



Department  
for Transport

# Civil Sanctions for Aviation Offences Official Government Response

**Moving Britain Ahead**

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# Foreword

In this consultation we set out how we would grant CAA access to the civil sanction powers in the Regulatory Enforcement and Sanctions Act 2008 (“RESA 2008”), which will give it a greater range of enforcement options across the UK, enabling it to regulate more flexibly, proportionately, and cost-effectively.

Although we received a relatively small sample of 27 responses for this consultation, the feedback from respondents that we did receive has generally been very constructive. This feedback helped us to reassess and improve upon the initial policy proposals and modify them where we considered it appropriate to do so.

We sought your views on how the legislation that will enact civil sanctions for the CAA should be shaped. Your feedback will help us shape these new enforcement powers and ensure they operate in the best way possible for the sector. This will be further refined when the CAA conduct their consultation on how they intend to use these powers, which will happen in due course.

# Executive summary

## Introduction

- 1 With the consultation concluded the feedback has been examined from the responses received, which have been summarised in the table set out below. The 27 responses received for this consultation included responses from trade unions, airlines, airports, General Aviation stakeholder groups, private pilots and members of the public. So while it is a small sample, it is diverse and provides a useful cross section of opinion on this policy from across the industry.
- 2 Overall most respondents were positive about the proposals, though there were some areas where examination of the proposals and the feedback has led us to modify our position. We therefore propose to make the following changes to the policy:
  - **We will retain the exemption for small businesses** (defined as those with fewer than 251 staff) from variable monetary penalties and restoration notices. Some respondents noted that a sector potentially affected by civil sanctions is General Aviation in which there are many small businesses; and felt this exemption could diminish the effectiveness of the policy. Government policy is however to maintain the exemption for small and medium enterprises from these regulatory sanctions in order to reduce burdens on them.
  - **We will allow for the 28 day evidence gathering period for representations in respect of a notice of intent to impose discretionary requirements prior to the final decision to be extended** by a maximum of 2 weeks, allowing for a maximum of 42 days. This would be at the discretion of the CAA, who would decide whether a case was sufficiently complex to require an extension. Some respondents made the case that 28 days for evidence gathering in complex cases was challenging, the Government accepts the merit in this argument and has modified its policy accordingly.
- 3 Some stakeholders suggested civil sanctions could be incompatible with Just Culture. As set out in the consultation document Just culture is a long accepted part of aviation safety and features in the EU Occurrence Reporting Regulation. It encourages the open reporting of safety occurrences by eliminating the *inappropriate* punishment of front-line staff for genuine mistakes. While civil sanctions will allow the CAA to take new forms of enforcement action, we consider that civil sanctions are compatible with Just Culture, which already sits alongside criminal penalties.

One respondent raised concerns about the compatibility of UK regulation with the Single European Sky framework, with particular concerns around liability for certain offences under Civil Sanctions. On the issue of offences it is the CAA's decision as and when to use a sanction, making appropriate judgements where it perceives ambiguity. Like all regulators, the CAA can be challenged on the judgments it makes and, if an appeal against a stop notice is successful then the appellant can seek redress from the CAA for any financial loss. Furthermore the CAA will have to

adhere to the guidance and policies that it produces for its use of civil sanctions. There will therefore be opportunities at this stage for stakeholders to discuss the use of civil sanctions and how they are applied with the CAA.

In terms of the wider SES compatibility with UK regulation we consider that there is no conflict for the principal reason that as long as the UK is a member of the EU then EU regulation overrides domestic regulation. Further the SES regime has not yet been fully applied, so the potential incompatibility with UK regulation is at most prospective.

- 4 The Government will now seek to bring into legal force these proposals as set out in the table below. In due course the CAA will also consult on how they should implement these powers, in the context of their policy and guidance.

# 1. Summary of Results and Government Response

Table setting out consultation questions and the Governments response.

Question No	Consultation Question	Summary of Responses	Government Response
1	Do you agree with the principle of introducing civil sanctions at this time only for safety and airspace regulation and related matters; and not (as part of this consultation) for consumer or for aviation security matters?	<p>Almost equal split of 7 for and 8 against, in this question.</p> <p>Those in favour expressed general support for the improved flexible enforcement powers civil sanctions will offer, but caveated that they didn't want to lose any protections such as appeals processes currently enjoyed.</p> <p>Negative responses focused on whether the CAA should have access to civil sanctions at all. One respondent also raised the issue of whether civil sanctions were compatible with the 'just culture' principle as set out in the EU Occurrence Reporting Regulation.</p>	<p>No respondents directly addressed the question, so the Government will work on the assumption there is no disagreement with the suggested scope that we initially proposed.</p> <p>As set out in the FAQ section of the consultation document the Government considers that there is no conflict between civil sanctions and the principles of just culture in EU Occurrence Reporting Regulation (EU 376/2014). Article 16(10) of the Regulation provides that 'The protection set out <a href="#">[in this Article]</a> shall not apply to any of the following situations: (a) in cases of wilful misconduct); (b) where there has been a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or property, or which seriously compromises the level of aviation safety'. The Government will remind the CAA to have a regard to this provision when they consider their policy and guidance material, which will underpin the implementation of this legislation.</p> <p>On the final issue of whether the CAA should have access to new civil sanction powers, Parliament has decided that the CAA should have</p>

			access to these enforcement powers subject to secondary legislation. This is not therefore the appropriate consultation opportunity to reopen that issue.
2	Do you agree with the principle of introducing civil sanctions only in relation to secondary and for EU legislation and not for offences on the face of UK Acts of Parliament?	<p>5 where for and 8 against in the response to this question.</p> <p>The positive responses generally agreed there would be benefits from proportionality and safety through increased compliance. One person agreed with the principle of sanctions, but wondered if a gradual system of warning culminating in a sanction would be more appropriate.</p> <p>One respondent argued that they could not envisage any safety benefits and another argued that the costs to Civil Aviation would be passed on to the consumer, not really impacting them. One respondent also queried whether there could be a review of offences.</p> <p>Two respondents questioned whether the 250 or less exemption for small businesses from variable monetary penalties and restoration notices was practical. They thought that given this would exclude most of GA it</p>	<p>No respondents directly addressed the question, so the Government will work on the assumption there is no disagreement with the idea of introducing civil sanctions only in relation to secondary and EU legislation.</p> <p>To address the points about the use of civil sanctions as a last resort the CAA will be consulting in due course on how they intend to implement these powers, and this is the kind of flexibility the CAA will be able to use with civil sanctions.</p> <p>With regard to a review of offences, that is not within the remit of this proposal. However on the 25 of August this year the Government made significant changes to the Air Navigation Order with the GA Review. This was a deregulatory program of work with the express aim of reducing burdens on the General Aviation sector.</p> <p>It is difficult to assess the longer term effect of civil sanctions on aviation safety. Given most of the offences for which civil sanctions are proposed are safety related, it would be reasonable to assume that an increase in compliance should lead to a corresponding increase in safety. We consulted Natural England and the Environment Agency on their experiences with implementing civil sanctions, and neither could provide evidence of an increase in compliance. Both Agencies were however more concerned with restoration of the environment, rather than safety compliance, so the comparison is difficult to make.</p> <p>The Government's policy of not applying certain civil sanctions to businesses of 250 or fewer people, will mean that either the CAA may use criminal prosecution powers, with the resource implications that implies; or that there could be a compliance deficit.</p>



		would make the purpose of this measure somewhat redundant.	
3	Paragraph 22 suggests some factors which the Government believes would make it particularly appropriate for the CAA to be able to apply criminal penalties in respect of certain offences. Are there any factors you think should be added to or removed from or modified in this list?	<p>Fifteen responses in total to this question, with 3 for and 12 against.</p> <p>Of the three positive responses they supported the general principle of civil sanctions particularly in relation to repeat offending. One supported them, but questioned their need for mild offences and the last felt they would be useful because the burden of proof would be lower.</p> <p>Four respondents commented negatively either focusing on the fact the CAA would be operating outside a legal framework or because they believed the use of prosecution doesn't lead to a good H&amp;S culture.</p> <p>One respondent argued that the burden of proof shouldn't be lowered and that criminal prosecutions should be carried out by a police force not a regulator.</p>	<p>With regard to suggestions that the CAA would act without a legal framework, there will be a specific legal framework, given that the framework for Civil Sanctions would be set out in legislation and subject to a right of appeal to an independent tribunal. Further CAA would have to publish guidance and policy, upon which it must consult, and use civil sanctions within that framework. There are already policies in place within CAA with regard to acting in a proportionate manner that is evidence and risk based. This would be extended to the use of civil sanction powers given to it by Parliament.</p> <p>Furthermore civil sanctions would offer more flexible forms of enforcement, before having to resort to other more onerous criminal enforcement. The Environment Agency and Natural England have found civil sanctions they used acted as a means of promoting dialogue to bring people back into compliance by the threat of sanction. These actions pleased stakeholders who were treated in a more proportionate manner.</p> <p>The burden of proof is set out in primary legislation. Criminal sanctions are out of scope of this consultation.</p> <p>Given no responders raised any specific offences that they wanted, or did not want civil sanctions to be applied to, the Government will implement this proposal as consulted on.</p>
4	In this consultation the Government does not intend to create a power to allow the	Fourteen people responded to this question, though results were split evenly for and against.	It is true that FMPs might offer the CAA a certain amount of extra flexibility in their enforcement practices. However the Environment Agency found that they were very "process heavy" for such a small penalty, when compared with, for example, a Fixed Penalty Notice,

	<p>CAA to impose the civil sanction of a fixed monetary penalty for any safety or airspace offence. Do you agree with this?</p>	<p>Three commented in support saying they could be useful as a means of identifying levels of compliance or simply that they preferred a fine to a criminal penalty. The last while supportive claimed that they would have to be proportionate to the individual/body concerned.</p> <p>Two of the negative responses linked FMP's to having negative effects on the reporting culture with one saying it would undermine the principle of just culture. Another pointed out that it removes jurisdiction from the courts.</p>	<p>coupled with no opportunity to recover the costs of enforcement. Furthermore the CAA has clearly stated that it does not wish to use them. Having considered these factors, the Government will continue as originally proposed by not implementing Fixed Monetary Penalties.</p> <p>With regard to the concerns raised over just culture, please refer to the answer in Q1.</p>
5	<p>In this consultation the Government intends to make available to the CAA discretionary requirements powers as a package in relation to any particular offence, as they are intended to be available for use in combination. Do you agree with this? If you think certain discretionary requirements should not be available for</p>	<p>Six respondents responded positively, eight negatively.</p> <p>One respondent commented positively in limited terms to these proposals, but questioned whether the CAA was truly independent enough from the views of the major airlines.</p> <p>The negative comments focused on whether non-financial penalties were more effective, and that even these incurred costs (complying with a stop or enforcement notice for example).</p>	<p>The Government notes that nobody commented on the levels of discretionary requirements as set out in the original consultation question. On this basis, given no evidence to the contrary, the Government proposes to keep the levels of discretionary requirements as originally proposed.</p> <p>In relation to the responses indicating general concerns about the costs and impact of civil sanctions, the Government notes that the CAA would want to balance imposing meaningful sanctions with a deterrent effect, whilst not having them set at a level that would leave their stakeholders in financial jeopardy.</p> <p>The Government notes the point that in many cases non-financial penalties can have a powerful deterrent effect. However, the purpose of introducing civil sanctions for the CAA is to facilitate them with a more</p>

	certain penalties please give details and explain why.	There were also some who questioned whether combinations of sanction might complicate matters and if the CAA were ready to handle this.	flexible enforcement toolkit, not granting them access to financial penalties would run counter to this.
6	Paragraph 52 sets out suggested advantages of civil sanctions. What advantages do you think should be added to or removed from or modified in this list? Can you identify any disadvantages?	<p>One respondent stated that an advantage of civil sanctions would be the lower standards of proof required (it in fact varies from penalty to penalty. For fixed monetary penalties for example the criminal standard is required, for stop notices and enforcement undertakings it's reasonable grounds).</p> <p>Another commented that there was no evidence compliance would rise across the industry. Also didn't believe early payment discounts are a benefit given they do not support the introduction of VMP.</p> <p>Another pointed out that the regulation is complex with over 500 offences of which many were not enforced because it was either impractical or unnecessary to do so. Expressed concern if the CAA started recording more offences it would make compliance seem to worsen. Argued that proportionality would</p>	<p>The Government notes that no comments have been made with regard to the contents of the list of advantages of civil sanctions.</p> <p>On the issue of compliance it is challenging to prove that the use of civil sanctions leads to an increase in compliance. Both Natural England and the Environment Agency have been approached to ascertain if they have any evidence of this. They did not, but their regime was aimed at restitution of damage to the natural environment, CAA will have very different aims. CAA are confident that the implementation of civil sanctions should eventually lead to a measurable increase in ANO and EU law compliance.</p> <p>On the subject of variable monetary penalties, the respondent is writing from the perspective of civil aviation. While civil aviation will be subject to the sanctions regime, in practice many likely to be affected will be in the general aviation sector and it would be less common for larger operators to be affected. The respondent refers to comparative evidence from other countries, however the Government has not seen any evidence that would confirm this claim.</p> <p>On whether civil sanctions are more proportionate, the point of civil sanctions is that they are not a simple matter of an offence leading directly to a set penalty. They allow for more opportunity for dialogue, and in the experience of the Environment Agency/Natural England, they often get results before sanctions even come to be used. Both of these agencies have said they have experienced almost entirely positive feedback from people who are happy with civil sanctions being used as they offer much more flexibility in the manner outlined above.</p>

		be an advantage, if the CAA were currently taking a heavy handed approach, they are not. On stop notices they couldn't see the point given there was already a power of direction for the CAA.	On the point about CAA already having powers of direction, the CAA confirmed that a direction is imposed for purely safety reasons, and is applicable only to an aircraft operator and requires the operator to do or not do something for a stated period of time. It could not be used to stop a course of action or conduct by someone who was not such an operator, in relation to which a stop notice could be used.
7	Do you consider that the First Tier Tribunal is an appropriate destination for appeals in relation to the civil sanctions powers proposed for the CAA?	<p>Two respondents commented positively, on the proviso that the members selected to sit on the board were suitably qualified.</p> <p>Two questioned whether there would be sufficient resources available to support the appeals process. One suggested that with Variable Monetary Penalties the courts could get clogged with minor claims of financial reasonableness rather than effective discretionary requirements.</p>	<p>The Government notes that no one objected to the principle of the First-tier Tribunal being an appropriate body to hear appeals.</p> <p>On the issue of complex matters, the members of the tribunal are qualified to hear such appeals and will be used to dealing with them; moreover, they will be able to call on expert witnesses where required to explicate any issue requiring technical input.</p> <p>The issue of resources is a matter that the CAA will have to consider, at the appropriate time. However in the experience of Natural England the number of prosecutions dropped because they now had other tools to use, saving resources in other areas.</p>
8	Do you consider that the General Regulatory Chamber Rules will suit the handling of these appeals? If not, why not?	<p>Two respondents commented positively, with one person saying the body of rules outlined were already well proven.</p> <p>The two negative responses were the same as the previous question, so will not be repeated.</p>	The Government notes that no specific concerns have been raised with respect to the rules identified. The Government will therefore proceed as set out in the consultation.
9	Do you agree that sums payable in pursuance of a decision of a tribunal should carry interest,	Most comments were generally neutral to this. Two responses thought that it seemed fair, but at a standard (court) rate of 8% pa	The Government notes that most respondents were supportive of this proposal.

	<p>and that the CAA shall be able to recover unpaid balances and interest as a debt due to the CAA? If not, why not?</p>	<p>subject to the legislation governing commercial debts.</p> <p>Other responses were supportive provided it was clear to people that interest will be applied, and that they were liable for further fines for non-payment. Another questioned whether CAA would be able to enforce this, and whether court enforcement officers might be better able to.</p> <p>One person believed fines weren't the best way to help a pilot improve. Another who didn't support the use of fines said they thought all costs should be recoverable.</p>	<p>It is none the less important that when the CAA consult on their proposals for the implementation of these powers that they are clear with their stakeholders how the interest rates will be set.</p> <p>The CAA as the regulator of the Aviation sector wants to work with its stakeholders in a manner that builds trust, but it does also have to be able to enforce the law effectively. On this basis the CAA has to be able to ensure the sanctions it applies are meaningful and have a corresponding deterrent effect.</p>
10	<p>Do you agree that, with regards to CAA requirements and notices, the tribunal should be able to determine the ground of appeal on any ground?</p>	<p>Most comments agreed with this proposal.</p> <p>One agreed provided that the tribunal process was outside the CAA as it wasn't appropriate for them to run the process.</p> <p>Another argued that the right of appeal would be essential with clear guidance available around the process.</p> <p>One person commented the CAA shouldn't be beholden to the appeals process controlled by</p>	<p>The Government notes the broad support for these proposals. The tribunal will need to ensure that the appeals it accepts are reasonable and based on suitable grounds.</p> <p>On the issue of the CAA running its own appeals process, while it would no doubt be capable of doing this, it would not be appropriate because the appeals process must be independent.</p>

		<p>another body because they are a competent authority.</p> <p>A further respondent argued that while there should be a broad range of appeals, not just anything should be accepted.</p>	
11	<p>Paragraphs 71 and 72 set out suggested aggravating and mitigating factors that the CAA could take into account in deciding what enforcement action to take. Do you agree these are the only aggravating mitigating factors to be taken into account?</p>	<p>One respondent agreed with the level of sanction in relation to offence in most cases.</p> <p>One respondent questioned whether this issue would clash with just culture. And another expressed similar concerns about pilots being scared of losing their jobs if they raised a breach of the ANO and were then subject to a civil sanction.</p> <p>Another respondent was supportive of the proposals as set out, but wondered if pilot experience could be a mitigating factor.</p>	<p>The Government notes that the responses gave few specific examples of mitigating actions. Rather respondents were more concerned with the overall use of civil sanctions and its effect on occurrence reporting and protections for whistle-blowers.</p> <p>The CAA whistleblowing policy is that they will try to protect the anonymity of reporters. This cannot however be guaranteed if they have to take formal enforcement action. Giving a witness statement is a voluntary action - so the CAA cannot make someone give such a statement. Regulation (EU) 376/2014 provides for protections against prejudicial actions being taken by an employer against an employee who has reported an occurrence and also against actions being taken against the reporter by the competent authority (the CAA in this case), subject to certain exceptions, as detailed in the Regulation itself.</p> <p>On the subject of experience as a mitigating factor the Government will ask the CAA to take this into consideration as part of their consultation on the implementation of these powers.</p> <p>With regard to the concerns raised over just culture, please refer to the answer in Q1.</p> <p>With regard to the idea that there should be no reductions of fines for prompt mitigating action, civil sanctions are as much about individual private pilots as they are about airlines. The CAA has to be able to work with the industry and its enforcement regime has to balance this, whilst being robust enough to offer genuine deterrence. If the regime is too</p>

			harsh the industry would be less inclined to report breaches for fear of sanction.
12	Annex A sets out for UK and EU legislation, the government's view of which of the six possible civil sanctions should be made available in respect of which offences. Do you agree with the proposed allocation of Civil Sanctions to offences?	<p>One respondent commented that small FMPs should be used for small breaches, with prison available only following a criminal conviction for certain offences.</p> <p>The respondent also identified fatigue as being an issue that needs more rigorous enforcement, with airlines currently enticing/forcing staff to work longer hours.</p> <p>One respondent argued there is no clear evidence financial penalties improve compliance and that the non-financial sanctions proposed should be applicable consistently across all sectors of aviation, with no exemption for small businesses. They also argued there should be a review process to ensure that any introduction of civil sanctions has no direct impact on safety performance.</p> <p>One person believed that there needed to be a review of the regulations in relation to which sanctions were being applied, since so many of them were very</p>	<p>In the matter of fixed monetary penalties please see the answer to question 4.</p> <p>With regard to the issue of fatigue, these comments are out of the scope of this consultation which is about penalties not offences.</p> <p>Regarding the comment about a lack of evidence for increased compliance, the CAA believes that the implementation of civil sanctions will incentivise an increase in compliance. Natural England and the Environment Agency have both reported that with the implementation of civil sanctions they have seen positive results in terms of their interaction with industry. This is because civil sanctions are perceived as being more flexible and produce a more proportionate response to certain offences.</p> <p>In terms of a review of the impact of sanctions and the wider regulatory regime, the Government will do a post implementation review assessing the impact of the policy after a suitable period of time. In terms of reviewing wider regulation the Government has introduced changes that have come out of its review of the Air Navigation Order, which were specifically targeted at reducing the burdens of regulation on the GA sector.</p>

		trivial and will have limited impact on Aviation Safety.	
13	Annex B sets out an assessment by the government of the impact of granting the CAA these civil sanction powers. Do you agree with this assessment? If you do not agree then please provide further or corrected information or indicate where you believe that it can be obtained. (In Annex B more detailed questions are set out relating to specific parts of the data and the analysis)	<p>Two respondents agreed in principle, but noted these were new powers for the CAA and they should proceed with caution. One also thought that if it brought culture change it was worth it.</p> <p>One person didn't agree with the estimates as they considered they lacked detail on how much it was going to cost the GA.</p> <p>One respondent argued that the rationale for intervention is not clear on how greater compliance or indeed how current non-compliance impacts aviation safety. It is clear that for some activities the CAA does not have the correct tools to address the issue. The policy objective states that the CAAs aim is for compliance to be normal aviation practice. There is no objective evidence in the consultation document to suggest that current compliance performance is not normal? As stated the standards of UK aviation safety is currently very high and the two statements do not concur. The consultation</p>	<p>The Government notes that some respondents called into question the accuracy of the Impact Assessment.</p> <p>On the issue of costs to the GA sector it is important to remember that there are no new offences being introduced; all that is changing is the penalties that can be applied. Consequentially there ought not to be too much adjustment needed by GA users, since if they are already compliant they will notice no change. This is why we have estimated a relatively low impact from transition to the new regime. The Government is however aware that this is an area of concern, so we will ensure that it is addressed in any post legislative review.</p> <p>It is true that Aviation does indeed have some of the highest standards of safety in the world. In spite of this the CAA can point to cases where they currently have limited tools available to offer fair and effective enforcement action. They believe these shortcomings can be overcome using civil sanctions and that with the ability to take more nuanced enforcement action, compliance would increase. Both the Environment Agency and Natural England, who have both successfully adopted civil sanctions, and reported that their users have been positive about being subject to what they perceive as a more proportionate form of regulation.</p>



		<p>document makes a statement that greater levels of compliance should bring about greater levels of aviation safety but this is not supported objectively.</p> <p>One other person stated they weren't satisfied the CAA was objective enough in its dealings with the aviation sector to be given any powers, and they wanted sanctions to be rigorously applied.</p>	
14	Do you agree that the CAA does not require additional powers of entry, search and seizure in connection with civil sanctions?	<p>Supportive comments for this proposal, with some pointing out that care should be taken with circumstance.</p> <p>One respondent felt such powers would be necessary in order to effectively pursue evidence in the investigations.</p>	<p>The Government notes the support given to the proposal that the CAA does not need any additional powers of entry.</p> <p>There is some merit to the idea put forward that extra powers of entry could be used to gather evidence. However we do not intend to confer on the CAA powers that it believes it does not require.</p>
15	Do you agree that the CAA should be given the power to recover costs?	<p>Most of the comments were supportive of cost recovery by the CAA dependent on the circumstances, or in one case with the exception of VMP.</p> <p>One person argued that this would be open to abuse since there would be no incentive for CAA to keep its costs down.</p>	<p>The Government notes the general support given to cost recovery by the CAA. On the point about giving the CAA no incentive to keep costs down, the ability to recover costs only becomes relevant when a decision to enforce has been taken. CAA may also only recover costs which it has necessarily incurred in relation to the imposition of the civil sanction in question (cost recovery is only applicable to discretionary requirements and stop notices, but not enforcement undertakings. See section 53 of RESA 2008). In other words, CAA do not need to be 'incentivised' since they are required by law to keep their costs reasonable. Finally CAA would not want to be in a position of having to manage the inevitable appeals if they failed to keep their costs reasonable.</p>

16	Do you agree with the proposed time limit for making representations on civil sanctions?	9 of 12 responses were in favour of this proposal. Not many comments, with any that were there being supportive. Some asked for a longer time period as there may in some cases (particularly with large organisations) need to be a significant amounts of evidence gathering. 60 days was mooted by one, the other asked only that some negotiation on extensions could be in place.	The Government notes the unanimous support for there being a time limit for making representations in cases where a notice of intent to impose discretionary requirement is being challenged at the stage before a final notice is given, but not how long that period should be. In order to address these concerns we will provide that the CAA can extend the period by a maximum of up to two weeks (from 28 to 42 days) in cases of complexity and that it will be a matter for the CAA as to whether it changes the period in respect of particular cases.
17	Do you agree with the proposed process for the CAA to handle representations in respect of civil sanctions?	9 of the 12 responses were in favour of this proposal.  One person commented that the proposal looked reasonable. Another agreed saying involving third parties allowed for solicitor or trade union representation.  One respondent did not agree with the proposed process. Representations should be dealt with by a person not involved in the original decision to ensure consistency across the CAA.	The Government notes majority support and as such will proceed with the original proposal.
18	What other circumstances can you suggest as offering additional reasons why the CAA might not	Not many responses to this question. One person asked if limited flying experience could be considered in appropriate circumstances. Also argued that safety be given primacy in the	In terms of safety, this is already accounted for in the ANO and under relevant EU law (EASA implementing acts). The Government will instruct the CAA to consider experience and whether they will use it to mitigate sanctions in their enforcement decisions as part of their policy on this matter.

	impose a discretionary requirement?	considerations for discretionary requirements.	
19	Do you have any comments on the circumstances proposed as to when variable monetary penalties should be uncapped?	<p>One respondent supported uncapped fines. They argued that some of the larger operators deal with billions every year and if fines were capped it would lead to a situation in which the operator could 'live with' the fine.</p> <p>One respondent did not support the introduction of the discretionary requirement tool of a VMP. They argued fines should only be used when a criminal sanction is applied as financial sanctions are not a recognised tool in a Just Culture. Individuals making a decision on a financial sanction of the order of tens of thousands of pounds is not appropriate. In relation to large or uncapped fines, they argue that where circumstances are as grave as to merit a very large fine, then criminal prosecution should be used. Two further respondents also supported only using large fines in conjunction with criminal prosecution.</p>	While there is an argument to be made for uncapped fines being a suitable deterrent for larger operators, the Government believes that a £250k limit is sufficient. Fines of this magnitude are rare, with the last example over 20 years ago. If the CAA do come to the conclusion that a larger fine is in order for a particular offence, they can of course seek criminal prosecution in the courts.
20	Do you have any comments on the provision for non-	Two respondents agreed there should be such penalties in place, but on the proviso that the level of	The Government will, given the feedback, ask the CAA to take particular care in its consultation at how the level of fines for non-compliance penalties are set. This is because it is apparent that some wanted more

	<p>compliance penalties or the amounts proposed?</p>	<p>penalty should take into account the individuals ability to pay and whether they are working. For businesses it may be necessary to consider the fine as a % of turn over.</p> <p>Another respondent argued that financial penalties need to be incremental in nature, until they reach such a point of severity the offender is forced to take action. Only in serious circumstances such as major safety breaches or other such events should a criminal sanction then be used.</p> <p>One respondent commented on why they didn't support this proposal. If following due process a fine is issued and then unpaid, rather than simply increase the payment amount the regulator should proceed with a prosecution. A VMP and non-compliance penalties are not appropriate and there are other significant disincentive tools in the discretionary requirements. A 'stop notice' to an organisation is a far more powerful tool than a non-compliance penalty.</p>	<p>severe penalties and some less, so it's important the CAA are able to find the right balance.</p>
21	<p>Do you have any comments on the</p>	<p>One person commented that while they were supportive of this</p>	<p>The Government notes that there is a range of views on this matter with some against and some for, though slightly more in favour.</p>

	<p>proposal not to provide for early payment discounts and late payment penalties but to provide for the recovery of unpaid balances through the court?</p>	<p>idea, early payments were agreed to with caution in that they might encourage people to agree to something in order to reduce the cost that they may otherwise challenge. Late payment fines would also they believe encourage abuse of the system by the regulator.</p> <p>One respondent agreed with late payment fines, and also suggested that this be backed up with court enforcement orders confiscating property to the value of the outstanding fine.</p> <p>One respondent commented that they didn't feel going through the courts would be viable for GA.</p> <p>Another felt that the penalties would lose its impact if you allowed for early payment.</p> <p>Another respondent, while supportive of early payment discounts questioned whether this would really help achieve the desired outcome of better compliance with the ANO.</p> <p>Another didn't support the introduction of financial discretionary requirements and therefore did not see a need for early payment discounts or late payment penalties. In the event that criminal sanctions result in a</p>	<p>The purpose of CAA being able to use the courts to obtain the authority to claim unpaid balances is because they are independent from CAA and are in a position to offer objective decisions. Further section 52 of RESA 2008 provides that the penalty (and any interest and penalty for late payment) may be recovered through the court as civil debt.</p> <p>Given most responses are in favour of this proposal the Government will proceed as initially proposed.</p>
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		fine then they argued a normal court process would apply.	
22	Do you have any comments on the proposed coverage of compensation for those on whom stop notices are served wrongly, including the suggested definition of the loss that compensation is intended to address?	Most respondents supported this proposal. One considered an entity should retain its right to pursue the losses it incurred. They claimed it is not clear in the consultation document what it is intended that 'loss' would cover. They also argued it needs to be clear that levels of impact will vary between the various organizations involved.	The Government notes that there is large support for these proposals and as such will implement as originally proposed. The Government will ask the CAA to consider how it manages its liabilities in case of appeals by large operators.
23	Do you have any comments on the actions that may be specified in respect of enforcement undertakings and in particular the proposal to add one further action?	Not many comments on this one, with only one supportive saying further training would be a suitable further action. Two comments were not supportive saying it wasn't at all clear what is meant by a general improvement to aviation where other forms of restitution are not available. One respondent argued that any benefit of these actions would be outweighed by the additional oversight that it would entail from the CAA.	The Government will proceed as proposed on this matter, but will ask the CAA to consider the request for the addition of training as part of the options available when deliberating on enforcement notices.
24	Do you have any comments on the actions that may be specified in respect of enforcement	Not many comments on this, two were happy with the idea that if Civil Sanctions go ahead the CAA would have to consult. They	The Government has seen that there is majority support for the CAA consulting on their use of Civil Sanctions. This consultation will inform how CAA set their policy and guidance for their operation.

	undertakings and the scope for the CAA to determine certain procedures, after consultation?	asked that this be as wide a consultation as possible.	It is also noted that there were no specific recommendations in respect of the original question. So the Government will proceed as originally set out in the consultation.
25	Do you have any comments on the proposed certificate of completion and the proposed appeals process?	Not many respondents, only one person commented giving blanket support to the proposals.	The Government notes that few comments have been received in relation to the certificate of completion. It has noted that there is a wish to see the proposed certificate when the CAA come to consult, the Government will ask the CAA to consider this.
1	Do you agree with assessment of the costs and benefits of Option 0?	None, but one commented that the current state of affairs was no good, option 1 therefore is invalid. No negative comments though some stated that as it was not quantified they couldn't take a view.	The Government notes that some believed that option 0 should have been costed. The reason Option 1 was uncosted was that it represents the retention of the status quo, against which other options are compared. There would therefore be no additional costs/benefits to GA for doing what CAA would already be doing.
2	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?	No negative comments though some stated that as it was not quantified they couldn't take a view.	See previous comment.
3	Do you agree with assessment of the costs and benefits of Option 1?	One respondent was concerned with the potential additional costs of investigations.	Those responding made no suggestions for additional costings, and we will proceed on the basis that the estimates are correct.
4	Is there any extra information on Option 1 you feel should have	No comments received.	The Government notes there was no additional information provided.

	been included? Are you able to provide extra information or do you know where it can be found?		
5	Do you agree with the assumption made around civil sanctions costs' recovery?	<p>The Government has seen that there is a roughly even split in the number of those for and against the costings here.</p> <p>One respondent commented that the costs weren't clear, with the proposed costs for the CAA being far too low. The respondent also thought the costs to business would be a lot higher.</p>	Those who thought the costings were not complete or inaccurate made no positive suggestions for better costings. We will update the data as far as possible before seeking clearance for this impact assessment from the independent Regulatory Policy Committee.
6	Do you agree with the assumption made about how the enforcement of aviation regulations will change following the introduction of civil sanctions?	<p>One respondent commented that it would be hoped that the regulations will be easier to understand and follow. They also asked that civil sanctions should provide sufficient discretion to allow the pilot to see their errors and be able to do better in the future or be prepared to use training to improve skills.</p> <p>One respondent thought there should be much more rigorous thinking around this area, though didn't specify exactly what they had in mind.</p>	<p>The Government notes that some of the negative comments may be based on a misunderstanding of the intention of this policy change. The use of civil sanctions is purely about expanding the CAA's enforcement toolkit, it is not about creating new offences or changing current ones. Thus those who are currently complying with the ANO and relevant EU aviation laws will not see any change. The Government and CAA are taking forward other deregulatory work in the form of the ANO review, to simplify and improve the regulation across the GA sector.</p> <p>Please also see the answer to Q6 for the relationship between offences and penalties.</p>
7	Do you agree with the assumptions made in estimating the volume of appeals against civil	One respondent commented that there was no estimate for the proportion of appeals, so couldn't agree. They thought £0.02m	While there were some comments sceptical of the level of costs to HMCTS, they are based on the experience and costing history of HMCTS itself and we are confident they are robust.



	sanctions and the cost to HMCTS?	costs for HMCTS seemed too low given it seemed to suggest only 2-3 appeals a year. Another respondent noted that the level of appeals will be dependent on the quality of CAA investigations, with the better the quality the fewer appeals.	
8	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?	One respondent stated they didn't have any confidence in the quality of the IA.	The Government notes that there is a majority view that the costs of learning about the new sanctions will not be low. It is important to remember that as mentioned previously the Government are not introducing any new offences here, so those who are and remain compliant will not see any change. Please see the answer to Q6 for the relationship between offences and penalties.
9	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?	One respondent commented that Option 2 was the most workable solution in the IA. They also believed that the reduced burden of proof needed for a conviction would result in higher levels of success.	The Government notes that there was majority support for the quality of analysis in option 2 of the IA.
10	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?	One respondent argued that this IA needed to attempt to estimate the costs to the industry and individual pilots, without which it is currently rather pointless.	The Government notes that there is majority support for the level of information on the impacts of the options considered. It is noted that some felt that the level of analysis was not sufficient, but gave no specific examples of where to seek data that would correct this. We will be re-examining the IA prior to implementing this measure, which in turn will have to be validated by the independent Regulatory Policy committee.



## 2. List of Respondents

Aircraft Owners and Pilots Association

Airport Operators Association

Balpa

British Airways

British Business and General Aviation

General Aviation Alliance

Glenswinton Aerodrome

Heathrow Airport Ltd

Individual flight instructors

Individual members of the public

Individual pilots

Insch Airstrip

NATS

Newcastle International Airport

Aircraft Owners and Pilots Association

Unite

UPS