

<b>Title:</b> CAA Civil Sanctions <b>IA No:</b> <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> Civil Aviation Authority (CAA), MoJ	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 01/01/2011		
	<b>Stage:</b> Development/Options		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Andy Kirby			

**Summary: Intervention and Options** **RPC Opinion:** RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
-£1.02m	-£0.85m	£0.08m	Yes   IN

**What is the problem under consideration? Why is government intervention necessary?**  
 At present, the CAA has no access to sufficiently wide regulatory tools to allow it to respond proportionately and flexibly to all breaches of aviation safety and airspace regulations. The most intrusive enforcement methods are criminal prosecutions and licensing actions (e.g. suspending a pilot's licence) and each is time-consuming, and can be costly and disproportionate. There are few intermediate methods available, and warning letters have no legal force, so efficient action to ensure compliance can be hard to achieve. The Civil Aviation Act 2012 amended the Regulatory Enforcement and Sanctions Act 2008 to enable an order to be made giving the CAA access to a range of civil sanctions to use in addition to their existing penalties. Secondary legislation is needed to make this order.

**What are the policy objectives and the intended effects?**  
 The CAA aspires that regulatory compliance will be normal practice, but as long as while breaches of regulation occur the CAA will need to take enforcement action to maintain high standards in aviation safety. The preferred option (Option 2) aims to address the current gap in the CAA enforcement toolkit, enabling it to take proportionate and cost-effective enforcement action, and in some cases to act so as to prevent breaches of regulation before serious harm occurs. In the longer term, we expect the preferred option to help bring about greater levels of compliance and therefore safety by providing a wider deterrent against offending and bringing offenders back into compliance sooner.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option '0' is the 'do nothing option', the baseline against which the impact of Options 1 and 2 are assessed. Option 1 is to recommend that the CAA make more extensive use of its existing criminal prosecution powers. Option 2 is to give the CAA access to a range of civil sanctions provided for by Part 3 of the Regulatory Enforcement and Sanctions Act (RESA) 2008. The Government prefers Option 2, and believes that it offers the CAA the most flexible and proportionate regulatory toolkit for enforcing aviation regulation, while not adding a significant cost burden to the majority of regulated parties who comply with regulation. Further variations on Option 2 were considered and ruled out.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 2019					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> n/a		<b>Non-traded:</b> n/a	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

Description: Government recommends to the CAA that it make greater use of its existing criminal prosecution powers

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.68m	High: £0	Best Estimate: -£0.34m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	-£0.1m	-£0.7m
Best Estimate	0	0	-£0.3m

### Description and scale of key monetised costs by 'main affected groups'

An increase in prosecutions would lead to an increase in CAA investigation and legal costs (best estimated to be £0.1m over 10 years). As the CAA is funded by regulated parties, these costs ultimately fall on the aviation sector. Increased prosecutions would result in increased costs for Her Majesty's Courts & Tribunal Service (HMCTS), best estimated to be £0.3m over a 10 year period.

### Other key non-monetised costs by 'main affected groups'

The further costs of implementing this option would be limited as the mechanisms for investigating criminal breaches in aviation regulation and for carrying out enforcement through criminal prosecution are already in place.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	NQ	NQ
High	0	NQ	NQ
Best Estimate	0	NQ	NQ

### Description and scale of key monetised benefits by 'main affected groups'

We have not been able to accurately monetise any benefits with this option.

### Other key non-monetised benefits by 'main affected groups'

In the longer term (assuming that evidence can be gathered to support additional further prosecutions), this option may incentivise greater levels of compliance by acting as a deterrent against non-compliance. Increased levels of compliance would make a positive contribution to aviation safety. The Treasury will benefit from increased funds raised through fines imposed on offenders.

Key assumptions/sensitivities/risks	Discount rate	3.5
<p>Figures are based on estimates. It is assumed that the CAA will act on the Government's recommendation. It is assumed that non-compliance rates remain constant, but in reality increased prosecutions could increase compliance and subsequently decrease enforcement costs. Only the most serious offences might be appropriate for criminal prosecution, and there would be no new form of enforcement for less serious offences, leaving obstacles to effective regulatory action.</p>		

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: 0	Yes	NA
Benefits: NQ		
Net: 0		

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** The CAA is given access to a range of civil sanctions, provided for by Part 3 of RESA 2008

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£1.70m	High: -£0.34m	Best Estimate: -£1.02m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Average	
			Total Cost (Present Value)	
Low	N/A	£0.m	£0.3m	
High	N/A	£0.2m	£1.7m	
Best Estimate	£0.0m	£0.1m	£1.0m	

### Description and scale of key monetised costs by 'main affected groups'

There is an annual increase in CAA enforcement costs (best estimated as £0.1m), The CAA is funded by regulated parties so these costs ultimately fall on the aviation sector. There is expected to be an increase in HMCTS costs (best estimated as £0.02m over 10 years) There are one-off transitional costs of £0.02m to the CAA, and £0.02m to the DfT.

### Other key non-monetised costs by 'main affected groups'

There will be costs to regulated parties of learning about the new enforcement regime. The CAA will provide information, however the cost of understanding regulation and its enforcement ultimately falls to regulated parties. These costs are expected to be small, as no new offences are created, and the only change is in how regulation is enforced

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	0	NQ	NQ
High	0	NQ	NQ
Best Estimate	0	NQ	NQ

### Description and scale of key monetised benefits by 'main affected groups'

We have not been able to accurately monetise any benefits with this option.

### Other key non-monetised benefits by 'main affected groups'

A flexible range of civil sanctions will enhance the CAA's ability to take proportionate enforcement action. In the longer term, greater levels of compliance could bring about greater levels of aviation safety, and reduce enforcement costs to the CAA and therefore to regulated parties. The Treasury will benefit from funds raised through fines imposed on offenders.

Key assumptions/sensitivities/risks (%)	Discount rate	3.5
<p>Figures are based on estimates. For the purposes of calculation, it is assumed that non-compliance rates remain consistent. However, in the longer term, it is likely that improvements in the CAA's ability to carry out enforcement will lead to greater levels of compliance and safety, though there is uncertainty in how overall offending rates will change in response to the introduction of civil sanctions. There is a risk that civil sanctions are seen as a soft form of enforcement, reducing the deterrent effect.</p>		

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs: 0.1</b>	<b>Benefits: NQ</b>	<b>Net: -£0.1</b>	Yes	NA

# Evidence Base (for summary sheets)

## 1. Problem under consideration

- 1.1 The CAA currently has a limited toolkit for enforcing aviation regulation. At one end of the scale they can bring criminal prosecutions or take licensing actions (for example, removing or suspending a pilot's licence) and at the other end it can make findings, issue cautions or send out warning letters.
- 1.2 Pursuing a criminal prosecution for a breach of aviation regulation is time-consuming, costly, and may be disproportionate for many offences. Similarly, investigations leading to formal cautions are often time-consuming and costly, and disproportionate for many offences. Licensing actions are also time-consuming, costly, and potentially disproportionate. In addition, licensing actions are only an option where the offender carries a CAA licence. It cannot, for example, be used to address the conduct of those who breach aviation regulations with unmanned aircraft, as pilots of unmanned aircraft currently need not be licensed.
- 1.3 Warning letters are significantly less costly to issue, but carry no legal force. They can be seen as a 'soft option', and may fail adequately to encourage compliance, especially where offenders feel that any further sanction would be unlikely.
- 1.4 The Hampton Review of the regulatory system, undertaken in 2005, supported work being undertaken at the time to examine whether the CAA should have access to a suitable range of civil sanctions.
- 1.5 The subsequent Macrory Review into 'Regulatory Justice: Sanctioning in a post-Hampton World' published in 2006, concluded that the existing sanctioning framework for dealing with regulatory non-compliance was inadequate. The review also concluded that regulators often had to choose between issuing a warning letter or caution, and taking criminal proceedings, so were without easy access to proportionate intermediate sanctions to act as a deterrent to non-compliance. In addition, the Macrory Review concluded that the reliance of regulators on criminal prosecution was sometimes disproportionate. The recommendations in the review included:  
*'Introducing schemes of Fixed and Variable Monetary Administrative Penalties, available to those regulators who are Hampton compliant, with an appeal to an independent tribunal rather than the criminal courts.'*
- 1.6 The CAA's regulatory enforcement activity is divided between the Consumer Protection Group (CPG), the Markets and Consumers Group (MCG), the Safety and Airspace Regulation Group (SARG) with support from the Investigation and Enforcement Team (IET).
- 1.7 CPG and MCG work to ensure that risks to consumers are minimised and that passengers are aware of their rights. Key responsibilities in this area include:
  - economic regulation of dominant airports, and competition enforcement in relation to airport operation services;
  - enforcement of consumer protection rules around issues like cancelled flights;
  - enforcement of regulations and requirements relating to transporting dangerous goods by air; and
  - management of the ATOL financial protection scheme for holidaymakers, which repatriates and refunds them if their travel firm fails.
- 1.8 SARG carries out activity related to the safe operation and maintenance of aircraft and associated service provision. SARG's responsibilities include the regulation of aircraft, airlines, airports, and airspace. It also has overall responsibility for licensing of pilots, engineers, and air traffic controllers.
- 1.9 IET are responsible for carrying out investigations jointly with SARG, MCG and CPG into regulatory breaches that may result in criminal prosecution.
- 1.10 This impact assessment considers introducing civil sanction powers only for offences currently enforced by SARG (supported by IET), therefore only SARG and IET enforcement actions are

considered. Any further proposals to introduce civil sanctions for offences currently enforced by CPG and MCG would be dealt with in an independent impact assessment.

## 2. Rationale for intervention

- 2.1 The effective enforcement of aviation regulation is necessary to ensure the safety of the wider public, aviation users, and staff. The standards of UK aviation safety are currently very high, but nonetheless breaches in safety regulations still occur. A more flexible enforcement regime could bring about greater compliance.
- 2.2 The CAA regulates a wide range of individuals and organisations. Regulated parties include: 20,000 active professional and 30,000 private pilots, 12,400 licensed aircraft engineers, 2,350 air traffic controllers, 206 airlines, 141 licensed aerodromes, 950 organisations involved in design, production and maintenance of aircraft and 2,400 Air Travel Organisers' Licence (ATOL) holders. In addition there are 19,000 aircraft registered in the UK.<sup>1</sup> Given the wide range of organisations regulated by the CAA as well as the broad scope of its regulatory activities it is necessary for the CAA to have access to a flexible enforcement toolkit to ensure it can enforce aviation regulation proportionately.
- 2.3 The CAA's current system of regulatory enforcement is primarily reliant on regulatory actions (such as licensing actions), issuing warning letters, or undertaking criminal prosecutions. It does not allow the CAA easy access to proportionate intermediate sanctions which can focus on bringing infringers back into compliance. In addition, the limited flexibility of the existing enforcement system means that some offences are rarely enforced, with the result that compliance is harder to achieve. Adding a range of flexible, intermediate sanctions to the CAA's toolkit would help ensure it had the right toolkit to proportionately enforce aviation regulation, and in some cases would enable the CAA to act so as to prevent breaches of regulation before serious harm occurs. Offenders who at present face only warning letters may face civil sanctions more in line with the seriousness of their offences, and some cases currently dealt with through criminal prosecution or cautions could be dealt with more appropriately and cost-effectively through civil sanctions.
- 2.4 The CAA is a statutory body and at present has a limited range of enforcement tools. To strengthen its enforcement toolkit, the Secretary of State may recommend to the CAA that they make greater use of existing criminal prosecution powers. Alternatively, the Civil Aviation Act 2012 amended the Regulatory Enforcement and Sanctions Act (RESA) 2008 so that an order could be made to grant the CAA access to a range of civil sanctions powers. Secondary legislation is required to make this order and so grant the CAA these powers.

## 3. Policy Objective

- 3.1 The CAA's aim is for compliance with aviation regulations to be normal aviation practice. However, as long as breaches of regulation occur it will remain necessary for the CAA to take enforcement action. The objective of this proposal is to strengthen the CAA's enforcement toolkit. In particular, the objective of the preferred option, Option 2, is to address the current gap in the CAA enforcement toolkit by granting the CAA access to a flexible and proportionate range of enforcement actions. This would allow the CAA to work with infringers to bring them back into compliance and to escalate up to more interventionist measures only where necessary.
- 3.2 The introduction of civil sanctions will allow the CAA to take more effective and consistent action to ensure compliance. It will enable a more proportionate enforcement of offences where existing measures, such as warning letters, are considered inadequate, yet criminal prosecution may not be in the public interest and therefore would not be pursued. In addition, there may be regulatory breaches for which pursuing a civil sanction would be a more cost effective and proportionate means of enforcement than pursuing one of the existing criminal sanctions.
- 3.3 In the longer term it is intended that adopting Option 2 will promote aviation safety and passenger protection by bringing offenders back into compliance sooner, discouraging non-offenders from

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<sup>1</sup> Source: CAA

offending, and enabling the CAA in some cases to act so as to prevent breaches of regulation before serious harm occurs.

## 4. Options considered

4.1 This impact assessment is structured around three options:

- Option 0: do nothing
- Option 1: Government recommends to the CAA that it make greater use of existing criminal prosecution powers.
- Option 2: Give CAA access to a range of civil sanctions, provided for by Part 3 of RESA 2008.

### **Option 0: Do nothing**

4.2 The 'do nothing' option is to maintain the existing system of aviation enforcement. The purpose of including this option is to provide a baseline against which the new proposals, Options 1 and 2, can be considered.

4.3 At present, criminal sanctions exist for the majority of offences for which the CAA has an enforcement function. The CAA may also deploy other enforcement measures in relation to some offences, as well as using the tools of engagement, interaction, guidance, publicity and written or verbal warnings. These other enforcement measures include:

- varying or suspending permissions to carry out a regulated activity (for example providing flight instruction or flying particular categories of aircraft in particular areas);
- varying or suspending licence approval;
- imposing or varying licence conditions;
- issuing no fly directions;
- issuing letters before further enforcement action; and
- placing regulated parties on notice that they are at risk of future enforcement action if suitable remedial action is not taken.

4.4 In particular, the CAA has powers under article 228 of the Air Navigation Order 2009 (ANO) to vary, suspend or revoke any certificate, licence, approval, permission, exemption, authorisation or other document issued, granted or having effect under the Order on sufficient ground being shown to its satisfaction after due inquiry

4.5 In October 2012 the CAA published its first Regulatory Enforcement Policy. This applies to all of the CAA's regulatory activities, providing the regulated aviation community, its passengers and consumers, and the wider public with a clearer view of the CAA's role in seeking to resolve a breach, or a suspected or potential breach, of civil aviation rules. In it the CAA seeks to define a proportionate policy that will focus the attention of those we regulate on addressing risks to the consumer and the public, and is transparent to those we regulate, to consumers and to the wider public.

### **Option 1: Government recommends that the CAA make greater use of its criminal prosecution powers**

4.6 The Secretary of State would recommend to the CAA that they consider the wider public interest in aviation safety and make greater use of criminal prosecution in cases where prosecution is not currently brought.

4.7 Under this option the CAA would make greater use of criminal prosecution powers. More criminal prosecutions would be brought, potentially resulting in cases in which criminal sanctions are imposed even though they are disproportionate to the offence.

- 4.8 A focus on reactive criminal prosecution powers would penalise breaches in safety regulation rather than focusing on future compliance.

## **Option 2: Give the CAA access to a range of civil sanctions, provided for by Part 3 of RESA 2008**

- 4.9 The Civil Aviation Act 2012 amends Part 3 of the Regulatory Enforcement and Sanctions Act (RESA) 2008 to add the CAA to the list of regulators in Schedule 5 to the 2008 Act. This enables an order to be made so as to give the CAA access to a range of civil sanctions provided for by Part 3 of RESA 2008, which could be used in relation to the enforcement of breaches of civil aviation law. These sanctions would sit alongside existing sanctions available to the CAA and would provide it with an alternative to relying on criminal prosecutions. Section 103 of the 2012 Act also adds particular provisions of the Civil Aviation Act 1982 to the list of enactments in Schedule 7 to the RESA 2008. This has the effect of extending an existing power to create criminal offences by subordinate legislation, so as to include the power to confer on the CAA the civil sanctions provided for by Part 3 of the RESA. 2008.
- 4.10 The RESA 2008 provides for a range of four civil sanctions to give a regulator access to effective sanctions that are flexible and proportionate. These are:
- **Fixed monetary penalty (FMP):** Under a fixed penalty notice a regulator would be able to impose a monetary penalty of a fixed amount. Provision may be made for early payment discounts and for the payment of interest or a financial penalty for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed. **At present there are no plans to give the CAA access to Fixed Monetary Penalties for the aviation offences considered in this proposal.**
  - **Discretionary requirements:** Discretionary requirements are a package of sanctions that may be imposed either on their own or in combination with each other. It is currently intended to give the CAA access to the package of discretionary requirements. They would enable the CAA to impose, by notice, one or more of the following:
    - **Variable monetary penalty (VMP):** The amount of a variable monetary penalty would be determined by the regulator. Provision may be made for early payment discounts and for the payment of interest or a financial penalty for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed. The exact penalty imposed will depend on the nature of the offence as well as offender and may vary depending on factors such as size (e.g. private pilot vs. airline). **Variable monetary penalties will not be applied to business with <250 employees**
    - **Compliance notice (CN):** A requirement to take specified steps, within a stated period, to secure that an offence does not continue or happen again; for example measures such as making good an unsafe piece of equipment or providing training.
    - **Restoration notice (RN):** A requirement to take specified steps, within a stated period, to secure that the position is, so far as possible, restored to what it would have been if no offence had been committed. **Restoration notices will not be applied to business with <250 employees**
  - **Stop notices (SN):** A notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice. If a person does not comply with a stop notice they will be guilty of a criminal offence. A stop notice may only be served if the person is carrying on or is likely to carry on the activity and the regulator has the reasonable belief:
    - that in carrying it on the person presents, or would be likely to present, a significant risk of harm to:
      - human health;
      - the environment (including the health of animals and plants); or
      - the financial interests of consumers; and



- that in carrying on the activity the person is, or is likely to be, committing an offence.
- **Enforcement undertakings (EU):** Enforcement undertakings are agreements made between a person and a regulator for that person to undertake specific actions. A regulator will not be able to impose enforcement undertakings. The regulator may only accept enforcement undertakings where the regulator has reasonable grounds to suspect that the person has committed an offence. The action that a person can offer to undertake must be:
  - action to secure that the offence does not continue or recur;
  - action to secure that the position is restored, so far as possible, to what it would have been if the offence had not been committed;
  - action (including the payment of a sum of money) to benefit any person affected by the offence; or
  - other actions that may be prescribed by the Minister in the order.

4.11 The CAA has reviewed and categorised the safety offences for which it has an enforcement function into three groups:

- Category 1: the most serious offences for which a civil sanction is rarely likely to be a desirable alternative. Civil sanctions would not be made available to enforce these offences;
- Category 2: offences where either criminal or civil sanctions could be appropriate depending on the exact nature of the case. This category is by far the largest category. For category 2 offences, offenders would face, if appropriate, a civil sanction, whereas at present they could only face a criminal sanction; and
- Category 3: offences where civil sanctions would be of particular value as the existing criminal sanctions have, to date, rarely been applied because prosecution would be disproportionate. These offences are a key area where challenges to ensuring effective enforcement currently exist. The CAA would consult regulated bodies before publishing final guidance on its use of civil sanctions powers.

4.12 This impact assessment is limited to considering the use of civil sanctions as an alternative to criminal prosecutions in respect of current offences. It does not seek to address the distinct question of the appropriateness of the current range of criminal offences which is the subject of separate assessment under the Red Tape Challenge.

## 5. Excluded options

5.1 The following further options were considered but have been excluded on policy grounds.

### **Give the CAA access to civil sanctions including Fixed Monetary Penalties**

5.2 The RESA 2008 allows specified regulators to be granted the power to use Fixed Monetary Penalties in their enforcement toolkit.

5.3 There is considerable diversity in the bodies regulated by the CAA, in terms of size, nature and resources. Fixed Monetary Penalties do not offer a sufficient degree of flexibility to ensure proportionality across this range, so could have a potentially uneven impact across different regulated bodies.

5.4 For this reason, neither the CAA nor the Government feel that it is appropriate at this time to give the CAA access to Fixed Monetary Penalties for the aviation offences considered in this impact assessment.

### **Give the CAA access to civil sanctions, excluding Fixed Monetary Penalties, for all business regardless of size**

5.5 The Government set out a policy position, on 8 November 2012, in respect of making orders under Part 3 of RESA 2008 to provide a regulator with powers to impose civil sanctions as an

alternative to criminal prosecution. The position is that, the Government will observe the following principles:

- Powers to impose Fixed Monetary Penalties, Variable Monetary Penalties and Restoration Notices will, as a general rule, only be granted where their use is restricted to organisations with more than 250 employees; and
- Powers to impose Enforcement Undertakings, Stop Notices and Compliance Notices may be granted without restriction as to the size of organisations against whom they might be used.

5.6 Due to this policy position the application of the full range of civil sanctions, excluding Fixed Monetary Penalties, is inconsistent with existing Government policy.

### **Give the CAA access to civil sanctions but exclude small businesses and private pilots from some sanctions**

5.7 A further alternative would be to extend the small business exemption to individual pilots. This would prevent the development of an uneven approach to the enforcement of aviation regulation for individual pilots and small businesses.

5.8 For the majority of the offences, the applicability of civil sanctions has been classed as “category 2” by the CAA, which will mean civil sanctions may be used as an alternative to criminal prosecution for these offences. Under the Option 2, offenders who previously faced criminal prosecution would face an appropriate civil sanction. However, if some civil sanctions are not available to use against small businesses and private individuals, then in some cases there would be no alternative to pursuing a criminal prosecution. Therefore, excluding small business and private pilots would place them at a disadvantage as they would continue to face potentially disproportionate and costly criminal prosecution, as well as a criminal record.

5.9 CAA figures show that around 30,000 private pilots are licensed by the CAA. Excluding individual pilots, together with the 96% of aviation organisations which fall below the 250 employee limit, would leave a large proportion of the sector outside the scope of full civil sanctions, limiting the effectiveness and flexibility of civil sanctions as an enforcement tool.

### **Recommend that the CAA make greater use of existing non-criminal powers**

5.10 The Secretary of State could recommend to the CAA that make greater use of existing non-criminal powers such as the suspension and revocation of licences.

5.11 Under this option the CAA would be required to make greater use of its existing non-criminal enforcement powers although this would always be subject to it having the necessary statutory authority to act. More licence revocations and suspensions could bring about greater levels of compliance while avoiding criminal sanctions. Licence suspensions of varying lengths could be used in a similar manner.

5.12 There are a number of offences where licence revocation is not an option, because no licence is currently needed to carry out the activity associated with the offence. One set of examples are offences relating to flying unmanned aircraft. Another example is Article 164(2) (b) of the Air Navigation Order 2009 (the “ANO”) which states:

*‘Except with the permission of the CAA—*

*A kite must not be flown at a height of more than 30 metres above ground within the aerodrome traffic zone of a notified aerodrome during the notified operating hours of that aerodrome.’*

As the flying of kites does not require a licence, licence revocation or a change to licence conditions are not available as enforcement options. However, it is the view of the CAA that criminal prosecution may not always be proportionate for this offence. Even if existing licence revocation measures were used more frequently there would be many offences such as this one that could not be enforced this one.

5.13 In the example above, a Stop Notice could provide an appropriate alternative to the existing criminal sanction, preventing an action that might lead to serious harm from taking place, rather than merely reacting after the event.

- 5.14 Even in cases where licence revocation or suspension is possible, it may not always be proportionate or cost-effective to use these powers. Certain civil sanctions are expected to be less costly to administer than licensing actions(see 6), and in some cases licence revocation or suspension would potentially have a far greater impact than a civil sanction, for example resulting in a pilot losing significant income or even their livelihood.

### **New sentencing structures**

- 5.15 Sentencing guidelines could be revised to provide stronger deterrents for breaches of aviation regulation.
- 5.16 In April 2010 the Department for Environment, Food and Rural Affairs (DEFRA) introduced civil sanctions for the Environment Agency, Natural England and the Countryside Council for Wales. These changes were introduced alongside a new sentencing structure. An Environmental Enforcement Review in 2006 found that in the case of environmental offences the existing sentence structure was inadequate. The new sentencing approach emphasised:
- ensuring damage was restored;
  - removing any financial benefit for non-compliance; and
  - separately, punishing criminal behaviour where appropriate
- In some cases, new powers were introduced to order restoration, remove financial benefit, and order an offender to publicise an offence or their remedial action.
- 5.17 In the case of civil sanctions for environmental offences there was clear evidence that the existing sentencing structure was inadequate. In the case of the CAA there is no evidence that the current sentencing framework is inadequate.
- 5.18 There are cases where non-compliant individuals or organisations do not face sufficiently effective enforcement action because prosecution would not be proportionate or in the public interest. Where this is the problem, a tougher sentencing framework would not help bring about more effective enforcement action.
- 5.19 The CAA is mainly a safety regulator. This is in contrast to regulators of predominantly environmental offences (e.g. fly-tipping), where there is a clearly quantifiable financial benefit from flouting safety regulations (e.g. not incurring the costs of safe disposal). Aviation businesses with a less consistent approach to compliance may, over time, reduce their costs as a result of non-compliance. However, these benefits are less clearly quantifiable, so there are difficulties introducing criminal penalties to remove financial benefit from non-compliance.
- 5.20 The consequence of non-compliance with aviation regulation is often an increase, to some degree, in the risk of death, injury or damage. There is less scope for identifying appropriate restorative action.
- 5.21 For these reasons, the need for criminal powers to enforce restorative action is less clearly defined than in the case of environmental offences.

## **6. Monetised and non-monetised costs and benefits of each option**

- 6.1 Figures throughout section 6 may not sum due to rounding.
- 6.2 Data on CAA costs and enforcement actions has been provided by the CAA. Data on costs to Her Majesty's Courts and Tribunal Service (HMCTS) has been provided by the Ministry of Justice.
- 6.3 All monetised costs to business are direct costs to business resulting from the implementation of the option under consideration.

### Option 0: Do nothing

#### Costs to the CAA

- 6.4 Table A summarises the CAA's current use of enforcement mechanisms, and their associated costs.

Table A: Current annual use and cost to CAA of enforcement functions

Enforcement action	Average number of actions per annum	Average cost of investigation and subsequent enforcement action (£)	Total CAA cost per annum (£)
Investigations leading to Warning letters - SARG	877.0	£300	£263,100
Investigations leading to warning letters - IET	61.0	£7,819	£476,931
Investigations leading to Licensing action	95.5	£4,347	£415,139
Investigations leading to Cautions - IET	32.0	£7,819	£250,193
Investigations leading to Prosecutions - IET	22.3	£10,140	£226,453
<b>Total</b>	<b>1,088</b>		<b>£1,631,816</b>
Prosecution Costs recovered (£889 per prosecution, see 6.14)			£19,843
<b>Total after cost recovery</b>			<b>£1,611,972</b>

Source: CAA

- 6.5 Average annual cost includes component costs of staffing, investigation, overheads, internal review, and appeals.
- 6.6 In practice, costs for individual cases vary according to the level of investigation conducted before taking enforcement action, and according to the cost of taking the enforcement action itself.
- 6.7 IET's function is primarily to investigate and sanction breaches in aviation regulation. Costs for an individual action have therefore been calculated based on the IET's total cost, notional costs of carrying out certain kinds of investigation and prosecuting a case, and the number of investigations carried out. IET cost and cost recovery data are taken from data from 2010-2013.
- SARG's function is a mixture of routine safety monitoring, and investigating and sanctioning breaches in regulation. Costs for an individual action have therefore been calculated using estimates of the number of hours taken to investigate and sanction offences. SARG figures are taken from 2012 data, which is the most recent available or based on estimated annual averages where recorded data was not available.
- 6.8 The CAA is funded by the aviation sector, so CAA enforcement costs ultimately fall on the aviation sector. Some of these costs are recovered from the minority of the sector which breaches aviation regulation, and the remainder are charged to the sector as a whole. See 6.14

below.

### Costs to HMCTS

6.9 In cases of criminal prosecution, there is also an annual cost to HMCTS, shown in table B.

Table B: Costs to HMCTS

Enforcement action	Average number of actions per annum	Cost to HMCTS per unit (£)	Total cost to HMCTS per annum (£)
Prosecutions	22.3	£3,496	£78,077

Source: Ministry of Justice, CAA

- 6.10 Under existing enforcement mechanisms, only criminal prosecutions result in a cost to HMCTS. Costs given here are indicative. The cost per unit estimate is based on a standard cost of £1,748 per half day of HMCTS time, and the assumption that prosecutions for breaches of aviation regulation take a full day.
- 6.11 In cases where a custodial sentence is imposed there is also a cost to HM Prison Service. There have been no such cases in recent years; it is assumed that this trend will continue.
- 6.12 The annual cost to HMCTS under the 'do nothing' option is estimated at £0.08m.

### Costs to offenders

- 6.13 Businesses which are non-compliant with aviation regulation can face additional costs resulting from enforcement action taken against them. These costs include fines after criminal prosecution (paid to the consolidated fund), fines levied for non-compliance with civil sanctions (paid to the consolidated fund) and legal expenses (paid to the offender's legal advisers). As these costs fall on non-compliant organisations as a result of their non-compliance, normal impact assessment practice has been followed and most of these costs have not been monetised or included as part of the Equivalent Annual Net Cost to Business (EANCB) or Net Present Value (NPV) calculations.
- 6.14 The CAA seeks to recover some legal and investigation costs from offenders after successful prosecution. The CAA is funded by the aviation sector, so the CAA's enforcement costs ultimately fall on the aviation sector. The CAA will charge the whole aviation sector for those enforcement costs which are not recovered from offenders. Any cost recovery from offenders therefore reduces the amount the CAA is required to charge the wider sector, and so represents a transfer from offenders to non-offending aviation organisations.
- 6.15 The costs expected to be recovered by the CAA have been monetised, and used to calculate the CAA's enforcement costs after cost recovery. It is the CAA enforcement costs after cost recovery that are passed on to business as a whole, and which are used in EANCB and NPV calculations. However, in accordance with impact assessment practice, the impact on offending businesses of paying these costs recovered by the CAA has not been included in the EANCB or NPV calculations as they are costs paid by offenders as a result of enforcement of the law.
- 6.16 Table C shows data from 2010-2013 on costs recovered by the CAA.

Table C: Costs recovered by the CAA after prosecution

Year	Actions	Costs recovered (£)
2010-11	29	£11,214
2011-12	18	£17,443
2012-13	20	£30,872

<b>Total</b>	67	<b>£59,530</b>
<b>Notional average per offence</b>		£889

Source: CAA

- 6.17 The average costs recovered per prosecution are £889. This suggests average annual cost recovery of £19,843.

*Summary of costs and benefits*

- 6.18 The total annual monetised cost of investigation and enforcement under the baseline ‘do nothing’ option is therefore estimated at £1.61m to the CAA and £0.08m to HMCTS, giving a combined baseline cost of £1.69m.

*Questions*

- 6.19 This is a consultation stage impact assessment, and we are actively seeking your feedback on the content. Please consider the following questions:

**Q1:** Do you agree with assessment of the costs and benefits of Option 0?

**Q2:** Is there any extra information on Option 0 you feel should have been included? Are you able to provide extra information or do you know where it can be found?

**Option 1: Government recommends to the CAA that it make greater use of its existing criminal prosecution powers**

- 6.20 Table D shows predicted costs to the CAA under option 1.
- 6.21 It is assumed that the cost of taking each type of enforcement action will remain the same as under the baseline scenario option 0, and that the costs recovered per prosecution will remain the same as under the baseline.
- 6.22 Because cautions typically represent the most serious offences against which prosecutions are not brought, it is assumed that as the number of prosecutions rises, there is a corresponding fall in the number of cautions.
- 6.23 To assess how Option 1 will impact on costs to business, we consider three scenarios: 0%, 25%, 50% change. These correspond to decreases in cautions of 0%, 25% and 50% when compared with existing levels. These decreases give a wide range for testing the sensitivity of the impacts. We believe that no change (0%) and a large change (50%) are unlikely, with 25% being our best estimate.

Table D: Predicted costs to the CAA under Option 1

Enforcement Action	Number of actions (baseline)	Enforcement action take under option 1			Cost to CAA per unit (£)	Total CAA cost (£)		
		0%	25%	50%		0%	25%	50%
Investigations leading to Warning letters – SARG	877.0	877.0	877.0	877.0	£300	£263,100	£263,100	£263,100
Investigations leading to warning letters – IET	61.0	61.0	61.0	61.0	£7,819	£476,931	£476,931	£476,931
Investigations leading to Licensing action	95.5	95.5	95.5	95.5	£4,347	£415,139	£415,139	£415,139
Investigations leading to Cautions – IET	32.0	32	24	16	£7,819	£250,193	£187,645	£125,097
Investigations leading to Prosecutions – IET	22.3	22	30	38	£10,140	£226,453	£307,570	£388,688
<b>Total</b>	<b>1,088</b>	<b>1,088</b>	<b>1,088</b>	<b>1,088</b>		£1,631,816	£1,650,385	£1,668,954
Prosecution costs recovered (£889 per prosecution, see 6.14)					£889	£19,843	£26,951	£34,059
<b>Total after cost recovery</b>						£1,611,972	£1,623,434	£1,634,895

Source: CAA

## Costs to HMCTS

6.24 A greater number of prosecutions would mean that there would be an increase in costs to HMCTS incurred from additional prosecutions, as displayed in table E:

Table E: Predicted costs to HMCTS under Option 1

Enforcement Action	Number of actions	Enforcement action take under Option 1			Cost to HMCTS per unit (£)	Total cost to courts (£)		
		0%	25%	50%		0%	25%	50%
Prosecutions	22.3	22.3	30	38	£3,496	£78,077	£106,045	£134,013

Source: Ministry of Justice, CAA

## One off implementation costs

6.25 The cost of implementing this option would be limited as the mechanisms for investigation and for carrying out enforcement through criminal prosecution are already in place.

## Costs to offenders

6.26 Businesses which are non-compliant with aviation regulation might face additional costs resulting from enforcement action taken against them. These costs include fines (paid to the consolidated fund) and legal expenses (paid to the offender's legal advisers). As these costs fall on non-compliant organisations as a result of their non-compliance, normal impact assessment practice has been followed and most of these costs have not been monetised or included as part of the EANCB or NPV calculations.

6.27 As discussed in 6.15-6.16, the CAA seeks to recover some legal and investigation costs from offenders after successful prosecution. These costs are monetised and used to calculate the CAA's enforcement costs after cost recovery, which are passed onto the sector as a whole. In accordance with impact assessment practice, the impact on offending businesses of CAA cost recovery has not been used in NPV and EANCB calculations.

6.28 Table D shows how cost-recovery by the CAA may change in each of the Option 1 scenarios considered. Under Option 1, annual cost recovery by the CAA may range from £19,843 to £34,059, but is best estimated as £26,951.

## Non-monetised benefits

6.29 **Increased compliance:** For the purposes of calculations, we have assumed that compliance levels remain the same. However, the CAA's increased use of prosecutions could have a deterrent effect, leading to changes in behaviour and greater levels of compliance. This will in turn reduce enforcement costs to the CAA, and subsequently to the regulated community. Nonetheless, it has not been possible to monetise this benefit as there is a high degree of uncertainty over how future compliance might change.

6.30 **Benefits to aviation safety:** In the longer term, greater levels of compliance should bring about greater levels of aviation safety.

6.31 **Funds transferred to the Treasury:** Additional prosecutions may result in additional fines, and so increased funds transferred from offenders to the Treasury. In accordance with impact assessment practice, these transfers have not been monetised.

## Summary

6.32 The total monetised cost to the CAA and HMCTS of enforcement under Option 1 is estimated at between £1.69m (£1.61m to CAA, £0.08m to HMCTS) and £1.77m (£1.63m to CAA, £0.13m to



HMCTS), with a best estimate of £1.73m (£1.62m to CAA, £0.11m to HMCTS). This represents a best estimate of the cost increase of £0.1m over the baseline each year, or **£0.3m in present value terms** over the appraisal period.

### Questions

- 6.33 This is a consultation stage impact assessment, and we are actively seeking your feedback on the content. Please consider the following questions:
- Q3:** Do you agree with assessment of the costs and benefits of Option 1?
- Q4:** Is there any extra information on Option 1 you feel should have been included? Are you able to provide extra information or do you know where it can be found?

### **Option 2: The CAA is given access to a range of civil sanctions, provided for by Part 3 of RESA 2008**

#### *Proportion of cases attributable to businesses with less than 250 employees*

- 6.34 To reflect the fact that variable monetary penalties will not be used against SMEs we need to adjust the data. The CAA does not collect data on the size of businesses who it takes action against under each other categories listed in Table A. However, since offences are committed by individuals it appears sensible to assume that the number of offences should grow in line with total number of employees.
- 6.35 The table in Annex B shows that businesses with less than 250 employees represent 11% of total employment in the sector and for our purposes will be assumed to represent 11% of all cases (category 2 and 3) and therefore enforcement action. This leaves 89% of cases which could be subject to variable monetary penalties under this option.

#### *Costs to the CAA*

- 6.36 Table F shows predicted costs to the CAA under option 2.
- 6.37 It is assumed that the cost of taking existing types of enforcement action will remain the same as under the baseline scenario option 0, and that the costs recovered per prosecution will remain the same as under the baseline.
- 6.38 The costs of investigation leading to civil sanctions have been estimated by the CAA, based on the expected number of hours it will take to investigate, review and oversee a civil sanction.
- 6.39 The weightings for the use of different civil sanctions were provided by the CAA, based on the evidence requirement for each type, the experience of the Environment Agency with civil sanctions, and expected cost-effectiveness of each sanction. These weightings are only an estimate and it is hard to predict the distribution of the relevant civil sanctions in advance. The distribution may also change if experience allows a more accurate assessment of the relative efficacy of the different sanctions when applied to aviation safety.
- 6.40 It is assumed that as the use of civil sanctions increases, there are reductions in the use of existing types of enforcement activity. To assess how Option 2 will impact on costs to business, we consider three scenarios: 0%, 25%, 50% change – accounting for the fact that variable monetary penalties aren't available for use against SMEs . These correspond to a decrease in other types of enforcement activity (warning letters, cautions, and prosecutions) by 0%, 25% and 50% respectively. These decreases give a wide range for testing the sensitivity of the impacts. We believe that no change (0%) and a large change (50%) are unlikely, with 25% being our best estimate.
- 6.41 The CAA expects no change in the number of licensing actions.
- 6.42 Note that there is a high degree of uncertainty in these estimates, as the exact action taken would be dependent on the nature and severity of the offence, and costs of using civil sanctions are based only on predictions of how long each sanction would take to administer.

Table F: Predicted costs to CAA under Option 2 Enforcement Action	Number of actions (baseline)	Enforcement action take under Option 2			Estimated cost per unit (£)	Total regulator cost (£)		
		0%	25%	50%		0%	25%	50%
<b>Estimated Scenario*</b>		<b>0%</b>	<b>25%</b>	<b>50%</b>		<b>0%</b>	<b>25%</b>	<b>50%</b>
Investigations leading to Warning letters – SARG	877.0	877.0	657.8	438.5	£300	£263,100	£197,325	£131,550
Investigations leading to warning letters – IET	61.0	61.0	61.0	61.0	£7,819	£476,931	£476,931	£476,931
Investigations leading to Licensing action	95.5	95.5	95.5	95.5	£4,347	£415,139	£415,139	£415,139
Investigations leading to Cautions – IET	32.0	32.0	24.0	16.0	£7,819	£250,193	£187,645	£125,097
Investigations leading to Prosecutions – IET	22.3	22.3	16.8	11.2	£10,140	£226,453	£169,840	£113,226
Investigations leading to VMP	0	0	20.7	41.4	£5,307	£0	£109,973	£219,945
Investigations leading to CN	0	0	23.6	47.1	£5,307	£0	£125,075	£250,150
Investigations leading to RN	0	0	4.7	9.4	£5,307	£0	£25,015	£50,030
Investigations leading to SN	0	0	68.3	136.7	£720	£0	£49,210	£98,420
Investigations leading to EU	0	0	115.5	231.0	£538	£0	£62,130	£124,259
<b>Total</b>	<b>1,088</b>	<b>1,088</b>	<b>1,088</b>	<b>1,088</b>		<b>£1,631,816</b>	<b>£1,818,281</b>	<b>£2,004,746</b>
Civil sanction costs recovered (25% of civil sanction cost, see 6.51)						<b>£0</b>	<b>£92,850</b>	<b>£185,701</b>
Prosecution costs recovered (£889 per prosecution, see 6.14)					<b>£889</b>	<b>£19,843</b>	<b>£14,882</b>	<b>£9,922</b>
						<b>£1,611,972</b>	<b>£1,710,548</b>	<b>£1,809,124</b>

Source: CAA

*Costs to HMCTS*

6.43 Under option 2, criminal prosecutions would continue to incur a cost to HMCTS, as displayed in table G.

Table G: Predicted costs of criminal prosecutions to HMCTS under Option 2

Enforcement Action	Number of actions (baseline)	Number of prosecutions under Option 2			Cost to HMCTS per unit (£)	Total cost to HMCTS (£)		
		0%	25%	50%		0%	25%	50%
Prosecutions	22.3	22.3	16.8	11.2	£3,496	£78,077	£58,558	£39,039

Source: Ministry of Justice, CAA

- 6.44 In addition, HMCTS would incur the cost of dealing with appeals against civil sanctions. The DfT would initially incur this cost, with the cost of running the appeals process transferring to HMCTS after the next spending round.
- 6.45 At present, there are relatively few challenges to CAA actions. For example, for the years 2010-2013 there were only three not-guilty pleas (which can be viewed as being an appeal, in a sense, against the CAA’s judgment that an offence has been committed). Additionally, the CAA expects to use a high proportion of Enforcement Undertakings, which are voluntary undertakings and so cannot be appealed. It is therefore assumed that the appeal rate against civil sanctions will be relatively low and no greater than 10 a year.
- 6.46 The Ministry of Justice estimates that the yearly cost of running an appeals process for up to 10 appeals a year is £34,996. This appeals process will have to be in place regardless of how many appeals are heard. It is therefore assumed that the annual cost to HMCTS of this appeals process will be £34,996, irrespective of the number of civil sanctions are issued by the CAA.
- 6.47 Full compliance with civil sanctions is assumed, so we include no court costs relating to non-compliance with civil sanctions (for example, failure to pay a VMP).
- 6.48 The total cost to HMCTS is given in table H:

Table H: Total annual predicted cost to HMCTS under Option 2:

Scenario	Volume of civil sanctions used in place of existing measures		
	0%	25%	50%
<b>Total Costs to HMCTS</b>	£113,043	£93,524	£74,005

Source: Ministry of Justice, CAA

*Costs to offenders*

- 6.49 Businesses which are non-compliant with aviation regulation might face costs resulting from enforcement action taken against them. These costs might include fines following prosecution or civil sanction (paid to the consolidated fund) and legal expenses (paid to the offender’s legal advisers). Further, where offenders do not comply with sanctions they can be liable to fines for this non-compliance.
- 6.50 As these costs fall on non-compliant organisations as a result of their non-compliance, normal impact assessment practise has been followed and most of these costs have not been monetised or included as part of the EANCB or NPV calculations.

- 6.51 As discussed in 6.15-6.16, the CAA seeks to recover some legal and investigation costs from offenders after successful prosecution. The CAA has not, at this stage, developed a policy on cost recovery were it to be given access to civil sanctions. For illustration, it is assumed that 25% of the costs of administering the new civil sanction would be recovered from the offender. The basis of the assumption of 25% recovery is that the CAA may not pursue cost recovery in every instance. For minor offences, this may not be cost effective or proportionate. However, for serious, complex, or large investigations, the CAA may seek to recover much of its cost. Cost recovery could therefore range between 0% and 90%. On balance, as there are a greater number of less serious offences, which are the category most likely to be suitable for civil sanctions, on average cost recovery will be skewed towards a figure of less than half the CAA's costs.
- 6.52 Cost recovery following civil sanction or prosecution has been monetised and used to calculate the CAA's enforcement costs after cost recovery, which are passed onto the sector as a whole. In accordance with impact assessment practice, the impact on offending businesses of CAA cost recovery has not been used in NPV and EANCB calculations.
- 6.53 Table F shows how cost recovery may change under Option 2, on the assumption 25% of civil sanction costs are recovered. Cost recovery may range from £19,843 to £195,623 with a best estimate of £107,733.

#### *Non-monetised costs*

- 6.54 The CAA will be responsible for monitoring that civil sanctions such as Stop Notices and Enforcement Undertakings are complied with. It is anticipated that the CAA will carry out such monitoring using existing monitoring structures, and so will not incur additional costs.

#### *One-off transition costs*

- 6.55 **Cost to the CAA of consulting on use of civil sanctions:** The CAA will consult on its policy for using civil sanctions. The CAA's estimate of the costs of consultation is provided in table I.
- 6.56 **Cost to the CAA of setting up appropriate systems, training staff, and issuing new guidance:** The quantity of safety investigations is expected to remain the same, but additional systems and training will need to be put in place for the use of civil sanctions. These costs are not expected to be significant, and the CAA would normally aim to accommodate training on new enforcement procedures from existing budgets as these are a regular feature of regulatory activity across the organisation. Therefore, these costs have not been monetised.
- 6.57 **Cost of establishing an appeals process:** There will be a cost associated with setting up the appeals process. The cost estimate for establishing an appeals process is estimated by the Ministry of Justice to be £2,961, with an additional one off cost of up to £15,000 for training and establishing expertise (for details, see Justice Impact Test in Annex A). The cost of establishing the appeals process will be met by DfT, and is set out in table I.
- 6.58 **Cost to the regulated community in finding out about the new sanctions:** The CAA will provide information about the new enforcement regime through its existing communication channels, such as the CAA website. However, the responsibility and cost being aware of the law and potential enforcement activities ultimately falls on regulated parties. The costs of learning about the new sanctions is expected to be small as no new offences are created, and the only change is in how regulation is enforced. Civil sanctions are also commonly used in other areas such as motoring offences so many people will already have some level of familiarity. These costs have not been monetised.

Table I: Predicted monetised one-off implementation costs of Option 2:

<b>Cost of consultation (cost to CAA)</b>	
<b>Action</b>	<b>Days</b>
Setting Civil sanctions type and fees	1
Agreeing civil sanction types and fees	5
Compiling rationale for use of civil sanctions	2
Developing guidance on the use of civil sanctions	7
Agreeing guidance	5
Developing Consultation document	2
Issuing consultation	1
Collating consultation responses	1
Reviewing responses	1
Developing changes to approach	1
Agreeing changes	0.5
Finalising guidance in light of consultation 1	1
Issuing guidance	0.5
<b>Total days</b>	<b>28</b>
<b>Total cost to CAA (£80 p/h)</b>	<b>£17,920</b>
<b>Establishing appeals process and training costs (cost to DfT)</b>	
<b>Action</b>	<b>Cost</b>
Establishing appeals process	£2,961
Training costs	£15,000
<b>Total cost to DfT</b>	<b>£17,961</b>
<b>Grand Total</b>	<b>£35,881</b>

Source: Ministry of Justice, CAA

### *Non-monetised benefits*

- 6.59 **A greater range of proportionate and flexible enforcement options for the CAA:** This option would allow the CAA access to a greater range of sanctions, helping to ensure that the enforcement action taken is proportionate to the offence. This will allow the CAA to ensure that action to ensure compliance is proportionate and timely.
- 6.60 **Greater levels of compliance:** For the purposes of calculations, we have assumed that compliance levels remain the same. However, if the CAA has access to more effective enforcement mechanisms, this could have a deterrent effect, leading to changes in behaviour and greater levels of compliance. This will in turn reduce enforcement costs to the CAA, cost-savings which will ultimately be passed to the regulated community. Nonetheless, it has not been possible to monetise this benefit as there is a high degree of uncertainty over how future compliance might change.
- 6.61 **A more level playing field:** Companies with a less consistent approach to compliance may, over time, reduce their costs as a result of non-compliance (e.g. reduced monitoring costs, reduced investment in correct equipment). Increased enforcement is likely to reduce the commercial advantages of non-compliance.
- 6.62 **Benefits to aviation safety:** In the longer term greater levels of compliance should bring about greater levels of aviation safety.

- 6.63 **Funds transferred to the Treasury:** Funds raised from penalties, discharge payments, interest or late payment charges would be paid into the Consolidated Fund. These transfers have not been monetised.

### Summary

- 6.64 The total annual monetised cost to the CAA and HMCTS of enforcement under Option 2 is estimated at between £1.73m (£1.61m to CAA, £0.1m to HMCTS) and £1.88m (£1.81m to CAA, £0.07m to HMCTS), with a best estimate of £1.80m (£1.71m to CAA, £0.09m to HMCTS). This represents a best estimate of the cost increase of £0.1m over the baseline each year, or **£1.02m in present value terms** over the appraisal period.
- 6.65 There are **one-off transition costs of £35,881** (£17,920 to CAA, £17,961 to DfT).

### Questions

- 6.66 This is a consultation stage impact assessment, and we are actively seeking your feedback on the content. Please consider the following questions:
- Q5:** Do you agree with the assumptions made around civil sanctions costs' recovery?
- Q6:** Do you agree with the assumptions made about how the enforcement of aviation regulations will change following the introduction of civil sanctions?
- Q7:** Do you agree with the assumptions made in estimating the volume of appeals against civil sanctions and the cost to HMCTS?
- Q8:** Do you agree that the costs of appropriate learning about the new sanctions will be low? Are you able to provide any extra information on these costs or do you know where it can be found?
- Q9:** Is there any extra information on Option 2 you feel should have been included? Are you able to provide extra information or do you know where it can be found?

## 7. Rationale and evidence that justify the level of analysis

- 7.1 Datasets are incomplete, and unit costs for each type of enforcement have had to be estimated by the CAA using the best available data, limiting the extent to which full monetisation can be achieved.
- 7.2 This impact assessment will be updated in light of consultation responses, or other new sources of information.
- 7.3 Where quantitative analysis has not been possible, qualitative explanations have been used.

## 8. Risks and assumptions

- 8.1 For the purposes of making calculations, we have assumed that levels of non-compliance remain consistent after the introduction of civil sanctions. However, as the CAA's use of civil sanctions becomes known among regulated parties, changes in behaviour may bring about greater levels of compliance over time. This would reduce enforcement costs to the CAA and the regulated community.
- 8.2 It has not been possible to monetise this benefit because there is a high degree of uncertainty over how future compliance levels might change. Because this benefit has not been monetised, estimated changes in the CAA costs should be considered conservative estimates, and in the longer run, the higher levels of compliance might reduce the CAA's enforcement costs.
- 8.3 In Option 1, we have assumed that the CAA would act on the Government's recommendation to increase prosecutions.
- 8.4 There are considerable uncertainties in the costs and benefits of introducing civil sanctions. There are a number of reasons for this:

- Datasets on the current uses of enforcement mechanisms are not comprehensive;
- Analysis is based on predictions about the scale of the switch to using Civil Sanctions;
- The CAA do not know precisely how patterns of offending would change under Options 1 or 2;
- Under option 2, it is not possible to predict precisely what costs would be recovered from Civil Sanctions; and
- Under Option 2, it is not possible to predict precisely what action will be taken when each of the civil sanctions is applied and with what result. Therefore, it is not possible to predict precisely what the costs of using a civil sanction will be, nor which of those costs will be recovered. Nor is it possible to say with certainty what existing sanction would be displaced by each use of a new sanction.

8.5 There are risks associated with both Options 1 and 2:

- Under Option 1, the recommended increase in prosecutions might lead to greater challenges to prosecutions decisions on the grounds of lack of public interest, because they are disproportionate to the offence;
- Under Option 2, civil sanctions may be seen as a 'soft option', reducing their deterrent effect. However, criminal prosecution would remain an option for dealing with more serious offences. The CAA would produce guidance on the factors determining whether prosecution or civil sanctions are appropriate;
- Under Option 2, the assessment costs for VMPs and restoration notices could be disproportionate. Assessments for these types of civil sanction are potentially complex. However, it will be in the common interests of the CAA and offenders not to spend disproportionate sums on assessment; and
- Under Option 2, if the application of civil sanctions is not sufficiently clear then there is a risk that a high number of appeals would be brought. Estimates of how many appeals are likely to be brought are based on the CAA's existing enforcement experience (See also Justice Impact Test in Annex A).
- Under option 2 there is a slight risk that the CAA would be more likely to use criminal sanctions on small business due to their inability to apply variable monetary penalties or restoration notices

8.6 Whilst the above uncertainties remain we have provided a wide range for the costs of each option and do not expect actual costs to be significantly outside this range.

## 9. Direct costs and benefits to business calculations

- 9.1 The direct cost to business has been calculated in accordance with the "One in Two Out" methodology. The direct cost to business is set out in the evidence base and included in the summary sheets.
- 9.2 The CAA is funded by statutory charges on those it regulates. These fall on both individuals and businesses. It is difficult to identify the precise proportions. This because the calculation would be dependent on classifying which charges are to individuals and which to business and not all types of charges fall clearly on one category and not the other. The proportions as between individuals and businesses have been estimated to be in the order of 85% falling on businesses and 15% on individuals.
- 9.3 Our best estimate of the direct costs to business is that there will be an estimated annual net cost to business (EANCB) of £0.08m. This is in 2009 prices in line with established OITO methodology.
- 9.4 The options considered do not amount, strictly speaking, to new regulation. Instead, the options considered only change the penalties that might be enforced against those who break existing aviation regulations. "Fines and penalties – even if levied on a regulated entity for non-

compliance with a regulation”<sup>1</sup> are out of scope of OITO. However while the sanctions themselves are out of scope there will be increased costs from CAA utilising new and more costly enforcement actions as opposed to using cheaper enforcement options, such as warning letters. As the CAA is funded by regulated parties, including all businesses regulated by the CAA, cost increases to the CAA are ultimately passed on to these businesses. Given there will also be a change to the current enforcement regime there will also be a one off transitional cost to consider. The increase in costs passed on to business from the new sanctions and the transitional costs mean there will be a regulatory impact on business that is **in-scope of OITO**.

9.5 The impact on small firms has been further analysed in the small firm impact test set out in Annex A.

## 10. Wider impacts

10.1 The wider social, environmental and economic impact of these policy proposals has been considered, together with possible unintended consequences. For social, environmental and economic impacts the results are in Annex A. Table J summarises the specific impact tests.

Table J: Specific impact tests

Type of test undertaken	Results in Evidence Base	Results in Annex A
Competition Assessment	No	Yes
Small Firms Impact Test	Yes	Yes
Justice Impact Test	Evidence provided	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes
Family Impact Test	No	Yes

## 11. Summary and preferred option with description of post implementation review

11.1 The preferred option is Option 2. This option provides the best means for the CAA to achieve the policy objective of proportionate and flexible enforcement by addressing the current challenges to taking effective action on compliance. The Government’s plans will now be put out to consultation together with this IA. Subject to the outcome of that consultation the necessary measures may be

<sup>1</sup> <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/11-671-one-in-one-out-methodology.pdf>



implemented in UK law in March 2015. Before using any civil sanctions powers the CAA would be required to produce guidance about its use of civil sanctions.

- 11.2 This policy will be reviewed as part of the Post Implementation Review of the Civil Aviation Act 2012. A memorandum has been prepared in preparation for this review which recommends that the review does not take place until April 2019 at the earliest. That would be five years after the full implementation of the provisions of the Civil Aviation Act. This is considered to be a reasonable time to allow the impact of the regulatory changes, which will take time to work through, to be properly assessed.
- 11.3 In terms of data collection, the CAA would be asked to log all investigatory enforcement action in ways that are compatible with the analysis of this impact assessment. This would allow the Post Implementation Review to confirm whether this policy has led to changes in the levels of CAA enforcement and whether compliance has improved among regulated parties.

## Annex A – Specific Impact Tests

### 1. Competition assessment

- 1.1 In order to assess the impact on competition the following questions have been considered. Do the policy options:
- **Directly limit the number or range of suppliers?** None of the options considered should have a significant impact on the range of suppliers. This is because, provided that suppliers comply with aviation regulations, they will be unaffected.
  - **Indirectly limit the number or range of suppliers?** Neither option 1 or 2 should have a significant impact on the range of suppliers. This is because provided that suppliers comply with aviation regulations they will be unaffected. However, routinely non-compliant companies may have reduced costs due to non-compliance. Increased enforcement is likely to reduce the commercial advantages of non-compliance.
  - **Limit the ability of a supplier to compete?** The only impact would be on those using non-compliance as a means to gain a competitive advantage. Compliant businesses will be unaffected.
  - **Reduce supplier's incentives to compete vigorously?** Compliant business will benefit from a level playing field that will in future apply to all suppliers.
- 1.2 Overall there is unlikely to be any major impact on competition. There may be some benefit to competition as routinely non-compliant business will face greater levels of enforcement, helping to level the playing field between them and routinely compliant business.

### 2. Small Firms Impact Test

- 2.1 Small businesses generally have fewer resources available to learn about and adjust to regulatory change. Time invested in finding out about the proposed new enforcement mechanisms may result in small firms incurring higher relative costs. However, these costs would be a one-off occurrence.
- 2.2 The CAA is committed to ensuring that enforcement action is taken in the most proportionate way, considering both the nature of the offence and the offender. In relative terms, non-compliance by larger firms is, in many areas (e.g. consumer protection), likely to have a greater impact. Therefore it is likely that in many cases larger firms will face greater sanctions.
- 2.2 In order to ensure CAA enforcement is proportionately applied to small business and to align the enforcement regime with current government policy small businesses will not be subject to Variable Monetary Penalties or Restoration Notices.

### 3. Justice Impact Test

#### Legal Aid

- 3.1 Businesses do not qualify for legal aid so there will be no impact on legal aid applications as a result of actions brought against businesses.
- 3.2 A large number of private individuals are regulated by the CAA and 60% of regulated pilots are private pilots. In addition certain offences, such as those relating to kite-flying, may be committed by the wider public. Depending on circumstances, these individuals could qualify for legal aid. It is possible that under Option 2, a reduction in the number of cases brought to court would lead to a reduction in applications for legal aid. However, given the range of offences and regulated bodies, as well as the relatively small number of cases leading to criminal prosecutions (currently an average of 22.3 per annum) we expect that the likely effect will be low.

#### Offences and penalties

- 3.3 No new criminal offences are being created.

## Courts

- 3.4 No new offences are being created. The proposals do not include new applications or a new right of appeal (appeals against civil sanctions would be made to a tribunal). There is not expected to be a significant impact on:
- work load due to the volume or complexity of cases
  - systems changes (either IT or manual)
  - reprinting of guidance or other documents
- 3.5 Under option 1 it is likely there would be an increase in the volume of prosecutions. The cost estimates for this are set out in Table E.
- 3.5 Under option 2 it is likely that there would be a decrease in the volume of cases dealt with by the courts. The cost estimates for this are set out in Table I.
- 3.6 Under option 2 courts also may be required to deal with non-payment of fines or non-compliance with other civil sanctions (e.g. ignoring a Stop Notice). The volume of such cases is expected to be relatively low (if any) and, in accordance with Impact Assessment standard practice, compliance with civil sanctions has been assumed.

## Tribunals and appeals

- 3.7 For evidence surrounding tribunals and appeals costs, see section 6 in the Evidence Base.
- 3.8 Under option 2 the introduction of civil sanctions would require an appeals process to the First-tier Tribunal to be established. The cost of establishing the appeals process has been estimated by the Ministry of Justice to be £2,961 together with training costs of the order of £15,000. However, this estimate is provisional and indicates likely costs using historical information for setting up and running new appeal rights. The final cost may change by the time the CAA is given access to civil sanctions. The costs of setting up the First-tier Tribunal would be met by DfT.
- 3.9 The volume of appeals is estimate to be no more than 10 a year. The estimated annual running cost for handling up to 10 appeals is estimated by the Ministry of Justice to be £34,966. The DfT would initially incur this cost, with the cost of running the appeals process transferring to HMCTS after the next spending round.

## Judicial appointments and training

- 3.10 It would be the decision of the President of the First-tier Tribunal Chamber that deals with the appeals whether or not it would be necessary to recruit expertise in order to inform the appeals panel. These could include:
- **A licensed pilot** – for breaches of regulation related to flying an aircraft, it will be necessary to have an expert with an understanding of what is required to fly an aircraft in a safe and responsible manner.
  - **Licensed air traffic controller** – for breaches of regulation related to airspace it will be necessary to have an expert with an understanding of the purpose of airspace regulations and real-world risk of breaching them.
  - **An aeronautical engineer with expertise in the design of aircraft** – an understanding of the design of aircraft necessary to determine if an aircraft is being operated in accordance with its design limitations.
  - **An aircraft maintenance engineer** – for breaches of aviation safety regulations related to aircraft maintenance.
- 3.10 The cost for training and expertise is estimated as a one off cost of up to £15,000 depending on the exact requirements.

## Fees for Tribunal Service

- 3.11 The Lord Chancellor has the capacity to charge fees for appeals to the First-tier Tribunal, for example an application fee. Where he is proposing to introduce fees he is required to consult the Senior President of Tribunals. The Lord Chancellor would also carry out public consultation prior

to the introduction of any new fees. Following this, any such proposal would be subject to secondary legislation that would need to be debated and agreed by both Houses of Parliament before it would take effect.

### **Litigation impact**

- 3.12 The factors of human rights, discretion, judicial discretion, allocation of resources, organised interest or opposition, legislative complexity have been considered in accordance with Ministry of Justice guidance.
- 3.13 Under option 2, as civil sanctions would be introduced as an alternative to criminal prosecution there may be a reduction in the number of cases being heard in the courts.

## **4. Sustainable Development**

- 4.1 The Government Guiding Principles on Sustainable Development are:
- **Living Within Environmental Limits:** Respecting the limits of the planet's environment, resources and biodiversity – to improve our environment and ensure that the natural resources needed for life are unimpaired and remain so for future generations.
  - **Ensuring a Strong, Healthy and Just Society:** Meeting the diverse needs of all people in existing and future communities, promoting personal wellbeing, social cohesion and inclusion, and creating equal opportunity for all.
  - **Achieving a Sustainable Economy:** Building a strong, stable and sustainable economy which provides prosperity and opportunities for all, and in which environmental and social costs fall on those who impose them (polluter pays), and efficient resource use is incentivised.
  - **Using Sound Science Responsibly:** Ensuring policy is developed and implemented on the basis of strong scientific evidence, whilst taking into account scientific uncertainty (through the precautionary principle) as well as public attitudes and values.
  - **Promoting Good Governance:** Actively promoting effective, participative systems of governance in all levels of society engaging people's creativity, energy, and diversity.
- 4.2 The policy object of these proposals directly supports two of these principles. Specifically, "Ensuring a Strong, Healthy and Just Society" and "Promoting Good Governance". Encouraging greater levels of compliance with aviation regulation and ensuring a fair and proportionate means of enforcement would encourage good governance among regulated organisations and help to ensure just outcomes following breaches of regulation respectively.

## **5. Carbon Assessment**

- 5.1 As Options 1 and 2 only relate to the enforcement of existing aviation regulation there is not expected to be any significant change in the volume of aviation traffic as a result of these measures. Therefore, no change in greenhouse gas emissions is expected as a result of these proposals.

## **6. Other Environment**

- 6.1 **Noise pollution:** better enforcement of existing aviation regulations and greater levels of compliance could lead to reduced noise pollution around airports and aerodromes. However, as it is not possible to predict how levels of offending or level of compliance may change as a result of the introduction of either options 1 or 2 and it has not been possible to monetise this impact.

- 6.2 **Air quality:** while aviation does have an impact on air quality the CAA has no role in air quality enforcement. As there is not expected to be any significant change in the volume of aviation traffic as a result of these proposals no change in air quality is expected as a result.
- 6.3 As options 1 and 2 are limited to offences for which the CAA already has an enforcement function no impact is expected in the following areas:
- Waste management
  - Landscape and townscape
  - Water pollution, levels of water abstraction and exposure to flood risk
  - The amount or variety of living species or the amount, variety or quality of ecosystems
- 6.4.1 Furthermore the policy is not expected to be vulnerable to the predicted effects of climate change other than in a general wider sense.

## 7. Health Impact Assessment

- 7.1 There may be health benefits associated with actions taken to bring about greater levels of compliance. Greater levels of compliance may lead to greater levels of aviation safety; this in turn could lead to a reduced rate of accident leading to injury or death.
- 7.2 However, as it is not possible to predict how accident rates may change as a result of the introduction of either Options 1 or 2 it has not been possible to monetise this impact.

## 8. Equality Impact Tests

- 8.1 The following impact tests have been considered. The measures will be implemented equally across all groups regulated by the CAA regardless of their race, age, sexual orientation, ethnic origin, disability or gender. As a result we anticipate there will be no impact with regard to the following:
- Race Equality
  - Disability Equality
  - Gender Equality
  - Human Rights

## 9. Rural Proofing

- 9.1 Civil sanctions will only be used against individuals and business that do not comply with aviation regulations. Non-compliance in rural areas will be treated in the same manner as non-compliance in urban areas. The impact will therefore be the same across rural and urban areas, unless there are greater levels of non-compliance in rural areas.
- 9.2 There are no available figures on how levels of compliance may vary across urban and rural areas.

**Q10:** Is there any extra information on the impacts of the Options considered that you feel should have been included? Are you able to provide extra information or do you know where it can be found?

## **10. Family Impact Test**

10.1 Impact on families is expected to be negligible

## Annex B- Analysis of aviation organisations by size



Analysis showing the count, employment and employees of VAT and/or PAYE based enterprises in the United Kingdom in UK SIC 2007 Classes in the aviation industry by employee size bands.

Data as at March 2012

Note: All figures are rounded to avoid disclosure. Values may be rounded down to zero and so all zeros are not necessarily true zeros. Where a variable is deemed to be disclosive, it is removed (..C) and another cell in the same row and column must also be removed to avoid disclosure by deduction.

	0-249			250+			Total			% 0-249 of Total		
	Count	Employment	Employees	Count	Employment	Employees	Count	Employment	Employees	Count	Employment	Employees
<b>3030 : Manufacture of air and spacecraft and related machinery</b>	500	7,932	7,897	40	91,028	91,026	<b>540</b>	<b>98,960</b>	<b>98,923</b>	<b>93</b>	<b>8</b>	<b>8</b>
<b>3316 : Repair and maintenance of aircraft and spacecraft</b>	615	..C	..C	15	..C	..C	<b>630</b>	<b>12,202</b>	<b>12,188</b>	<b>98</b>		
<b>5110 : Passenger air transport</b>	635	6,046	5,917	20	64,463	64,463	<b>655</b>	<b>70,509</b>	<b>70,380</b>	<b>7</b>	<b>9</b>	<b>8</b>
<b>5121 : Freight air transport</b>	285	..C	..C	0	..C	..C	<b>285</b>	<b>1,975</b>	<b>1,934</b>	<b>100</b>		
<b>Total</b>	<b>2,035</b>	<b>20,374</b>	<b>20,155</b>	<b>75</b>	<b>163,272</b>	<b>163,270</b>	<b>2,110</b>	<b>183,646</b>	<b>183,425</b>	<b>96</b>	<b>11</b>	<b>11</b>

This table is confidentialised by the ONS

Extract paent12

Date 27 February 2013

## Annex C- Impact assessment questions

This is a consultation stage impact assessment, and we are actively seeking your feedback on the content. In the main body of the impact assessment, we asked the following ten questions:

**Q1:** Do you agree with assessment of the costs and benefits of Option 0?

**Q2:** Is there any extra information on Option 0 you feel should have been included? Are you able to provide extra information or do you know where it can be found?

**Q3:** Do you agree with assessment of the costs and benefits of Option 1?

**Q4:** Is there any extra information on Option 1 you feel should have been included? Are you able to provide extra information or do you know where it can be found?

**Q5:** Do you agree with the assumption made around civil sanctions costs' recovery?

**Q6:** Do you agree with the assumption made about how the enforcement of aviation regulations will change following the introduction of civil sanctions?

**Q7:** Do you agree with the assumptions made in estimating the volume of appeals against civil sanctions and the cost to HMCTS?

**Q8:** Do you agree that the costs of learning about the new sanctions will be low? Are you able to provide any extra information on these costs or do you know where it can be found?

**Q9:** Is there any extra information on Option 2 you feel should have been included? Are you able to provide extra information or do you know where it can be found?

**Q10:** Is there any extra information on the impacts of the Options considered that you feel should have been included? Are you able to provide extra information or do you know where it can be found?