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Response to

Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation

Introduction

The Light Aircraft Association (LAA) is the leading organisation for powered Sports and Recreational Aviation (S&RA) in the UK. With more than 60 years of history, it has 8,000 members and regulates approximately 2,500 light aircraft. Many LAA members are individual owner/operators of light aircraft, while others operate light aircraft as part of small ownership groups. To provide airworthiness services to these members, the LAA works under a delegated authority from the Civil Aviation Authority (CAA). LAA aircraft are in the group known as 'Annex II' aircraft, which currently do not fall under the jurisdiction of EASA but remain under the control of national airworthiness authorities such as the CAA. Our members also deal directly with the CAA on many issues of registration, licensing and medical certification, etc.

Hence, the LAA has a particular interest in the CAA's activities and its underlying regulatory framework, as this is vital to our core function of providing an airworthiness service to our members. The LAA is greatly concerned that the proposed new Regulatory Framework for Aviation outlined in the consultation document will introduce a new approach which will be inimical to our interests and those of UK General Aviation (GA) more broadly; by a disproportionate and excessive emphasise on consumer protection and environmental issues. Below we will explain our main concerns. Many other points are included in the detailed response form which accompanies this paper.

Flawed consultation results in weak proposals

We believe that the consultation process was fundamentally flawed; in particular we take exception to the lack of a proper stakeholder analysis and inadequate consultation with General Aviation (GA) stakeholders. Instead of a proper pre-consultation, the proposals are rooted in Sir Joseph Pilling's 2008 Strategic Review of the CAA, and also in the recently completed DfT review of the economic regulation of airports. We disagreed with Pilling's report, because he chose to set aside much of the evidence given to him by the GA industry, including that provided by our own representatives. The DfT's economic regulation of airfields consultation was not directed at GA stakeholders, yet taken together with Pilling and driven by a consumerist agenda, it has brought forth these weak proposals which effectively ignore GA. Indeed, they were only circulated to a full GA stakeholder list by DfT at a late stage and after protests from GA representatives. Further, we were surprised, during discussion with officials, to learn that there was no awareness at the DfT of the European policy dimension and specifically of a recent and relevant EU resolution, related to business and recreational GA.

This is a missed opportunity for the government to review the way the CAA works in conjunction with all aviation stakeholders, and provide the best solution for both safety and the wider public interest. Because of the basic problems with the consultation process, these proposals do not give adequate consideration to a key stakeholder group. GA is a £1.4 p.a. billion industry regulated by the CAA and represents about 13% of the value of UK aviation, but it is mentioned only twice in passing. In 2005 there were 27,000 civil aircraft in the UK of which about 1,000 were airliners representing only 3.7% of UK aircraft. There were 16,200 aircraft,

microlights and balloons representing 60% of aircraft, with 9,500 gliders and hang gliders making up the remaining 36%. The passenger-carrying capacity of the UK GA fleet is estimated to be 40-50% of that of the airliner fleet. From these figures, it should be abundantly clear that UK aviation must be properly regulated by a body that takes an interest in the GA sector, and is not driven by an agenda constructed entirely around the airline passenger and the environment. We can only imagine that these unbalanced proposals must have been developed within a limited group of officials, in ignorance of the full scope of UK aviation and its regulatory needs. This is, perhaps, the consequence of the failure to properly identify stakeholders and conduct an adequate pre-consultation.

To address this fundamental defect in the proposals there should be a further interest group identified: - GA users. These are not 'intermediary users', but individuals and businesses directly regulated by the CAA, whose proper regulation is essential to aviation safety and the viability of the entire aviation industry in the UK. We believe that the proposed CAA priorities should be supplemented by another, perhaps couched in terms of a specific remit for 'General Aviation: business and recreational airspace users'. The interest of GA, S&RA, and the many thousands of independent aviators must not be submerged by a new consumer-oriented quango whose remit overlaps with that of the Office of Fair Trading (and which should in our view remain with that body).

Safety regulation: the ghost at the consumer feast

Perhaps the most important issue facing the CAA in recent years has been the rise of the European Aviation Safety Agency (EASA). This EU agency has increasingly taken to itself many of the old powers of the CAA and the other European national airworthiness authorities. EASA has been eating the CAA's lunch in the safety regulation, licensing and operations spheres for some years. It is hard to resist the conclusion that the CAA is being re-branded as a consumer and environmental champion, because its old safety regulation role is in decline. Nevertheless, the CAA must continue with its safety regulation role, even in a fashionable consumer-dominated agenda, as the proposals reluctantly admit (6.13). We are concerned that the new proposals present many opportunities for internal conflicts of interest between competing priorities. Safety is not always convenient for the consumer or the 'intermediary user'. Safety is not always in accord with environmental objectives. The LAA believes that aviation safety regulation must always remain the primary overriding priority for the CAA, and that all other priorities must be secondary.

An important but overlooked point here is that despite EASA, the CAA retains safety regulation powers over Annex II aircraft - those categories of aircraft which are currently excluded from EASA's remit by its founding EU legislation. Such aircraft constitute a substantial minority of light aircraft in the UK, and most LAA aircraft are included in Annex II. It was a surprise, therefore, to see that Figure 6.1 of the consultation, which purported to illustrate "Aviation safety: high level policy framework" omitted mention of nationally-regulated aircraft, and they are not mentioned elsewhere in the document. Again, we are forced to conclude that the authors of these proposals have led a sheltered life, perhaps having flown as an airline passenger, but with very little exposure to the reality of UK aviation!

Adverse consequences for GA

The consequences of a consumerist CAA focussing on the end-user, narrowly-defined as the airline passenger, will be extremely adverse for GA. The proposals (Chapter 8) try to address some difficult issues by indicating that the CAA's priorities on practical matters, including airspace, will remain in accordance with its current duties under the Transport Act 2000. At first sight, this seems fine. Then, the question is asked as to whether the interest of the end user and the 'intermediary user' diverge as regards airspace. This is a specious question because it assumes that the only stakeholders involved are in these two groups, but it clearly illustrates the thinking of those drafting the proposals. They appear to genuinely believe that the travelling public ('end-users') and 'intermediary users' (e.g. airlines providing services to end-users) are

the only stakeholders in UK aviation. As explained above, thousands of LAA members and many thousands of other GA aircraft operators are in neither of these groups, but all require access to airspace.

Given the apparent lack of knowledge of those drafting these proposals, we can have little confidence in the outcomes for GA. CAA currently balances the needs of all sectors of UK aviation, as it is required to do. An airspace planning focus that was shifted, even marginally, towards 'end-user' interests would gradually eat away our remaining UK uncontrolled airspace, always in the interests of passenger safety, convenience and of course 'intermediary user' financial benefit, with which these can be readily conflated. Similar considerations apply in the context of air traffic service provision for GA.

Indeed, these proposals make it very clear that the interests of all other parties will be secondary to those of the airline passenger. Other consumers of aviation services (for example freight customers and users of GA services) are specifically stated as secondary, although the proposal suggests that CAA *should not be prevented* from considering their interests, provided these do not conflict with those of the end user (section 5.23). The convoluted wording of this section indicates the extent of a doctrinaire consumerist mindset, in those drafting these proposals.

Other adverse consequences for GA would inevitably appear, as a result of these proposals. In particular, there is intent to allow the CAA to use the powers of the RES Act 2008 to introduce a range of civil sanctions. GA is particularly identified in the proposals, as the source of numerous opportunities to exercise such new powers. The LAA does not believe that civil sanctions should be applied to the individual GA pilot and aircraft operator. The RES Act 2008 was framed primarily as a regulation mechanism for businesses. As a general principle, we are opposed to shifting the burden of proof away from the regulator. The law is available; the courts provide a remedy where serious offences are committed. In practice, also, we perceive serious potential problems around safety, reporting and detection for the pilot and aircraft operator, and we believe they will undermine the transparent safety and reporting culture in UK aviation, to the detriment of all. Such sanctions should be reserved for purely commercial issues, and must not be applied to the safety regulation area. We are not convinced by CAA assurances that civil sanctions will not be applied to this area; a restriction should be placed on the face of the bill.

The LAA rejects the targeting of GA for sanctions and also opposes the proposal to charge 'the industry' for criminal prosecution work. The recent trend to allow regulators to fund their enforcement activity from 'the industry' provides a clear perverse incentive for regulators. LAA aviators are ordinary individuals, without industrial-scale budgets to pay for expanded CAA enforcement activities directed at airlines, as well as their own activities.

We also note that the so-called 'draft impact assessment' provided is a deplorable sham, which is unworthy of a consultation on major new legislation. It is substantially incomplete and gives no estimates for most of the proposed extra costs. One thing is clear however - the 'industry' will also be expected to pay for the CAA's proposed new activities protecting the consumer and the environment, although these are clearly public benefits. No doubt the big airports and airlines will ensure that the end user eventually pays for these benefits by passing on the CAA's additional charges to the travelling public. For aerodromes and other small GA businesses, the new priorities will lead to higher CAA charges, which will have to be defrayed from a relatively tiny number of GA users. For private aviators such as LAA members, there are no customers to mulct: they stand at the bottom of the food chain and must pay out of taxed income. We beg to object.

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