are keen supporters of the principle of outcome-focused, risk-based regulation because it deals with good lessons learned from safety practice, which is that rules, of themselves, are not sufficient to get the right output. You actually need to say, "Are the rules working?" Where significant step changes have been made in safety across all sectors in the past 10 or 15 years is where safety management systems have put much more onus on operators to say, "Are the rules sufficient? Are they delivering the intended outcome?"

Canadian reform of aviation security

Transport Canada launched an Aviation Security Regulatory Review Project in 2007. This involved a detailed examination and renewal of Canada's aviation security regulations with the aim of establishing the regulatory framework appropriate for the security of Canada's aviation system in the future.⁵ At the heart of the Canadian reform is the use of SeMS.

The DfT regulatory reform team have reviewed and examined the Canadian experience and consulted Transport Canada. The design of the SeMS and the pilot and implementation process is being developed to take account of lessons learned by the Canadian authorities and industry.

Like the CAA's experience of SMS, the Canadian experience suggests that reform of this nature requires evolutionary not revolutionary change. Creating the necessary culture within both the Regulator and the regulated entities is key to the effectiveness of the reform, be it for safety or security.

The European Union and other international partners

In the UK there are two layers of aviation security regulation. The EU common basic standards, which are directly applicable, came into force in April 2010 following negotiations over a number of years. These standards contain detailed and often prescriptive requirements that are applicable in all EU Member States. In addition there are the UK's More Stringent Measures (MSMs) - extra requirements that are the result of a risk assessment that takes into account the threat facing the UK. The MSMs are mostly set down in a prescriptive way.

The Department has scrutinised both the EU regulations and the MSMs to see what flexibility they currently offer, and whether there is sufficient flexibility to allow for an OFRB regime to begin under the existing regulatory framework. While there is an element of flexibility, our view is that at present the prescriptive nature of both the UK and EU regulations would make it difficult to introduce a full OFRB approach.

⁵ <http://www.tc.gc.ca/eng/aviationsecurity/page-185.htm>

The same restrictions do not apply to the introduction of the SeMS as a regulatory tool. However the processes being managed would still have to comply with European requirements pending any legislative change at the EU level.

We will, where possible, look to enable more flexibility in the way that the UK's MSMs are met as and when they are reviewed. Any change in EU regulations would take a great deal of time to achieve and to get right. But the process has started. The European Commission has begun to look at the future direction of the EU regulatory approach, including in discussions with industry and also with Member States via the EU Aviation Security Committee. In addition, the issue was examined at a high level conference on aviation security hosted in conjunction with the Polish Presidency in Brussels on 27 September 2011⁶. The panel discussions and exchange of views involved more than 100 high level specialists and key players in aviation security. The participants considered the sustainability of the current model of aviation security and whether to move to a more risk based approach. More recently the Transport Minister for Denmark - current holders of the EU Presidency - raised the issue of aviation security reform during an informal discussion at the Transport Council on 22 March 2012⁷. We will seek to continue this dialogue and will continue to engage with our European partners on the question of moving to a SeMS/ OFRB approach.

We will also engage with other international institutions and global partners. Bodies such as ICAO are considering the value of SeMS. Most recently they have examined the experiences of IATA members, who have reported the benefits of SeMS as being:

- *a greater ability to anticipate and react to threats through more effective security programmes;*
- *self-reporting and open lines of communication between industry and regulatory authorities, which increases the quantity and quality of security data available;*
- *an increased security culture and transfers of responsibility, which in today's security environment can be instrumental in addressing insider threats and creates an environment of continual oversight.*

The views of industry

The wider aviation industry, in responding to the consultation and in workshops before and during the consultation period, has signalled broad support for an OFRB approach. Earlier this year, in giving evidence to the House of Commons Public Bill Committee during its scrutiny of the Civil Aviation Bill, the Commercial Director of an aviation security service provider

⁶ http://ec.europa.eu/transport/air/events/2011-09-27-avsec_en.htm

⁷ <http://eu2012.dk/en/NewsList/Marts/Uge-12/aviation-security>

and an airport operators' representative were asked about reform of aviation security rules. They said:

"I work with smaller companies and some remote locations. The one-size-fits-all approach, particularly when applied as the standard for Heathrow, does not work. Introducing flexibility via a risk-based regime would certainly allow more appropriate measures, and certainly more appropriate measures for the consumer, not only the operators."
Aviation security service provider

"We have consistently supported the Government's move to an outcomes-focused regime." Airport operators' representative

Summary

There are lessons to learn from past and present reforms of aviation security regulation. There are also wider issues to consider, such as changing European Union requirements, and the challenges of re-focusing organisational cultures.

4. The GOVERNMENT'S RESPONSE: CONCLUSIONS

While there was clear support for the proposed move to a SeMS based, OFRB approach, respondents raised a number of significant issues. One of the issues for immediate consideration is the timetable for introducing the new OFRB approach. The consultation document suggested that this might be phased in over three years starting from April 2013 and beginning with the larger airports and operators.

While there was broad agreement with the principle of phasing, there was recognition that the move from the current 'direct and inspect' regime would require substantial change for both the industry and the Regulator.

Our understanding of similar reforms elsewhere, in particular the CAA's experience of introducing SMS, is that it is likely to take a significant period to bring about the reforms. Embedding this change (initially through the introduction of SeMS) would require commitment from all parties and a determination to ensure that the objective of improved security is achieved. It should allow the industry to operate more efficiently as it allows the management of security risks to be integrated with other business systems. During the process of developing and implementing the new regime, however, it would be critical that the performance of the existing security regime is not degraded.

Under the Civil Aviation Bill currently before Parliament, certain regulation and compliance functions will be conferred on the CAA and the relevant staff will be transferred from DfT to the CAA. The current working assumption is for the CAA to take on these functions from spring 2014.

The Government recognises that the CAA will need time to adapt to and embed the new role, and that industry too will need time to adjust to the new oversight approach rather than the current 'direct and inspect' method of regulation. The Chief Executive of the CAA made this point when he gave evidence to the Public Bill Committee scrutinising the Civil Aviation Bill on 23 February. He said:

"I would welcome some space between the transfer of responsibility, the development of security management systems and the rolling out of outcome-focused, risk-based security regulation in due course. I would not be in favour of bunching everything together for a single, one-hit implementation, which would be a riskier strategy."

The Government agrees. We must press on as quickly as possible, but we must avoid creating unnecessary risks to our aviation security by implementing too many reforms at the same time.

Introduction of the OFRB approach is not linked to or dependent on the CAA carrying out the aviation security functions conferred on it under the Civil Aviation Bill, but we believe that it is dependent on effective introduction of the SeMS concept; SeMS needs to be established before OFRB could be

introduced. The CAA experience of rolling-out the aviation SMS regime is that it takes between 5-10 years for such new systems to become fully embedded. And the Canadian experience of introducing SeMS suggests that it is a process that should not be rushed.

Implementation of a full OFRB regime would be influenced strongly by progress in reforming EU regulation. Many respondents said that the benefits of an OFRB approach would be severely limited if it applied only to the UK's MSMs but not to the substantial body of EU regulatory requirements. Respondents also noted that it was likely to be several years before EU regulatory requirements were changed. **We agree, but believe that there are significant benefits to early adoption of the SeMS concept as a first step towards OFRB.**

The SeMS concept

The first step in moving aviation security to an OFRB approach would be to develop and introduce the SeMS as the basis for regulation since it is the means of providing assurance to industry and to the Regulator that risks have been properly identified and are being managed effectively.

A SeMS is an organised, systematic approach to managing security. It provides the necessary organisational structure, accountabilities, policies and procedures; it requires security management to be integrated into the day-to-day activities of the organisation.

The implementation of SeMS would be a powerful tool in helping to improve the culture of security across the industry, just as the SMS so successfully underpins the aviation industry's approach to safety. It would raise professional standards and generate a sense of ownership rather than simply compliance with a security process. Through the resultant accountability it would provide an incentive for continuing improvement. It is the starting point and foundation for a successful OFRB approach.

Transitional arrangements

We intend to start the regulatory reform by developing the SeMS process within the current regulatory regime based on existing MSMs and EU requirements. We envisage an incremental approach, beginning with a series of pilots starting later this year, as explained in Section 5, followed by progressive roll-out if the pilots are concluded successfully.

The consultation document provided information on the structure of a SeMS and what it should include, and looked ahead to developing the concept in consultation with industry and then trialling it at one or more operations. Thereafter much would depend on the readiness, and willingness, of individual operators to adopt a SeMS, and the capacities of the Regulator. Since many airports and airlines already operate elements of a SeMS the expectation is that they would be among the first to be included in the roll-out programme. But we will undertake an assessment of the capability of other

industry operators to use this model, including the cargo sector, with a view to wider roll-out. The Regulator will be assessing industry operators on their capability to implement SeMS before deciding on which operators shall be first to do so in order to ensure that security standards are not compromised.

The pilots will enable us to gather evidence to use in discussions with our European partners to seek changes to EU requirements so that we could get the greatest benefits from an OFRB approach. The pilots will provide us with some of the evidence base needed to do this.

We will also continue to review our MSMs, with a view to removing or revising them on the basis of risk assessment. Where it is determined that measures must be retained to meet a particular security objective we will, where possible, look to enable more flexibility in the way that they are met.

The Government is committed to ensuring that the principles of better regulation are applied to aviation security in ways that maintain and improve the effectiveness of security and improve the passenger experience. The successful development and implementation of SeMS would lay the necessary foundations to ensure that an OFRB approach would be effective.

5. THE GOVERNMENT'S RESPONSE: NEXT STEPS

It is the Government's intention to take an incremental approach to the security reform programme. We will focus initially on introduction and development of the SeMS concept, before looking at implementing the full OFRB approach.

Significant progress has been made in developing the SeMS concept and the initial guidance material to assist with its implementation. The Department is working with an industry expert and the CAA in the development of a comprehensive initial guidance document. An industry Expert Panel will be established to assist and advise on development of the SeMS itself and its supporting documentation. The Panel will also advise how the SeMS approach can be rolled out.

SeMS pilot

Using the initial guidance we plan to pilot SeMS development with a number of industry entities, starting at London City airport later this year once the Olympics have finished. The aim of the pilots will be to test our guidance and to see whether an organisation can begin to develop an internal SeMS culture that would improve and develop its approach to security. It will also inform the capability required by both the industry and the Regulator to effectively implement and oversee SeMS. The pilots will be reviewed at each stage to ensure that we have a firm foundation for each incremental step of the roll-out of SeMS, and that security standards are not compromised. We therefore expect this process to take several years.

Threat and risk context statement

Effective implementation of SeMS and OFRB requires information about threat and risk to be shared with the aviation industry. Work is underway to determine the best approach to doing this. The Department proposes to share further information via a threat and risk statement. The final format of this document, its content and the regularity with which it would be shared, is the subject of ongoing discussion with the relevant government agencies. We also aim to share draft versions with industry partners before formal publication to ensure that it is fit for purpose.

Industry-Readiness questionnaire

The Department is planning to gather data across industry to identify and assess the most effective approach to rolling out and implementing SeMS. This will also assist in identifying those industry partners with the capability to become early adopters of the new approach.

Completion of the pilots, and the information gathered from the questionnaires, will be used to inform the SeMS roll-out.

OFRB

The experience gained on the effectiveness of the SeMS regime will inform development of the OFRB programme.

The SeMS work is expected to identify how the current regulatory regime can be improved. It is hoped that this may provide evidence that the security outcomes delivered by the existing prescriptive regime could also be delivered by giving more responsibility to each organisation to develop its own security systems.

We will use this information to enable, where possible, more flexibility in the way that the UK's MSMs are met, as and when they are reviewed.

The full benefit of the ability to develop and implement local security measures will, however, only be feasible once EU as well as UK regulations are reformed.

EU and wider International engagement

Development of the SeMS concept is expected to provide the evidence that will allow the UK to make the case for reform to the European Commission and other EU Member States.

Over the years the Department has developed and established many effective international working relationships and engagement tools which we have at our disposal (in an EU context these are primarily in relation to the Commission, other EU Member States' aviation security officials and the aviation industry, as well as security equipment manufacturers).

We will continue to share our objectives and plans for regulatory reform, and encourage acceptance of the concepts of SeMS and OFRB. We will use the evidence we gather from the SeMS pilots, SeMS roll-out and our review of the UK's MSMs, to press our argument that EU regulations should be re-cast to allow for an OFRB approach.

We will also endeavour to update other international partners and groups, such as IATA, to ensure that they remain aware of our proposed reforms.

Updating the Industry

As well as setting up an industry Expert Panel, the Department will continue to engage widely with the industry, including further consultation events where appropriate. We will report progress on these next steps as the regulatory reform work progresses.

ANNEX A

Summary of responses

A	Airports	Any airport or airport trade body	16
B	Airlines	Any airline or airline trade body	19
C	Cargo	Any company involved in the carriage of mail or cargo also any cargo trade body	18
D	Security provider	Any company or consultants supplying security services	10
E	Trainer	Any company supplying training	1
F	Manufacturer	Any manufacturer of security equipment or technology	5
G	Government	Other Government department or agency	2
H	Industry employee	Any individual working in the aviation security industry	7
I	In-flight services	Suppliers of in-flight catering	0
J	Interest Group	Any pressure group	7
K	Police		1
L	Trade Union		3
M	Member of the public	Anyone not connected with the aviation industry	4
O	Other		0
P	Pilots	Current or ex-pilots	23
	TOTAL		116

List of organisations who responded

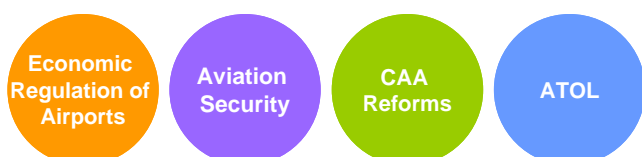
- A.Hartrodt uk
- AADKTN
- ABTA
- ACPO
- Air Canada Pilots Association
- Airlock Aviation
- Airports Council International
- Alliance Party of Northern Ireland
- AOA
- Association of Asia Pacific Airlines
- Association of European Airlines
- Association of International Courier and Express Services
- Atlantic Freight Ltd
- Avsec Global Ltd and Astraesus
- BA
- BAA
- BALPA
- BAR-UK
- Belfast Airport

- BFBS Consultants Limited
- Big Red Kite Aviation
- Birmingham Airport
- British Aviation Group (BAG)
- British International Freight Association
- CAA
- Cathay Pacific Airways Limited
- Consumer Council
- DHL Aviation
- DHL Global Forwarding
- ERAA
- European Low Fare Airlines Association
- Flybe
- Freight Transport Association
- G4s
- GAPAN
- Gatwick Airport
- Glasgow Prestwick Airport
- Gloucestershire Airport
- HIAL
- IATA
- IPA
- Kerry Logistics UK
- KLM
- Kuehne & Nagel Ltd
- Liberty Express
- Loganair
- London Luton Airport
- London Stansted Cargo
- Lufthansa
- MacDonald Humfrey
- Manchester Airport
- Menzies Aviation
- MORPHO
- Morpho UK
- Newcastle Airport
- Norbert Dentressangle
- Norwich International Airport
- Plymouth Airport
- Prospect
- Qantas
- QinetiQ
- Quickmarsh Ltd

- Rapisan Systems
- Raytheon
- RCAE
- Royal Mail
- Ryanair

What aviation security work does the Department for Transport do now?

- **Threat and risk analysis.** The Department for Transport (DfT) engages with the Joint Terrorism Analysis Centre (JTAC) to understand and analyse the terrorist threats to aviation.
- **Policy formulation and development.** DfT develops aviation security policy, from first principles or in response to events, intelligence or trends, to give direction to its activities and inform its priorities. Engagement with industry, including meetings of the National Aviation Security Committee (chaired by the Secretary of State), is also a source from which policy may be formulated and developed.
- **Regulation.** In addition to European Union (EU) common basic standards for aviation security, the DfT develops and maintains the UK's more stringent measures. These aviation security requirements are set out in directions which the Secretary of State gives to industry.
- **Inspection.** Inspections are carried out by DfT to ensure compliance with aviation security directions. Inspectors, who, in statute are described as "authorised persons", are DfT employees. With regard to known consignors of cargo, inspections are undertaken by independent validators acting on behalf of the Department.
- **Enforcement.** Where there has been a failure to comply, a "stepped approach" to enforcement is taken, ranging from words of warning, enforcement procedures and, if appropriate, prosecution.
- **Advice and guidance.** DfT provides advice and guidance to the aviation industry to assist compliance with EU and UK aviation security requirements and to improve aviation security more generally.
- **International negotiations.** DfT represents the UK on international forums and, with partner countries, helps deliver the UK's aviation security objectives on the global stage. DfT negotiates EU common basic standards for aviation security and encourages international co-operation in the sharing of research.
- **Overseas capacity building.** DfT assists in the management of the threat from aircraft bound for the UK by providing assistance (training, equipment, advice etc.) to certain countries where particular threats and vulnerabilities have been identified.
- **Incident management.** As well as playing a full part in the Government response to aviation security incidents, the DfT provides an "on the ground" presence at incidents and potential incidents which may have an impact on aviation security or where immediate security advice, or a decision on a variation from normal security practice to meet the immediate circumstances, may be needed. Such incidents range from demonstrations, diplomatic conferences through to actual terrorist incidents.
- **Vetting.** The Secretary of State specifies in directions (served on industry) certain aviation security activities that can only be carried out by individuals who have been vetted. DfT operates arrangements for the national security vetting of such individuals. This involves the making of vetting decisions (e.g. to grant/not grant clearance) and the handling of any appeals.
- **Research.** DfT not only commissions but also plays an active part in research to understand, among other things, the consequences of terrorist attacks, vulnerabilities in aviation, assessment of new detection and screening technology or processes with the aim of delivering enhanced capability and encouraging innovation.



What aviation security functions are we conferring on the Civil Aviation Authority?

The Bill provides for the following aviation security functions to be conferred on the Civil Aviation Authority (CAA):

- **Regulation** – The CAA will have a duty to review aviation security directions that are currently in force and make recommendations to the Secretary of State about those directions and about the giving of further directions, which may, for example, follow from a change in the security threats to civil aviation. The Secretary of State may specify the form of the recommendations. Aviation security directions will continue to be made by the Secretary of State. The CAA's role will be, for example, to prepare draft directions for the Secretary of State to make or to prepare guidance on directions.
- **Inspection and enforcement** – The CAA will have the power to appoint authorised persons (i.e. inspectors) to carry out inspections and, if necessary, enforcement. The inspection and enforcement powers of CAA-appointed inspectors will be the same as currently exist for DfT-appointed inspectors.
- **Advice and assistance to the Secretary of State** – The CAA will have a duty to provide advice and assistance to the Secretary of State, as the Secretary of State requires, in connection with matters relevant to the purposes of Part 2 of the Aviation Security Act 1982 (the protection of civil aviation against acts of violence). This may include, for example, assisting with work relating to the International Civil Aviation Organisation and the European Union on aviation security, or with incident management.
- **Advice and guidance to industry** - The CAA will have a duty to provide such advice and assistance to industry as it considers appropriate having regard to the purposes to which Part 2 of the Aviation Security Act 1982 applies (the

protection of civil aviation against acts of violence).

- **Vetting** - The CAA will be required to make arrangements for the national security vetting of individuals carrying on or wishing to carry on certain aviation security functions, as specified in directions, including arrangements for renewing and withdrawing clearance and handling appeals.
- **The Secretary of State will remain responsible** for aviation security policy and for making aviation security directions.

Why?

- The CAA has regulated aviation safety since it was formed in 1972, but security has always been regulated directly by Government. This current situation does not align with modern regulatory best practice.
- The proposals in the Bill will mean that the industry will have a single regulator for aviation safety and security. This should enable industry to better integrate security with its other day-to-day business activities, such as safety.
- Aviation security regulation can benefit from the CAA's operational experience of safety regulation.
- The 'user pays' principle will apply to aviation security regulation as it does currently to the regulation of aviation safety.
- The CAA has wide experience of risk based safety regulation and this should prove to be very valuable for a future move to Security Management Systems and Outcome Focussed, Risk Based (OFRB) security regulation. This approach would enable the industry to deliver bespoke solutions, focused on achieving security outcomes, rather than following prescriptive processes.



Will CAA be equipped to discharge these functions?

CAA is already the UK aviation safety regulator and is widely regarded as being a world class regulator.

The CAA has had many years of providing frameworks to facilitate the implementation of Safety Management Systems and there are many parallels with this work and the development of Security Management Systems.

CAA also has responsibility under EU regulations for ensuring that Air Navigation Service Providers implement Security Management Systems This has many similarities to the way in which DfT intends industry to deliver aviation security, so CAA already has some relevant knowledge and experience. The DfT and CAA are working together to ensure that CAA will have the necessary security expertise and access to information to deliver its new security functions. **The Bill will enable aviation security functions to be conferred on the CAA, and subsequently for transfer schemes to be made containing the detailed arrangement for the transfer of staff in the relevant posts.** We would hope that the majority of staff will decide to go to the CAA, but if people do decide to move elsewhere we believe there will be enough time to manage this. The intention is for the proposed transfer scheme to follow the general TUPE (Transfer of Undertaking, Protection of Employment) principles. Formal engagement with the trade unions has begun.

When ?

The DfT is working to a plan that will aim for the CAA take on aviation security regulation functions from spring 2014. This will allow sufficient time for the joint DfT/CAA programme team to determine the exact division of responsibilities and to ensure that the aviation industry is cognisant of the respective roles.

Costs to industry

We have estimated that the ongoing cost to the CAA of its new security functions would be £4.8m per year. This cost, if expressed so as to fall equally to passengers and cargo, would equate to approximately £0.01 per passenger movement per year and £0.001 per kilogram of cargo.

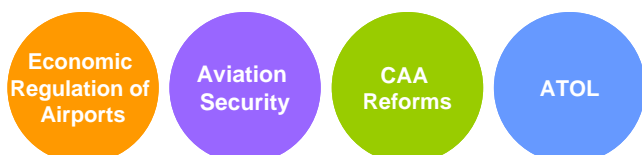
The CAA will determine how and on whom it intends to levy charges for security regulation. The CAA already consults with industry on its charges on a voluntary basis but the Bill will make this a statutory requirement. The Secretary of State must also be consulted. Under section 11(3) of the Civil Aviation Act 1982, the Secretary of State has the power to make regulations to override any charging scheme made by the CAA.

Charging the industry for the regulation of aviation security aligns with the vast majority of other forms of regulation, including CAA's regulation of aviation safety. The aviation industry already meets the costs of providing security (close to £1bn), and the cost of regulation (£4.8m) is a small addition which could be neutralised by efficiency savings from the overall reform package.

Preparatory work

A great deal of work is already underway to make sure the transfer is as smooth as possible, and we have established a joint DfT/CAA team to ensure the right processes are established before the transfer takes place. Some of the key work programmes are:

- Information sharing between DfT and CAA (including threat and risk analysis)
- Integrating security into the wider CAA structure
- IT arrangements
- Transfer schemes and secondary legislation
- Arrangements for CAA charges for security
- Transition plan.



Civil Aviation Bill

Aviation security brief continued/

Developing new interfaces

DfT is working closely with the CAA to develop new interfaces. The DfT and CAA already have experience of working together in high pressure situations such as volcanic ash. We have good communication between staff at all levels and Ministers are in regular communication with the Chair and Chief Executive of the CAA.

Consultation

Pre-Legislative Scrutiny of the Bill, including the aviation security provisions, was undertaken in November and December 2011.

We made industry aware of the aviation security proposals at the earliest opportunity and are looking at how we can engage industry on the transfer as we go forward.

The separate but parallel process of moving to OFRB was the subject of full public consultation during 2011.

Further information

For more information on the Civil Aviation Bill please visit:

<http://www.dft.gov.uk/topics/legislation/civil-aviation-bill>

You can also track progress on the Parliament website at:

<http://services.parliament.uk/bills/2010-11/civilaviation.html>

Civil Aviation Bill

The Civil Aviation Bill modernises the regulatory framework for civil aviation in the United Kingdom to enable the sector to increase its contribution to economic growth without compromising high standards. There are four key areas:

- a. reforms to the legislative framework for the economic regulation of airports
- b. modernisation of the CAA's powers and governance
- c. conferring certain aviation security functions on the CAA
- d. ATOL.

