

Enforcement Guidance and Draft Statement of Policy on Penalties - Air Traffic Management and Unmanned Aircraft Act 2021 Part 1

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Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

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Enquiries regarding the content of this publication should be addressed to:

airspace.modernisation@caa.co.uk

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About this document

1. Following the enactment of the Air Traffic Management and Unmanned Aircraft Act 2021¹ (or as “the Act” throughout this document), the CAA has new roles and powers in relation to Part 1 of the Act, relating to ‘Airspace Change Proposals’.
2. This document provides:
 - A summary of the CAA’s roles relating to Part 1 of the Act.
 - Details of the CAA’s advisory role regarding the use of the Direction powers contained in Part 1 of the Act, and the impact on General Aviation - at Appendix A.
 - Enforcement Guidance covering the powers brought about by Part 1 of the Act - at Appendix B.
 - A draft Statement of Policy on Penalties, which the CAA is required to consult on under Part 1 of the Act - at Appendix C.

Views invited

3. We are asking for responses to a number of questions concerning the draft Statement of Policy on Penalties contained in Appendix C through our [dedicated consultation website](#). We are asking for responses by the closing date of 2 March 2022.
4. We cannot guarantee that any views submitted after that date will be taken into account. For any queries on how to access the consultation, please email airspace.modernisation@caa.co.uk.
5. When you complete the online consultation there will be an option for you to hide your identity or refuse publication. (In any event, your email address will not be published.) In the interests of transparency, we hope respondents will not refuse publication.
6. If you do send us a separate submission and it includes any material that you do not want us to publish, please also send us a redacted version that we can publish. You should be aware that information sent to and therefore held by the CAA is subject to legislation that may require us to disclose it, even if you have asked us not to (such as the Freedom of Information Act and Environmental Information Regulations). Therefore, if you do decide to send information to the CAA but ask that this be withheld from publication via redacted material, please explain why, as this will help us to consider our obligations to disclose or withhold this information should the need arise.

¹ <https://www.legislation.gov.uk/ukpga/2021/12/contents/enacted>

7. If you require this document to be provided in a different format, please email airspace.modernisation@caa.co.uk and we will endeavour to accommodate your need.

Next steps

8. We expect to publish responses we receive on our consultation website as soon as is practicable, with identifying and confidential information removed where requested. We will take your views into account and, where we feel it necessary to do so, will make modifications and publish our penalties policy statement and enforcement guidance in relation to Part 1 of the Act.

Chapter 1

Summary of CAA's roles and powers

Background

- 1.1 The Government recognises that there will be a major challenge coordinating different airspace changes in the future to modernise the UK's airspace. Airspace modernisation requires a wider system planning approach, and this is a key component of the CAA's Airspace Modernisation Strategy (AMS).²
- 1.2 The feasibility work conducted by NATS³ into airspace modernisation in the South of the UK showed that there is a high level of interdependence between different airports' future demands over airspace, especially in the South East. Given this, airspace change sponsors – usually airports or Air Navigation Service Providers (ANSPs) – will need to develop their airspace change proposals (ACPs) in close collaboration with each other and ensure that they develop and consult on these in a coordinated way.
- 1.3 In order to help airspace change sponsors overcome potential coordination challenges, the DfT and CAA commissioned NATS (En Route) Plc (NERL) to set up a new separate and impartial unit, the Airspace Change Organising Group (ACOG), to coordinate airspace changes across the UK by creating and maintaining an airspace change masterplan.⁴ These requirements are now reflected in NERL's Licence conditions.
- 1.4 Historically, neither the government nor the CAA have had the powers to guarantee or compel that airspace change as part of a wider modernisation programme is taken forward. Following consultation⁵ the Government introduced the Air Traffic Management and Unmanned Aircraft (ATMUA) Bill into Parliament to address this issue. The Bill received Royal Assent on 29th April 2021 and is cited as the Air

² CAP 1711 Airspace Modernisation Strategy, December 2018

<https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=8960>

³ DfT: NATS Feasibility Report into Airspace Modernisation in the South of the UK, 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763085/nats-cao-feasibility-airspace-modernisation.pdf

⁴ See 'About ACOG' for more background on the role of ACOG: <https://www.acog.aero/about-acog/>

⁵ DfT: Consultation Response on Legislation for Enforcing the Development of Airspace Change Proposals, October 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841247/consultation-response-on-legislation-for-enforcing-the-development-of-airspace-change-proposals.pdf

Traffic Management and Unmanned Aircraft Act 2021 (or as “the Act” throughout this document).

- 1.5 Part 1 of the Act relates to airspace change proposals and contains powers for the Secretary of State⁶ to direct “*a person involved in airspace change*” to progress or cooperate in an ACP. Such persons are ANSPs, airports and other persons with functions relating to air navigation.

CAA's advisory role

- 1.6 As the Act passed through Parliament, a number of commitments were made by the Government including that:
- the CAA provides advice to the Secretary of State if the CAA considers the Secretary of State's powers contained in Part 1 of the Act should be utilised; and
 - the CAA provides a report on the impact of Part 1 of the Act on General Aviation.
- 1.7 On 15th November 2021 the Department for Transport wrote to the CAA confirming the scope and type of advice and information that the CAA may be required to provide in the future, should the need arise.⁷ The advice concerning the use of powers is required to cover the following issues, where possible:
- The extent to which the ACP would assist in the delivery of the CAA's airspace strategy.⁸
 - The complexity of the ACP and the cost of progressing it.
 - Whether there is a case for an alternative sponsor to progress the ACP.
- 1.8 For the avoidance of doubt, when the CAA is asked to advise on the giving of a Direction under section 3 of the Act that a person co-operate with another person involved in airspace change, our advice will always be that the Direction requires that any information shared for that purpose should be kept confidential by the recipient and only used or disclosed in connection with the purposes stated in the Direction.
- 1.9 Further details of the scope and type of advice and information that the CAA may be required to provide are included in Appendix A.

⁶ The Secretary of State may delegate certain of their functions to the CAA by giving a notice to the CAA but has not done so.

⁷ The Secretary of State will request this advice from the CAA under s16 of the Civil Aviation Act 1982 as and when the need arises.

⁸ The CAA's coordinated strategy and plan for the use of all UK airspace for air navigation up to 2040, including for the modernisation of the use of such airspace (required by Air Navigation Directions 2017, Direction 3(e)) is known as the CAA's Airspace Modernisation Strategy or AMS.

Enforcement powers

- 1.10 Should the Secretary of State issue a Direction to a person involved in airspace change with which the recipient does not comply, the Act provides the CAA with enforcement powers including the ability to issue an Enforcement Order and to impose a penalty. The decision to issue a Direction and the CAA's use of its enforcement powers is subject to the right to appeal to the Competition Appeal Tribunal.
- 1.11 Appendix B sets out our policy and guidance concerning the use by the CAA of its enforcement powers contained in Part 1 of, and Schedule 2 to the Act.
- 1.12 This is consistent with the CAA's overarching Regulatory Enforcement Policy⁹ which sets out the CAA's general approach to enforcement.
- 1.13 Delivery of the CAA's AMS is our ultimate goal. Our enforcement approach is aimed at bringing the recipient of the Direction into compliance, thereby progressing airspace modernisation. We aim to achieve the right balance of formal and informal approaches, depending on what we consider to be appropriate in the circumstances.
- 1.14 Our choice of approach will be guided by the impact of non-compliance on the progress of airspace modernisation and the type of action which in our view will most likely bring the recipient of the Direction into compliance. Our approach will be informed by information received from dialogue with the recipient of the Direction, from ACOG and other stakeholders. Our approach will also be informed by knowledge of the recipient of the Direction's intent and past behaviour.

Ability to determine and impose a penalty

- 1.15 The CAA may impose a penalty on a person if the CAA has determined that the person has contravened a requirement of an Enforcement Order. The CAA's decision to impose a penalty is subject to the right to appeal to the Competition Appeal Tribunal.
- 1.16 Schedule 2 of the Act requires the CAA to prepare and publish a statement of its policy on imposing penalties and determining their amount. The CAA is required to consult on this policy with appropriate stakeholders. Appendix C contains a draft Statement of Policy on Penalties for consultation.
- 1.17 We are seeking your views on the following questions:
- **Question 1:** Do you have any comments on the CAA's proposed approach to imposing a penalty under Schedule 2 of the Act?

⁹ CAP1326 CAA Regulatory Enforcement Policy, October 2012
<https://publicapps.caa.co.uk/modalapplication.aspx?appid=11&mode=detail&id=7069>