



BRIEFING PAPER

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Air Traffic Management and Unmanned Aircraft Bill [HL]

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Summary

The Bill seeks to enable the Government to modernise airspace management and air traffic licensing, and to introduce new powers to tackle the unlawful use of unmanned aircraft or 'drones'.

The Bill has completed its stages in the House of Lords, where there has been qualified cross-party support for the principal aims of the Bill. The Bill was introduced to the Commons on 28 January 2021, Second Reading took place 2 February 2021 and Committee stage proceedings on 9 February 2021. Report Stage and Third Reading in the Commons is scheduled for 22 March 2021.

Part 1: Airspace management

A programme of airspace modernisation is underway to redesign the UK's flightpaths. The aims of this are to deliver quicker, quieter and cleaner journeys. It will also deliver more capacity. This modernisation programme is being led by industry with support from the Civil Aviation Authority (CAA) and from Government. However, participation is currently on a voluntary basis. Neither the Government nor the CAA currently have powers to guarantee that airspace change is taken forward.

Clauses 1-8, together with **schedules 1 and 2**, would introduce new powers for the Secretary of State to direct airports and other entities with functions relating to air navigation to take forward airspace change proposals.

Part 2: Air traffic licensing

In 2016, the Government published a consultation on [Modernising the Licensing Framework for Air Traffic Services](#). This consultation noted that the current licensing framework governing the provision of air traffic services needed to be "modernised to ensure that it remains fit for purpose and continues to improve on the UK's record on safety, satisfying demand and resilience".

Clauses 9-11, together with **schedules 3-7**, would amend the [Transport Act 2000](#) to update the regulatory framework governing the licensing of air traffic services.

New clause 12, a Government-tabled amendment at Report Stage in the Lords, would provide temporary powers to amend the retained EU law on airport slot allocation due to the coronavirus pandemic. The 80/20 or Use it or Lose it Rule is used to monitor compliance and determine whether airlines can retain their legacy slots. The European Commission has waived the rule for the summer and winter seasons in 2020-21 because of the coronavirus pandemic, and the UK Government wishes to make a similar waiver through the use of these temporary powers.

Part 3: Unmanned aircraft

The Government has welcomed the opportunities of unmanned aircraft (also known as drones) but recognises their safety risks. The risks were most visibly seen with the disruption at Gatwick Airport in December 2018, where the airport closed in response to several reports of drone sightings. There are also concerns around the use of drones to smuggle contraband into prisons.

Clauses 13-18, together with **schedules 8-11**, would expand the regulatory framework to address misuse of unmanned aircraft. The Bill would:

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- powers to police the misuse of unmanned aircraft, including to: (i) ground unmanned aircrafts; (ii) stop and search people and vehicles; (iii) to obtain a warrant to search property
- provide for fixed penalties for certain offences relating to unmanned aircraft

1. Background

The December 2019 Queen's Speech announced the Government's intention to bring forward a Bill to:

- give the Government new powers to direct an airport or other relevant body to prepare and submit a proposal to the Civil Aviation Authority (CAA) to **modernise their airspace**, enabling more efficient, quieter and greener flights;
- modernise the **licensing framework for air traffic control**; and
- give the **police new powers to tackle the unlawful use of unmanned aerial vehicle (UAVs or 'drones')**, including the ability to require a person to land a UAV and enhanced stop and search powers where particular UAV-related offences have taken place.¹

These proposals should be seen in the context of the Government's [Aviation Strategy](#), which it has been consulting on since 2018. The final Aviation 2050 White Paper was expected in 2020 but has been delayed due to the ongoing coronavirus-related emergency.

Other relevant developments include:

- the Government's new [airspace modernisation policy](#), published in 2019, and accompanying changes to the process for making and obtaining permission for an [airspace change proposal](#) via the UK's aviation regulator, the Civil Aviation Authority (CAA); and
- [ongoing civilian drone incursion events](#) at major airports and threats at other important national sites, including the Gatwick shutdown of December 2018.

The [Air Traffic Management and Unmanned Aircraft Bill \[HL\] 2019-21](#) was published on 9 January 2020. It has already completed its stages in the House of Lords. [Second Reading](#) in the Commons took place on 2 February 2021. [Committee stage proceedings](#) took place in one meeting on 9 February 2021. Report Stage consideration and Third Reading of the Bill is scheduled for Monday 22 March 2021.

The Bill was only slightly amended in the Lords – these were largely technical changes brought by the Government. The main substantive change was **new clause 12**, which would introduce a new section into Part 2 of the Bill to provide for temporary powers to amend regulations governing airport slot allocations. There were only two minor technical amendments made to the Bill in Committee in the Commons.

The Bill applies to the whole of the UK and deals entirely with reserved matters – with the exception of clause 12 airport slots allocation, which extends to England, Wales and Scotland only. The provisions related to unmanned aircraft are subject to legislative consent from the [Scottish Parliament](#) and the [Northern Ireland Assembly](#), which have both been published on 24 June 2020.

¹ HMG, [Queen's Speech: Background Briefing Notes](#), 19 December 2019, p93

2. Part 1: Airspace change proposals

2.1 Background

What is airspace?

Airspace is the volume of space above ground level and extends as far as aircraft can fly. In the UK, airspace is either considered to be:

- **Controlled airspace:** in which there is a system of structured routes and aircraft are managed by air traffic control (ATC) services. These services oversee the airspace and monitor the separation of aircraft in order to keep them safe as they head towards their destinations.
- **Uncontrolled airspace:** where the pilot of the aircraft does not receive a service from the ground but has to “see and avoid” other aircraft and also navigate independently. Most light aircraft and some military and commercial aircraft operate in this airspace.

Airspace change proposals

The UK’s airspace was designed in the 1950s and 1960s. Like any other piece of infrastructure, airspace needs to be managed and continuously improved.

Changes are made via an ‘airspace change’ process. Airspace changes can include proposals, for example, to amend airport flightpaths, to change the classification of particular airspace or to alter high-level flightpaths.

Airspace changes are made via an ‘airspace change’ process. Anybody can initiate, and thus, sponsor, an airspace change. Sponsors are largely aerodrome/airport operators, an [Air Navigation Service Provider](#) (ANSP) (or a combination of the two); or the regulator (the Civil Aviation Authority (CAA)).

The CAA has responsibility for deciding whether to approve changes proposed to the design of airspace over the UK. In taking decisions over airspace changes, the CAA must consider a range of factors set out in section 70 of the [Transport Act 2000](#), including safety, security, operational and environmental impacts such as aircraft noise and emissions.

A new airspace change process took effect in January 2018. It is explained in detail in the CAA’s [Airspace Design: Guidance on the regulatory process for changing airspace design including community engagement requirements](#).

Airspace modernisation

Since the 1950s, airspace changes have been made piecemeal with additions and adaptations being made “in response to growing traffic levels”.² This has resulted in various inefficiencies, including:

² DfT, [Upgrading UK Airspace Strategic Rationale](#), 2017

- Constraints to the number of flights that the airspace can safely accommodate;
- Unnecessary delays for passengers;
- Greater fuel burn, resulting in more emissions and noise impacts for those living near airports.³

Accordingly, a programme of airspace modernisation is underway to redesign the UK's flightpaths. This modernisation aims to deliver quicker, quieter and cleaner journeys, and more capacity, for the benefit of those who use and are affected by UK airspace.

The Department for Transport (DfT) set out its strategic case for airspace modernisation and the resultant benefits in 2017.⁴ Transport Minister, Baroness Vere of Norbiton, set out the challenge at Second Reading of the Bill explaining:

It estimated that by 2030 one in three flights arriving or leaving an airport is likely to be delayed by an average of 30 minutes. That is 72 times higher than in 2015 and would be very damaging for passengers, businesses, the economy, communities and the environment.⁵

The CAA's strategy for airspace in the UK to 2024 is published in the [Airspace Modernisation Strategy](#).⁶ This modernisation programme is being led by industry with support from the CAA and from Government. However, participation is on a voluntary basis. Neither "the Government nor the CAA currently have powers to guarantee that airspace change is taken forward".⁷ The CAA says:

This means that when airspace modernisation is needed across a number of airports to restructure and rationalise the airspace they use, there is no way of ensuring that they will each sponsor the airspace changes identified as necessary. Where there are interdependencies between changes, this can hold up modernisation.⁸

The UK's airspace is highly interdependent, particularly over the south-east. For airspace change to take place, airports and NATS—formerly National Air Traffic Services—have to work together to take into account the needs of neighbouring airports, as well as their own. If one airport pulls out of the programme, that could delay the whole modernisation programme, which in itself is a very complex undertaking. Should this situation occur, neither the Government nor the CAA currently has the powers to guarantee that airspace change is taken forward.

The Government's 2018 consultation, [Aviation 2050 – the future of UK Aviation](#), sought views on annex A: "Legislation to enforce the development of airspace change proposals".⁹ The Government confirmed its intention to bring forward legislation regarding airspace

³ CAA, [Airspace Modernisation Strategy, CAP 1711](#), 2018

⁴ DfT, [Upgrading UK Airspace Strategic Rationale](#), 2017

⁵ HL Deb 27 Jan 2020 [c1265](#)

⁶ CAA, [Airspace Modernisation Strategy, CAP 1711](#), 2018

⁷ CAA, [Airspace Modernisation Strategy, CAP 1711](#), 2018

⁸ CAA, [Airspace Modernisation Strategy, CAP 1711](#), 2018

⁹ HM Government, [Aviation 2050 The future of UK aviation](#), 2018

change proposals in its [consultation response](#), published in October 2019.¹⁰

2.2 The Bill

Clauses 1-8, together with **schedules 1 and 2**, would introduce new powers for the Secretary of State to direct airports and other entities with functions relating to air navigation to take forward Airspace change proposals. At Second Reading in the Lords, Transport Minister, Baroness Vere of Norbiton, explained the rationale for the Bill:

The Government are working closely with the industry to encourage voluntary participation. However, if an airport is unwilling to participate voluntarily, the new powers in the Bill will enable the Secretary of State to compel airports to bring forward airspace change proposals, ultimately ensuring that the aviation modernisation programme is delivered. This includes airspace changes that direct airports to release underused controlled airspace so that general aviation users can better access it.¹¹

The Bill would:

- define an “airspace change proposal” for the purposes of the Bill (**Clause 1**);
- enable the Secretary of State to direct an airport operator, air navigation service provider or any person involved in air navigation to progress an airspace change proposal. Such directions may only be given where it will assist in the delivery of the CAA’s airspace strategy (**Clause 2**);
- provide parallel powers to clause 2 that would enable the Secretary of State to direct persons to cooperate in airspace change proposals (**Clause 3**);
- provide for the form in which directions made under section 2 or 3 must be given (**Clause 4**);
- provide for the powers in clauses 2 and 3 to be delegated to the CAA (**Clause 5**);
- amend an existing information gathering power contained in section 84 of the [Civil Aviation Act 1982](#) to enable the CAA to require information from a person involved in airspace change within the meaning of Part 1 of this Bill (**Clause 6**);
- introduce Schedules 1 and 2 of the Bill (**Clause 7**):
 - **Schedule 1** would make provision for appeals against decisions to give or vary a direction given by the Secretary of State under clause 2 or 3; and
 - **Schedule 2** would make provisions governing enforcement by the CAA of a direction given by the Secretary of State under clause 2 or 3. The schedule would provide for the CAA to make: **contravention orders** giving notice to persons believes have contravened a direction under the Bill;

¹⁰ DfT, [Consultation Response on Legislation for Enforcing the Development of Airspace Change Proposals](#), Oct 2019

¹¹ HL Deb 27 Jan 2020 [c1266](#)

enforcement orders requiring the person to take specified steps to remedy the consequences of the contravention; and introduce **penalties for contravention of enforcement orders**, which may be either or both a fixed amount (not exceeding 10% of the person's turnover) or a daily amount (not exceeding 0.1% of the person's turnover). The Schedule would also introduce appeal rights in respect of contravention orders, enforcement orders and penalties.

- Provide for interpretation of Part 1 of the Bill (**Clause 8**)

Lords debates

There was cross-party support for Part 1 of the Bill in the Lords. Only one technical, minor amendment was made to this part of the Bill.

At Second Reading, Shadow Transport Minister Lord Tunncliffe expressed support for Part 1 of the Bill but stressed the need for the modernisation process as a whole to focus on sustainable growth.¹² These points were supported by Lord McNally, the Liberal Democrat Spokesperson at Second Reading.¹³

At Committee stage, debates on Part 1 of the Bill considered amendments (all of which were withdrawn) on:

- **Limiting the scope of the Secretary of State's powers under clause 1.** Specifically, amendments sought clarifications over who could be compelled to progress airspace change proposals and how those powers could be used. Amendments sought to limit the powers to "the delivery of the master plan for airspace modernisation". Liberal Democrat Transport Spokesperson, Baroness Randerson said:

By narrowing the powers, we are trying to ensure that the Secretary of State is obliged to act in the interests of the master plan. Acting in the interests of the master plan might seem obvious, but I am told that discussions between officials and the industry have not produced a clear statement or clear reasoning as to how the airspace strategy and the master plan will fit together, because we are talking about different things.¹⁴

Baroness Vere responded by saying the powers would be used "only if it assisted delivery of the CAA's strategy and plan", but that airspace modernisation is not just about the master plan and the amendments could prevent this broader work.¹⁵

- **Cost implications of airspace changes:** The Opposition tabled amendments designed to ensure the Secretary of State would mitigate the financial implications for smaller airports subject to directions by providing appropriate compensation. Baroness Randerson, cautioned that airspace changes "could reflect 15% of the annual turnover of a small airport, which would be

¹² HL Deb 27 Jan 2020 [c1269](#)

¹³ HL Deb 27 Jan 2020 [c1270](#)

¹⁴ HL Deb 8 Feb 2020 [c2080](#)

¹⁵ HL Deb 8 Feb 2020 [c2082-2084](#)

impossible for them to deal with financially.”¹⁶ In response, the Government set out the general long standing policy that “air passengers should fund the cost of their travel, including the cost of changes to airspace structure, rather than this being subsidised by the taxpayer.” While at the same time noting “there may be occasions when a small airport requires financial assistance to carry out some aspects of an airspace change proposal”. The Government Whip, Baroness Bloomfield of Hinton Waldrist said in these circumstances the CAA’s Airspace Modernisation Support Fund of £10 million may be used (subject to Treasury approval), and that:

“As a last resort the Government could consider, on a case-by-case basis only, whether grant funding under Section 34(1)(b) of the Civil Aviation Act could be provided to an airport directed to bring forward an ACP that resulted in adverse financial impacts.”¹⁷

The Airport Operators Association (AOA), the trade association for UK airports, has further highlighted the negative impact the pandemic is having on airport finances. It has called for the Government to fund the initial stages of airport modernisation until industry has recovered and can resume its own investment.

- **Resourcing for the CAA for its additional functions:** The Minister sought to reassure the Committee over concerns for the resources for the additional functions the CAA would be tasked with. Baroness Vere stated that the CAA already reports on its resourcing publicly through multiple channels.¹⁸
- **Making the Secretary of State responsible for delivery for airspace modernisation:** Lord Tunnicliffe’s amendment sought to make the Secretary of State responsible for the modernisation process. He explained:

“To get something of this complexity done—I have been involved in issues of similar complexity—you need a single individual you can hold accountable for its success. That individual must have the appropriate authority and, because we are talking about something in common ownership—airspace—that individual must be politically accountable. The only person who meets that test is the Secretary of State. I beg to move.”¹⁹

Baroness Vere responded by setting out existing lines of responsibility and concluded that “the responsibility for directing the programme [already] lies with the Secretary of State”.²⁰

At Report Stage, Peers again raised concerns over funding airspace change proposals. This time in the context of the Covid-19 pandemic and associated travel restrictions impacting the aviation industry. Transport Minister Baroness Vere said:

...the Government have asked the Airspace Change Organising Group—ACOG—to revisit the master plan for airspace change in this light [severe impact of Covid-19 on the aviation sector] to

¹⁶ HL Deb 8 Feb 2020 [c2087](#)

¹⁷ HL Deb 8 Feb 2020 [c2090](#)

¹⁸ HL Deb 8 Feb 2020 [c2094](#)

¹⁹ HL Deb 8 Feb 2020 [c2097](#)

²⁰ HL Deb 8 Feb 2020 [c2099](#)

ensure that the benefits of the programme are realised and that the investment already made is not lost. In July last year, ACOG published a report on remobilising airspace change. It included 10 recommendations aiming to ensure that the programme advances, while recognising the financial pressures faced by airports and the industry.²¹

The [Transport Minister also wrote to Lord Tunncliffe](#) in December 2020 seeking to provide further reassurance over costs.

Commons debates

There were no amendments tabled to this Part of the Bill.

At **Second Reading**, there was cross-party support for this Part of the Bill. Labour's Shadow Transport Minister said he shared the Minister's ambition for airspace modernisation. He described the current situation as "an analogue system in a digital age."²²

Many members welcomed the potential environmental benefits to be realised by airspace modernisation – allowing cleaner, greener, more efficient routes. For example, Andrew Selous MP noted that, "Upgrading our airspace is a key part of building back better and contributing to a cleaner recovery for the UK economy." Further he welcomed the fact that "upgrading UK airspace will help to prevent potential delays, reduce congestion and make travel easier and more efficient for us all."²³ There were also calls for the Government to go further to find ways to redress the environmental impact of aviation.

At **Committee stage**, Labour's Shadow Transport Minister, Mike Kane questioned the wide scope of the powers provided for by clause 1 and raised concerns over the funding of airspace change proposals under clause 2. The Aviation Minister Robert Courts rehearsed Government's earlier responses to these points made in the Lords, that the powers would only be used if necessary and had to be future proofed, and that funding could be provided in exceptional cases.

Mike Kane also noted concerns around the powers to delegate responsibilities to the CAA under clause 5, and the potential for a conflict of interest. He asked the Minister:

Is there a conflict of interest with the CAA being delegated enforcement powers when it is also responsible for making the judgment on suitability? It appears that it will act as both judge and jury, and I hope that the Minister will explore that conflict today.²⁴

Robert Courts, Aviation Minister, accepted that "there will be a need to ensure that such governance structures are in place" to manage any potential conflict if those responsibilities are delegated. He further emphasised that "The CAA has already created an internal governance structure that separates out its role in tracking airspace change proposals and advising on the use, powers and decisions on ACPs." He

²¹ HL Deb 21 Jan 2021 [c1314](#)

²² HC Deb 2 Feb 2021 [c891](#)

²³ HC Deb 2 Feb 2021 [c892](#)

²⁴ HC Deb 2 Feb 2021 [c10](#)

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was therefore confident that should it be necessary the CAA would be able to establish those necessary structures.²⁵

²⁵ HC Deb 2 Feb 2021 [c10](#)

3. Part 2: Air traffic services

3.1 Background

Air traffic control (ATC) aims to move aircraft safely and efficiently through airspace. Controllers keep aircraft set distances apart while moving them from airport to airport using set routes.²⁶ Air navigation services comprise:

- **En-route services:** the control of aircraft from the completion of their initial climb, through to cruising altitude and then to the completion of their controlled descent, before handing over to approach control;
- **Approach control services:** Radar services provided by the ATC unit take over control of aircraft approximately 40 miles from the airport and sequences aircraft landing before handing over to aerodrome control;
- **Aerodrome control services:** Visual control provided from the ATC tower for aircraft taking off/landing and for ground movement control.²⁷

Under the *Transport Act 2000* the Government issued a licence to NATS (En Route) plc (NERL) to provide en route air traffic services in the UK. The provision of these services operates as a statutory monopoly. Under the Act, the CAA is economic regulator of NERL, and has powers to modify conditions of the licence, subject to its duties under section 2 of the 2000 Act.

The explanatory notes to the Bill explain there have been two serious system failures that have prompted reviews of the regulatory framework for NERL:

- a [Voice Communications Systems \(VCS\) failure on 7 December 2013](#), which had a particularly disruptive effect on passengers, prompting a wide-ranging CAA review into the NERL licence and regulatory framework.
- a [computer system failure on 12 December 2014](#), that led the CAA and NATS to establish an independent inquiry into the cause of the failure.

Following investigations, the CAA was satisfied that neither of the two failures led to safety concerns associated with NATS's handling of the incident. There was also no evidence that NATS was in breach of the service obligations in its licence. The [independent inquiry into the 2014 system failure](#), did however, make a number of recommendations to update and modernise the licensing framework.

In 2016, the Government published a consultation [Modernising the Licensing Framework for Air Traffic Services](#). This consultation noted the current licencing framework governing the provision of air traffic services needed to be "modernised to ensure that it remains fit for

²⁶ CAA, [How air traffic control works](#), accessed 22 Jan 2020

²⁷ See figure 1 in DfT, [Modernising the Licensing Framework for Air Traffic Services](#), 2016

purpose and continues to improve on the UK's record on safety, satisfying demand and resilience". The Consultation presented three proposals to modernise the licensing framework by:

- amending the licence modification process to allow the CAA to directly make changes to the licence after consultation, subject to a right of appeal to an appropriate body;
- giving the CAA access to a wider range of enforcement tools, subject to appeal to an appropriate body; and
- extending the NERL licence notice period to promote NERL's ability to finance itself more efficiently.²⁸

Airport slots

Since the early 1990s, slot allocation in the UK has been governed by the EU Airport Slot Regulation ([Regulation 95/93\(EEC\)](#)) ('the EU rules'). The EU rules came into force in 1993 and were later transposed into UK law by the [Airports Slot Allocation Regulations 2006](#). The EU rules retain the principles of global industry guidelines called the Worldwide Airport Slot Guidelines (WASG).

The main features of the global guidelines, and the EU rules, currently in place in the UK are:

- Historic precedence or grandfather rights. These enable airlines to retain their slots if they have used them 80% of the time in the last equivalent winter and summer season. The 80/20 or Use it or Lose it Rule is used to monitor compliance and determine whether airlines can retain their legacy slots. The European Commission has waived the rule for the summer and winter seasons in 2020 because of the coronavirus pandemic. The global guidelines say that historic slots may not be withdrawn from an airline to accommodate new entrants or any other category of aircraft operator. Confiscation of slots for any reason other than proven, intentional slot misuse is not permitted;
- An independent body, known as the airport coordinator, is responsible for allocating slots. The UK coordinator is [Airport Coordination Limited \(ACL\)](#). ACL has an arms-length relationship with the Department for Transport (DfT) and the regulator, the Civil Aviation Authority (CAA). Neither the DfT nor the CAA have any involvement in the slot allocation process; and
- Protections ensuring that 50% of new requests for slots are allocated to new entrants.

You can read more about airport slot allocation and reform in the Commons Library briefing, [Airport slots](#).

3.2 The Bill

Clauses 9-11, together with **schedules 3-7**, would amend the [Transport Act 2000](#) to update the regulatory framework governing the

²⁸ DfT, [Modernising the licensing framework for air traffic services](#), Sept 2016

licensing of air traffic services. **New clause 12**, a Government-tabled amendment at Report Stage in the Lords, would provide temporary powers to amend the retained EU law on airport slot allocation due to the coronavirus pandemic.

At Second Reading, Transport Minister, Baroness Vere of Norbiton explained that the Government's rationale for Part 2 of the Bill was to modernise the regulatory regime:

...it has been 18 years since the establishment of an economic regulatory regime for the provision of en-route air traffic control services. These services are provided by NATS (En Route) plc, helpfully referred to as NERL, which is regulated by the CAA. During those 18 years, the technological and economic landscape of air traffic services has changed rapidly. This has led to growing pressure to improve efficiency and resilience.

The current process for modifying the en-route air traffic services licence is inefficient and impractical. The CAA can make changes to a licence only with the consent of NERL, which is the licence holder, or via a determination by the Competition and Markets Authority—the CMA. This means that important changes to the licence could be delayed or may fail to be implemented at all. The licensing framework needs to be modernised to ensure that it remains fit for purpose, continues to build on the UK's excellent safety record, satisfies demand, and continues to be resilient.²⁹

The Bill would:

- replace section 11 of the *Transport Act 2000* with new provisions that allow the CAA to modify licence conditions without the need for the consent of air traffic services (**Clause 9**);
- introduce **Schedules 3 and 4** of the Bill to provide for (**Clause 9**):
 - Appeals to be made in respect of a decision by the CAA to modify a licence condition (**Schedule 3**);
 - The related appeals procedure (**Schedule 4**).
- Make provision for the imposition and recovery of penalties and require the CAA to publish a statement of policy with respect to imposing penalties (**Clause 10**).
- Introduce **Schedule 5 and 6** of the Bill that would provide for (**Clause 10**):
 - the CAA's powers to enforce breaches of the licence holder's duties under section 8 of the 2000 Act or a licence condition, and the licence holder's appeal rights in respect of orders and penalties made or imposed by the CAA (**Schedule 5**);
 - the CAA to require persons to provide information for the purpose of exercising certain functions, for enforcement where information is not provided, and for penalties where such information is falsified, altered, suppressed or destroyed (**Schedule 6**).

²⁹ HL Deb 27 Jan 2020 [c1266](#)

- introduce **Schedule 7** of the Bill that provides for amendments to the 2000 Act which are consequential on clauses 9 and 10 (**Clause 11**).
- provide temporary powers to amend the retained EU law on airport slot allocation where there has been a reduction in the level of air traffic as a result of the coronavirus pandemic (**Clause 12**). This new clause was a Government tabled amendment at Report Stage in the Lords.

Lords debates

There was little substantive debate about the provisions in Part 2 of the Bill at **Second Reading**. Lord Tunnicliffe sought reassurances that the CAA would receive additional funding for its new powers, noting that “a 2017 survey found that fewer than 10% of employees believed that they had time to undertake important safety activities to an acceptable standard.”³⁰

At Committee, the Government tabled a number of minor technical amendments to the Schedules. The debate on Part 2 of the Bill considered amendments (all of which were withdrawn) on:

- **Reducing time limits determining appeals** under Schedule 3 from 24 weeks to 12 weeks. Moving the amendment, Lord Bradshaw said
“The Bill is about efficiency, and what I am proposing is an improvement in efficiency. [...] The pace of work of the CMA in some cases is such that a snail would be envious that it can go so slowly. I believe there is a strong case for saying that it should come to a decision within 12 weeks of a matter being referred to it.”³¹
Baroness Vere said that 24 weeks is “already a shorter timescale than the CMA usually operates when it is dealing with price-control appeals from other sectors”.³² The amendment was withdrawn.
- **Preparing a report on the impacts of Parts 1 and 2 of the Bill on general aviation.** Lord Tunnicliffe said he felt general aviation – that is non-commercial aviation – was not being taken seriously in the ongoing policy changes in the sector. This report was intended to require the Government to take account of general aviation.³³

Between when the Bill was introduced in January 2020 and Report Stage in the Lords in January 2021, the aviation industry has been significantly impacted by the COVID-19 pandemic and associated travel restrictions. In October 2020, the Airport Operators Association (AOA), the trade body for airports, reported its members were losing £83 million a week.³⁴ The Transport Committee’s report on the impact of

³⁰ HL Deb 27 Jan 2020 [c1270](#)

³¹ HL Deb 10 Feb 2020 [c2102](#)

³² HL Deb 10 Feb 2020 [c2103](#)

³³ HL Deb 10 Feb 2020 [c2107](#)

³⁴ AOA, [UK’S Airports Losing £83 Million A Week As A Result Of Covid-19](#), 21 Oct 2020

the pandemic on the aviation sector further highlights that in April flights were 97% down on the corresponding period in 2019.³⁵

Consequently, at **Report Stage**, the Government tabled amendment 12A (and consequential amendments), which inserted **new Clause 12** on airport slot allocations. This would provide the Secretary of State with temporary powers to amend the retained EU law on airport slot allocation where there has been a reduction in the level of air traffic as a result of the coronavirus pandemic. Baroness Vere explained:

We anticipate that the effects of the Covid-19 pandemic on the aviation industry will continue for some time. Passenger demand is not predicted to return to 2019 levels until at least 2024-25. After we exited the UK-EU transition period on 31 December, regulation 95/93 was retained in UK law. However, when it was retained, the powers of the Commission to extend the period of alleviation from the 80:20 rule—which are being transferred to the Secretary of State—were expressly limited to 2 April 2021. As we expect disruption to air travel to continue for several years, it is therefore imperative that the UK has the necessary powers at its disposal to provide alleviation beyond the summer 2021 season should the evidence suggest that it is warranted.

There was cross-party support for the overall intention of the amendment, but questions were posed around:

- Defining the qualifying comparator year. The amendment would allow for the Secretary of State to choose “any previous year [they consider] appropriate” for comparing levels of traffic, which Baroness Randerson said was too vague.³⁶
- Adequate consultation with all stakeholders for each season that is managed under these amendments.³⁷

Amendment 12, agreed to at Report Stage, would provide the CAA with discretion over whether to investigate alleged or apprehended contraventions of section 8 duties or licence conditions by air traffic services licence holders. This Government amendment was supported by Labour’s Transport Spokesperson Lord Tunnicliffe. Speaking to this amendment, Transport Minister Baroness Vere said it would:

...provide clarity and flexibility for the CAA and stakeholders as to when investigations should be commenced. This will reduce the potential for unnecessary investigations which have no material effect—or which result in no enforcement action being taken—without watering down the CAA’s powers, or the ability of parties to raise a complaint. The CAA will publish updated enforcement guidance, which can refer to the application of Section 34.³⁸

Commons debates

There were no amendments tabled to this Part of the Bill and there was little substantive debate on **clauses 9-11**, but several Members raised concerns over how **clause 12** would work.

³⁵ Transport Committee, Second Report of Session 2019–21, [The impact of the coronavirus pandemic on the aviation sector](#), June 2020, para 12

³⁶ HL Deb 21 Jan 2021 [c1325](#)

³⁷ HL Deb 21 Jan 2021 [c1326](#)

³⁸ HL Deb 21 Feb 2021 [c1317](#)

At **Second Reading**, the SNP's Shadow Transport Minister Gavin Newlands said he welcomed the move to extend the relaxation of the "80:20 rule", but wanted "other factors such as employment conditions [to be] used as criteria when allocating slots."³⁹ While other Members stressed the need for regional airports to be considered. Paul Howell MP noted his concern that regional airports have been used to frustrate opportunities for regional airports. He therefore said

It is imperative that, if [the Secretary of State] chooses to use the power of waiver, he still enables a review of slots, does not allow a full roll-over and retains a mechanism to reallocate some of those, particularly to support regional airports.⁴⁰

At Committee Stage, Labour's Shadow Transport Minister, Mike Kane highlighted Opposition concerns over how long the temporary powers provided for by **Clause 12** would be in force (until August 2024) and whether those slots holders would gain an unfair advantage. He said:

My concern is that airlines with grandfathered rights to lucrative landing slots might gain an unfair advantage over new operators. Existing slot holders could hoard their best-performing slots unused, whereas new operators may be able to restart operations sooner, thus bringing more jobs back to the sector earlier, given that the pandemic has so severely impacted those working in airports, airlines and ground handling services.⁴¹

In his response to these points, the Aviation Minister, Robert Courts, noted the date in the legislation is the date of the expected demand recovery i.e. that demand for flights is not expected to recover to 2019 levels until around 2023. Further, the Minister said any decision to use the power would be "taken on the basis of data and market conditions at the time" and that these powers also provide for conditions to be attached to the slots, thus addressing those concerns over competition in the sector.⁴²

³⁹ HC Deb 8 Feb 2021 [c893](#)

⁴⁰ HC Deb 2 Feb 2021 [c900](#)

⁴¹ HC Deb 9 Feb 2021 [c18](#)

⁴² HC Deb 9 Feb 2021 [c18](#)

4. Part 3: Unmanned aircraft

4.1 Background

The Government has welcomed the potential opportunities created by unmanned aircraft (also known as drones) but also recognises their safety risks. The risks were most visibly seen with the disruption at Gatwick Airport in December 2018, when the airport closed in response to several reports of drone sightings. This disrupted several thousands of passengers whose flights were either cancelled or significantly delayed during the nearly 36 hours in which the airport was closed.

Existing legal framework

The [CAA](#) is responsible for regulating unmanned aircraft. Relevant legislation is contained chiefly in the [Civil Aviation Act 1982](#) and the [Air Navigation Order 2016 \(SI 2016/765\)](#), with detailed guidance set out in the CAA's [Unmanned Aircraft System Operations in UK Airspace – Guidance](#). Amendments were made to the law surrounding drone registration and usage via:

- the [Air Navigation \(Amendment\) Order 2018](#), which introduced flight restriction zones around airports.
- the [Air Navigation \(Amendment\) Order 2019](#), which extended the no-fly zone for drones around airports
- the [Air Navigation \(Amendment\) Order 2020](#), which updated provisions in the 2016 Order to align with requirements in Commission Implementing Regulation (EU) 2019/947 (the Implementing Regulation). (**Note:** the 2020 Regulations were enacted after this Bill was introduced in the Lords).

Enforcement

Some of the enforcement issues surrounding drones are not aviation-related and, therefore, do not fall within the CAA and DfT's purview. To bring clarity in this area the DfT and CAA signed a [memorandum of understanding \(MOU\)](#) with the police and the Home Office to ensure that the areas of responsibility are defined.⁴³

Under the MOU, the Home Office, "will work together towards drafting and implementing effective legislation in respect of drones to mitigate misuse and the threat posed", while the police will "assess reports of drone misuse...with resources to be concentrated on investigating the most serious misuse."

Operational guidance has also been produced by the National Police Chiefs' Council about the legislation and how to deal with the misuse of drones.⁴⁴

⁴³ CAA, [Annual Reports & Accounts 2015/16](#), p11

⁴⁴ NPCC, [Guidance to Officers on Drones – Legislation and dealing with misuse](#), 2015

Consultations and strategies

In July 2018 the DfT published its consultation [Taking Flight: The Future of Drones in the UK](#). The consultation sought views on (amongst other things) police powers relating to drones and fixed penalty notices.⁴⁵

The Government response was published on 7 January 2019 in the immediate aftermath of the drone disruption at Gatwick Airport over the 2018 Christmas period. The then Secretary of State, Chris Grayling, said that the incident was a “stark example of why we must continue to ensure drones are used safely and securely in the UK.”⁴⁶

The flagship proposal at the back end of this consultation was the introduction of new police powers. As the Secretary of State elaborated:

These include allowing the police to request evidence from drone users where there is reasonable suspicion of an offence being committed, as well as enabling the police to issue fixed penalty notices for minor drone offences. Those new powers will help to ensure effective enforcement of the rules. They will provide an immediate deterrent to those who might misuse drones or attempt to break the law.⁴⁷

The Secretary of State also expressed his desire to “ensure that the most up-to-date technology is available to detect, track and potentially disrupt drones that are being used illegally.” He added that the consultation responses would be “used by the Home Office to develop an appropriate means of using that technology in the UK.”⁴⁸ The [AOA has previously called for mandatory geo-fencing](#) (software within the drone that prevents it flying over certain areas on a map), and mandatory remote identification of drones (a beacon on all drones, identifying its registrant owner/operator) to help airports identify genuine threats to safety arising from accidental incursions.

Stop and search powers

On 17 September 2018, the Home Office published its consultation [“Stop and search: extending police powers to cover offences relating to unmanned aircraft \(drones\), laser pointers and corrosive substances”](#). The consultation asked for views on a new power to stop and search individuals and vehicles on the basis of “reasonable grounds” in order to search for drones. The Government said the new power would enable “better law enforcement” than existing stop and search powers can provide.⁴⁹

The Government [responded to the consultation](#) in February 2019. Over half of consultees (63.4%) said new stop and search powers were not needed.⁵⁰ These consultees felt the risk posed by drones did not warrant

⁴⁵ DfT, [Taking Flight: The Future of Drones in the UK](#), July 2018,, p9

⁴⁶ DfT, [Oral statement to Parliament - Drones: consultation response](#), 7 January 2019

⁴⁷ DfT, [Oral statement to Parliament - Drones: consultation response](#), 7 January 2019

⁴⁸ Ibid.

⁴⁹ Home Office, [Stop and Search: Extending police powers to cover offences relating to unmanned aircraft \(drones\), laser pointers and corrosive substances](#), September 2018, para 22

⁵⁰ Home Office, [Stop and search: extending police powers to cover offences relating to unmanned aircraft \(drones\), laser pointers and corrosive substances Government response](#), February 2019, p8

the extension of stop and search powers.⁵¹ The Government disagreed. It pointed to an increase in drone misuse, the use of drones to smuggle drugs into prison and the Gatwick incident. It concluded that the extension of stop and search powers was “proportionate and beneficial”.⁵²

The Government has since published its UK Counter-Unmanned Aircraft Strategy. It says the objective of the strategy is to reduce the risk posed by the highest-harm illegal use of drones. It lists four objectives to realise this ambition:

1. developing a comprehensive understanding of the evolving risks posed by the malicious and illegal use of drones
2. taking a ‘full spectrum’ approach to deter, detect and disrupt the misuse of drones
3. building strong relationships with industry to ensure their products meet the highest security standards
4. empowering the police and other operational responders through access to counter-drone capabilities and effective legislation, training and guidance⁵³

4.2 The Bill

Clauses 13-18, together with **schedules 8-11**, would expand the regulatory framework to address misuse of unmanned aircraft. The Bill would:

- introduce **Schedule 8**, which would provide new powers to police the misuse of unmanned aircraft (**Clause 13**);
- introduce **Schedule 9**, which makes provision about police powers relating to requirements in the *Air Navigation Order 2016* (**Clause 14**);
- introduce **Schedule 10**, which contains provisions about fixed penalties for certain offences relating to unmanned aircraft (**Clause 15**);
- introduce **Schedule 11**, which makes provision about the amendment of provisions that relate to offences in consequence of an Air Navigation Order (**Clause 16**);
- facilitate disclosure of information under provisions in Part 3 of the Bill, subject to data protection legislation or the Investigatory Powers Act 2016 (**Clause 17**); and
- provide for interpretation of Part 3 of the Bill (**Clause 18**).

Schedule 8 is split into two parts. Part One would provide police officers with three new powers:

⁵¹ Home Office, [Stop and search: extending police powers to cover offences relating to unmanned aircraft \(drones\), laser pointers and corrosive substances Government response](#), February 2019, p14

⁵² Home Office, [Stop and search: extending police powers to cover offences relating to unmanned aircraft \(drones\), laser pointers and corrosive substances Government response](#), February 2019, p21

⁵³ HM Government, [UK Counter-Unmanned Aircraft Strategy](#), Oct 2019

- **a power to ground unmanned aircrafts** when they have “reasonable grounds” to suspect the unmanned aircraft has been, is, or is likely to be, involved in an offence. The Bill would make failing to comply with an officer’s direction to ground an unmanned aircraft an offence. The offence would carry a fine on conviction.⁵⁴
- **a power to stop and search people and vehicles** when they have “reasonable grounds” to suspect they will find an unmanned vehicle (or item associated with it) that is or has been:
 - used in a relevant offence under the [Air Navigation Order 2016](#) (fly near aerodromes, endanger aircraft, or fly without a licence), **or**
 - used in any relevant prison offence, **or**
 - used in other offences in the [Air Navigation Order 2016](#) (fly when prohibited by Secretary of State, without a licence, flying tethered small aircraft when requirements not met) **and** the flight is disruptive to other aircraft, causing harassment, alarm or distress, undermining the security or good order of a prison, damage property **or** threatening national security.⁵⁵
- **a power to obtain a warrant to search property** for unmanned aircrafts that have been involved in a relevant offence (and items associated with them) and to seize them if found.

Powers like these are known as PACE powers (after the *Police and Criminal Evidence Act 1984*). The Library’s paper [police powers: an introduction](#) explains what PACE powers are and how they are generally regulated. The proposed powers in this Bill would allow officers to use PACE powers when investigating and detecting crime involving unmanned aircraft.

Part Two of **Schedule 8** would amend provisions in *Police Act 1997* relating to “property interference”.

Under [Part III](#) of the *Police Act 1997*, police chiefs can issue warrants authorising their officers to “bug” the property (typically houses, cars and telephones) of those they suspect have committed serious crime. This power is known technically as ‘property interference’. Chief constables must be satisfied that the use of property interference is necessary to prevent or detect serious crime and that it is proportionate to that aim when issuing a warrant. Section seven of the [Covert Surveillance and Property Interference Revised Code of Practice](#) provides officers with statutory guidance on their current property interference powers.

Part Two of **Schedule 8** would amend Part III of the 1997 Act to allow police chiefs to authorise property interference when they have reasonable grounds that unmanned aircraft is being used to conduct a relevant offence. It also gives the Civil Nuclear Constabulary and prison

⁵⁴ Schedule 8, para 1

⁵⁵ Schedule 8, para 2

authorities powers to request authorisation for property interference in connection to unmanned aircraft misuse relating to a prison offence.

The Government do not expect the “police as a whole” to be burdened significantly with the new powers included in **Schedule 8**.⁵⁶ The Government is investing £1.28 million in a new national police counter-drone unit that will respond to unmanned aircraft incursions.⁵⁷ However the Government does anticipate that as unmanned aircraft become part of day-to-day life they will become part of community policing. Baroness Vere said the Home Office will ensure the police have “sufficient resources to deliver what is required.”⁵⁸

Schedule 9 would enable constables to obtain information from Unmanned Aircraft Systems operators or remote pilots about the lawful basis of an unmanned aircraft flight, for those flights that require a prior step to be lawful. The Schedule was entirely replaced at Report Stage in light of the enactment of the [Air Navigation \(Amendment\) Order Regulations 2020](#). The Minister nevertheless said the “policy intention of the schedule remains the same”.⁵⁹

Schedule 10 would provide for the Secretary of State to make regulations prescribing offences as fixed penalty offences for the purposes of this Schedule.

Schedule 11 is split into two parts. Part one would provide that powers to make Air Navigation Orders includes the power to make amendments of Schedule 8 of the Bill, only so far as it relates to offences under an Air Navigation Order. Part two would provide the Secretary of State a new power to make regulations providing for criminal offences or civil penalties in relation to any “relevant legislation” i.e. EU derived legislation.

Lords debates

At **Second Reading**, Baroness Vere explained the Government’s rationale for the clauses. She said that whilst the Government recognises that the “majority of unmanned aircraft users... fly responsibly” there have been “instances of model aircraft being flown illegally”. She said the provisions in the Bill would address “operational gaps” and give the police the “necessary powers to require an unmanned aircraft to be grounded, to stop and search persons and to enter and search premises under warrant”.⁶⁰

There was qualified cross-party support for the aims and the need to regulate the use of unmanned vehicles. Debate centred on:

- ensuring the stop and search powers would be used proportionately and effectively;⁶¹
- whether the powers in the Bill consulted on in 2018 reflect the events at Gatwick, which occurred after the consultation.

⁵⁶ HL Deb, 12 Feb 2020, cc2288

⁵⁷ HL Deb, 12 Feb 2020, cc2288

⁵⁸ HL Deb 12 Feb 2020, cc2288-2289

⁵⁹ HL Deb 21 Feb 2021 [c1345](#)

⁶⁰ HL Deb 27 Jan 2020, [cc1268](#)

⁶¹ HL Deb 27 Jan 2020 [c1270](#)

Baroness Vere responded by reassuring Peers, “we have of course been in touch with members of the police force around Gatwick and, indeed, all over the country to make sure they are content with the powers in the Bill”;⁶²

- whether the legislation is fit for purpose and able to keep pace with technological developments;⁶³
- the need to set minimum ages to be able to operate an unmanned aircraft⁶⁴; and
- making the penalties for misuse of unmanned aircraft strong enough to deter both individuals and large companies, such as Sky or Amazon.⁶⁵

At Committee Stage, Peers expressed their support for the aims of Part 3 of the Bill. Debate focussed on:

- **probing amendments connected to the effectiveness of the police powers in Schedule 8.** Amendments sought to ensure that the powers could be used in all scenarios and that officers could confiscate unmanned aircraft when appropriate.⁶⁶
- **monitoring of the stop and search powers.** Amendments sought to require police forces return data about their use of the powers. Baroness Vere reassured Peers that data on the use of the stop and search powers in the Bill will be recorded and monitored as part of the existing stop and search regulatory framework.⁶⁷
- **future proofing the legislation to address potential risks.** Amendments on requiring geo-fencing equipment to be up to date, switched on and working.⁶⁸

At Report Stage, an entirely new Schedule 9 was introduced to the Bill in light of the enactment of the [Air Navigation \(Amendment\) Order Regulations 2020](#) in December 2020. The new Schedule introduced has updated references to the 2020 amendment regulations. The Minister said the “policy intention of the schedule remains the same”.⁶⁹ Lord Tunnicliffe and Baroness Randerson pushed the Minister on how “technical” and “minor” the changes were. The Minister said:

...the reality is that they are minor and technical. Where they are slightly not minor and technical—perhaps a bit borderline—I tried to bring that out in my 12-minute speech, particularly where there have been changes. For example, the implementing regulation has introduced some changes from the status quo ante; it is a slightly different regime. I suppose that, although they are technical amendments to make it all match up, perhaps they may be on the large end of minor. But I reassure him that I too have found nothing that I could not describe as minor or technical and, on that basis, I commend the amendment to the House.⁷⁰

⁶² HL Deb 27 Jan 2020 [c1291](#)

⁶³ HL Deb 27 Jan 2020 [c1270](#)

⁶⁴ HL Deb 27 Jan 2020 [c1281](#)

⁶⁵ HL Deb 27 Jan 2020 [c1281](#)

⁶⁶ HL Deb 12 Feb 2020 [c2269-2280](#)

⁶⁷ HL Deb 12 Feb 2020 [c2283- 2290](#)

⁶⁸ HL Deb 12 Feb 2020 [c2305](#)

⁶⁹ HL Deb 21 Jan 2021 [c1345](#)

⁷⁰ HL Deb 21 Jan 2021 [c1349](#)

Baroness Randerson moved amendment 14, which would require a review of legislation relating to unmanned aircraft and whether it provides sufficient protection to individuals. Transport Minister Baroness Vere said the Government felt the review was “neither necessary nor appropriate” as the *Air Navigation Order 2016* is the relevant legislation and must be reviewed every five years.⁷¹ The [amendment](#) was defeated 274 to 255.

Commons debates

The Government tabled two minor amendments to this Part of the Bill.

At **Second Reading**, several Members stressed the need to balance the positives and negatives associated with drones. As the SNP’s Shadow Transport Minister, Gavin Newlands put it:

We often hear of drones in a negative light, be that in their use in warfare, in closing airports as we saw at Gatwick, or in reported near misses with aircraft, but it is clear that they can provide many positives within a fairly and well-regulated framework.”⁷²

At **Committee stage**, the British Airline Pilots Association (BALPA), the pilot’s union, [submitted evidence to the Bill Committee](#). In this evidence, BALPA noted its support for much of the Bill, “strongly urged MPs not to consider watering down the police powers in this bill” which BALPAs view are “at least proportionate to the threat”, and made two recommendations for amendments to the Bill to:

- Make it illegal to fly a drone that has had its safety features disabled; and
- Prohibiting droner users to fly more than a single drone or a single swarm of drones.

Sam Tarry noted these concerns and raised them with the Minister in relation to Clause 16 and Schedule 11. The Minister responded to these concerns, by stating that “we have constructed the Bill in the way that we have, so that it is able to adapt and flex to technology or operating practices that change in the future.”⁷³

⁷¹ HL Deb 21 Feb 2020 [c1354](#)

⁷² HC Deb 2 Feb [c894](#)

⁷³ HC Deb 9 Feb [c26](#)

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