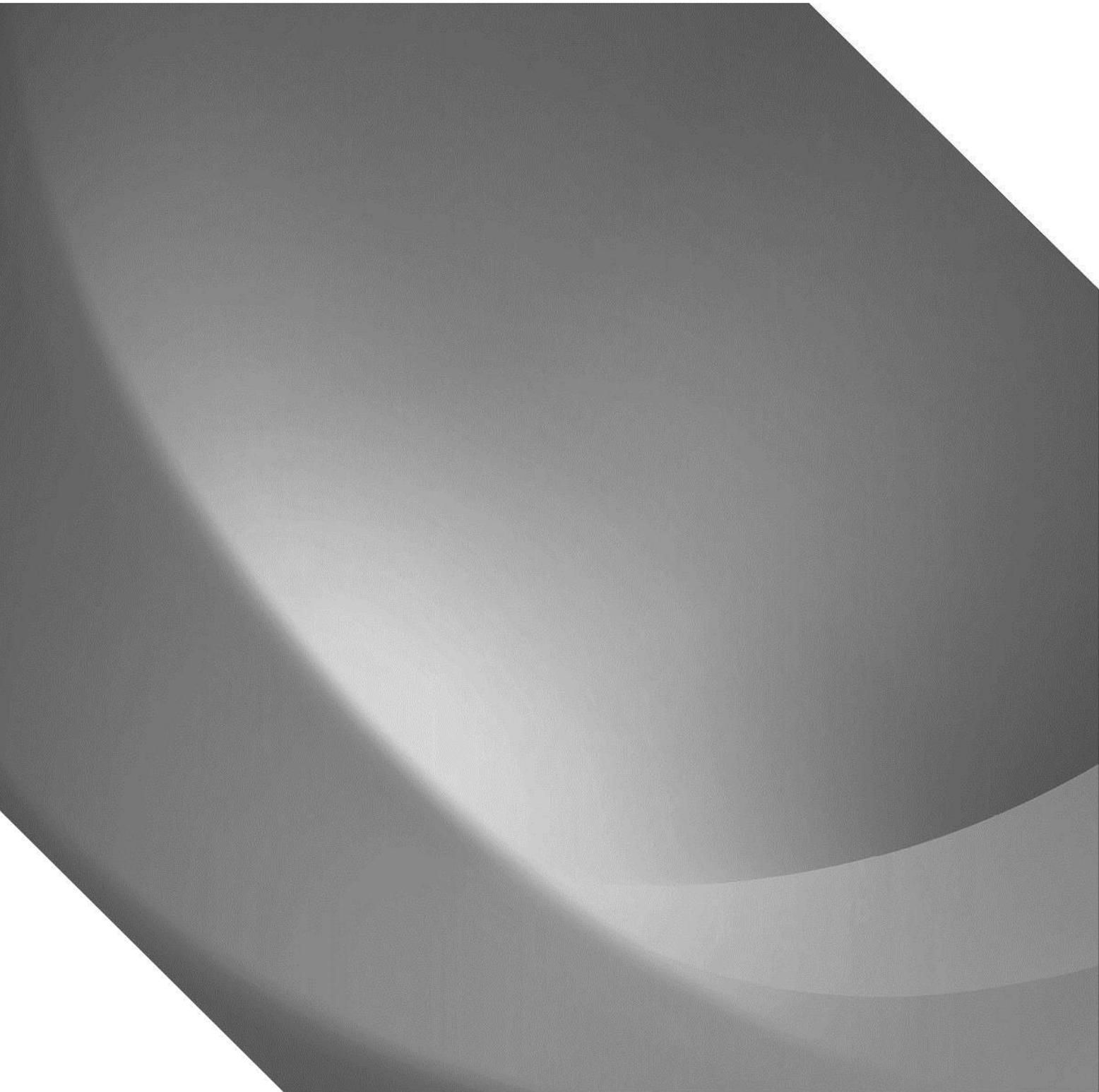


Reforming policy on the design and use of UK airspace

CAA response to the Department for Transport consultation

CAP 1561



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Executive Summary

- 1.1 The Civil Aviation Authority (CAA) considers that modernising the UK's airspace, some of the most congested in the world, presents an opportunity that will benefit consumers, airlines, airports, general aviation and some local communities.
- 1.2 Delivering this modernised infrastructure presents challenges. There are increasing and competing demands for airspace that must be reconciled, and any change to low-level airspace that alters the noise distribution may well face challenge from stakeholders.
- 1.3 The CAA welcomes the Department for Transport's (DfT) proposals to reform policy on the design and use of airspace. They are a welcome step towards creating a framework that facilitates modernisation and the benefits it unlocks, while ensuring that stakeholders are properly informed; engaged in the change process; that they have a genuine opportunity to shape proposals as they are developed; their views form part of the evidence base presented to the CAA where airspace decisions are required.
- 1.4 The CAA is making its own reforms to the process for deciding on changes to airspace design. We are currently consulting on draft Airspace Design Guidance. Our proposed reforms will help to reinforce the DfT policy framework, by ensuring that our process meets modern standards for regulatory decision-making in being fair, transparent, consistent and proportionate. The airspace change process must be impartial and evidence-based, and must take account of the needs and interests of all affected stakeholders.
- 1.5 However, while these reforms to government policy and the CAA's process for considering airspace changes form essential elements of the framework to secure modernisation, they may not be enough to secure sustainable airspace modernisation. There needs to be a mechanism to create a masterplan for airspace changes, a means to drive those changes forward, and a way to decide between competing demands for scarce airspace capacity. The government should also introduce a stronger enforcement regime for noise management.¹

¹ These issues were discussed in the CAA's response to the Transport Select Committee inquiry into airspace management and modernisation, available here, which would encourage the DfT to consider alongside this response:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/transport-committee/airspace-management-and-modernisation/written/49710.pdf>

Summary of the key points in our submission

1.6 We summarise these and other points in our submission below.

A new mechanism to drive airspace modernisation

1.7 The CAA considers that successful modernisation requires a new mechanism to oblige proposals to be developed and for them to be coordinated with other change sponsors such that those changes are aligned coherently into a UK airspace masterplan. In addition there also needs to be means for deciding between competing demands for scarce airspace capacity. The CAA believes that this is a national issue and is committed to working with the DfT to assist in the development of a solution that would create such a mechanism.

Enforcement of noise management

1.8 Recent consultation and engagement with communities shows that a mechanism is needed to reassure overflowed communities that the aviation industry will be held to account if it does not meet clear and transparent standards on noise management. Without this, distrust between communities, the aviation industry, the CAA and the DfT will remain. In the first instance it should be airports which enforce airlines' noise performance, with a potential role for the CAA as a potential backstop considered for cases where stronger action is needed.

1.9 Currently the CAA does not have powers to require the aviation industry to take particular actions to manage noise, nor to enforce standards relating to noise management. The CAA is concerned that this is not clear from the consultation document.

ICCAN

1.10 We recognise that ICCAN can play an important role in enhancing transparency, assessing the effectiveness of information provision, and assuring the impact of mitigations. But the CAA's experience of airspace design, management and regulation suggests that no single body is likely to bring about a significant change in overflowed communities' understandable concerns about the noise impacts from airspace change. We are therefore wary of raising expectations that ICCAN will be able to change perceptions in this respect.

1.11 The CAA now sees no significant overlap between ICCAN and our own roles undertaken within either our Airspace Regulation team or Environmental Research and Consultancy Department. As such, creation of the body may take longer than currently expected.

1.12 The CAA should have a limited role in setting up ICCAN to ensure its independence. The core principle should be that ICCAN established with sufficient independence for it to challenge and criticise all stakeholders, including the CAA.

Tier 2

- 1.13 A definition that a tier 2 change is a change to ANSP procedures which results in a permanent and planned redistribution of aircraft is an accurate description of the policy objective. For the purposes of clarity, we suggest the DfT consistently adopts this language in its definition throughout the final policy documents. We consider that a change to MATS Pt II, where an aerodrome is obliged to publish one, is evidence of a planned and permanent change to ANSP procedures. We recommend that 'redistribution' is clearly defined in the final policy framework in order that there is no ambiguity whether the tier 2 function applies to a particular ANSP proposal or not.
- 1.14 As a tier 2 change may have the same impacts as a tier 1 change we consider consistency with tier 1 functions and processes is an overriding objective. The law will in any event require the change sponsor/CAA to consider all section 70 factors when proposing/considering tier 2 changes. DfT's final policy framework should avoid any references that could make this uncertain.. To avoid inconsistency the same approach to assessment of environmental factors set out in the ANG for tier 1 changes should be applied to Tier 2 including application of altitude-based priorities.
- 1.15 We acknowledge that the DfT's proposed tier 2 policy aims to be proportionate, including the proposed exemption for airports with fewer than 50,000 movements a year. However, the consequence of this would be inconsistency between tier 1 and tier 2. This inconsistency could lead to ANSPs furthering procedure changes rather than tier 1 changes to airspace design, which would reduce the incentive to systemise risking the aim of modernising airspace. We recommend that further consideration is given to this aspect of the policy. The CAA considers that the aim of proportionality could be better achieved by introducing different levels of tier 2 changes based on impact rather than number of aircraft movements with correspondingly different process requirements rather than by excluding them from the tier 2 definition overall.
- 1.16 For the purposes of clarity, the DfT should define the terms engagement and consultation in its final policy and be clear as to what it expects to see in which circumstance when drafting and reflecting the policy in the Directions and guidance it gives to the CAA.

Tier 3

- 1.17 Without additional enforcement powers and formal direction, the CAA would be able to do no more than set out best practice in relation to information provision, and potentially report on which airports have adopted it.

Transition arrangements

- 1.18 To give change sponsors and other stakeholders sufficient clarity and certainty, it will be important to ensure that the CAA and DfT adopt a unified approach to transitioning to new Airspace Design Guidance and the underlying policy framework that introduces new or revised functions and bodies.
- 1.19 To ensure this approach to transition is harmonised, we propose agreeing a timeline with the DfT in the coming months. We consider that both the DfT and CAA should publish the respective policy and process with a lead-in time before coming into force.

Chapter 1

Introduction

- 1.1 The CAA welcomes the opportunity to respond to the DfT's consultation on its proposals to reform policy on the design and use of UK airspace, including directing the CAA to carry out new functions.
- 1.2 As the UK's independent aviation regulator, the Secretary of State has given the CAA functions that relate to the structure and design of airspace in the Civil Aviation Authority (Air Navigation) Directions dated 2001 (amended in 2004).
- 1.3 This means the CAA has responsibility for deciding whether to approve proposed changes to the design of airspace over the UK – the airspace structure and instrument flight procedures within it that are used by aircraft. These decisions are taken in accordance with Section 70 of the Transport Act 2000, which sets out various factors that must inform our decision-making, including safety, efficient use of airspace, the expeditious flow of air traffic, security, operational and environmental impacts such as aircraft noise and emissions.
- 1.4 The current consultation from the DfT comes alongside the CAA undertaking a programme of work to revise and update the way we make decisions on proposed changes to airspace. The two organisations have worked closely together in developing our proposals. The CAA believes that in total, if implemented, the suite of changes will lead to a more transparent change process, with decisions made on the best possible evidence base, and stakeholders having the opportunity to influence proposals during their development in a structured and clear way.
- 1.5 Our consultation on draft Airspace Design Guidance was launched in March and will close on 30 June 2017. It can be found here:
<https://consultations.caa.co.uk/policy-development/draft-airspace-design-guidance/>
- 1.6 We look forward to continuing to work closely with the DfT as it develops the final policy framework² that underlies our airspace change process.

Transition

- 1.7 **To give change sponsors and other stakeholders sufficient clarity and certainty, it will be important to ensure that the CAA and DfT adopt a**

² The Directions containing the CAA's air navigation functions which give effect to that policy and the environmental guidance to the CAA on our environmental duty when carrying out our air navigation functions (referred to in this document as the ANG).

unified approach to transitioning to new Airspace Design Guidance and the underlying policy framework that introduces new or revised functions and bodies.

1.8 In this context, we welcome the DfT's statement that:

1.9 *"We will therefore work closely with the CAA following the consultation to agree an implementation date and detailed transition arrangements. Where relevant e.g. for airspace change, we would expect to mirror the transition arrangements set out by the CAA in its recent consultation on the Airspace Change Process: any change proposal which has yet to be consulted on before the introduction of the revised process should adhere to the new process from the implementation date."*

1.10 **To ensure this approach to transition is harmonised, we propose agreeing a timeline with the DfT in the coming months. We consider that both the DfT and CAA should publish their respective policy and process with a lead-in time before coming into force.** This would mean, for example, that when the DfT publishes revised Directions and a new ANG, it would provide a date on which its provisions would come into effect. Otherwise changes will come into effect on the day of publication, which would cause delays to airspace changes if the CAA and other stakeholders involved in the process are not fully prepared for the changes.

1.11 For information, we have set out our current intention in terms of the transition to new regulatory guidance on our website [here](#).

1.12 We intend to provide the DfT with a marked-up version of the draft ANG, given the close interplay between our own process and the government policy framework. We will use this to highlight specific areas where we believe that additional clarity or confirmation of the DfT's intention will provide helpful certainty for all stakeholders.

The wider context

Airspace modernisation

1.13 The CAA welcomes the DfT's support for the need to modernise airspace to deliver economic benefits to the UK by ensuring this major piece of infrastructure is up to date. We also support the clarification of the policy framework, including the steps proposed to consider and incorporate the impacts of aviation including health and quality of life into decision making.

1.14 New technology offers the opportunity for aircraft to fly more precise routes, which presents the potential for clear benefits - fewer delays, improved resilience to disruption, better passenger experience, lower costs, reduced carbon emissions through less fuel burn, changes to noise profiles that may benefit

some communities, and enhanced safety. Achieving these benefits will require modernising the UK's airspace, some of the most congested in the world.

- 1.15 Without modernisation, our airspace will not be able to cope with the predicted increase in demand, let alone the extra aircraft movements a third runway will allow for. Many aviation consumers in the UK already face unnecessary delays, while reliance on holding stacks and extended routeing increases CO2 emissions.
- 1.16 To achieve this vision of a modernised airspace, at a national level there needs to be a mechanism to create a masterplan which would determine how airspace is designed, how these designs are implemented, and how competing bids for scarce airspace capacity are decided. Progress in modernisation is dependent on the choices of competing commercial airport entities and air navigation service providers (ANSPs).
- 1.17 Despite the importance of airspace modernisation, there is currently no mechanism to require any of the relevant parties to deliver it. Neither Parliament, through legislation, nor the Secretary of State, through Directions, have given the CAA a comprehensive suite of powers to require other parties to comply with any recommendations that the CAA might make in relation to airspace strategy. The Secretary of State has the power to issue environmental directions to ANSPs pursuant to section 39 of the Transport Act 2000. The CAA has no such power. Furthermore, the CAA cannot require stakeholders, such as airport operators, to bring forward individual airspace change proposals or to change their operating methods unless there is a safety consideration. In effect, this means that there is currently no mechanism whereby a coherent integrated airspace can be devised and promulgated by any particular body.
- 1.18 **The CAA considers that successful modernisation requires a new mechanism to oblige proposals to be developed and for them to be coordinated with other change sponsors such that those changes are aligned coherently into a UK airspace masterplan. In addition there also needs to be means for deciding between competing demands for scarce airspace capacity. The CAA believes that this is a national issue and is committed to working with the DfT to assist in the development of a solution that would create such a mechanism.**

Community engagement

- 1.19 We welcome the policy framework's intention to ensure communities' views are taken into account when airspace is changed and clarity and transparency are enhanced. This desire to enhance transparency and engagement echoes changes the CAA proposes.

- 1.20 The development of some airspace change proposals in recent years has highlighted a lack of trust between some local communities, the aviation industry, the CAA as decision-maker and DfT. This can sometimes create an impasse on airspace changes – changes which, in totality, might improve outcomes in respect of all the factors we have to consider but which, as a consequence, may place some individuals in a worse position than if no change were made.
- 1.21 We are clear that those potentially affected by airspace changes should have the ability and opportunity to influence the development of a proposal and through effective engagement as the proposal is developed. The CAA's decisions on airspace change must take proper account of the needs and interests of all affected stakeholders.
- 1.22 The CAA considers that an ambitious approach to engagement by airspace change sponsors, combined with the other improvements outlined above will help to deliver a modernised airspace structure fit for the 21st century.
- 1.23 **Recent consultation and engagement with communities shows that a mechanism is needed to reassure overflown communities that the aviation industry will be held to account if it does not meet clear and transparent standards on noise management. Without this, distrust between communities, the aviation industry, the CAA and the DfT will remain. In the first instance it should be airports which enforce airlines' noise performance, with a potential role for the CAA as a potential backstop considered for cases where stronger action is needed.**
- 1.24 **Currently the CAA does not have powers to require the aviation industry to take particular actions to manage noise, nor to enforce standards relating to noise management. The CAA is concerned that this is not clear from the consultation document.**

Chapter 2

The role of the CAA

- 2.1 The CAA considers it is important that stakeholders understand the limits to our role in airspace and noise management. Paragraph 7.18 of the consultation document says:
- 2.2 *“We want the CAA to influence the aviation industry’s performance in ongoing noise management through its leadership, advisory role and its duty regarding the publication of information on the environmental effects of UK air travel and mitigations for them. Through its Information Duty, the CAA is already able to request that existing environmental information be shared with the CAA, which it can then publish. The CAA should set out how it aims to influence airports to develop and implement better noise management approaches as they work with their airline customers, contracted ANSPs and their local communities.”*
- 2.3 and:
- 2.4 *“This means the CAA could provide leadership at a strategic level, and could advise airports, airlines or ANSPs to take action if they are presented with compelling evidence and conclude that the factors are not appropriately balanced. For example, this could be because the right balance is not being struck in the way noise is being accounted for in operations, in the noise control measures being used or in how airports are incentivising airline or ANSP behaviours.”*
- 2.5 The CAA is concerned that this might create the expectation that the CAA (or others) has powers to force airports, ANSPs or others to act to reduce the noise impact of aviation or create transparency. This is not the case.
- 2.6 When considering the role of the regulator in ongoing noise management and incentivising good practice, it is important to be clear that (unlike the Secretary of State) the CAA does not currently have powers to require the aviation industry to take particular actions to manage noise, or to enforce standards relating to noise management.
- 2.7 In our 2016-2021 strategic plan³, we proposed undertaking a Noise Management review to consider our approach to noise management as a regulator, and we welcome and will factor into that work the proposal within the consultation that our role should be to: *“influence the aviation industry’s performance in ongoing noise management through its leadership, advisory role and its duty regarding*

³ <http://www.caa.co.uk/Our-work/Corporate-reports/Strategic-Plan/Our-five-year-strategic-plan/>

the publication of information on the environmental effects of UK air travel and mitigations for them."

2.8 As a part of this work, we are developing a matrix setting out what powers we understand we have in relation to aviation noise, and also highlighting areas where the review will consider our approach. The matrix also makes clear where we believe we currently have the power to act, either as a decision-maker, or in limited circumstances to monitor industry's performance, or to offer advice or best practice.

2.9 To help clarify our role, we reproduce it below. Where a cell suggests there is 'potential to explore' it indicates our intention to explore whether it is possible and/or desirable for the CAA to act, as part of the Noise Management Review. In such circumstances, we may require new legislative powers to act.

Area	CAA acts as a decision maker	CAA monitors industry's performance	The CAA is able to require industry to remedy poor performance	Advise to do differently	Taking a leadership role
Airspace change					
Tier 1	Existing function in Directions	One-off with Post-Implementation Review (PIR)	Ability to require modifications as part of PIR	Yes	N/A
Tier 2	Proposed direction	New process could include one-off PIR	Potentially as part of possible PIR.	Yes	N/A
Tier 3	No	Proposed direction	No	Proposed best practice role	N/A
Environmental information					
Obtain information	N/A	Statutory power if it exists already	No	Yes	N/A
Create information	N/A	No	No	Proposed Tier 3 airspace change role	Potential to explore
Improving noise management approaches	No	We understand the language in 1.44 to indicate a role of some sort here.	No	We understand the language in 1.44 to indicate a role of some sort here.	We understand the language in 1.44 to indicate a role of some sort here.
NERL en route behaviours	Not unless Tier 2 change	Potential to explore	No	Potential to explore	Potential to explore

Area	CAA acts as a decision maker	CAA monitors industry's performance	The CAA is able to require industry to remedy poor performance	Advise to do differently	Taking a leadership role
	triggered				
Balanced approach operating restrictions	Proposed role where restrictions imposed outside planning regime	Proposed role where restrictions imposed outside planning regime	Proposed role where restrictions imposed outside planning regime	Potentially but possible conflict with ICCAN's proposed role.	N/A
Airline track keeping	N/A	Potential to explore	No	Potential to explore	Potential to explore
Airline slot utilisation	No	Potential to explore	No	Potential to explore	Potential to explore
Operational noise mitigations	No obvious power but review to consider wider licensing roles.	Potential to explore	No obvious power but review to consider wider licensing roles.	Potential to explore	Potential to explore
Wider best practice & research	No	No	No	Yes – usually at the DfT's behest.	Yes – albeit at present infrequently and with little resource to support.

Chapter 3

Responses to the DfT's consultation questions

1a: Please provide your views on the proposed call-in function for the Secretary of State in tier 1 airspace changes and the process which is proposed, including the criteria for the call-in and the details provided in the Draft Air Navigation Guidance.

- 3.1 The CAA welcomes the formalisation of the Secretary of State's role in airspace change, and the clarity and certainty that will be provided when the final policy framework sets this out in a transparent fashion. We note that the call-in process is a lever to allow or stop a proposed airspace change, and not a lever to instigate one. Moreover, because it is a lever that it is only operable at the end of the airspace change process, the DfT should consider in advance any additional policy principles it may wish to rely on during any potential call in decision to avoid creating new process risks.
- 3.2 Within the CAA's proposed reforms to the process we use to make decisions about proposals to change the design of airspace, we reflect the role of the Secretary of State as it is described in the DfT's consultation. As part of this reform, we are also developing an online portal, analogous to planning portals used by Local Authorities, to host all information relating to every airspace change proposal. We recommend that the DfT works with us to ensure that call-in requests, decisions to call-in and final decisions taken by the Secretary of State are communicated via the portal to enhance transparency and keep the process accessible and comprehensible for stakeholders.
- 3.3 In relation to tier 2 changes, as covered in question 1b, the CAA notes that at present there is no apparent intention for the Secretary of State to have a call-in function. It may be useful for the rationale for the distinction between the two types of changes, which can have similar impacts, to be set out, as at present the CAA is not clear why they are treated differently.

1b: Please provide your views on the proposal that tier 2 airspace changes should be subject to a suitable change process overseen by the Civil Aviation Authority, including the Draft Air Navigation Guidance and any evidence on costs and benefits.

- 3.4 We welcome the concept of a tier 2 category of airspace changes. This would introduce an air navigation decision function for the CAA to changes which may have the same noise impact as a tier 1 change for people on the ground, but which have previously not been subject to an air navigation decision by the CAA and therefore not subject to assessment of all the section 70 factors, including

environmental impact. In our consultation on draft Airspace Design Guidance we have asked several questions of stakeholders to help us develop an effective regulatory process for tier 2 proposals. If the DfT implements this policy, we would expect it to formally give the CAA this function and direct us to enact such a process following this consultation. We intend to consult on that process before implementation.

- 3.5 Several points of additional detail would help the CAA develop any process, and provide clarity for stakeholders.
- 3.6 We understand it is proposed that the CAA will have a new function to agree to certain operational changes made by ANSPs and that the DfT is proposing that the CAA only agrees to do so after the ANSP has carried out a minimum process that includes a degree of engagement with local communities. We understand it is proposed that not all ANSP operational changes will be tier 2 changes. At present we consider the current policy wording is ambiguous as to:
- The scope of ANSP operational changes that the CAA will be directed to approve before they can be implemented by ANSPs⁴; what is meant by planned and permanent and what is meant by redistribution;
 - Whether this scope will be determined by Secretary of State in Directions or whether the Directions will give the CAA the power to determine the scope;
 - Whether the Secretary of State intends to direct a minimum process that the CAA must impose on ANSPs before the CAA makes its decision;
 - Whether the DfT intends there to be 'Levels' of tier 2 changes, some which require a more detailed process, or additional considerations than others (as featured within our revisions to the current process).
- 3.7 The scope of tier 2 changes and our role in respect of them will need to be unambiguously reflected in the the Secretary of State's Directions to the CAA (and if applicable, any tier 2 specific environmental guidance placed in the ANG).
- 3.8 From a technical perspective, it is important to be clear that vectoring is not the only practice that can lead to a permanent and planned redistribution of aircraft as a result of air traffic control decisions. **A definition that a tier 2 change is a change to ANSP procedures which results in a permanent and planned redistribution of aircraft is an accurate description of the policy objective. For the purposes of clarity, we suggest the DfT consistently adopts this language in its definition throughout the final policy documents. We consider that a change to MATS Pt II, where an aerodrome is obliged to**

⁴ In order to give legal effect to this policy, and in addition to a new tier 2 direction to the CAA, it is our understanding that it will be necessary for the Secretary of State to direct ANSPs (under the Secretary of State's power in Section 39) that they cannot make such changes without the approval of the CAA.

publish one, is evidence of a planned and permanent change to ANSP procedures⁵. We recommend that 'redistribution' is clearly defined in the final policy framework in order that there is no ambiguity whether the tier 2 function applies to a particular ANSP proposal or not.

- 3.9 **As a tier 2 change may have the same impacts as a tier 1 change we consider consistency with tier 1 functions and processes is an overriding objective. The law will in any event require the change sponsor/CAA to consider all section 70 factors when proposing/considering tier 2 changes. The DfT's final policy framework should avoid any references that could make this uncertain, for example the reference within 2.16 of the draft ANG that only noise will be considered.**
- 3.10 **The CAA considers that to avoid inconsistency the same approach to assessment of environmental factors set out in the ANG for tier 1 changes should be applied to tier 2 including application of altitude-based priorities.** If this is not adopted, it could lead to sponsors prioritising different environmental outcomes for the two types of change, and potentially choosing whether to propose a tier 1 or tier 2 change based on the expected environmental impacts.
- 3.11 The CAA is not clear on the rationale for excluding airports with fewer than 50,000 movements a year. This differs from the approach to tier 1 changes, where no such limitation is applied. **We acknowledge that the DfT's proposed tier 2 policy aims to be proportionate, including the proposed exemption for airports with fewer than 50,000 movements a year. However, the consequence of this would be inconsistency between tier 1 and tier 2. This inconsistency could lead to ANSPs furthering procedure changes rather than tier 1 changes to airspace design, which would reduce the incentive to systemise risking the aim of modernising airspace. We recommend that further consideration is given to this aspect of the policy. The CAA considers that the aim of proportionality could be better achieved by introducing different levels of tier 2 changes based on impact rather than number of aircraft movements with correspondingly different process requirements rather than by excluding them from the tier 2 definition overall.**
- 3.12 If however this exclusion is maintained in the final Directions and ANG, the DfT should clarify that the threshold refers to Air Transport Movements, rather than all movements (As the current draft wording would include a wider list of airports than those set out in footnote 12). In addition, it will be necessary that the approach to airports where aircraft are handled by an ANSP based at another airport is set out.

⁵ As not all aerodromes are required to publish a MATS PtlI manual, the definition of planned and permanent may require further consideration in such cases.

- 3.13 At present, the draft guidance and consultation document use the terms consultation and engagement interchangeably in relation to tier 2. Within our own airspace change process, the CAA uses them to mean two different things. We consider that engagement is a catch-all term which may include consultation, but could equally involve information provision, focus groups, round tables or other types of outreach. Consultation has a more specific legal definition and requirements, defined by the Gunning Principles and detailed in our draft guidance. **For the purposes of clarity, the DfT should define these terms in its final policy and be clear as to what it expects to see in which circumstance when drafting and reflecting the policy in the Directions and guidance given to the CAA.**

1c: Please tell us your views on the proposal that tier 3 airspace changes should be subject to a suitable policy on transparency, engagement and consideration of mitigations as set out by the Civil Aviation Authority.

- 3.14 We welcome the introduction of the tier 3 category of changes, and agree that in the first instance, an information provision role for airports is appropriate.
- 3.15 We understand the DfT's consultation to mean the government intends for the CAA set out best practice on information provision relating to tier 3 changes, rather than to create a policy airports must adopt. However, it is important to avoid raising expectations that the CAA's best practice guidance will be followed by all airports, or that the CAA would be able to insist that airports take corrective actions.
- 3.16 **Without additional enforcement powers and formal direction, the CAA would be able to do no more than set out best practice in relation to information provision, and potentially report on which airports have adopted it.**

1d: Please tell us your views on the airspace change compensation proposals.

- 3.17 The CAA does not have any comment on these proposals.

2a: Please provide your views on the proposal to require options analysis in airspace change processes, as appropriate, including details provided in the Draft Air Navigation Guidance.

- 3.18 The CAA supports the need for a consistent evidence base and we have already taken steps to include options appraisal in our airspace change process.
- 3.19 It is right that at the core of the options appraisal is an assessment of the cost and benefits of the proposal, with as many costs and benefits as possible quantified in monetary terms, to allow for a direct comparison between options.

However, we should recognise that quantification of costs and benefits may not always be possible or proportionate, and accept that in these cases a qualitative description of the costs and benefits can be used.

- 3.20 It is also important to be clear that while a cost benefit analysis can help the decision-maker, it is not a binary situation where in every case in which the benefits exceed the costs, a proposal will be approved. In our draft Airspace Design Guidance we state that the CAA will not make decisions purely on the basis of a cost-benefit analysis. There may be issues that cannot be quantified, or the policy direction may be opposed to the result of the cost-benefit analysis.
- 3.21 As options analysis covers more factors than the environment, to have legal effect the minimum standards required by the DfT must be set out in Directions to the CAA, not in the ANG.
- 3.22 We also look forward to seeing the DfT's specific WebTAG guidance for airspace change proposals.

2b: Please provide your views on the proposal for assessing the impacts of noise, including on health and quality of life. Please provide any comments on the proposed metrics and process, including details provided in the Draft Air Navigation Guidance.

Proposals

- 3.23 The CAA supports the clarified policy approach of a repeatable, national methodology that can be applied locally. The approach of using evidence about health impacts to assess potential noise impacts is clearer, consistent, objective and repeatable. We have already taken steps to include the DfT's assessment proposals in the options appraisal part of our process.
- 3.24 However, we believe that to ensure legal certainty, there is a need to ensure consistency and clarity when referring to altitudes throughout the ANG.
- 3.25 Although the altitude-based priorities are proposed to remain unchanged, the revision of the ANG provides an opportunity to ensure that the altitude-based priorities drafting is clear and unambiguous. In particular we consider that the use of the phrase "the most efficient use of airspace" in 3.22 of the draft ANG (which is from the Transport Act and relates to the efficiency of the whole system and the number of aircraft through a block of airspace) with regard to airspace above 7000ft is incorrect. Using the wording from the Transport Act we consider the drafting should refer to "the expeditious flow of air traffic".
- 3.26 The CAA's categorisation of tier 1 airspace change into 'Levels' reflects these differing priorities and affords stakeholders a clear way of understanding how we will take into account the possible environmental impacts of a proposed change. The DfT's altitude-based priorities are used in our draft Airspace Design

Guidance to define Levels of airspace change, so that the anticipated noise impacts and those affected are fully taken into account when a proposed change is being developed.

3.27 We recommend the DfT adopts the language set out below to ensure consistency:

Altitude	Priority	Associated CAA Level
Ground – to below 4,000ft above mean sea level (amsl)	Minimise the noise impact of aircraft and the number of people on the ground affected by it, particularly with regard to noise disturbance above 51dB LAeq16hr or 45dB LAeq8hr	Level 1
At and above 4,000ft amsl – to below 7,000ft (amsl)	Minimising the impact of aviation noise on populated areas – particularly with regard to noise disturbance above 51 dB LAeq16hr or 45 dB LAeq8hr, but the CAA may also balance this requirement by taking into account the need for an efficient use of airspace and expeditious flow of traffic that minimises emissions	Level 1
At and above 7,000ft (amsl)	The most expeditious flow for individual aircraft with a view to minimising overall aircraft emissions, meaning that mitigating the impact of noise is no longer a priority	Level 2

Metrics

3.28 The CAA welcomes the government proposing that a broader range of metrics are utilised in order to better communicate and consider the range of environmental impacts a change may have. In particular, use of the overflight metric will provide residents with a means of better understanding which areas will experience "overflight", as opposed to experiencing noise as defined by one of the other metrics.

3.29 With specific regard to Lnight, this is an annual average night indicator as defined in EU and UK legislation. The 2013 Aviation Policy Framework introduced the requirement to produce routine average summer night LAeq8hr contours to complement summer average daytime LAeq16hr contours. To be consistent and to reflect that UK airports are busiest during summertime we recommend that the night indicator be based on a summer average night.

3a: Please provide your views on the Independent Commission on Civil Aviation Noise's (ICCAN's) proposed functions.

- 3.30 The CAA welcomes the concept of an Independent Commission on Civil Aviation Noise (ICCAN), which offers an opportunity to enhance transparency and community engagement.
- 3.31 Our draft Airspace Design Guidance is based on enhancing transparency and ensuring, through regulation and oversight, that sponsors more effectively engage, consult and inform stakeholders throughout the process. ICCAN can provide input into that by offering advice on the transparency and efficacy of the consultation and decision-making process; providing best practice to sponsors on communities' needs; and reviewing noise mitigations to assess whether they are appropriate.
- 3.32 We are aware that some have suggested that ICCAN has decision-making or enforcement powers in relation to airspace changes. We strongly caution against giving the new body such decision-making accountability. This is because airspace change decisions must consider safety, the operational effectiveness of the design, and other factors as well as the interests of airspace users and local communities. ICCAN will not have the skills to make detailed assessments with regard to these other factors and to do so would replicate skills the CAA already possesses.
- 3.33 When the Airports Commission first proposed an Independent Aviation Noise Authority (IANA), the CAA saw some overlap between its intended role and our own, and suggested we could take on those roles. IANA was described as having powers, some of which potentially conflicted with the CAA's regulatory duties. More recently, the Department for Transport modified the idea into its proposal for an ICCAN, without any decision-making powers and with a role providing advice and expert opinion to the CAA which we will be required to take into account in aspects of our work (i.e. within our airspace change decision-making process). Furthermore, it is assumed that the UK aircraft noise model (ANCON) and associated expertise and technology would not now move to ICCAN.
- 3.34 The CAA now does not believe that there is significant, or possibly any, overlap with our own roles undertaken within either our Airspace Regulation team or Environmental Research and Consultancy Department. As such, creation of the body may take longer than currently expected, as the hiring and onboarding process for new staff may be lengthy.
- 3.35 In paragraph 6.7, it is indicated that ICCAN will have a role to provide advice on airport development and airspace modernisation, without being clear that this relates solely to noise impact. Without the technical expertise or a formal function, it is not clear how ICCAN would have the ability to offer wider input. It

would be helpful to clarify that this role refers solely to noise impacts, for the avoidance of doubt.

- 3.36 We recognise that ICCAN can play an important role in enhancing transparency, assessing the effectiveness of information provision, and assuring the impact of mitigations. But the CAA's experience of airspace design, management and regulation suggests that no single body is likely to bring about a significant change in overflowed communities' understandable concerns about the noise impacts from airspace change. We are therefore wary of raising expectations that ICCAN will be able to change perceptions in this respect.
- 3.37 The consultation document sets out the government's intention that ICCAN has a role in all tier 1 and tier 2 airspace changes (presumably including Trials and Temporary Airspace Changes where appropriate). The CAA assumes that this role would be limited to changes with a noise impact – those changes under 7,000ft amsl in the DfT's altitude-based priorities, or Level 1 changes within the CAA's proposed process. The final decision will need to be reflected in the directions and ANG.

3b: Please provide your views on the analysis and options for the structure and governance of ICCAN given in Chapter 6, and the lead option that the Government has set out to ensure ICCAN's credibility.

- 3.38 As the perception of independence is fundamental to its success, the CAA considers that being separate from all of the organisations involved in making airspace decisions would benefit ICCAN. Having considered several options, which each present some challenges and issues, the Government has proposed that ICCAN should be an arm's length body of the CAA.
- 3.39 We will work with Government to implement its preferred solution once it is confirmed following the current consultation, but would emphasise that the CAA considers it should have a limited role in setting up ICCAN to ensure its independence is secured.
- 3.40 Given the understandable desire from government for an ICCAN to be created as swiftly as possible once it has made its decision on its preferred solution, and as the arm's length body structure is the lead option, we are undertaking some preparatory work to understand the legal, staffing, back-office support and financial implications of this proposal for the CAA, to ensure we are able to implement any decision swiftly. However, building on the point above, this work does not cover creating a Business Model for ICCAN; setting out detailed job descriptions; or a process of preparing to hire any staff. We do not believe that these roles are appropriate for the CAA to undertake to ensure ICCAN retains independence.

4a: Please provide your views on the proposal that the competent authority to assure application of the balanced approach to the adoption of operating restrictions at airports in England should be as set out in Chapter 7 on Ongoing Noise Management and further information at Annex F.

- 3.41 The CAA welcomes the proposal that it becomes the competent authority in relation to application of the balanced approach. The CAA's unique expertise and range of functions ensures that the need to balance all relevant considerations (including safety and operational issues, alongside environmental impact) will be factored in to our decision-making.
- 3.42 We consider that instances of operating restrictions being introduced without a role for the relevant planning authority would be infrequent.

4b: Please provide your views on the proposal that responsibility for noise controls (other than noise-related operating restrictions) at the designated airports should be as set out in Chapter 7 on Ongoing Noise Management.

- 3.43 The CAA does not have any views on these proposals.

4c: Please provide your views on the proposal that designated airports should publish details of aircraft tracks and performance. Please include any comments on the kind of information to be published and any evidence on the costs or benefits.

- 3.44 The CAA welcomes the proposal to introduce additional formal information requirements for airports and recognises that many airports already publish such information, but would look to the sector to comment on the potential costs and benefits of publication of aircraft track-keeping performance in particular.
- 3.45 The DfT may wish to have regards to our draft Airspace Design Guidance in which, to meet proposed Tier 3 requirements, we propose a series of metrics which may be useful in helping communities and other stakeholders understand the impacts of aviation⁶. This data could be generally useful, and may be considered best practice on information provision – but would constitute best practice not a formal requirement.
- 3.46 The CAA considers that it is important to ensure that any information guidance is proportionate, and promotes best practice which airports can apply to their own unique local circumstances, rather than imposing a one-size-fits-all requirement.

⁶ See para 302 onwards here: http://publicapps.caa.co.uk/docs/33/CAP1520_AirspaceChange_Plain.pdf

4d: Please provide your views on whether industry is sufficiently incentivised to adopt current best practice in noise management, taking into account Chapter 7 on Ongoing Noise Management, and the role of the Independent Commission on Civil Aviation Noise in driving up standards in noise management across the aviation sector.

The CAA's formal role in ongoing noise management

- 3.47 When considering the role of the regulator in ongoing noise management and incentivising good practice, it is important to be clear that the CAA does not currently have powers to require the aviation industry to take particular actions to manage noise, or to enforce standards relating to noise management.
- 3.48 The Transport Act 2000 and the Secretary of State's Directions to the CAA made pursuant to it, set out the CAA's role in relation to managing airspace and approving changes to airspace. As the CAA's role in deciding whether or not to approve a change does not empower us to set conditions on airports, ANSPs or airlines, the Act does not give the regulator any explicit enforcement powers.
- 3.49 The CAA has a duty set out in the Civil Aviation Act 2012 to make information available relating to the environmental effects of civil aviation. This duty also includes provision for the CAA to publish advice and guidance with a view to reducing, controlling or mitigating adverse environmental effects.
- 3.50 In its 2016-2021 Strategic Plan, the CAA set out its intention to undertake a review of opportunities to influence noise management that are within its existing powers and activities. This review is exploring opportunities to use existing powers the CAA already holds to drive performance improvements in aviation noise management. We intend to publish conclusions from this work during 2017, after a period of engaging all stakeholders to consider the issue.
- 3.51 We set out above our broader considerations relating to our role in paragraph 1.37 onwards.

The role of industry

- 3.52 As set out above, the CAA is concerned that it is not clear that the regulator does not currently have powers to hold industry to account in relation to ongoing noise performance. Further, we believe that with no entity being provided such a role, community trust in aviation is unlikely to be enhanced to the point where the changes that facilitate modernisation are able to be implemented. In the first place, we believe that airports could do more to hold their airline customers to account on their performance. This could include greater publication standards to highlight best and worst performance; and/or adopting a stricter approach to disincentivise behaviours causing most noise impact through conditions of use which are set by airports. The CAA would be happy to work with the DfT in developing such an approach.

- 3.53 The consultation text relating to ongoing noise management focuses principally on the role of airports. While airports are rightly the usual focus of community requests for information and redress relating to noise issues, there are also roles for ANSPs and airlines to play in ongoing noise management, whether from the perspective of information provision, or in developing operational procedures that reduce noise. The CAA considers that it is important not to inadvertently undermine this role by underemphasising it in the policy framework.
- 3.54 The CAA notes that the consultation is not proposing to directly impose obligations on an ANSP to consider the environmental impact of the decisions it makes (as the DfT has the power to do under section 39 of the Transport Act). Instead the consultation proposes indirect oversight by the CAA via tier 3 and non-statutory best practice expectations on industry to be placed at the end of the Secretary of State's guidance to the CAA on its environmental duty (ANG). We note the government's statement that if industry is not responding to the CAA's tier 3 role it may consider further action, including giving the CAA powers to enforce its guidance. The Secretary of State may consider using the direct power under s39 instead or in addition to this.

5: Please provide any comments on the Draft Air Navigation Guidance published alongside this consultation.

- 3.55 Clarity in the documents that make up the final policy framework will be critical to the successful implementation of DfT's final policy as well as infrastructure development and modernisation of airspace in the long term. Experience shows that ambiguity leads to uncertainty and in some cases legal action to resolve those uncertainties.
- 3.56 We intend to provide the DfT with a marked-up version of the draft ANG, given the close interplay between our own process and the government policy framework. We will use this to highlight specific areas where we believe that additional clarity or confirmation of the DfT's intention will provide helpful certainty for all stakeholders.
- 3.57 Given the close interplay within our own process, and the CAA's necessary ongoing relationship with the policy framework, and its associated guidance and directions, we would be happy to meet with the DfT to discuss any specific points of detail that our subject matter experts and legal teams believe would provide additional clarity and certainty.

Chapter 4

Additional comments

- 4.1 These are issues that are neither specific to particular areas of the consultation nor covered by any of the consultation questions, but that the CAA believes are important to highlight in order to ensure that the final policy framework, Directions and ANG are clear and consistent.

Directions

- 4.2 Several of the areas detailed in the consultation will need the DfT to require the CAA, by way of revised Directions, to take on revised or new functions (such as tier 2 and tier 3 functions) or to take certain actions, for instance, the creation of ICCAN. We expect that the final policy framework will be wholly reflected in revised Directions to the CAA, the revised ANG and any additional documents necessary. We will highlight these areas in our detailed comments to ensure there is a clear legal framework for the CAA to deliver the DfT's intended policies.

Altitude-based priorities

- 4.3 For the sake of clarity, and for legal certainty, it is important that throughout both the policy framework, guidance and any further documents, there is consistency in how altitudes are referred to.
- 4.4 To be clear, we do not question the policy associated with the altitude-based priorities, we simply want to ensure they are expressed uniformly.
- 4.5 We set out our preferred formulation to describe altitudes and the priorities associated with them in answer to Question 2b, and would request that this is adopted throughout all DfT materials.

Tactical airspace restrictions

- 4.6 As currently drafted, the DfT's proposed policy in relation to Temporary Airspace Changes (tier 1b) risks capturing very-short term tactical and pre-tactical restrictions of airspace within their definition. We understand this is not the DfT's intention.
- 4.7 Such restrictions are normally of very short duration (often measured in hours/days), and are put in place to facilitate unusual aerial activity, for example airshows, military exercises, temporary and permanent restrictions of flying in the national interest, and operation of Royal Flights.

4.8 We consider that the final Directions should ensure that CAA can continue to adopt a proportionate approach the following short-term airspace restrictions within Tier 1b:

- Temporary Restrictions of Flying Regulations in accordance with article 239 of the ANO 2016;
- Restricted Airspace (Temporary);
- Temporary Danger Areas;
- Controlled Airspace (Temporary);
- Royal Low Level Corridors;
- Temporary airspace constructs, e.g. Tactical Air-to-air Refuelling Area or Tactical Orbit Area, for the facilitation of military exercises or operations;
- Temporary Segregated Areas;
- Establishment of Permanent Restricted or Prohibited Areas in accordance with article 239(1)(c) of the ANO 2016;
- Any temporary alteration of Instrument Flight Procedures (IFP) due to the establishment of the above restrictions e.g. TANGO SIDs at Farnborough during Farnborough International Airshow.