

Control of Noise from Civil Aircraft

The Government's conclusions

December 2003

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Contents

Introduction	5
Terminology	5
Overview	6
New enabling power for aerodromes to establish and enforce noise control arrangements	7
No additional power to compel an aerodrome to prepare a noise amelioration scheme	13
Duty on providers of air traffic services	16
CAA's duty to consider environmental factors when licensing certain aerodromes	17
Consultation facilities at certain aerodromes	17
Fixing charges for using licensed aerodromes by reference to noise factors	18
Nuisance caused by aircraft in flight (air noise) and on aerodromes (ground noise)	19
Regulation of noise and vibration from aircraft, which use 'designated' aerodromes, while they are in the air	21
Noise insulation	24
Coverage	25

Introduction

In July 2000 the Department of the Environment, Transport and the Regions issued a consultation paper about *Control of noise from civil aircraft*,¹ which invited comments on proposals to improve measures to tackle operational aircraft noise.

Nearly 600 responses to the consultation were received and in March 2002 the Department for Transport, Local Government and the Regions issued a *Summary of Responses*.²

This paper sets out the Government's conclusions. We have not in this document duplicated the comprehensive summary of responses, although we have commented on the broad issues raised as part of that process when explaining the reasoning behind our conclusions.

Terminology

The terms 'aerodrome'³ and 'airport'⁴ are used largely interchangeably throughout this document. The context will make it clear when a limited selection of aerodromes is referred to.

'The 1982 Act' means the Civil Aviation Act 1982.

'The 1986 Act' means the Airports Act 1986.

'The 2000 Act' means the Transport Act 2000.

'NPR' is an abbreviation for Noise Preferential [departure] Routes.

¹ *Consultation Paper: Control of Noise from Civil Aircraft*, Department of the Environment, Transport and the Regions, July 2000.

² *Summary of Responses to Control of Noise from Civil Aircraft*, Department for Transport, Local Government and the Regions, March 2002.

³ 'Aerodrome' is defined in s105 of the Civil Aviation Act 1982 as "any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically". The term 'airport', in legal parlance, has a similarly broad meaning, also specifically encompassing the buildings and facilities on the aerodrome site. Aerodromes require a CAA licence if carriage of passengers for hire and/or pilot training is to be conducted. There are currently some 145 licensed aerodromes.

⁴ Defined in section 82 of the Airports Act 1986 as 'means the aggregate of the land, buildings and works comprised in an aerodrome within the meaning of the 1982 Act'.

Overview

On broad policy direction, responses on the whole tended to divide along expected lines. ‘Industry’ interests tended to be wary of greater local government involvement in aerodrome regulation, while ‘environmental and amenity’ interests mostly favoured greater regulation. Some offered the view that more stringent regulation should be applied, that a new regulatory body should be established, and/or that the proposed new power of designation (to allow the Secretary of State to direct an aerodrome to prepare a noise amelioration scheme) should become the rule rather than the exception.

Some respondents reminded the Department of the economic and social benefits generated by local aerodromes, and in particular of their important role in the training of pilots. Many of those responding as local residents, or on behalf of amenity groups, also acknowledged the benefits of general aviation, although there were also those who tended to regard private flying as a frivolous or selfish activity; or otherwise thought that the disbenefits outweighed the benefits.

We are satisfied that general aviation does, in general, contribute significant benefits to the local and (in aggregate) national economies. We are, nevertheless, confirmed in the view that those responsible for operating aerodromes should be responsible for keeping the noise from their activities to a minimum, and should be prepared to incur reasonable costs where necessary in order to do so. This approach fits with the ‘polluter pays’ principle.

There was a measure of support from some respondents, both ‘industry’ and ‘environmental and amenity interests’ for a central regulatory body, such as the CAA (Civil Aviation Authority), or DETR (now DfT) itself, performing the functions that the consultation proposed for the aerodrome and/or local authority – in the agreement and enforcement of noise amelioration schemes (questions 4, 7, 8, 11 and 13). They argued that it would ensure both technical expertise and safety, maintain a degree of standardisation or that commercial self-interest were barriers against effective self regulation. In some cases, they amounted to advocacy of retaining section 5 of the 1982 Act and specifying large numbers of aerodromes under that power; or, implicitly or explicitly, of designating large numbers for direct regulation under section 78 of the 1982 Act.

We have carefully considered the case for a central regulatory body to perform these functions or conferring duties upon an existing entity such as the CAA or, for example, the Environment Agency or even a completely new body. However, aerodromes vary enormously in their size and type of operations and in their local circumstances, including the number and disposition of near neighbours. The policy of successive Governments has been that local environmental issues are best resolved at the local level wherever possible. This means maintaining an appropriate balance between the legitimate rights of aerodromes and aircraft operators, and the rights and interests of people in the communities disturbed by aircraft noise. The

preference for local solutions to aircraft noise issues has, we believe, generally proved successful. To require or create a central regulatory body to take on this role would be counter to this longstanding policy and would have introduced an additional layer of central bureaucracy without, we have concluded, being likely to improve the regulation and management of aircraft noise.

We proposed providing aerodromes with greater means to regulate flying behaviour, a proposal which met with general assent. This will be an enabling and clarifying power, to strengthen the confidence of aerodrome managements in making and enforcing firm rules to control noise, and to be used if there is a need to do more to control aircraft noise at a particular aerodrome. Where existing arrangements are working satisfactorily, the expectation will be that such arrangements will carry on much as before.

New enabling power for aerodromes to establish and enforce noise control arrangements

Question 1

We invite views on the proposal to give non-designated aerodromes greater powers to regulate flying behaviour.

We propose to do so, when Parliamentary time allows.

Apart from the special circumstances of Heathrow, Gatwick and Stansted,⁵ long-held Government policy is that aircraft noise problems are best resolved locally. The aircraft operator and the owner or manager of the land or airfield from which aircraft are being flown are expected to take all practical steps to ensure that disturbance to those living in the surrounding area is kept to a minimum.

In our consultation paper we explained that any aerodrome can prepare a reasonable noise amelioration scheme *restricted to activities within its boundary*, using byelaws⁶ (if necessary) or other rights and powers to underpin it.⁷ We also explained that the larger aerodromes have been able to conduct monitoring and, with air traffic control (ATC)⁸ co-operation, track

⁵ which are designated under section 80 for the purposes of section 78 Civil Aviation Act 1982.

⁶ Section 63 of the Airports Act 1986 provides for the Secretary of State to approve byelaws to enable individual aerodromes to regulate the use and operation of the aerodrome, including the mitigation of noise.

⁷ Aircraft noise may also be covered, where appropriate, by planning conditions or planning agreements under Town and Country Planning legislation.

⁸ Smaller airfields, particularly if there is no controlled airspace overhead, do not all have air traffic control units.

monitoring *outside* their boundaries. Noise amelioration measures may be published in the AIP⁹ and/or in the appropriate Manual of Air Traffic Services, used by controllers and where applicable translated into ATC instructions. Aerodromes may also make adherence to noise rules part of their conditions of use, with sanctions for non-adherence.

Although we continue to believe that the emphasis on local resolution of problems to mirror local circumstances is the right one – and that this works well in the majority of cases – there have been concerns that aerodromes' existing powers may fall short of what is required for the fullest range of noise amelioration measures consistent with the ICAO¹⁰ balanced approach. The main areas are:

- the extent of powers to set and deliver noise contour or quota controls, and
- clarification of powers to permit surcharging of aircraft that deviate from noise preferential routes (NPRs) on departure. (Typically, adherence to NPRs is assessed against a 'swathe' 1.5km either side of the nominal centre of the departure route. Where modern monitoring equipment is installed, aircraft that stray outside this swathe can be detected¹¹)
- the desirability of putting beyond doubt that aerodromes could voluntarily implement noise control measures within a reasonable range beyond the airfield itself. For example, aerobatics practice based on general aviation airfields often takes place at some distance from the aerodrome.

We acknowledge that, for the most part, airports' noise rules are applied and enforced without much legal contention, so the clarification and strengthening of these powers will not necessarily lead to dramatic improvements in the noise climates around aerodromes, in the short term. On the other hand, we have accepted that the Government has a duty in relation to the European Convention on Human Rights, especially in recognition of the protection from legal action afforded by section 76 (1) of the 1982 Act (see Question 16), to ensure that there are effective provisions to control and where possible ameliorate aircraft noise nuisance.

Any system of surcharges or penalties that aerodromes introduce for breaches of noise amelioration schemes will have to meet normal standards of reasonableness and proportionality, ultimately with the possibility of legal challenge by a dissatisfied airline. However, legislative changes should usefully strengthen airports' position in, for example, relying on a properly calibrated noise and track-keeping system, and avoiding vexatious challenges.

⁹ Aeronautical Information Package. This is generally available to pilots and air traffic controllers.

¹⁰ International Civil Aviation Organisation.

¹¹ In the case of Heathrow, Gatwick and Stansted, where the Secretary of State is responsible for noise control, it has not been found necessary to impose surcharges except for the most persistent or flagrant violations. With modern navigational equipment, and by working in co-operation with airlines, it has been found possible to reduce NPR deviations to very low levels (about 1% at Gatwick).

An additional point is that licensed aerodromes are broadly required to accept the air transport traffic, which presents itself, without undue discrimination. This places an additional premium on the clarity of powers to discipline airlines, ultimately including the sanction of denying access where an airline is a persistent offender.

Some concern was expressed that in order to address noise issues there may be a risk of safety being compromised by, for example, unorthodox circuits being specified. However any aerodrome considering the introduction of new noise amelioration measures would continue to need to be satisfied that any revised arrangements were safe in all the circumstances.

Notwithstanding the Government's strong preference for local solutions to local problems, if an aerodrome persistently resisted the introduction of reasonable voluntary noise amelioration measures the Secretary of State would have the option of designating the aerodrome under section 80 for the purposes of section 78 of the '1982 Act'¹² or to specify under section 5 of the '1982 Act'.¹³

THE AERODROMES (NOISE RESTRICTIONS) (RULES AND PROCEDURES) REGULATIONS 2003

Since the consultation was carried out the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003¹⁴ have come into force. Although the Regulations themselves do not require the introduction of new noise amelioration measures they set out the procedures which major airports¹⁵ should follow when considering noise amelioration measures. Existing operating restrictions are not affected by the Regulations.

Broadly, the Regulations require aerodromes to follow a 'balanced approach'¹⁶ when dealing with noise problems at an airport and implement the EU operating restrictions Directive.¹⁷ The main rules are that aerodromes:

- may consider economic incentives as a noise measure;

¹² This provides for the Secretary of State to prescribe measures to limit or mitigate the effect of noise and vibration connected with the taking off or landing of aircraft at aerodromes.

¹³ This empowers the Secretary of State to place a duty on the CAA to take environmental factors into account when licensing an aerodrome specified for the purpose.

¹⁴ Statutory Instrument 2003/1742.

¹⁵ Broadly the regulations apply to 'city airports' as defined, and to any other civil airports that have more than 50,000 movements of civil subsonic jet aeroplanes per year. Currently these are Birmingham, Edinburgh, Glasgow, London Gatwick, London Heathrow, London Stansted, London Luton, Manchester, London City and Belfast City.

¹⁶ A concept enshrined in International Civil Aviation Organisation Resolution A33/7.

¹⁷ Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002, on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community Airports.

- shall not impose a measure or a combination of measures which is more restrictive than is necessary to achieve the environmental objectives established for the airport by that authority;
- shall not discriminate on grounds of the nationality or the identity of the air carrier or the aircraft manufacturer;
- should take into account the likely costs and benefits of the various noise measures available as well as airport-specific characteristics;
- when introducing restrictions based on an aircraft's noise performance, should base these upon the noise performance of the aircraft as determined by the certification procedure conducted in accordance with Annex 16;¹⁸
- shall establish one or more environmental objectives for the airport before considering any measures under the Regulations.

Schedule 2 to the Regulations lists the matters to be taken into account when considering operating restrictions at a relevant airport and CAEP¹⁹ will shortly publish guidance for airports.

Question 2

- i) Do you consider that a new power should be available to all aerodromes, or only to certain categories?**
- ii) If the latter, what sort of categories – e.g. would an annual turnover or movements threshold be appropriate, or perhaps the new power should be limited to licensed aerodromes?**

We asked whether the proposed new power should be available to all aerodromes or only to certain categories. **We have concluded that this enabling power should be available to all aerodromes.** Concerns over noise are certainly not restricted to large busy aerodromes. Even a small aerodrome may attract complaints as a result of, say, prolonged low-level circuit training. For this reason we could see no compelling argument for restricting proposed additional powers to licensed aerodromes; or based on movements or annual turnover.

There were concerns at the potential cost, in time and money, for noise monitoring equipment for example, at the smaller aerodromes. Clearly, what would be reasonable at a major airport would be beyond what one would expect at a small grass airstrip used on an occasional basis, or even at a busy general aviation airfield. However, it should be borne in mind that at the majority of aerodromes, effective noise control arrangements will already exist and it is not the intention that these new powers should be used to unpick existing arrangements (including any planning permissions/conditions and section 106²⁰ agreements).

¹⁸ Annex 16 means the third edition of Volume 1, Part II of Annex 16 of the Chicago Convention on International Civil Aviation 1944.

¹⁹ ICAO's Committee on Aviation Environmental Protection.

²⁰ Section 106 of the Town and Country Planning Act 1990 (as amended).

Question 3

We invite views on our proposal that infringements of noise amelioration schemes should be dealt with on a civil [law] basis.

We sought views on whether infringements of noise amelioration schemes set up by aerodromes should be on a civil or criminal basis. The majority of those that responded supported the use of civil law, one consideration being the less exacting burden of proof in the event of dispute.²¹

A number of points of view were put. On the one hand it was argued that using the law increased the risk of litigation which small aerodromes could ill afford and that ‘naming and shaming’ would be sufficient. At the opposite end of the spectrum was the view that criminal sanctions would be preferable – citing criminal sanctions for offences under the Environmental Protection Act – or at least as a fall back for persistent offenders.

On balance we are persuaded that agreements between aerodromes and their users on noise amelioration measures **should generally continue to be underpinned by civil law**. We expect that financial or other types of penalties (e.g. suspension of an operator) would normally only be invoked after appropriate verbal/written warnings have been given.

Question 4

- i) Do you agree that aerodromes should be free to set whatever reasonable sanctions they think appropriate, within limits set down by the Secretary of State?**
- ii) What are your views on the sanctions that could be applied by an aerodrome for failure to comply with a noise amelioration scheme?**

In our consultation paper we explained that the Department did not propose to specify in detail the sanctions that aerodromes should adopt for aerodrome users that fail to comply with the terms of an amelioration scheme. We did, however, suggest that the Secretary of State should provide non-statutory guidance setting the minimum and maximum sanctions that aerodromes should adopt.

There was widespread support from respondents for guidance to be issued. **We shall work with relevant bodies to draw up non-statutory guidance on sanctions in due course.**

Some respondents suggested that a third party might set the sanctions rather than the aerodrome and also that the sanctions regime should be agreed with the local authority to whom compliance reports should be provided. Given the civil law remedies ultimately available, and the consultative framework which enables local authorities and amenity groups to put their views on such matters, we have not been persuaded that the bureaucracy involved in such an arrangement, would be justified.

²¹‘Balance of probabilities’ vs. ‘beyond a reasonable doubt’.

Question 5

- i) **Do you think the physical extent of the new power should be defined as a) the aerodrome traffic zone (ATZ) where one exists; b) a larger area based on the ATZ definition; c) an area dependent on the vertical and lateral position of an aircraft when it is at a certain stage during flight – such as attaining a specific height after take-off, or on joining final approach or leaving a noise preferential route?**
- ii) **We invite other suggestions on defining the physical extent of the new power.**

As we explained in our summary of responses, views varied widely on these questions. Some aerodromes were concerned at the prospect of being held responsible for the action of pilots outside the immediate vicinity of the aerodrome itself whereas some local authorities and environmental groups noted that an ATZ would not always cover the standard training circuit.

Some respondents argued that the area of control should be determined locally without attempting to provide a ‘one size fits all’ definition in legislation; they particularly observed that the physical extent of an aerodrome’s powers ought to be related to the monitoring and enforcement capability at the aerodrome’s disposal. It would be unreasonable, it was argued, to expect a small aerodrome to be able adequately to monitor an area much beyond its physical boundary.

The CAA noted that the rules applicable to ATZs do not give aerodromes any special authority to direct the operation of flights unless an air traffic control service is provided and suggested that the extent of the new power could be defined as in the vicinity of an aerodrome as based on ICAO Annex 11:

“An aircraft is in the vicinity of an aerodrome when it is in, entering or leaving the aerodrome traffic circuit”.

We believe that this, coupled with a discretionary power for the Secretary of State to extend the boundaries of the new power for new noise controls in individual cases (see Question 6 below), represents a sensible minimum. However, the larger airports operate controls, such as noise preferential routes for departures and continuous descent approach (CDA) for arrivals, which extend beyond the traffic circuit, but can be monitored using modern noise and track-keeping (NTK) systems.

We conclude that the Annex 11 definition (to encompass the area within and immediately outside the traffic circuit) **is appropriate as the ‘default’ scope of aerodrome noise powers, but that these should reach also to the full extent of noise preferential routes.** Where an airport has the capability to monitor adherence to specified CDA procedures from a height up to 6,000ft, the enhanced powers should extend to the applicable monitoring area.

Where, conversely, an aerodrome does not yet have the facilities accurately to monitor flights over the full extent of its circuit(s), its enforcement criteria should of course be fair and proportionate taking account of such limitations.

Question 6

- i) **Do you think that the Secretary of State should be given discretion to authorise the extension of the boundaries of a scheme?**
- ii) **If so, what opportunity (if any) should be given to others to make representations?**

This attracted a rather mixed reaction, as described in the summary of responses.

As noted above, there are large differences between the circumstances at large airports with expensive noise and track keeping systems, and small general aviation aerodromes, some of which lack an aerodrome traffic zone. Although we would anticipate that the definition of the physical boundary of a 'noise amelioration zone' as described under Question 5 is flexible enough to cover most circumstances, we have concluded that the Secretary of State **should have discretion to authorise the extension** of the boundary of a particular scheme (by order) upon application from an aerodrome.

However, **we believe that before making a decision to extend reach of noise controls, the Secretary of State should be required to consult:**

- the CAA;
- local authorities in whose areas the aerodrome or any part of it is situated;
- other local authorities whose areas are in the neighbourhood of the aerodrome;
- other organisations representing the interests of people living near the aerodrome.

No additional power to compel an aerodrome to prepare a noise amelioration scheme

Question 7

- i) **Do you agree that the Secretary of State should have discretion to specify that an aerodrome must prepare a noise amelioration scheme and then must agree it with its local planning authority?**
- ii) **If not, can you suggest a better alternative?**

In our consultation paper we proposed giving the Secretary of State a new discretionary power to direct an aerodrome to prepare and agree a noise amelioration scheme with the 'lead' local planning authority.

We also proposed that where the aerodrome and 'lead' local authority could not agree a 'scheme' the matter should be referred to independent arbitration broadly according to the provisions of the Arbitration Act 1996 and that the 'lead' local authority should have enforcement powers should an aerodrome not implement the 'agreed' scheme. Lastly we asked for views on whether aerodromes should agree with the 'lead' local planning authority how long noise amelioration schemes should run and when they should be removed.

As we explained in our summary of responses some aerodromes expressed concern at the possibility of local authority involvement whereas some of those in favour nevertheless felt that guidance on what was expected of schemes would be helpful. Some considered that other organisations such as the CAA, DETR (now DfT/ODPM/Defra), County Councils or Regional Assemblies would be better placed to agree schemes than local planning authorities. Airlines were generally opposed to our proposal arguing that even if an aerodrome agreed a scheme with the local planning authority this could be nullified as the Secretary of State could still use his designation powers under section 78 of the 1982 Act. They were also concerned that proliferation of local regulations may lead to contravention of international standards, a point also made by airport users and aviation related organisations. Airport consultative committees, environmental organisations and local authorities were generally supportive. Some suggested that the aerodrome should consult local residents and parish councils about their proposals, not just the 'lead' local planning authority. Some suggested a greater use of section 5²² of the 1982 Act as an alternative to our proposal.

Having considered the arguments, **we have decided not to proceed with the new power** as we are persuaded that a new prospective layer of regulation would have been too bureaucratic. In coming to this view, we have been mindful that the Secretary of State's powers to specify/designate an aerodrome under section 5 or 80 (for section 78) of the 1982 Act would provide an adequate safeguard should an aerodrome's voluntary amelioration measures be regarded as inadequate. This was also one of the considerations that we took into account in arriving at our decision not to repeal section 5 of the 1982 Act as originally proposed (see Question 13).

Question 8

- i) Do you agree that local authorities should be given the power to compel certain aerodromes to implement noise amelioration schemes that were agreed under compulsion?**
- ii) Should local authorities additionally be given powers to compel aerodromes to implement voluntary noise amelioration schemes?**
- iii) What sanctions do you think should be available to local authorities?**

The question of whether local planning authorities should be given powers to enforce the implementation of compulsory noise amelioration schemes is **no longer relevant in view of the decision not to proceed with the proposal at Question 7.**

²² Section 5 empowers the Secretary of State to place a duty on the CAA to take environmental factors into account when licensing an aerodrome specified for the purpose.

As part of our consultation however we also sought views on whether local planning authorities should have powers to compel aerodromes to implement noise amelioration schemes drawn up on a voluntary basis. This received general support from environmental groups and local authorities but was generally opposed by aerodromes and airlines, again over worries about widely differing schemes being drawn up in an industry largely regulated by international agreements. There were also concerns that local authorities would lack sufficient technical knowledge of aviation procedures to enable them properly to enforce noise amelioration schemes.

Local planning authorities generally have wide experience in enforcing planning conditions and obligations, although knowledge of aviation issues will vary from area to area depending on number and type of aerodromes within their area. In particularly complex cases it would be open to a local planning authority to seek specialist consultancy advice, for example, if it felt that there was a need for more technical knowledge. But some local planning authorities will have built a degree of aviation expertise as a result of their duties under planning legislation.

We therefore reject arguments that LPAs *could* not fulfil this role, were it given to them. However, none of the arguments and evidence adduced has convinced us that it is necessary to give LPAs power of compulsion over airport schemes. We have concluded that it is appropriate to leave airports, given their primary relationship with the aircraft operators, with the normal discretion to enforce their own rules. Local authorities and others will continue to be able to put any concerns they may have about enforcement through the consultative processes. Ultimately, as has previously been explained in this paper, the Secretary of State does have the power to intervene (under sections 5 and 78 of the 1982 Act) should voluntary arrangements be found to have failed.

Question 9

Do you agree that disputes about the content of a noise amelioration scheme should be resolved through an independent arbitration process, without referral to the Secretary of State?

Question 10

Do you have any views on how arbitration costs should be divided between the parties, or on other details of the arbitration process?

Question 11

i) Do you agree that aerodromes, in agreement with their local planning authority when required, should decide how long their noise amelioration schemes should run and that long term schemes should be reviewed at appropriate intervals?

ii) Should the review period for a long term scheme be laid down, or left to the parties to agree?

Questions 9–11 were linked to the proposed new power to compel an aerodrome to prepare a noise amelioration scheme (Question 7) which is not to be proceeded with. **We have concluded that it would not be appropriate to legislate for dispute resolution (nor for provisions**

relating to duration or review arrangements) in respect of noise amelioration schemes that have been drawn up voluntarily. There is nothing to stop aerodromes themselves proposing a dispute resolution arrangement with the local authority as part of a voluntary scheme.

Duty on providers of air traffic services

Question 12

- i) **Do you agree that the providers of air traffic services should be required to take account of the need to minimise noise disturbance and to consult the managers of certain aerodromes over proposals to change standard navigation procedures in the vicinity of these aerodromes?**
- ii) **Should ATS providers be required to consult all aerodromes, only licensed aerodromes, or only those with an annual turnover or number of movements or some other criterion above a certain level?**

We recognised that decisions on routing of aircraft made by air traffic controllers can have an impact on noise and we asked for views on whether they should have an explicit duty to take into account the need to minimise disturbance caused by noise. We mentioned that related provisions were contained in the Transport Bill then going through Parliament.

Since our consultation the Transport Act 2000 has come into force. The Secretary of State has given directions to the CAA under section 66 of the Act dealing with (among other things) changes to airspace arrangements. Section 70(2)(d) requires the CAA, in exercising its air navigation functions, to take account of guidance on environmental objectives given by the Secretary of State. **Comprehensive guidance was issued in January 2002²³** including factors relevant to both aircraft arrivals and departures as well as changes to airspace arrangements and procedures.

Additionally the Secretary of State has powers (under section 39 of the 2000 Act) to give air traffic service providers (either generally or individually) directions relating to the environment. **It is our intention to issue such directions in due course.**

Although many respondents did not express views on this matter most that did were supportive although there were concerns that air traffic service providers should concentrate on safety rather than noise. There is no question but that safety considerations will remain paramount.

²³ *Guidance to the Civil Aviation Authority on Environmental Objectives Relating to the Exercise of its Air Navigation Functions*, Department for Transport, Local Government and the Regions, January 2000.

CAA's duty to consider environmental factors when licensing certain aerodromes

Question 13

Do you agree that section 5 of the Civil Aviation Act 1982 should be repealed and replaced (as to noise) with new powers?

Section 5 empowers the Secretary of State to place a duty on the CAA to take environmental factors (including noise and emissions) into account when licensing²⁴ an aerodrome specified for the purpose.²⁵ The power has never been used and in our consultation paper we suggested that the CAA's inspection regime should concentrate on safety issues and that environmental matters should be looked at separately with the involvement of local people. This proposal was underpinned by the parallel proposals that aerodromes themselves might be given greater powers to control noise *and* that the Secretary of State would be given a discretionary power to direct an aerodrome to agree a noise amelioration scheme with the relevant local authority.

However, in view of our decision not to proceed with the power to direct aerodromes to prepare a noise amelioration scheme we have concluded that it is appropriate to retain section 5 for the time being, as an alternative to section 78 if and where voluntary arrangements prove problematic.

The CAA had strongly favoured repeal of section 5, with a view to maintaining the single focus of its aerodrome standards department upon safety regulation. In deciding not to repeal we acknowledge this concern, and that there would be resource implications for the CAA if aerodromes were to be specified under section 5.

Consultation facilities at certain aerodromes

Question 14

- i) Do you have any views on the current consultation arrangements?**
- ii) Is the legislative framework adequate?**
- iii) Should it, for example, provide specifically for a dispute resolution procedure?**
- iv) How might the arrangements be improved?**

²⁴ Aerodrome licensing function of the CAA is a reference to any function conferred on it by or under article 103 of the Air Navigation Order 2000.

²⁵ Specifically this requires the CAA to have regard to the need to minimise so far as reasonably practicable any adverse effects on the environment and any disturbance to the public, from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation.

Section 35 of the 1982 Act enables the Secretary of State to designate an aerodrome and require its management to provide adequate facilities for consultation for users of the aerodrome, local authorities whose areas cover or are in the neighbourhood of the aerodrome, and other organisations representing the interests of local people, on any matter concerning the management or administration of the aerodrome which affects their interests.

A number of respondents considered that consultative committees should be given executive or enforcement powers. However, a consultative committee is not intended to detract from the responsibility of the management to manage an aerodrome, and we agree with the majority of respondents that this would not be appropriate. We have also concluded that it would not be appropriate for the Secretary of State to supplant the courts' role as arbiter of claims that aerodromes have failed to discharge their section 35 duties.

There was otherwise general acceptance that the legislative framework was adequate and **we do not intend to ask Parliament to amend section 35.**

Most of the 51 aerodromes currently designated have established consultative committees for this purpose. Non-statutory guidelines, to assist those running such committees, were issued in 1987.²⁶ A number of respondents had suggested updating this guidance. After further discussion with a selection of interested parties, the Department **has produced revised guidance** for consultative committees.

Fixing charges for using licensed aerodromes by reference to noise factors

Question 15

Do you agree that this section [38] should be amended to make it clearer that charges can be directly related to compliance with noise mitigation procedures such as 'noise preferential routes' [NPRs] (provided such routes are reasonable having regard to safety requirements and aircraft capabilities)?

Licensed²⁷ aerodrome authorities²⁸ currently have the power, under section 38(1) of the 1982 Act, to fix their charges in relation to aircraft noise, or to

²⁶ *Guidelines for Airport Consultative Committees*, Department of Transport, December 1987.

²⁷ 'Licensed' aerodromes are those licensed by the CAA under article 103 of the Air Navigation Order 2000 for the landing and take-off of aircraft which can be used for the public transport of passengers, or for giving instruction in flying to a person, or for conducting a flying test.

²⁸ An aerodrome authority means a person owning or managing an aerodrome licensed under the Air Navigation Order (S.I. 2000/1562, as amended).

the extent or nature of inconvenience resulting from such noise. The aim of this provision is to encourage the use of quieter aircraft and diminish inconvenience from aircraft noise. Section 38(2) empowers the Secretary of State (by order) to direct specified aerodromes in this regard although no such direction has, to date, been made.

Although a number of airports already incorporate in their charges an element to cover aircraft noise, it is apparent to the Department that there is some uncertainty as to whether section 38 allows for charges, for example, to reflect track-keeping infringements. The amendment proposed would make such power explicit.

There was general support for this proposal, subject to satisfying concerns about safety aspects and that the practical complexities of charging would be beyond many smaller aerodromes. Some considered that voluntary measures and guidance would be a better alternative to legislation. The Department agrees that co-operation between airports, airlines and air traffic controllers (as well as others including airlines' chart-providers) typically offers the best prospect of improving adherence to noise controls, including NPRs. However, surcharges can have a part to play, especially where there are flagrant and persistent violations, and **we have concluded that section 38 should be strengthened and clarified in this respect** when Parliamentary time allows.

We accept that the use of airport charges to reflect deviation from noise preferential routes is only likely to be possible at those airports where suitable technical facilities to monitor flight departures (NTK systems) exist.

Nuisance caused by aircraft in flight (air noise) and on aerodromes (ground noise)

Question 16

Do you agree that there should be no change to section 76 or 77 of the 1982 Act (other than the technical amendment referred to) nor to article 108 of the Air Navigation Order 2000?

Essentially, section 76 of the 1982 Act protects pilots and airlines from being sued for trespass or nuisance because they have overflowed anyone's property as part of normal flight. A provision having this effect has formed part of civil aviation law from the earliest days of commercial aviation. Without this or some similar protection, all civil aviation would be placed in practical difficulty.

Similar provisions to those in section 76 are also found in international law and in domestic law in other countries. Specifically, they are comparable with those of article 1 of the 'Rome Convention'.²⁹

²⁹ Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, 7 October 1952.

An important pre-condition in section 76 is the requirement for any flight to be in compliance with the provisions of any Air Navigation Order. Air Navigation Orders set various standards for the operation of aircraft which are relevant to the application of section 76 of the Act. Among these is article 84 of the Air Navigation Order 2000³⁰ which provides for the Secretary of State to make regulations known as the Rules of the Air, which prescribe, among other things, the manner in which an aircraft may be flown. At the same time section 76 provides for the recovery of damages for material loss or damage to persons or property caused by an aircraft or something falling from an aircraft, without the need to establish proof of negligence or intent.

Under section 77 an Air Navigation Order may regulate the conditions under which noise and vibration may be caused by aircraft on aerodromes (*i.e.* on the ground), and, in common with section 76, it also provides that no action may be brought for nuisance in respect of noise and vibration caused by aircraft complying with such an Order. Article 108 of the Air Navigation Order 2000³¹ allows the Secretary of State to prescribe the conditions under which noise and vibration may be caused by aircraft at certain types of aerodrome, and in particular at licensed aerodromes; and a general permission made (in 1993) under a predecessor Order³² is extant. Airports are responsible for setting more detailed rules to regulate ground-noise.

Most comments received related to section 76 and, although the majority of respondents agreed that there should be no change, some argued that the legal protection afforded may have been necessary in the early days of aviation but that the industry had expanded in ways that could not have then been foreseen. Various alternatives were put forward such as the ability to take action against inconsiderate flying nuisance or that non commercial traffic should not enjoy section 76 'protection'. **We have, after weighing these arguments, concluded that it would not be appropriate** so to amend section 76.

It was also suggested by some respondents that section 76(2) should be amended so that the civil legal standard of proof,³³ required in order for a claim to succeed in respect of wake vortex³⁴ damage to buildings, should be relaxed; or airports be required to implement a statutory compensation scheme, again without need for legal proof of liability. In practice, some airports have taken responsibility for dealing with complaints about vortex damage – including the payment of appropriate compensation – in recognition of difficulties that can arise in identifying the aircraft that has caused damage. We do not believe that the case has been made for transferring legal liability from the owner (or lessee) of the aircraft to the aerodrome operator.

³⁰ Statutory Instrument 2000/1562.

³¹ See footnote 30.

³² The Air Navigation (General) Regulations 1993 (S.I. 1993/1622).

³³ Balance of probabilities.

³⁴ Vortex is a circulating current of air that trails from the wing tips of arriving aircraft, which can occasionally damage roof tiles.

Regulation of noise and vibration from aircraft, which use ‘designated’ aerodromes, while they are in the air

Question 17

- i) Do you agree or disagree with the proposals at (a), (b), (c) and (d) above [amendments to section 78 of the 1982 Act listed at para 31 of the consultation paper]?
- ii) Do you agree that the Secretary of State’s powers under section 78 of the Civil Aviation Act 1982 should remain otherwise unchanged?
- iii) If not, have you any suggestions for change?

Noise from aircraft using the ‘designated’ aerodromes is regulated according to notices and directions made under section 78 of the 1982 Act. The ‘designated’ aerodromes are currently Heathrow, Gatwick and Stansted. The Secretary of State has powers under section 78 to direct aircraft operators using these airports, or the airport operators themselves, to adopt procedures that limit noise and vibration.

As we explained in our consultation paper we consider that existing powers are broadly appropriate to secure most of the present noise control policy objectives for designated airports, but that some limited changes are desirable;

- (a) *clarification and expansion of the powers in section 78(3)(b), to enable the Secretary of State to specify a constraint or constraints which would have the effect of limiting how often aircraft (or certain types of aircraft) could take off or land at the aerodrome in 24-hour periods or between specified times of the day or night. The constraint could, for example, take the form of noise quota limits or a limiting noise contour area;*
- (b) *clarification of section 78(6) to make explicit that the Secretary of State may direct an aerodrome manager, subject to overriding considerations of safety, to direct take-offs and/or landings onto a particular runway;*
- (c) *placing an explicit duty upon air traffic service providers to co-operate with aerodrome managers and (again subject to safety considerations) on direction of operations;*
- (d) *explicitly enabling ‘designated’ aerodromes to make surcharges, or the Secretary of State to stipulate the range of fines to be levied by the courts based upon their standard scale, for violations of the requirements of a notice under section 78 places on aircraft operators.*

Point (a) relates to a previous High Court ruling.³⁵ In 1993 the then Secretary of State wanted to discontinue using limits on the number of aircraft

³⁵ *Reg -v -Sec. State for Transport, ex p. Richmond LBC* [1994] 1 ALL ER 577, [1994] 1 WLR 74.

movements as the main form of night restrictions. Instead the Government of the day wanted to rely solely on a noise quota, which was designed to encourage the use of quieter aircraft by making noisier types use more of the quota for each movement. However, the High Court ruled that that was contrary to the provisions of section 78(3)(b) because the maximum number of movements would not be specified, as required by that section. The noise quota provisions currently applied are therefore a supplementary measure.

The proposed amendment would permit, if the Secretary of State so determined after consultation, application of quota limits as the sole or primary control mechanism, thus simplifying the night restrictions so that they relate chiefly to the amount of noise likely to be caused, rather than the number of movements. This amendment, as proposed, would also expand the scope of potential noise controls to the whole day, or season, rather than specified periods only (such as the night period 2300-0700 and night quota period 2330-0600, as at present). This could allow the imposition of overall noise contour limits for existing facilities: at present, such limits could only be imposed (as in the case of the Heathrow Terminal 5 decision) in relation to a planning decision, or else entirely voluntarily. The Secretary of State would also have the power to direct runway preferences.

Points (b) and (d) deal with more technical points. On (d), Heathrow, Gatwick and Stansted do already make surcharges for violation of departure noise limits (not to be confused with NPR deviations), but on a voluntary basis. But we believe that there is a need for this to be explicitly stated in section 78 as there is uncertainty that the existing power in section 38 (2) of the 1982 Act to direct on noise-related charges can be applied in respect of sanctions for breach of section 78 noise controls at the aerodromes where the Secretary of State is responsible for noise management.

As we explained in our summary of responses, respondents mostly supported the proposed amendments although some concerns were expressed. The amendment proposed in (a) was considered to have potential economic and capacity implications for aerodromes (and, ultimately, for some of their users). We have considered this concern carefully, but have concluded, in line with the policies set out in the air transport White Paper, that it is appropriate for the Secretary of State to take these extended powers in reserve, for use if necessary to deliver his commitment to achieving an appropriate balance of social, economic and environmental considerations. In doing so, it is not the Secretary of State's intention to overturn or amend decisions already reached through the planning system.

There was also some opposition to (b), suggesting that the role of the Secretary of State could be detrimental to safety. There were concerns about the powers in (d), as airport operators could be effected by the proposed surcharges.

However, such powers would not be exercised arbitrarily and safety would continue to be an overriding consideration. Operating restrictions may only be introduced in accordance with the ICAO balanced approach and, at the

three 'designated' London airports, specifically with Directive 2002/30/EC (implemented in the UK by S.I. 2003/1742); and after prior consultation (including regulatory impact assessment) in the normal way.

As regards item (c) this proposed amendment has been overtaken by section 39 of the Transport Act 2000. This empowers the Secretary of State to give directions to air traffic service providers as he thinks are necessary or expedient to prevent or deal with noise attributable to aircraft used for civil aviation, or to limit or mitigate the effects of such noise. Such directions may be given to an air traffic service provider or to air traffic service providers generally.

There was no strong call amongst respondents for amendments to section 78 beyond what we had suggested although some commented that all, or many more, aerodromes should be designated. It would be impracticable for the Government to take responsibility for noise control measures at all aerodromes although it will continue to consider individual cases on their merits.

We have concluded that the proposed amendments to section 78 (except (c)) should proceed.

Question 18

- i) Do you agree that fines should be linked to the standard scale or should they remain fixed or be determined on some other basis?**
- ii) If you consider that the fines should remain fixed, do you consider that the current level (£1,000) is appropriate?**
- iii) If you consider that the fines should be linked to the standard scale, do you think that the proposed level for the initial fine is appropriate? Do you think that daily fines are a good or bad idea?**

Under section 78(8) of the 1982 Act the Secretary of State can require the managers of 'designated'³⁶ aerodromes to install, operate and maintain noise-measuring equipment and to provide noise measurement reports. Similarly section 68(1) of the 1986 Act empowers the Secretary of State to require aerodrome operators to provide, maintain and operate equipment to monitor the movements of aircraft and to provide reports. To date these powers have not been used as where appropriate such arrangements have been entered into by airport operators voluntarily. We have no reason to expect this situation to change in the foreseeable future, so the purpose of these proposed amendments was and is essentially to bring the legislation up to date.

Our questions related to the fines that are currently laid down for failure to comply with these duties. These are set down in section 78(9) of the 1982 Act and section 68(3) of the 1986 Act as amended by the Criminal Justice Act 1982.

Notwithstanding that neither section 78(8) of the 1982 Act or section 68(1) of the 1986 Act have been used **we have concluded that the fines should,**

³⁶ Currently Heathrow, Gatwick and Stansted.

as originally proposed, be linked to level 5 of the standard scale used by the courts. This would currently mean a fine not exceeding £5,000. We do not consider that the offence falls within the criteria sufficient to warrant an exceptional maximum fine of £20,000.

The legislation also provides for a daily fine if failure to comply were to continue after a conviction. We asked for views on whether daily fines were a good or bad idea and suggested, as an example, that these could be linked to level 1 of the standard scale (currently £200).

Those responding to this question (disregarding those who had clearly misunderstood it – see summary of responses) were generally in favour of linking fines to the standard scale. Fewer respondents had specific comments on daily fines although there was a general view among local authorities and environmental organisations that they should be retained with some favouring a daily fine of £1,000. **We have concluded that a daily fine should be retained and linked to level 1.**

We therefore intend to increase the level of initial fine from level 3 (£1,000) to level 5 (£5,000) and to link the daily fine to level 1 (£200).

Noise insulation

Question 19

Do you agree that there should be no change to section 79 of the Civil Aviation Act 1982?

As we explained in our summary of responses to the consultation there did appear to be a degree of ambiguity in how respondents interpreted this question. Section 79 empowers the Secretary of State to make a scheme requiring an aerodrome operator to make grants towards the cost of providing noise insulation for buildings in the vicinity of the aerodrome.

Although the majority of respondents agreed that there was no doubting the Secretary of State's statutory authority to introduce noise insulation schemes some responses took the opportunity to comment on the willingness for this power to be used.

Both Heathrow and Gatwick have been subject to mandatory schemes, and remain designated for the purposes of section 79. Many of the larger non-designated airports have introduced their own noise insulation schemes, on a voluntary basis or in accordance with planning conditions or agreements.

The White Paper on *The Future of Air Transport* sets out the Government's policy in this area, looking forward up to 30 years ahead. It sets nationally applicable criteria for airport noise insulation schemes, with the details to be set by airports. The power to designate for the purposes of section 79 will remain available, if airports fail to make appropriate voluntary schemes.

We conclude that section 79 remains pertinent, and does not require amendment for the time being.

Coverage

Our consultation paper covered England, Scotland and Wales.

Scotland

Although most of the 1982 Act relates to reserved³⁷ matters there are a number of areas where functions have been transferred³⁸ to Scottish Ministers.

As the proposed additional powers to improve noise control at aerodromes not designated for the purposes of section 78 of the 1982 Act will rest with aerodromes themselves it is not expected that there will be any Ministerial functions to transfer to Scottish Ministers.

Section 38(1) of the 1982 Act – which we propose to amend – is a reserved matter. However, the power of the Secretary of State in section 38(2) to direct an aerodrome to use the powers in section 38(1), was transferred to Scottish Ministers in respect of aerodromes in Scotland by an earlier transfer of functions order.

Section 78 of the 1982 Act – which we propose to amend – is reserved but with functions already transferred to Scottish Ministers. This will continue.

Section 35 of the 1982 Act is devolved³⁹ matter.

Wales

Civil aviation is not devolved in Wales, nor have any functions in the 1982 Act been transferred to the Assembly under the various transfer of functions orders.

³⁷ Section E4(d) of Schedule 5 to the Scotland Act 1998.

³⁸ Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999.

³⁹ Schedule E4 *Exceptions* to Schedule 5 to the Scotland Act 1998.

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