

CAA Response to 2019 Government Consultation Aviation 2050: the future of UK aviation

CAP 1813

Published by the Civil Aviation Authority, 2019

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First published July 2019

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Introduction

1. On 21 July 2017 the Government announced¹ that it intended to create a new Aviation Strategy which would set out the long-term direction for aviation policy making for 2050 and beyond. It first published a Call for Evidence², within which it sought views from stakeholders on the approach the Government was proposing to take and the issues that it had identified, as well as on the specific policy proposal to support airports throughout the UK making the best use of their existing runways, subject to environmental issues being addressed. The CAA responded to the Call for Evidence on 12 October 2017.³
2. The Government subsequently published a 'next steps' document in April 2018⁴, setting out some of the specific issues to be considered as part of the policy development process. In December 2018, it published 'Aviation 2050: the future of UK aviation'⁵ a consultation document on policy proposals for the Aviation Strategy.
3. This document presents the CAA's response to the Aviation Strategy consultation, which was submitted on 20 June 2019. Its format mirrors the online form which was the Government's preferred method for responding to the consultation. The CAA's response best aligned with a subset of the questions and therefore not all questions will appear in the text.
4. This document differs from the CAA's formal response only in respect of: this introduction section; the inclusion of some formatting not supported by the online form; in Q21, the renumbering of the heading 'Slot Allocation' from 20.3 to 3.4 (bringing it into line with the numbering in the rest of the document); and updating a reference to this section in section 4.1.

¹ <https://aviationstrategy.campaign.gov.uk/>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636625/aviation-strategy-call-for-evidence.pdf

³ <http://www.caa.co.uk/CAP1609>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698247/next-steps-towards-an-aviation-strategy.pdf

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769695/aviation-2050-web.pdf

Chapter 1

Personal and organisational details

Personal details

Q1. Your name and email address (only used if we need to contact you).

Your name

[REDACTED]

Your email

[REDACTED]

Q2. Are you responding:

on behalf of an organisation?

Organisation details

Q3. What organisation do you work for?

Civil Aviation Authority

Q4. What type of organisation is this?

Regulatory body

Chapter 2

Build a global and connected Britain

Q5. This section contains questions on chapter 2 of the consultation document - Build a global and connected Britain. Which of the following topic areas are of interest to you as an individual or to the organisation on behalf of which you are answering? (choose all relevant options)

Liberalisation of air traffic rights

Airline ownership and control

Interchange (short term leasing of aircraft between airlines)

International standards

Airline competition

Q6. How should the UK use its global leadership and international influence to further the aims of the UK's aviation sector?

2.1 International Standards (Aviation 2050, paragraphs 2.6 – 2.18)

The UK's reputation for safety and security as well as our effective and proportionate approach to regulation and oversight is admired and valued internationally. However, UK citizens often fly on airlines and from airports that are regulated by other safety authorities from around the world, and the UK aerospace industry serves those carriers. Therefore, it is essential that we maintain our breadth and depth of engagement and influence, to improve safety standards across the globe and ensure the UK is included in conversations and groups planning for the future.

New industry cross-border operating models may increase in the coming years. These will require close cooperation between regulators, both intra-Europe and international. Governmental and regulatory collaboration and cooperation in relation to oversight and intelligence sharing will be essential. If the UK does not remain a European Aviation Safety Agency (EASA) Member State, we should aim to keep a close alignment to EASA regulations in the first instance, except in those cases where there is a robust justification to adopt a different position. This is because, other things being equal, the industry benefits from the efficiency and consistency that comes with greater regulatory alignment.

Q10. What implementation issues need to be considered and how should these be approached? (e.g. resourcing challenges, high levels of complexity, process redesign, demanding timelines)

2.2 Liberalisation of Air Traffic Rights (paragraphs 2.28 – 2.31)

The aviation industry, particularly in Europe and North America has come a long way in terms of liberalising air traffic rights from the days where Air Services Agreements (ASAs) strictly controlled flight frequencies and often airlines. Now, there are many liberal ASAs, such as the European Union's (EU's) common aviation area and United States (US) open skies. Although many of the UK's major aviation markets are some of the most liberalised, government is right to highlight the benefits of further liberalisation for the industry and the consumer, and that there is more that can be done. The Civil Aviation Authority (CAA) therefore supports the government's ambition to further liberalise air traffic rights.

However, it should be noted that liberalisation of ASAs is not always solely in the UK government's hands, and (on the basis that it is reciprocal agreements which deliver the most benefit) requires both sides to agree. Government will therefore need to be effective in making the case for liberalisation to those countries that are resistant to change. In the past, factors such as lack of access to Heathrow has made negotiation of liberalised agreements more difficult, and so there may be an opportunity in the coming years for government to make progress in these cases as more capacity becomes available.

2.3 Airline Ownership and Control (paragraphs 2.32 – 2.34)

The government correctly highlights airline ownership and control as another area where greater liberalisation could benefit industry and passengers through easier access to capital and new route opportunities for airlines. As far back as 2006, the CAA highlighted this issue in its report 'Ownership and Control Liberalisation: A Discussion Paper – CAP 769'. In this, we noted that introducing such freedoms for airlines should bring considerable benefits to the industry and its users and play a significant role in enhancing related global economic activity. However, there were potential downsides that needed to be protected against; in particular, to ensure that there is no diminution of safety standards, but also to protect against 'free-riders' and work towards regulatory convergence.

2.4 Interchange (paragraphs 2.35 – 2.38)

Aviation 2050 proposes to facilitate interchange (paragraphs 2.35-2.37) and defines this as short-term leasing of aircraft between airlines. The term interchange normally refers to dry leasing (where the aircraft is transferred between Air Operator Certificates (AOCs) but is crewed by the staff of the lessee). The CAA supports the government's view that interchange agreements (like many forms of liberalisation) are likely to offer benefits to airlines, but that it is of primary importance that such arrangements retain the appropriate regulatory insight and that the safety of passengers is not compromised. A potential risk with interchange is that the aircraft and crew may be subject to different countries' safety assurance regimes. The CAA will work with the Department for Transport (DfT) to find if a framework is possible that allows airlines access to the benefits of interchange whilst retaining the appropriate level of safety oversight.

Q10. What implementation issues need to be considered and how should these be approached? (e.g. resourcing challenges, high levels of complexity, process redesign, demanding timelines)

It is not clear from Aviation 2050 whether anything is proposed to facilitate wet leasing (where the aircraft continues to be operated under the AOC of the lessor airline). EU legislation restricts the wet leasing of aircraft from outside the EU. The CAA fully supports the safety rules in Regulation 1008/2008 Article 13 (3)(a), as maintaining a high standard of safety in such arrangements is paramount. However, other restrictions on wet-leasing of non-EU aircraft were significantly tightened by this Regulation in 2008 in order, we believe, to solve issues in other Member States occurring under the 1992 single market legislation. We believe that the tests in Article 13(3)(b) are unnecessarily protectionist and restrictive, have reduced UK carriers' flexibility and therefore competitiveness, and so can potentially negatively impact consumers. These restrictions can also have unintended consequences and present practical difficulties for their enforcement. Should the opportunity arise from the UK exiting the EU, we would therefore welcome greater wet leasing flexibility, subject both to maintaining acceptable safety standards, and there being no excessive dependence on aircraft from outside the UK/EU (which was the understanding under the 1992 legislation - see Council minute statement to the former Regulation 2407/92).

Furthermore, the EU has (in direct contrast to the 2008 rules) recently made provision for the imminent liberalisation of wet leasing between the EU and the US, and we welcome a similarly liberal arrangement under a future UK-US ASA.

2.5 Airline Competition (paragraph 2.40)

We agree in general terms with the conclusion in paragraph 2.40 of Aviation 2050. We consider that the fact that Joint Business Agreements (JBAs), like mergers, reduce the number of direct competitors on the routes where the parties operate or could operate in competition (route overlaps) is more important than the effects of Frequent Flyer Programmes (FFPs), as referred in that paragraph.

However, it is important to note that, in part, airlines do JBAs because they cannot merge due to ownership and control restrictions and other restrictions in International ASAs. JBAs have the potential of bringing significant consumer benefits, but it is important that the various effects which these agreements can have are carefully considered and weighed by competition authorities.

We note, in this context, that the Competition and Markets Authority (CMA) is currently investigating the transatlantic oneworld JBA and we are assisting the CMA with its investigation, as required.

Q12. What are the regulatory burdens that need to be managed and how might these be addressed?

2.6 There are a number of new roles or tasks for the CAA proposed in Aviation 2050. In general, the CAA is willing to accept these providing:

- The proposed role is a standard independent regulatory role that relates to flight
- There is policy clarity from government about the purpose of the powers
- There is sufficient legal powers to exercise the functions
- The CAA can resource the function effectively in terms of skills and expertise without detriment to its other priorities and proportionately in terms of finance through either a new or existing statutory charging scheme or a government grant under section 16 of the Civil Aviation Act 1982 (CAA82) or some other industry or public source.
- The role does not insurmountably conflict with other of the CAA's duties or the roles of other bodies.

Q15. Are you aware of any relevant additional evidence that should be taken into account?

No

Chapter 3

Ensure aviation can grow sustainably

Q17. This section contains questions on chapter 3 of the consultation document - Ensure aviation can grow sustainably. Which of the following topic areas are of interest to you as an individual or to the organisation on behalf of which you are answering? (choose all relevant options)

A partnership for sustainable growth.

Airspace modernisation

Resilience

Slots allocation

Carbon emissions

Air quality

Noise

Q19. How regularly should reviews of progress in implementing the partnership for sustainable growth take place?

3.1 Airspace Modernisation (paragraphs 3.15 – 3.29)

In terms of airspace modernisation, the CAA is already required to report on delivery progress annually to the Secretary of State (SoS). The CAA considers this to be sufficient for the purposes of the aviation strategy in this area.

Q21. How could the policy proposals be improved to maximise their impact and effectiveness in addressing the issues that have been identified?

3.2 Airspace Modernisation (paragraphs 3.15 – 3.29)

The CAA supports proposals to modernise airspace as part of a partnership approach to ensure that aviation can grow sustainably.

Q21. How could the policy proposals be improved to maximise their impact and effectiveness in addressing the issues that have been identified?

The government tasked the CAA with a key oversight role for airspace modernisation in 2017 and the CAA published a final Airspace Modernisation Strategy (AMS) in December 2018 to replace the existing Future Airspace Strategy. This includes a shared DfT and CAA objective for modernising airspace and a new governance structure to oversee delivery.

The AMS sets out the initiatives that the aviation industry must deliver to modernise UK airspace, such as the introduction of new technologies and the redesign of some areas of airspace. This strategy requires industry-led working groups to draw up delivery plans, with delivery overseen by the CAA. One such plan will be a macro-level co-ordinated implementation plan (an airspace change masterplan) detailing which interdependent airspace changes are deemed necessary and when.

The CAA believes that the government has correctly identified the key risk of a single airport or air navigation service provider holding up an entire or elements of a modernisation programme, either because it is unable or unwilling to take forward a necessary interdependent airspace change. The CAA considers that it is highly desirable that the government legislates for powers, such as those already consulted on in Annex A of Aviation 2050, to direct individual airspace change proposals identified as necessary in a masterplan to be taken forward.

3.3 Resilience (paragraphs 3.30 – 3.45)

The CAA welcomes the government's commitment to working with the Industry Resilience Group (IRG), which has already made significant progress working on a voluntary basis to promote a common data set, better situational awareness, consistent responses to disruption, and improved foresight of where problems may arise.

However, the CAA also agrees that the government should prepare for a situation where the voluntary efforts of industry have not been enough to ensure adequate resilience for the aviation sector and some form of more central control needs to be established or delegated. Further, we think that the government should immediately consider the sort of response that might be appropriate and put in place any legislative or regulatory powers as soon as possible. This is because, should the situation arise when such action is needed, it is likely that passengers will be suffering significantly increased delays and cancellations during the time that it takes to implement. Therefore, having preparations in hand will shorten this time and lessen the detriment to consumers. The CAA offers to work with DfT and industry to identify the appropriate form of such a systems operator and the conditions in which it would be implemented. Some options for the sort of actions which could be implemented are set out in the following paragraphs.

For these purposes, we consider a systems operator to be a body which can make decisions on the fair use of a scarce resource (in this case airspace) and has the means to enforce those decisions. Note that the method of 'enforcement' may take a number of forms (or a combination of them), which could include:

- prior permissions – for example, restrictions on slot allocation or usage where it is clear that the expected schedules from all the airports in an area are unlikely to be deliverable, or refusing or amending certain flight plans when they are submitted if it leads to overall better performance of the network. Clearly, it should be ensured that

Q21. How could the policy proposals be improved to maximise their impact and effectiveness in addressing the issues that have been identified?

any amendment to planned schedules or flight plans was distributed fairly between users or some fair compensation mechanism was used;

- market measures – for example, either providing compensation to airlines that voluntarily amended their preferred schedule or increasing the cost for those who did not. The most efficient way of implementing such market measures might be through the existing airspace charging process, although some testing would be needed to work out whether the feasible increases or decreases in airspace charges would be enough to change airline behaviour; or
- subsequent enforcement – for example, the use of fines or other sanctions (such as slot sanctions) for those airlines which do not follow a schedule that has been amended by the systems operator to protect overall network resilience.

We note that industry is already making steps towards such greater control:

- There are requests to find a mechanism to enforce better the DvC process (where some flights for the following day are proactively cancelled when events such as poor weather or strike action mean that it is known that the whole schedule cannot be completed) at Heathrow, and at other airports where something similar is being considered. This process only operates when there is prior knowledge of an external event (e.g. weather or strike action) which will mean the full schedule cannot be flown to plan, and so some pro-active cancellations will provide the best outcome for industry and consumers. However, adherence to this reduced schedule is voluntary and airlines incur greater costs from a cancelled flight than they are likely to suffer from a delay (even though the cost of the delay to all flights at the airport is likely to outweigh the cost of the proposed cancellations).
- During summer 2019, the Eurocontrol Network Manager is trying to alleviate capacity issues at European Air Traffic Control (ATC) centres by requiring a subset of flights to divert around the most congested airspace. In order for this to provide the desired alleviation of delays, it is important that all other flights stick to the flight plans which they have submitted (and on which the level and location of necessary diversions has been calculated) and are not allowed to change them subsequently.
- At airport systems such as London, there is a growing pressure to plan schedules with an understanding of the shared airspace capacity as well as the capacities of each airport. At present, the IRG works to combine the schedules prior to the start of the season in order to understand their impact on the airspace after slots have been allocated. Currently, this is undertaken solely for information and so airlines, airports and air traffic control all understand where the 'hot spots' for resilience are likely to occur, and can plan how best to address them.
- For the 2012 London Olympics, Euro 2012 football championships and 2013 Champions League final, Airport Coordination Ltd (ACL) used a slot and flight plan matching tool to pro-actively manage the allocation and distribution of the predicted traffic over these periods, and ensure that airport slots were respected. To do this, the UK requested Eurocontrol suspend any flight plan notified to it by ACL as having been filed for which no airport slot had been granted or the terms of the slot had not been respected.

However, these are all short-term responses to particular disruption events. A systems operator in the sense we are proposing would have the option to intervene at any time, even when the schedules for the season are being developed and finalised. The CAA understands

Q21. How could the policy proposals be improved to maximise their impact and effectiveness in addressing the issues that have been identified?

that industry would find this a significant change from the current situation where airlines are only restricted in their use of routes and flightpaths by the availability of airport slots and their own internal airframe and flight crew scheduling.

The CAA is not proposing such a system is implemented by government straight away, only if the delays and cancellations caused by increasing traffic and congestion at UK and European airports, and the harm suffered by consumers as a result, became sufficiently great to warrant it. What the CAA is proposing is that government, in consultation with industry, looks into how such a systems operator should be set up and progressed with any new legislation or regulation which would be required by it. In that way, should there be a need to stand up such an operator, government would be able to do so with minimal delay, to the greater benefit of consumers.

3.4 Slot Allocation (paragraphs 3.46 – 3.59)

3.4.1 Summary

General – we welcome the government's focus on slots relating to new capacity as the current regime is largely untested and may not be designed to handle such a volume of slots being released at highly constrained airports. Our priority is that any changes to the slot regime do not negatively impact the timely and orderly delivery of new runway capacity at Heathrow airport (and other airports that may consider seeking planning permission for capacity expansion). The interactions between any changes to the slot regime and the CAA's price control for Heathrow expansion will need to be carefully considered by the government. Particularly for the more ambitious changes being considered, the government should be clear what problem it is trying to solve. Industry support for any changes to the existing regime will also be important, particularly from the airline community.

Options for reform

- We welcome the government's proposals to provide ACL with guidance on the definition of 'airport system', the objectives for the allocation of newly-created slots, and on the re-timing of existing slots.
- Among the other measures to facilitate effective competition and efficiency on which the government is seeking views, we welcome the proposals to consider issuing guidance on secondary trading and changing the existing 'new entrant' rule
- While we recognise the theoretical benefits from market-based allocation mechanisms, in particular auctions, such mechanisms would need careful design and testing to avoid any unintended consequences or practical difficulties. The consideration of more ambitious reforms should not delay or divert attention away from progress on administrative changes to the existing regime.

CAA's role in slot allocation

- Before commissioning an in-depth study or review of slot allocation by the CMA and/or the CAA, we encourage the government first to define more clearly the problem(s) with the current regime and the policy objective for change. Once this is done, the most appropriate body(s) to carry out the study may then become clearer.

Q21. How could the policy proposals be improved to maximise their impact and effectiveness in addressing the issues that have been identified?

- Regarding the government's proposal on the possibility of giving the CAA a more formal slot allocation role, while we are not specifically seeking such a role, we are happy to discuss with government, whether there is a helpful role in slot allocation consistent with our statutory duties and role that we can fulfil.

3.4.2 Key points

3.4.2.1 General

We note that the CAA does not have a formal role in allocating slots. We have viewed government's proposals through the lens of our economic regulation and competition functions under the Civil Aviation Act 2012 (CAA12) including our general duty to further the interests of passengers and cargo owners under CAA12.

We note the government's views that current regulations may not produce the best consumer outcomes in the event of a release of significant new capacity at highly constrained airports, such as for Heathrow expansion. In this regard, we welcome and encourage its focus on slots relating to new capacity as the current regime is largely untested and may not be designed to handle such a volume of slot release at a highly constrained airport.

We have consistently stated that additional runway capacity in the South East of England is needed to benefit air passengers and cargo owners. The timely delivery of more aviation capacity is required to prevent future consumers experiencing higher fares, reduced choice and lower service quality. The CAA's priority is that any change introduced to reform the slot regime does not negatively impact the timely and orderly delivery of new runway capacity at Heathrow airport, and other airports that may consider seeking planning permission for capacity expansion. In this regard, the interactions between any changes to the slot regime and wider processes (including the CAA's price control for Heathrow Airport Limited), and subsequent implications, will need to be carefully thought through by DfT. We welcome the opportunity to engage with DfT on this issue as it develops its proposals.

When contemplating changes to the slot regime, particularly more ambitious changes, the government must be clear what problem it is trying to solve. We are not convinced that, at present, that problem is sufficiently well defined. We would suggest a focus on concerns that the slot regime may not be well suited to handling high volumes of slot release at a slot constrained airport.

We consider it will be helpful to get industry support for any change to the existing slot regime, while recognising that different airlines, and potential new entrants, may have different interests and perspectives. We therefore welcome the government's proposal in paragraph 3.54 to work constructively with the industry to consider how to develop the existing slot allocation system.

The government's freedom to act outside the EU Slot Regulation will, of course, be wholly dependent on the post-transition arrangements negotiated between the UK and the EU.

3.4.2.2 Options for reform

Q21. How could the policy proposals be improved to maximise their impact and effectiveness in addressing the issues that have been identified?

We note the conclusions reached in the CMA's paper looking at the impact of the current allocation arrangement on competition from a theoretical perspective. The CAA has long advocated transparent secondary trading of airport slots as helping to rectify, over time, any inefficiencies arising from the administrative allocation system. While we also recognise the theoretical benefits from other market-based allocation mechanisms, in particular auctions, we note that such mechanisms would need careful design and testing to avoid any unintended consequences or practical difficulties for the industry, and so could be complex to set up. While the government has identified some administrative system changes that could help to promote its primary objective of facilitating effective competition, the CAA notes that there are some risks that auctions could be less effective in facilitating competition (for example because the costs and complexity of entering the auction could deter potential entrants, or because of various reasons why large, well-established airlines might bid higher than smaller airlines or potential entrants). It would be important to consider such risks carefully. Crucially, in the context of Heathrow expansion it will also be important to ensure that any such mechanisms do not negatively impact the timely and orderly delivery of additional capacity.

Administrative system changes

We welcome the government's proposals to improve elements of the administrative allocation system to enhance transparency, provide airlines with increased clarity and certainty and to ensure a process which is as legally robust as possible. In particular, we consider the government should:

- a. Provide ACL with greater guidance around its use of discretion in deciding between competing slot bids when allocating significant new capacity at highly constrained airports. However, in setting objectives for the allocation of newly created slots, the government should resist the temptation to second-guess the market by being overly interventionist or prescriptive in the choice of airlines or routes. We would generally advocate a light-touch regulatory approach. In this context, the principles of neutrality in paragraph 3.53 must be paramount.
- b. Provide specific guidance to ACL on the definition of 'airport system' in the new entrant rule. We note that had the (currently dormant) 2011/12 recast of the EU Slot Regulation become law, the airport system concept would have been deleted, with the UK's (including CAA's) support.
- c. Follow current EU rules and International Air Transport Association (IATA) guidelines that re-timing by incumbents of existing historic slots occurs before new capacity is added to the slot pool.

Secondary trading guidance

We also welcome the government's proposals to consider issuing guidance on secondary trading to increase transparency and therefore market fluidity, and to consider changing the existing new entrant rule to better allow new entrants or smaller incumbents to build a presence at constrained airports. The CAA believes it is important that any consideration of