

# Consultation on UK Airspace Policy: A framework for balanced decisions on the design and use of airspace



*Response from the Aviation Environment Federation*

25<sup>th</sup> May 2017

## **Q1. Please provide your views on:**

- a. 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changes and the process which is proposed, including the criteria for the call-in and the details provided in the draft guidance.**

We give a cautious welcome to the proposal on the basis that it allows for more democratic control over decision-making than is currently the case. Irrespective of whether applications are called-in or not, however, decisions should be taken in line with a sound policy framework that fairly weighs all the issues. The consultation proposes a new policy objective, namely: “To limit and where possible reduce the number of people in the UK significantly affected by aircraft noise as part of a policy of sharing benefits of noise reduction between industry and communities in support of sustainable development.” This fails to provide any clear steer for decision-makers on how any desire to protect public health and wellbeing should be balanced against the interests of the aviation industry. The addition, compared to previous statements of policy, of the requirement to support sustainable development is at best meaningless and at worst intended to imply that the current policy arrangements ensure the sustainability of aviation’s growth. We consider this to be a very long way from the reality.

The proposed economic trigger for call-in, namely that “the proposal could have a significant impact (positive or negative) on UK economic growth” is very general and leaves a wide scope for the Secretary of State to choose to intervene. In contrast, the environmental trigger is very specific, namely that the proposal must lead to a change in noise distribution resulting in a 10,000 net increase in the number of people subjected to a noise level of at least 54 dB LAeq 16hr as well as having an identified adverse impact on health and quality of life. Changes over less densely populated but important areas, such as AONBs, are unlikely to qualify unless the third criterion – strategic national importance – is deemed to apply. AONBs and national parks should be clearly defined as being of national significance. The phrase “as well as having” should, in addition, be replaced by “or have” to allow for a wider scope and to give environmental considerations equal weighting compared with economic ones.

We strongly disagree with the proposal that the call-in may not be used to reopen a planning decision or Development Consent Order (in the case of Heathrow expansion). We appreciate that it is not practical to reverse a planning approval given the substantial compensation costs that may be incurred, but this should not prevent re-examination of the conditions attached to an approval, especially where they were based on indicative flightpaths which may be subject to significant change further down the line.

We note, finally, that the main issue for communities in terms of the CAA's control over the process is the lack of a post-decision appeal mechanism, which this proposal does not address.

**b. the proposal that tier 2 airspace changes should be subject to a suitable change process overseen by the Civil Aviation Authority, including the draft guidance and any evidence on costs and benefits.**

We welcome the proposal for ANSPs to engage with communities affected by noise below 7000ft in the case of permanent and planned redistribution of air traffic, and the proposal for the CAA to establish a process for considering these impacts.

We note the considerable number of proposed exclusions however. In particular, we do not support the proposal to exclude ANSPs based at airports handling fewer than 50,000 movements per year. In some cases the noise impact of such operations can be considerable, especially in areas of low background noise. The proposal to exclude "any procedural change linked solely to the maintenance of a high standard of air safety" seems too broad a definition meanwhile, since it could exclude changes where safety becomes a concern only because of an increase in traffic numbers or a change to the traffic mix.

**c. 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.**

We support the recognition that operational changes such as shifts in the distribution of flights on particular routes can have significant noise impacts and should be recognized therefore as a category (tier 3) of airspace change and subject to an appropriate process. Since these changes, often incremental, can result in impacts at least as significant as those resulting from tier 1 changes, however, we are concerned by the recommendation for the CAA to take a "light-touch approach" to these changes, and to "ensure that its policy does not inhibit Tier 3 changes, as this could affect the development of new markets."

It seems to us that there is a significant remaining gap in the system in that the kind of changes that fall into the 'tier 3' definition, a gradual intensification or change in in how a flight path used for example, can cause at least a much disturbance as 'tier 1' or 'tier 2' changes. Yet there is no process through which the CAA, the local authority or any other actor can intervene in cases where the environmental impact becomes intolerable. The wording in relation to tier 3 indicates that no action will be taken to prevent noise impacts if there is any risk to the development of the aviation industry, which does not appear to us to reflect the claim that the new process ensures that 'balanced decisions' are made.

Furthermore, there is a lack of clarity over what constitutes a tier 3 change. For example, is incremental growth that takes place over a few years to be treated the same way as growth over a few months? In many cases, local factors will also influence how a change is perceived and communities should be able voice their views. The CAA could facilitate this engagement by ensuring that all airports publish quarterly statistics of airspace utilization by route.

**d. the airspace change compensation proposals.**

The Government's proposals in relation to compensation are sensible but, in the view of many of our members, wholly inadequate.

We support the proposals both to remove the reference made in the Aviation Policy Framework to 'development' and to remove the requirement that in order to trigger financial assistance towards insulation in for those exposed to noise of 63dB LAeq there must be a 3dB change. We also support the proposal that consideration be given by airspace change sponsors to whether compensation might form part of an appropriate package of measures to address the noise impacts of a change. We note, however, that compensation is largely left to discretion of airports/sponsors, and that the noise thresholds in the APF are high. As acknowledged in the consultation, unless living in the immediate vicinity of the airport, few households are likely to qualify. In addition, tier 3 changes such as increased frequency appear to be out of scope for compensation.

Some communities are wary that compensation may be seen as an attempt to buy their acquiescence in the face of noise impacts that they regard as unjust and unacceptable. Many, however, feel that there is a fundamental unfairness in the current arrangements that fail to apply the polluter pays principle to aviation, and that the lack of financial incentives to tackle noise impacts means that community interests are not given the priority they deserve. We can see no logical reason, for example, why the Land Compensation Act should apply for changes in infrastructure on the ground but not to changes in the air.

The focus for Government, the CAA and the industry should be on mitigating noise with a view to reducing noise impacts to a level consistent with the advice of the World Health Organisation for avoiding risks to public health. Provision of noise insulation belongs, in our view, in the category of mitigation rather than compensation, since the aim is to limit the noise effect. But where aviation noise cannot be brought below acceptable thresholds, there is a case for people to be compensated for its effects. This could be paid by way of Council Tax and local precept reductions (or rate relief) funded by the industry, payments to public buildings like schools and hospitals, compensation for diminution in value of property and meaningful packages to address the health, environmental and loss of amenity impacts of aviation noise. In cases of severe impact landowners should additionally have the right to sell their properties to the relevant airport at pre-impact values together with associated costs.

The noise levy proposed by the Airports Commission could, if set at the right level, have gone some way towards achieving this kind of compensation. While many airports operate noise-related charges designed to incentivise quieter aircraft, they are typically structured to be revenue neutral and don't generate the necessary funds to contribute to compensation measures. We disagree with the suggestion in the consultation that airport complaints are a reliable indicator of noise impact. ("Evidence collected on airport complaints suggests no strong case for further compensation at airports that are not expanding".) People will generally only complain if they expect something to be done about the noise, so naturally will stop complaining if they feel that no action is taken in response and it would be mistaken to view this as an indication that the noise impact was no longer significant.

**Q2. Please provide your views on:**

- a. the proposal to require options analysis in airspace change processes, as appropriate, including details provided in the draft guidance.**

We support the proposal for an options appraisal showing the respective impacts of single versus multiple routes. This should help to ensure that the interests of different communities are fairly considered.

The extent to which communities are able to engage in the decision-making process, however, including but not limited to the options appraisal, will vary depending on factors including financial resource, expertise, and time. Many communities feel that with no official body having a remit to advocate for community interests, there will remain an imbalance of power and knowledge in the system that unfairly disadvantages communities even when they are willing to commit considerable time and energy to participating in the process. The provision, by change sponsors, of financial support for communities to access technical help, or to engage a consultant to represent their views and interests more generally, should therefore be actively encouraged in the Government's guidance.

- b. 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 guidance.**

We note that rather than limiting the number of people exposed to any level of aircraft noise, the new policy is concerned with limiting the number of people experiencing significant adverse effects. We welcome the fact that noise impacts are to be captured down to lower levels than might have been assessed in the past given evidence that significant noise disturbance occurs beyond the traditional 57 Leq contour. We also support the proposal for Government to provide guidance on use of metrics such as the N60 and the CAA's overflight metric to capture impacts outside the LOAEL contour, though we have struggled to interpret the precise proposals in the consultation in relation to how day and night noise are to be assessed. ("We propose that the CAA's metric for overflights should be used for this purpose as a means of understanding and explaining how noise will be experienced by those on the ground and that for night noise, N65 daytime and N60 night time metrics should also be used.") We note that even frequency metrics such as the N60 provide a form of averaged noise information. In some cases noise issues can be related to wind direction or times of day (related to whether Heathrow is flying on easterlies or westerlies for example). In addition, therefore, to averages over a whole season or year, worst case scenarios for noise (over an hour or day) should be assessed where appropriate. The N65 metric should also provide a split between daytime and evening traffic.

We have some concerns about how the proposed use of WebTAG in the risk-based approach will work in practice. For those without technical expertise of how WebTAG works, it is difficult to get a sense of how the calculations will take place and what kind of weighting will be given to different noise levels. The indication, meanwhile, that under the proposed WebTAG methodology, concentration will generally be preferable below 4000 feet is a significant cause for concern among our members at Englefield Green, who tell us that "concentration at 4000 feet is a disaster" in terms of the resulting noise impact. A similar message is likely to come back from Teddington residents. We had understood that DfT was working on a layman's guide on this issue, but this has not been forthcoming despite being in the

pipeline since March 2016. It is currently difficult therefore for communities to have confidence that the proposed approach will effectively capture noise impacts as they are experienced, potentially jeopardizing one of the key aims of the consultation, namely to improve community trust in the process for decision-making in relation to airspace change.

More fundamentally, improvements to the system for assessing and weighting noise impacts will not tackle the underlying need to deliver noise reductions. While Government hopes these will be achieved through the introduction of quieter aircraft and less need for stacking, these measures will only have a marginal impact given the likely increase in the number of aircraft. The strategic rationale for upgrading UK airspace, published alongside this consultation, makes clear that the primary reason for airspace change is to ensure that increases in air traffic can be safely provided for.

The proposals in this consultation fall short of offering any kind of evidence-based approach for bringing aviation noise to within health-based limits and offer little clarity on how noise is to be balanced against other criteria such as anticipated economic benefits or fuel savings. While the consultation proposes that “taking account of consultation, preferred options should normally be based on those which result in fewer people significantly affected” there is no definition of ‘significantly affected’ to aid decision-making – no ‘SOAEL’ is defined – so a significant degree of judgment appears to rest with sponsors. Similarly DfT writes that “there is no hard formula, apart from the altitude-based priorities, for how different factors should be balanced against one another.”

With no defined threshold at which noise impact is deemed unacceptable, no health-based noise reduction strategy, and in the context of airspace change being pursued in order to facilitate growth, the process appears to be designed only for facilitating discussion about the least bad option.

**Q3. Please provide your views on:**

**a. the Independent Commission on Civil Aviation Noise’s (ICCAN’s) proposed functions.**

The range of proposed functions – to verify data, offer advice, undertake research and develop best practice - is worthwhile. However:

- We are disappointed that the body will not provide an ombudsman function. The current arrangements for members of the public to make a complaint about aircraft noise are difficult to navigate (for example requiring people to work out which airport the plane is associated with, or whether the complaint should be directed at CAA or NATS) and may be handled in an inconsistent way across different airports. A central, independent body responsible for handling noise complaints and providing information would have helped address what we see as a significant gap in the system.
- It is unclear to us how the proposed role for ICCAN in overseeing the airspace change process, including providing ‘assurance’ of the information provided by sponsors, will differ from that of the CAA.
- Even in an advisory role, ICCAN should have a specific mandate to monitor the latest evidence on impacts, metrics and mitigation and advise the Government on whether its policies are fit for purpose. Similarly, the ICCAN should be able to advise on whether the processes it has to oversee adequately tackle the aviation noise problem. If the ICCAN is unable to advise Government on what

noise policies and decisions are necessary in order to tackle aviation noise it is hard to see how it can have much standing or respect in the eyes of the public.

**b. 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.**

We note that the Government's current proposal is for a commission without enforcement powers or decision-making capability. For many communities this appears a downgrading compared even with the proposal by the Airports Commission on the creation of a noise authority.

AEF considers that airspace policy should include an aviation noise reduction strategy – a commitment, for example, to work towards the recommendations of the World Health Organisation on environmental noise, or, in the context of airspace change, criteria for the CAA to use to judge when the noise impact of a given change is too great to allow it to proceed. In the absence of such a strategy, and without enforcement powers, or the teeth to make binding recommendations, the Commission's effectiveness will be limited. This could be counter-productive if it frustrates communities, even if it succeeds in building trust.

Many of our members feel strongly, however, that trust will never be possible to achieve if ICCAN is housed within the CAA, which obtains its funding through charges levied on industry, has primary duties relating to facilitating the growth and development of the industry, and is currently trying to tackle its own trust deficit with the public. While we understand the practical advantages associated with housing ICCAN within the CAA our view is that it is more important to create a credible body able to command public trust than to have a commission set up quickly simply in order to smooth the process for determining how the noise impacts of a new Heathrow runway should be distributed.

We would support the creation of noise body, therefore, that is either housed within the Environment Agency or which is set up as a truly independent, freestanding organization.

**Q4. Please provide your views on:**

**a. the proposal that the competent authority to assure application of the balanced approach should be as set out in Chapter 7 on Ongoing Noise Management and further information at Annex F.**

Overall, we feel that the proposals for determining the 'competent authority' for noise controls are complex and likely to lead to significant confusion about which body is accountable. The creation of an independent noise regulator (as opposed to an advisory commission) could have helped to resolve this problem and we consider this to be a remaining gap in the system, not addressed satisfactorily by the current proposals.

We agree that a duty for the Secretary of State as the competent authority for called-in applications is appropriate but have some concerns about the proposal that the London airports will be de-designated over time for operational restrictions. While advice from ICCAN advice may be helpful, the assessment on cost-effectiveness (to fulfill the new European legislation) may require

Government input. We are concerned that local authorities will still be unable to intervene to manage noise except in the context of planning applications (even for example when a flight path is used differently from the use originally anticipated).

It is unclear when an operating restriction would be proposed outside of the planning process, so the proposed CAA role appears theoretical, unless the Government is considering de-designating the London airports for night-time noise controls. We note nevertheless that the CAA has primary legal duties to meet the needs of the aviation industry and its consumers so is not well-placed to make a dispassionate judgment about the appropriate application of operating restrictions. In the context of discussions more generally about changes to the airspace change process, the CAA has been keen to distance itself from any responsibility for considering whether operating restrictions to protect the public from noise may be necessary.

Overall, the existence of three different competent authorities all advised by ICCAN, allows scope for inconsistent decisions and confusion about the role of each body. Our experience of local authorities' handling of third party safety issues suggests that they may lack the relevant skills and expertise to undertake these assessments even with guidance.

**b. 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.**

Many of our comments on this section mirror those made in response to part a.

Overall, we feel that the proposals for determining the 'competent authority' for noise controls are complex and likely to lead to significant confusion about which body is accountable. The creation of an independent noise regulator (as opposed to an advisory commission) could have helped to resolve this problem and we consider this to be a remaining gap in the system, not addressed satisfactorily by the current proposals.

While we agree that a duty for the Secretary of State as the competent authority for called-in applications is appropriate, we have some concerns about the proposal that the London airports will be de-designated over time for operational procedures, with the Government replacing its controls with planning or airport-imposed controls. The consultation claims that designated airports are currently inhibited from taking noise measures because of designation. While this may conceivably be true, it is hard to make an informed judgment on this issue in the absence of clear evidence being provided. Additionally we are concerned that replacing the DfT's current hands-off approach with a situation in which airports themselves are, in most circumstances, required to self-regulate for noise-related operating procedures is deeply unsatisfactory. In many cases, little incentive exists for airports to introduce measures that are costly or impact on operations.

We have concerns about the proposal to give new responsibilities for determining operating procedures to local authorities. While some of our members support the principle of bringing the decision-making process for airspace change more closely into line with the planning process and engaging the local authority, which should be keen to represent the interests of its constituents, this view depends in part on what relationship the local authority is seen to have with the airport and

how competent it is considered to be in this area. Arguably, local authorities are less well prepared to deal with aircraft noise issues since the Government scrapped its guidance on planning and noise in PPG24. In some cases, airports are located close to the boundary of two neighbouring local authorities making it unclear which one is best placed to make a judgment on the interests of all the communities potentially affected by an airport's operations. We are also concerned that local authorities will still be unable to intervene to manage noise except in the context of planning applications (even for example when a flight path is used differently from the use originally anticipated).

Overall, the existence of three different competent authorities all advised by ICCAN, allows scope for inconsistent decisions and confusion about the role of each body. Our experience of local authorities' handling of third party safety issues suggests that they may lack the relevant skills and expertise to undertake these assessments even with guidance.

- c. 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**

We support this proposal. Publication of this information has become standard practice at many airports following the availability of similar data on commercial apps. The requirements appear specific but it is unclear in some cases what they are trying to achieve, for example why noise/overflight information above 4000 feet is not required.

In the discussions leading up to these proposals, this new requirement was presented as an alternative to NPRs. We regard the two issues as distinct, however, since NPRs don't just give noise information but are a tool for noise mitigation and control. As argued in response to question 4, we do not consider that simply trying to shift responsibility in this area away from central Government and on to local authorities, airports themselves or the CAA is an adequate response to what remains a regulatory gap in our view.

- d. 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.**

There are, in our view, few incentives. We note that few measures were introduced under Directive 2002/30 because of fear of competition between airports. Noise charges, unless introduced at all airports, could increase costs to airlines who, in turn, may threaten to develop routes elsewhere. The CAA charging structure also makes it difficult for some airports to recover costs of noise mitigation.