



Memorandum to the Transport Select Committee

Post Legislative Assessment of the Civil Aviation Act 2006

Presented to Parliament by the
Secretary of State for Transport,
by Command of Her Majesty
July 2011



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Introduction

1. This memorandum provides a preliminary assessment of the Civil Aviation Act 2006 (2006 Ch.34) and has been prepared by the Department for Transport for submission to the Transport Select Committee. It will be published as part of the process set out in the document Post Legislative Scrutiny – the Government's Approach (CM 7320) (as published by the previous administration).

Objectives of the Civil Aviation Act 2006 ("the Act")

2. The Civil Aviation Act received Royal Assent on 8 November 2006. The purpose of the Act was to make provision for various civil aviation matters. The Act implemented a number of Future of Air Transport White Paper commitments to sustainable aviation and the protection of passenger interests and contained a number of stand alone measures. The Act was largely concerned with refining and clarifying existing statutes, although some new provisions were included which dealt with noise and emissions, alongside some elements of deregulation.

3. The provisions within the Act which relate to aircraft noise originated from a public consultation carried out in 2002 and reflected the conclusions of the Government which were announced in The Future of Air Transport and Control of Noise from Civil Aircraft: The Government's Conclusions, both of which were published in 2003. The Act aimed to clarify and strengthen the measures available to airports for dealing with noise from aircraft.

4. The provisions relating to local aircraft emissions fulfilled an undertaking contained in The Future of Air Transport that the Government would bring forward legislation enabling the Secretary of State to require an emissions related element to be included in landing charges at airports where there are local air quality problems. The Act also gave the Secretary of State the power to direct airports to levy such charges.

5. The provisions relating to Public Airport Companies fulfilled an undertaking given to Parliament by Lord Rooker in 2003 to bring forward proposals to amend the Airports Act 1986 to permit public airport companies to engage in activities that none of its shareholding authorities would have the power to change. As a result of the Act they were authorised to undertake specific activities such as making their expertise available to other airports and taking part in joint ventures, which were previously outside of their powers.

6. The provisions relating to aviation route licensing procedures did not arise from a specific Government commitment but were designed to streamline the process for allocating scarce bilateral capacity among UK airlines, for the future benefit of airlines and consumers. The Act removed the airlines' right of appeal to the Secretary of State in aviation route licensing cases which are decided by the Civil Aviation Authority (CAA), the body with the greatest specialist expertise in aviation matters, airline economics and consumer affairs. This provision also removed the Ministerial role of handling the appeals of airlines from this process, as this had become outdated and was at odds with the general thrust of Government policy in competition and consumer matters.

7. The provisions relating to the CAA's Aviation Health Unit (AHU) reflected a Government commitment in 2003, when the unit was established, that legislation would be introduced to transfer its running costs from Government and the taxpayer to the aviation industry and air travellers. The Act enabled the CAA to recoup the costs for the operation of the AHU which offers advice and assistance in connection to the health of passengers on board aircraft, the aviation industry and to Government on a range of health related issues, by introducing such a levy.

8. The provisions relating to the Air Travel Trust Fund (ATTF), the purpose of which is to provide support to customers of failed tour operators under the Air Travel Organisers' Licensing (ATOL) scheme, reflected the Government's commitment in The Future of Air Transport to seek statutory powers to impose a new levy to address the Fund's deficit and secure its future solvency. To help achieve this, the Act gave the Secretary of State new powers to make regulations to require businesses holding an ATOL licence to contribute to the Fund.

9. The Act also clarified the respective roles of the aerodrome manager and the police in protecting an airport. These amendments were intended to ensure that both parties should seek to agree how best to achieve security at the airport, including the level of payments that the airport makes to the relevant police authority in respect of the services it provides at the aerodrome and to establish an independent means of resolving any disputes in relation to such matters.

10. The Act introduced a package of useful measures which were designed to improve environmental protection from civil aviation and increase consumer protection, without disproportionate regulatory impact.

11. Most provisions within the Act extended to the whole of the United Kingdom. The exceptions were as follows:

- Section 4 (power for aerodromes to establish noise control schemes) and paragraphs 2 and 5 of Schedule 2, which extend to England, Wales and Scotland and;
- Section 5 (public airport companies), which extends to England and Wales only.

Implementation

12. The provisions of the Act were commenced progressively on and from the date on which Royal Assent was received.

Preliminary assessment of the Act

Noise control schemes

13. Although the Civil Aviation Act 1982 contained a number of provisions relating to environmental issues, those provisions did not include any statutory provision for aerodrome operators to implement noise control schemes. New section 38A (1) to (5) provided operators of non-designated aerodromes¹ with powers to regulate noise and vibration from aircraft similar to those conferred on the Secretary of State by section 78 of the Civil Aviation Act 1982 (as amended by section 2 of the Civil Aviation Act 2006) for designated airports (currently Heathrow, Gatwick and Stansted). This provided non-designated aerodromes with powers to voluntarily establish and enforce noise control schemes for the vicinity of the aerodrome. Previously noise control schemes would often be subject to planning controls under town and country planning legislation. Section 38C allows the aerodrome to establish a penalty scheme if the noise control scheme is not being complied with.

14. In 2007 Manchester Airport using the powers contained in the 2006 Act, introduced a system of financial penalties for flights on which airlines persistently failed to keep to noise preferential routes. The Department is not aware of any other aerodrome which has used this power. However, a number of non-designated aerodromes still have noise control schemes made under town and country planning legislation.

Emission charges

15. Amendments to section 38 of the Civil Aviation Act 1982 in the 2006 Act provided powers for aerodrome authorities to introduce charges that reflect the pollution generated by each aircraft type. It also gave the Secretary of State the authority to direct an aerodrome authority to fix its charges based on the emissions produced by aircraft.

16. Prior to the Civil Aviation Act 2006, powers in section 38 of the Civil Aviation Act 1982 only enabled aerodrome authorities to fix charges by reference to the amount of noise different categories of aircraft make. The purpose of the amendment in the Act was to encourage the use of aircraft which produce lower emissions and thereby assist in meeting mandatory EU limits in respect of air pollutants. The most important emissions that affect air quality in the vicinity of airports are particulate matter and nitrogen dioxide (NO₂).

17. Heathrow, Gatwick and Luton airports have included an element in their landing charges based on aircraft NO_x emissions. Manchester airport is currently considering introducing an element of NO_x charging ahead of the 2012 summer season. NO₂ is a large part of the certified NO_x emissions. International standards set down by the International Civil Aviation Organisation (ICAO) limit emissions of NO_x from most turbo-jet and turbofan engines based on an aircraft's landing and take-off cycle. There are currently no equivalent standards for Particulate matter.

¹ i.e. airports which are not designated for the purposes of economic regulation under Part 4 of the Airports Act 1986

New engine developments normally emit lower NO_x levels than previous engines and the international standards are periodically tightened.

18. The Department is not aware of any other aerodrome authority that has used this power, nor has the Secretary of State used the power to direct an aerodrome authority to do so. Around other airports there is currently no risk of breaching the NO₂ air quality limits set under EU legislation.

Public airport companies

19. Section 5 of the Civil Aviation Act 2006 amends the Airports Act 1986 so as to give the Secretary of State for Transport the power to relax constraints on the vires of public airport companies and remove uncertainty over their vires in certain areas, so they may compete on a more level playing field with other airports. A public airport company is a company that carries out the business of operating an airport as a commercial undertaking, which is either a subsidiary of a single principal council or a subsidiary of two or more such councils.

20. Public airport companies operate as commercial undertakings within a competitive environment. However, because of their status, they are subject to extra “regulation”, which means they may only engage in activities in relation to which their local authority shareholders may engage.

21. The effect of section 5 of the Act is de-regulatory. The new provisions establish a way to make it easier for public airport companies to carry out specified activities which were previously outside of their powers or where the extent of their powers was uncertain, such as making their expertise available to other airports and taking part in joint ventures. This could include selling their expertise in airport management, aviation security, airport fire and rescue services, passenger, freight and aircraft ground handling, air traffic management and airport related development. The additional activities allowed and the participation in joint ventures would in practice be airport related, but given the range of activities that normally take place at airports and in connection with them, this would be a wide remit.

22. Regulations under Section 17A of the Airports Act 1986 (as introduced by section 5 of the Act) may be made on an airport specific basis or they may be applied generally to public airport companies. To date, no Regulations have been made under the provisions introduced by this section of the Civil Aviation Act 2006. The Secretary of State received a request from the Manchester Airport Group (MAG) in 2010 to make regulations under this provision in respect of MAG. However, the progression of these regulations is currently on hold pending further representations from MAG as to the exact scope of permitted activities that they would like to undertake.

Aviation route licensing procedures

23. This provision introduced the removal of the right of appeal to the Secretary of State in aviation route licensing cases decided by the CAA. Such cases arise from time to time where airlines wish to compete against each other for scarce traffic rights on routes where the rights to operate are limited under bilateral air services agreements. The previous arrangements effectively encouraged “losing” airlines to automatically appeal against CAA decisions, thus delaying the awarding of operating

rights and effectively requiring the Secretary of State to reconsider cases that the CAA were better placed to decide on the basis of hearings and evidence submitted to them. Under the new arrangements airlines would need to seek judicial review if they wanted to appeal against decisions.

24. Since the change was introduced there have been only two cases referred to the CAA for determination. In both cases hearings were held and decisions taken by the CAA in accordance with the relevant regulations (the Civil Aviation (Allocation of Scarce Capacity) Regulations 2007 (SI 2007/3556). Decisions awarding access to the available rights were announced promptly by the CAA. No appeals for judicial review were made, nor were any complaints received about the lack of recourse to an appeal against the decision to the Secretary of State.

25. The provision has clearly delivered its intended purpose of streamlining decision-making in these cases and avoiding the additional cost to airlines and the public purse of asking Ministers effectively to re-take the original decision on the basis of the same evidence available to the CAA.

CAA's Aviation Health Unit

26. The Civil Aviation Act 2006 introduced complementary duties on both the Secretary of State and the CAA in connection with "the health of persons on board aircraft". This duty is unique among national legislations as we understand. It does not confer a duty with regard for example to ill health which persons may have contracted in another country and brought back to the UK by the vector of air transport but relates specifically to the health of persons *as a result of flying*.

27. The Department for Transport (DfT) moved to organise and encourage measures for safeguarding health in accordance with this duty. It enhanced the function of the Aviation Health Unit (AHU) an arm of the UK's independent national aviation regulator the CAA, so that it could deliver the duty on the Secretary of State and recoup its costs through the CAA's scheme of charges. The AHU has become a centre of excellence in respect of aviation medicine. It is able to give advice both to passengers and to GPs in relation to medical conditions and consequent fitness to fly. It is also the Secretary of State's adviser on matters of aviation health.

28. In addition the DfT has, in recent years, commissioned tax-payer funded research into conditions like Deep Vein Thrombosis (DVT) and into allegations about cabin air quality which have led to major reports in these areas e.g. the WRIGHT study on DVT, published by the World Health Organisation in 2007 and the Cranfield University study into cabin air, published in 2011. Given the international nature of aviation and the common usage around the world of the same planes and aircraft engines it is likely that future research will need to be taken forward internationally.

29. The 2006 Act's provisions have been useful and have helped to develop aviation medical expertise. The DfT takes the health of persons on board aircraft seriously and the AHU in the CAA will be the vehicle for advice and delivery of this duty in the years ahead.

Air Travel Trust Fund

30. The Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (SI 2007/2999) were made under section 71A of the 1982 Act as inserted by the provisions of the 2006 Act. These Regulations give the CAA the power to determine the rate of contribution to the Air Travel Trust Fund (ATTF) by ATOL licence holders, subject to the approval of the Secretary of State, and set out other details concerning the contributions. The initial rate of contribution of £1 per booking came into effect on 1 April 2008. After a significant tour operator failure resulted in a substantial call on the Fund, these Regulations allowed the level of contribution to be increased to £2.50 from 1 October 2009, which was necessary in order to help maintain the Fund's ability to continue to pay out for refunds or repatriations for consumers in the event of the failure of a tour operator.

31. By making Regulations which allow the CAA to require ATOL licence holders to make contributions to the Fund, the Act has contributed towards the aim of ensuring the Fund's solvency and also assisted in allowing it to continue its purpose of providing support to consumers. Without the contributions, the Fund would not have any way of addressing its deficit. However, travel company failures since 2008 have meant that the Fund is still in deficit and continues to rely on a Government Guarantee for its solvency. In February 2011, the Government announced its 'in principle' decision to reform the ATOL scheme through new secondary legislation with the aim of providing greater clarity for consumers about its scope, and also to put the ATTF finances back on a self-sustainable basis. Detailed proposals for reform were published recently.

Policing at aerodromes

32. Part 3 of the Aviation Security Act 1982 (ASA) deals with the policing of airports that have been designated for policing purposes by the Secretary of State under section 25 of the Act. Under the Act the responsibility for policing activity at these airports lies with the relevant chief officer of police and the airport manager must make such payments in respect of policing the airport as the manager and the relevant police authority may agree. If they cannot agree, the Secretary of State may be required to determine the amount to be paid to the police authority by the airport manager (under section 26(3)).

33. Two reviews were conducted which resulted in the introduction of the Policing and Crime Act. Sir John Wheeler's review of airport security in 2002 recommended that the response to airport security needed to take the form of multiagency, locally agreed, threat and risk assessments, the outputs from which could be used to determine the extent of policing appropriate to the risk. The Stephen Boys Smith review of Airport Policing in 2006 sought to introduce a consistent national approach to airport policing and a transparent and fair funding system. As a result, Schedule 1 of the Civil Aviation Act 2006 amends the 1982 Act in relation to the policing of airports that have been designated under section 25 of earlier the Act.

34. Paragraph 2 of Schedule 1 inserts new sections 25A and 25B into the AS Act 1982. New section 25B requires the manager of a designated aerodrome, the police authority and the chief officer of police to enter into a Police Services Agreement (PSA).

35. Before entering into a PSA the aerodrome manager and chief officer of police, both of whom have operational responsibility, are required under new section 25A(2) to consult with those who also carry out protective activities at an airport (specified at section 25A(3)). Section 25A(4) gives the Secretary of State a delegated power to modify these consultation requirements, section 25A(5) provides that the degree of Parliamentary scrutiny should depend on whether the changes to the requirements are agreed by the manager of the aerodrome and the chief officer of police.

36. The Department worked closely with the Home Office and other relevant stakeholders to ensure that the legislation was given effect at the nine designated airports: Heathrow, Gatwick, Stansted, Aberdeen, Edinburgh, Glasgow International, Prestwick, Birmingham and Manchester. All successfully negotiated their PSA's. Prestwick were initially unable to reach agreement. However, both departments provided guidance and support to assist them in resolving the dispute without the need for the appointment of an independent expert.

37. It should be noted that the Policing and Crime Act 2009 amends the Aviation Security Act 1982 and has effectively removed the system of designation and replaced it with a new security planning framework which applies to all UK airports directed under the UK's National Aviation Security Programme. The 2009 Act provides that the airport operator pays for any dedicated policing identified in the security planning process. It introduced a new dispute resolution mechanism where the operator and the police are unable reach agreement.

38. As a result of the new security planning framework, a number of airports in addition to the previously designated airports have agreed that they require a dedicated police presence. Most of these airports have or are about to agree a PSA. Two have failed to agree a PSA and have sought recourse to formal dispute resolution.

Conclusion

39. The Civil Aviation Act introduced a number of important provisions in the UK Aviation Sector. Below is a summary of what the Act has delivered;

- The Act made real progress in attempting to clarify and strengthen the powers of aerodromes to help to tackle key issues in relation to both noise and emissions at or close to the UK's airports.
- It provides scope for Public Airport Companies to obtain greater freedom and flexibility to utilise their expertise to become involved in activities previously outside of their remit to which their skills were well suited, which could help them to compete on a more level playing field with other airports.
- The Act has delivered a more streamlined decision making process in relation to route licensing. Removing an airlines right of appeal to the Secretary of State has resulted in no challenges being made since the Act entered into force and to a cost saving for both airlines and the public purse. This provision also removed the duplication role for Ministers in this process, as before the Act was introduced they were often required to review a decision following an appeal from an airline, based on the same evidence which had led to the original decision being made by the CAA. The Act recognises the expertise of the CAA in making such decisions.
- The Act succeeded in securing the continued existence of and industry funding for the CAA's Aviation Health Unit (AHU), a specialist body which has become a centre of excellence in the field of aviation medicine, giving advice to airlines, passengers and General Practitioners. In the period since the Act was introduced a number of research studies have also been commissioned by the Government to look at important issues such as Deep Vein Thrombosis (DVT) and cabin air quality, which have helped to further increase medical knowledge in relation to aviation health related matters.
- The importance of the Air Travel Trust Fund (ATTF) has been clearly demonstrated since the Act entered into force, in particular with the collapse of a number of tour operators. This has led recently to an increase in contributions to the fund in order to ensure that it maintains the ability to continue to pay out for refunds or repatriations for consumers in the event of the failure of further tour operators. However, the continued deficit of the fund has led to the recent proposals to reform the ATOL scheme, with the aim of providing greater clarity and assistance to the consumer. The Department is currently consulting on these proposals.
- The Act placed an obligation on designated airports to enter into an agreement with their local police authority about how security measures in the Airport Security Plan should be carried out by the local police force at the airport. Designated airports have as a result of this provision been able to agree on the levels of policing that they require in order to protect the public. The airport operator has also been required to reimburse the costs of that policing

provision. In cases where airports have not been able to reach an agreement on this, the Act provided the powers for independent experts to formally provide assistance in resolving the matter. The positive effects of such provisions has informed the requirement in the Policing and Crime Act 2009 which abolishes the system of 'designation' at airports, whereby only nine airports were required to meet policing costs, and introduced a requirement that all UK airports operating within the scope of the National Aviation Security Programme with a need for a permanent police presence must pay for that policing.

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