

Introduction of police powers and stop and search for drone misuse

Department for Transport

RPC rating: fit for purpose

Description of proposal

Currently the police find it difficult to respond effectively to drone misuse as they have limited powers to investigate and enforce the law. Police currently cannot stop and search someone they suspect of being in possession of a drone that has been involved in a crime. The Department claims that additional restrictions alone are not a sufficient deterrent for those with malicious intent. Consequently, this regulation would set out new powers for the police, improving their ability to investigate incidents and prosecute those committing offences. This would close a number of identified operational gaps that limit the police's ability to respond.

The Department currently has two options for the policy, other than doing nothing. Option 2 enhances the powers of the police to intervene and respond effectively to drone misuse incidents and to investigate those suspected of misusing drones. It would grant stop and search powers to the police to improve their ability to prevent and respond to the offence of flying a drone within an aerodrome restriction zone or above 400ft without the required permission. Option 2 also gives the police the power to enforce the registration and online testing requirements in the Air Navigation Order 2016, and require that the drone operator produce their registration and testing documents. The preferred option 3, in addition to the proposals in option 2, extends stop and search powers to a wider range of suspected drone offences, including:

- a drone being flown without permission within 150 metres of a congested area, open-air assembly of more than 1000 people or within 50 metres of a vessel, vehicle, structure or person;
- a drone being flown in a restricted or prohibited area in contravention of the rules made by the Secretary of State;
- a drone being flown recklessly or negligently acting in a manner likely to endanger an aircraft, or any person in an aircraft;
- a drone being used to convey anything into a prison or to a prisoner that could facilitate the escape of any prisoner; and
- a drone being used to convey items into or out of prisons.

Impacts of proposal

Costs

Familiarisation

The Department has monetised the on-going cost to commercial drone users and police as a result of the compliance checks. The familiarisation costs to Government have not been monetised as the new powers would be communicated to police officers through existing mechanisms. The Department has explained that these costs would be small and therefore it would be disproportionate to monetise them.

Stop and Search

The main costs come from the exercise of stop and search powers. The central estimate of the unit cost of conducting a stop and search is £16.25, based on the assumption that on average 1.5 officers will each take 6 minutes to carry out a search. However, the Department has not monetised this cost to police over the 10-year appraisal period, arguing that it cannot estimate how many additional stop and searches would take place.

Compliance checks

The cost to Government of checking compliance with ANO has been monetised as an on-going cost. The Department has assumed in its central scenario that police will take 6 minutes to carry out a compliance check search which will cost £4.06 per search. In its central estimates, the Department assumes that every commercial drone operator will be stopped once a year, giving a total cost to government across the appraisal period of just over £1.2m. The IA does test this assumption using a low and central scenario which assume one in every two commercial drone operators are stopped and every commercial drone operator is stopped twice a year, respectively.

The cost to Government if non-commercial operators are checked for compliance with ANO has not been included in the final cost, due to data limitations. In order to provide a sense of scale of the additional cost to Government if non-commercial users were stopped, the Department has estimated the cost to Government in the first year (2019) at just under £370,000.

The cost to Government to search premises has not been monetised due to lack of evidence regarding the average time a police officer would take to search a premise.

Fixed Penalty notices (FPNs)

FPNs apply to a range of offences, and are likely to involve different fines, depending on the nature of offence. Therefore, further analysis of FPN amounts will be

conducted through the IAs accompanying the secondary legislation that these powers enable.

Costs to commercial drone users

The cost to commercial drone users of lost business time whilst police carry out compliance checks has been monetised as an on-going cost. Firm level costs are calculated by multiplying the time cost by the 2018 Annual Survey of Hours and Earnings (ASHE) estimate of the median hourly wage for all workers¹. The total cost to business over the appraisal period is estimated to be £643,549.

Costs to non-commercial users

Costs to non-commercial users have not been monetised; the Department does not have a robust methodology with which to estimate growth in the number of non-commercial drone users or the average cost associated with each user. To provide an indication of the likely scale, the Department has monetised the cost to non-commercial users for 2019. Using the number of commercial operators, the value of non-working time, and the time taken to complete a compliance check, the Department estimates this cost at £30,593 for 2019. The ratio of commercial to non-commercial users is likely to vary over the appraisal period. Therefore, cost to non-commercial users cannot be estimated without further evidence on how the non-commercial market will grow in the next 10 years.

Benefits

Stop and Search

The Department argues that the new stop and search powers would enable the police to deal with the threat of drone misuse more effectively. In many misuse scenarios, the harm or disruption is likely already to have occurred once the drone is in the air. Therefore, the Department has not been able to quantify the benefits of stop-and-search on businesses such as airports, prisons or general society

FPN

The benefits of introducing a FPN regime have not been monetised. The power ensures an effective and immediate deterrent where a specific offence has been committed and reduces pressure on Magistrates' Courts for less serious drone

¹ The Department uses the median wage for 'all workers' to reflect the diverse nature of drone operators in the UK.

offences. The power to issue an FPN could also increase the opportunity for officers to engage with and educate the public about the importance of flying a drone safely.

Small and micro business assessment (SaMBA)

All drone users, including small businesses, are required to obtain a Permission for Commercial Operations qualification from the CAA in order to operate commercially. The CAA publish a list of approved commercial operators but do not capture information on their size. The Department has reviewed the list and using its knowledge of the sector assumed that the majority of commercial operators are likely to be small and micro businesses according to the Department; the exact number has not been quantified. Given that the majority of firms are small or micro and the the unit cost of a compliance check (estimated at six minutes in the central scenario) represents a small proportion of the turnover of small firms, the Department argues that an exemption would undermine the policy's objectives. For the stop and search powers, the police would need sufficient evidence and the stops would be intelligence led. The Department does, however, concede that in some situations a search could be conducted, and a drone seized which would impact SMBs disproportionately. The impact on SMBs of FPNs will be analysed at the secondary legislation stage.

Quality of submission

The RPC welcomes this voluntary submission and the opportunity to assist the Department in developing its evidence base and analysis and is pleased to see proportionate analysis being used. As well as stop and search and compliance checking, the Department also proposes to give the police the power to issue FPNs for less serious drone-related offences, providing immediate and effective enforcement that could deter offenders and reduce potential future pressure on Magistrates' Courts, particularly once registration and competency testing requirements come into force in November 2019.

The Department provides a proportionate rationale, noting that police officials have informed DfT of the difficulties that they face and the areas where they need enhanced powers to be able to pursue offenders effectively.

The Department will conduct a post-implementation review, and has presented an appropriate and proportionate monitoring and evaluation plan.

Points for improvement

Given the scale of the impacts the RPC considers the level of analysis proportionate. However, the IA would be improved substantially by addressing the following additional comments:

- *Previous and future proposals:* The IA should set out more clearly how this policy fits into the existing policy landscape on drones. The IA should also include a detailed explanation of the package of measures planned for the near future that are related to this regulation and whether there will be any interaction among the policies.
- *Baseline:* The IA would benefit from a more detailed description of the status quo, against which the preferred option is compared. It is likely that, given the trend in drone use, the problems described under the status quo could increase significantly, e.g., airport disruptions or the delivery of contraband into prisons.
- *Unquantified benefits:* The benefits of the proposal have not been quantified; it would therefore be helpful to use (for example) break-even analysis to give a sense of the circumstances under which the policy is likely to be net beneficial.
- *Unquantified Costs:* The Department should indicate the likely scale of the impacts for the following costs to government.
 - *Cost to Government of stop and search applied to non-commercial users.* The cost to Government of stopping non-commercial operators has not been included in the final cost due to data limitations. However, the Department has estimated the cost to Government in 2019 at £369,786. The Department should use this for future years in the appraisal period to indicate the likely scale of impacts.
 - *Searching premises.* The cost to Government to search premises is not monetised due to lack of evidence regarding the average time required. The IA would benefit from an indication of the likely scale of this cost, including the possibility that a search which identifies an offence could lead to further costs, e.g., cost and time taken to prosecute.
 - *Costs to non-commercial users.* Costs to non-commercial users have not been monetised due to the lack of a robust methodology with which to estimate future number of non-commercial drone users and the likelihood that compliant users would be subject to stop and search. However, the department has managed to quantify the cost to non-commercial users for 2019 at a central estimate of £30,593. The IA

- could have been improved by using this to project costs for the appraisal period.
- *Drone sales* – The IA does not consider the possible impact of the legislation on drone sales. It is possible that the added burden of, for example, increased compliance checks could affect the sales of drones at the margins. The IA would benefit from an acknowledgement of this possibility, and an indication of the likely scale of the impact.
 - *Further costs to commercial users* – The Department does not expect costs to business (other than employee times) in terms of missed deadlines but does not provide support for this assertion. The IA would benefit from evidence in support of this statement.
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 - *Small and Micro Business Assessment (SaMBA)*: Whilst the RPC considers the SaMBA to be proportionate to the scale of the impact, the analysis is minimal. The Department's assessment would benefit from providing:
 - a more detailed assessment which explains in depth why the disproportionate impacts on SMBs were not mitigated and how the policy would be affected if SMBs were exempted or any disproportionate impacts mitigated; and
 - a figure for the number of small and micro businesses (SMBs) likely to be affected by this legislation, as this is currently unclear. At present the IA only states that the majority of the commercial drone users are likely to be SMBs.The RPC will expect to see greater consideration of small and micro businesses in future submissions.
 - *Familiarisation costs*: The Department has stated that they have been unable to monetise police familiarisation costs as these powers would be communicated through existing mechanisms. If proportionate, the Department could provide a clear explanation of these mechanisms and how long it may take every police officer to read the new guidance.
 - The Department should provide clearer evidence to ensure the calculation that stop and searches average 6 minutes is robust. Likewise, the Department should seek more information regarding the time taken to search premises for drones or contraband destined to be transported by drone; this could come from data from other stop and search or premise search activities.

- The costs and benefits of the policy, which are shown in the tables provided, could have been embedded within the narrative of the IA.
- The Department should state clearly how much a police constable gets paid per hour plus the wage uplift so the single search amounts can be verified.
- In Table 6, the costs to conduct a single search do not seem to correspond with the time taken to conduct the search or the average wage. These costs must be checked by the Department.
- The Department could have considered looking at the number of drones sold in the UK or imported into the UK to calculate the number of drones used by non-commercial users and the expected projection of users over the appraisal period.
- The IA could provide more robust evidence on the benefits of giving the police the powers to stop and search drone users. The IA could draw upon evidence from other countries with drone policies.
- The Department notes that searching premises and seizing a drone will only be used when police have sufficient evidence and have, therefore, assumed there will be a 100% conviction rate. The IA would benefit from testing this assumption and analysing the impacts of, for example, the cost of appeal for the affected business/individual, the police and the Magistrate's Court.
- Although the Department has provided a high-quality plan for monitoring and evaluation, and committed to a review, the IA would benefit for a clear timeline for delivery of a PIR including a commitment to publish.

Departmental assessment

Classification	Non-qualifying regulatory provision
Equivalent annual net cost to business (EANCB)	£0.1 million (initial estimate)
Business net present value	-£0.5 million
Overall net present value	-£1.4 million

RPC assessment

Classification	Non-qualifying regulatory provision
EANCB – RPC validated ²	£0.1 million
Business Impact Target (BIT) Score ¹	NQRP
Small and micro business assessment	Sufficient

Regulatory Policy Committee

² For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.