RESEARCH PAPER 05/51
23 JUNE 2005

Civil Aviation Bill

HC Bill 12 of 2005-06

The *Civil Aviation Bill* was introduced in the House of Commons on 9 June 2005. It will receive its second reading on 27 June 2005.

The Bill makes provision for various civil aviation matters, particularly: noise and emissions, public airport companies, appeals in respect of route licences, health and the Air Travel Trust Fund.

The Bill extends to the whole of the United Kingdom with minor exceptions.

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ISSN 1368-8456

Summary of main points

The *Civil Aviation Bill* (HC Bill 12 of session 2005-06) will implement commitments made in the Government's 2003 White Paper, *The Future of Air Transport*, to develop sustainable aviation policy and protect passenger interests. Measures include:

- Widening of the Secretary of State's powers to tackle aircraft noise and vibration;
- Clarification of aerodrome authorities' ability to charge for use of their facilities by reference to aircraft emissions;
- Provision of new powers to aerodromes to make noise control schemes;
- Removal of restrictions on local authority airports to enable them to compete on a more level playing field with privately-owned airports;
- Removal of the right of appeal in allocation of route licences cases and confer of powers on the Civil Aviation Authority (CAA) to make determinations in such cases;
- Requiring the CAA to provide assistance and advice regarding in-flight health of crew and passengers; and
- Provision for a levy on air travel organisers to replenish the Air Travel Trust Fund to help customers of failed tour operators.

The Bill extends to the whole of the United Kingdom, with two exceptions. The power for aerodromes to establish noise control schemes (**clause 4** and **parts 2** and **5** of the **schedule**) do not extend to Northern Ireland and the provisions regarding public airport companies (**clause 5**) extend only to England and Wales.

Key documents can be found at the following sites:

The *Civil Aviation Bill*:
http://pubs1.tso.parliament.uk/pa/cm200506/cmbills/012/2006012.pdf

The Explanatory Notes:
http://pubs1.tso.parliament.uk/pa/cm200506/cmbills/012/en/06012x--.htm

The Regulatory Impact Assessment:
http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_038204.pdf

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I Introduction: aviation policy

In December 2003, the Government produced a White Paper on the future of aviation in the UK.[1] In a statement to the House of Commons the Secretary of State, Alistair Darling MP, called the White Paper an attempt to set out "the strategic framework for development for the next 30 years, against the background of wider developments in air transport".[2] The Secretary of State also set out the context of the debate about the future of air transport in which the White Paper was drawn up:

- An estimated 200,000 jobs depend on the air transport industry directly, and some 600,000 indirectly;
- There has been a fivefold increase in air travel in the last 30 years, and half the population flies at least once a year;
- The growth in passengers travelling in the low-cost, no-frills sector has been significant, up from 7 million in 1998 to 47 million in 2003;
- A third of the goods that the UK exports (by value) go by air, and the amount of air freight at UK airports has doubled since 1990.[3]

The Secretary of State summarised the purpose of the White Paper, to balance the benefits of cheaper and better air transport with environmental costs:

> The Government recognise the benefits that the expansion of air travel has brought to people's lives and to this country's economy. Its increased affordability has opened up the possibility of travel for many people, and provides the rapid access that is essential to many modern businesses. But we have to balance those benefits against the serious environmental impact of air travel, particularly the growing contribution of aircraft emissions to climate change, and the significant impact that airports can have on those living nearby. That is why the Government remain committed to ensuring that, over time, aviation meets the external costs that it imposes. The White Paper sets out proposals to tackle aviation's greenhouse gas emissions by bringing it within the European Union emissions trading scheme. And the Government will continue to play a major role in seeking to develop new solutions and stronger actions by the appropriate international bodies.
>
> The White Paper also makes it clear that we will legislate to strengthen and clarify the powers to control noise at airports, and to allow us to direct airport operators to levy higher charges on more polluting aircraft. Similar charges in relation to noise have helped to bring about significant noise reductions at the

[1] DfT, *The Future of Air Transport* (Cm 6046), December 2003: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_031516.pdf
[2] HC Deb 16 December 2003, c1433
[3] *Ibid*.

> major London airports. But we can, and will, do more to reduce both noise and air pollution.
>
> Some of our major airports are already close to capacity, so failure to allow for increased capacity could have serious economic consequences. But that must be balanced by the need to have regard to the environmental consequences of air travel. Simply building more and more capacity to meet demand is not sustainable. Instead, a balanced approach is required that recognises the importance of air travel to prosperity, but which seeks to reduce and to minimise the impact of airports on those living nearby and on the natural environment.
>
> I should also make it clear that the White Paper cannot, by itself, authorise any particular development, but it does set out a policy framework for future decisions. In the light of the White Paper it is for individual airport operators to bring forward proposals that will then be subject to the usual planning process. The White Paper sets out a strategic framework for the development of airport capacity. It sets out our conclusions for every part of the country (…)[4]

In February 2005 the then Transport Minister, Charlotte Atkins MP, spoke at a seminar about sustainable aviation. The speech set out the progress that had been made since the White Paper's publication:

> Just over a year ago, we laid out our plans for a sustainable aviation industry through to 2030 in the Future of Air Transport White Paper - an industry that can deliver improved profitability, while also facing up to its broader responsibilities. We have been working hard with our partners to implement the White Paper measures since then.
>
> In the south-east that means a second runway at Stansted by 2012. A major work programme is under way at Heathrow to look at the implications of future growth - from enhanced use of the two existing runways, and from potentially adding a third runway. If strict environmental conditions cannot be met, then the focus switches to a possible new runway at Gatwick after 2019 … There are also plans for expansion at airports serving the UK's other major regional and capital cities. At Edinburgh this will involve developing a second runway, and significant additional terminal capacity at Manchester and Glasgow. But there will also be the need for additional capacity at many other regional airports (…)
>
> A full progress report on how we're doing will be published in 2006 (…)
>
> We all know that airport expansion can be contentious, but we know that airport management teams up and down the country are determined to manage growth responsibly. That means working as hard as possible with local people and businesses to minimise the impact of the aviation industry. The main airports in the South East are subject to a list of stringent environmental controls. Every

4 *Ibid*, cc1433-1434

> other significant airport in the UK is required to work with local communities on noise and other policies (…)
>
> It's absolutely crucial that we balance the benefits of expansion against the environmental impact of air travel. That impact includes growing aircraft emissions and their contribution to air pollution and climate change. It includes noise. And it includes the physical expansion of airports to accommodate growth. This is why we remain committed to ensuring that aviation meets the external costs it imposes, over time … Significant progress has been made in recent years, but we are seeking greater powers to extend noise charging, compensation for noise, and new noise legislation.
>
> We will push for these changes when Parliamentary time permits.[5]

It is in this context that the measures contained in the *Civil Aviation Bill* have been drawn up.

II Aircraft noise

A. Background

A 1991 survey by the British Research Establishment found that the number of people experiencing aircraft noise was second only to those hearing noise from traffic. 76% of those hearing aircraft noise reported that they were disturbed periodically. In 1996/7 local authorities in England and Wales received 1,956 complaints about aircraft noise.[6]

The *Environmental Protection Act 1990* specifically exempts aircraft noise from the general noise nuisance controls which exist under that legislation (section 79(6)). This is the case, irrespective of whether an airfield in question is small and unlicensed or a major UK airport.

Instead, aircraft are covered by the *Civil Aviation Act 1982* ('the 1982 Act'), which gives the Secretary of State wide powers to apply operational controls and restrictions. It should be noted that so long as the so-called *Rules of the Air* and *Air Traffic Control Regulations* are being observed, aircraft are protected from action in respect of trespass or nuisance under the 1982 Act.[7] Within controlled airspace, aircraft need Air Traffic Control clearance, which gives the Civil Aviation Authority (CAA) some scope for exercising controls. However, such controls are usually concerned only with safety, and in any case controlled airspace only extends around airports and along air routes, which are usually 10,000 to 12,000 feet up. Outside controlled airspace, aircraft can go anywhere so long

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5 Speech by Charlotte Atkins MP. Text available at: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/pdf/dft_aviation_pdf_035275.pdf

6 NSCA, *Pollution Handbook 2005*, p154

7 NSCA, *Pollution Handbook 1995*, p184

as they abide by the *Rules of the Air*. The Government has powers under the 1982 Act to designate areas where aircraft are not allowed to fly, but this is usually done only on safety or security grounds, for instance over high security prisons or sensitive installations.

The Department for Transport (DfT) is responsible for policy generally on the control of civil aircraft noise in the United Kingdom under section 78 of the 1982 Act; and specifically for noise control (other than ground running) at airports designated for this purpose under section 80 of the same Act. Airports so designated are Heathrow, Gatwick and Stansted.

At other airports the responsibility for noise lies with individual owners or operators. The Government's view is that noise at airports is essentially a local matter and best dealt with at local level. Most large airports have consultative committees and any changes in the rules are likely to be discussed with them.[8]

In July 2000 the Government published a consultation paper, *Control of noise from civil aircraft*, which set out proposals to change the powers of the Secretary of State, local authorities and aerodromes to establish and enforce noise amelioration schemes.[9] The paper asked a number of specific questions and was sent to organisations that represent the aviation industry and the interests of people who live near airports. The consultation closed on 13 October 2000 and a summary of the responses received to the consultation paper were published on 26 March 2002. On 12 December 2000 the Government issued a consultation paper on the future of aviation generally which included a section on noise.[10] Although the Government talked of issuing a response to the noise consultation paper, it decided to wait until it published its White Paper on air transport at the end of 2003.

The provisions in the Bill reflect the Government's conclusions announced in the December 2003 White Paper, *The Future of Air Transport*, and *Control of Noise from Civil Aircraft: The Government's Conclusions*, published at the same time.[11] The White Paper outlined the Government's intention to introduce new legislation to strengthen and clarify noise control powers both at larger commercial airports and at smaller aerodromes, 'when Parliamentary time allows'. There are two main measures highlighted in the White Paper:

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[8] Noise limits were first set at Heathrow in 1959 and were applied to Gatwick in 1968 and Stansted in 1993.

[9] DETR, *Control of noise from civil aircraft*, July 2000: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/pdf/dft_aviation_pdf_503441.pdf

[10] DETR, *The Future of Aviation: The Government's Consultation Document on Air Transport Policy*, December 2000: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/pdf/dft_aviation_pdf_503446.pdf

[11] DfT, *Control of Noise from Civil Aircraft: The Government's Conclusions*, December 2003: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_026247.pdf

- an amendment to section 78 of the Civil Aviation Act 1982 so that controls such as night restrictions could, subject to public consultation, be set on the basis of noise quotas alone, without a separate movements limit. This would mean that the primary control at an airport regulated by the Government could be related more directly to the noise nuisance, providing a more effective incentive for airlines to acquire, use and develop quieter aircraft. This amendment does not signal any intention to make the controls any less stringent than they are currently; and

- new powers to extend these controls so that they can relate to overall use of the airport, thereby enabling clearer environmental objectives to be set. At present, overall contour or similar controls may only be set voluntarily or through the planning system, which means that generally they must be directly related to a specific development, such as in recent years for the Manchester second runway and the Heathrow fifth terminal.[12]

More details were provided in the Government's response to the *Control of Noise from Civil Aircraft* document, published simultaneously with the White Paper. The main proposal was for a new enabling power for aerodromes to establish and enforce noise control arrangements:

> Apart from the special circumstances of Heathrow, Gatwick and Stansted,[13] long-held Government policy is that aircraft noise problems are best resolved locally. The aircraft operator and the owner or manager of the land or airfield from which aircraft are being flown are expected to take all practical steps to ensure that disturbance to those living in the surrounding area is kept to a minimum.
>
> In our consultation paper we explained that any aerodrome can prepare a reasonable noise amelioration scheme *restricted to activities within its boundary*, using byelaws[14] (if necessary) or other rights and powers to underpin it.[15] We also explained that the larger aerodromes have been able to conduct monitoring and, with air traffic control (ATC)[16] co-operation, track monitoring *outside* their boundaries. Noise amelioration measures may be published in the AIP[17] and/or in the appropriate Manual of Air Traffic Services, used by controllers and where applicable translated into ATC instructions. Aerodromes may also make adherence to noise rules part of their conditions of use, with sanctions for non-adherence.

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[12] *The Future of Air Transport*, p34

[13] Which are designated under section 80 for the purposes of section 78 of the 1982 Act.

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

[15] Aircraft noise may also be covered, where appropriate, by planning conditions or planning agreements under town and country planning legislation.

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

[17] Aeronautical Information Package. This is generally available to pilots and air traffic controllers.

Although we continue to believe that the emphasis on local resolution of problems to mirror local circumstances is the right one – and that this works well in the majority of cases – there have been concerns that aerodromes' existing powers may fall short of what is required for the fullest range of noise amelioration measures consistent with the ICAO[18] balanced approach. The main areas are:

- the extent of powers to set and deliver noise contour or quota controls, and

- clarification of powers to permit surcharging of aircraft that deviate from noise preferential routes (NPRs) on departure. (Typically, adherence to NPRs is assessed against a 'swathe' 1.5km either side of the nominal centre of the departure route. Where modern monitoring equipment is installed, aircraft that stray outside this swathe can be detected)[19]

- the desirability of putting beyond doubt that aerodromes could voluntarily implement noise control measures within a reasonable range beyond the airfield itself. For example, aerobatics practice based on general aviation airfields often takes place at some distance from the aerodrome.

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

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

An additional point is that licensed aerodromes are broadly required to accept the air transport traffic, which presents itself, without undue discrimination. This

[18] International Civil Aviation Organisation.

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

> places an additional premium on the clarity of powers to discipline airlines, ultimately including the sanction of denying access where an airline is a persistent offender.
>
> Some concern was expressed that in order to address noise issues there may be a risk of safety being compromised by, for example, unorthodox circuits being specified. However any aerodrome considering the introduction of new noise amelioration measures would continue to need to be satisfied that any revised arrangements were safe in all the circumstances.
>
> Notwithstanding the Government's strong preference for local solutions to local problems, if an aerodrome persistently resisted the introduction of reasonable voluntary noise amelioration measures the Secretary of State would have the option of designating the aerodrome under section 80 for the purposes of section 78 of the '1982 Act'[20] or to specify under section 5 of the '1982 Act'.[21, 22]

Specifically regarding this new power for aerodromes, the *Control of Noise from Civil Aircraft* consultation also asked whether the power should be available to all aerodromes or only to certain categories. The Government's response document concluded that the enabling power should be available to all aerodromes as concerns about noise are not restricted to large, busy airports.[23] Further, the document restated the Government's view that infringements of noise amelioration schemes should be dealt with on a civil law basis; that the Government would draw up non-statutory guidance on sanctions for non-compliance 'in due course'; and that before making a decision to extend the reach of noise controls, the Secretary of State should be required to consult with the CAA, local authorities and residents' organisations.[24]

The Government also announced in its response document that it would strengthen and clarify section 38 of the 1982 Act when Parliamentary time allowed. This section gives licensed aerodrome authorities the power to fix their charges in relation to aircraft noise, or to the extent or nature of inconvenience resulting from such noise. The aim of this section is to encourage the use of quieter aircraft and diminish inconvenience from aircraft noise. The second part of section 38 empowers the Secretary of State, by order, to direct specified aerodromes in this regard.[25] It also announced that some changes should be made to section 78 of the 1982 Act, specifically:

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

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

[22] *Control of Noise from Civil Aircraft: The Government's Conclusions*, pp7-9

[23] *Ibid*, p10

[24] The 'reach' or physical extent of the new power to be given to aerodromes is in line with the definition contained in ICAO Annex 11, "to encompass the area within and immediately outside the traffic circuit" but will also extend along the full stretch of noise preferential routes.

[25] *Control of Noise from Civil Aircraft: The Government's Conclusions*, pp18-19

(a) clarification and expansion of the powers in section 78(3)(b), to enable the Secretary of State to specify a constraint or constraints which would have the effect of limiting how often aircraft (or certain types of aircraft) could take off or land at the aerodrome in 24-hour periods or between specified times of the day or night. The constraint could, for example, take the form of noise quota limits or a limiting noise contour area;

(b) clarification of section 78(6) to make explicit that the Secretary of State may direct an aerodrome manager, subject to overriding considerations of safety, to direct take-offs and/or landings onto a particular runway;

(c) (…)

(d) explicitly enabling 'designated' aerodromes to make surcharges, or the Secretary of State to stipulate the range of fines to be levied by the courts based upon their standard scale, for violations of the requirements of a notice under section 78 places on aircraft operators.[26]

Point (a) would permit the Secretary of State, following consultation, to apply quota limits as the primary control mechanism for restricting night flights, the point being to simplify the night restrictions so that they relate largely to the amount of noise likely to be caused rather than the number of movements. It would also extend the scope of potential noise controls to the whole day, rather than specific periods, as is presently the case.[27] Points (b) and (d) deal with more technical points, but specifically on point (d), the Government felt it necessary to clarify the arrangements whereby Heathrow, Gatwick and Stansted currently make surcharges for violation of departure noise limits on a voluntary basis.

The consultation response also recommended that the levels of fines for aerodromes failing to comply with any requirements set down by the Secretary of State under section 78(8) of the 1982 Act or section 68(1) of the *Airports Act 1986* ('the 1986 Act') should be brought up to date. The paper proposes that the fines should be linked to level 5 on the standard scale (a fine not exceeding £5,000). The legislation also provides for a 'daily fine'; the paper recommends linking this to level 1 on the scale (£1,000).[28]

B. The Bill

The provisions in **clauses 1**, **2**, **3** and **4** of the Bill are designed to enhance and clarify the powers of the Secretary of State when regulating environmental controls at designated aerodromes[29] and of aerodrome authorities at all other (non-designated) sites.[30] The

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26 *Ibid*, p21

27 Currently, the night period is 2300 to 0700 and the night quota period is 2330 to 0600.

28 *Control of Noise from Civil Aircraft: The Government's Conclusions*, p24

29 Heathrow, Gatwick and Stansted.

Regulatory Impact Assessment (RIA) to the Bill summarises what these provisions would mean:

> At designated aerodromes the Secretary of State would have the explicit power to allow quota limits or noise contour limits as primary control of noise instead of movements limits. The Secretary of State would also have the power to direct runway preferences and explicitly allow surcharges to be made as a sanction on airlines for violation of noise controls. Any proposals to alter the noise control regimes at any of the *'designated'* aerodromes would be subject to public consultation and regulatory impact assessment in the normal way.
>
> Non-designated aerodromes will have clearer powers voluntarily to establish and enforce noise amelioration schemes for the vicinity of the aerodrome. Such schemes could, for example, include requirements for pilots to use (consistent with all safety requirements) noise-minimizing landing or take-off procedures or could limit the number of occasions on which aircraft, or certain types of aircraft, could take off or land at an aerodrome during specified periods. Enforcement powers will be clarified and extended to allow non-designated aerodromes to impose penalties for non-compliance with noise amelioration procedures.[31]

The measures in the Bill would, if passed, clarify and reinforce the Secretary of State's powers for controlling noise pollution and help non-designated aerodromes mitigate and avoid noise nuisance:

Clause 1 of the Bill replaces section 38 of the 1982 Act with a new section on aerodrome charges. The new section 38(1) empowers an aerodrome authority to fix its charges by reference to the noise caused by an aircraft or the inconvenience resulting from that noise; and the effect of an aircraft on noise pollution in the vicinity of the aerodrome or the failure of an aircraft operator to comply with noise limits. New section 38(2) specifies the purposes for which such charges can be made. These include: to encourage the use of quieter aircraft and reduce inconvenience from aircraft noise; to control noise pollution in the vicinity of aerodromes; and to promote compliance with noise limits.[32]

Clause 2 amends section 78 of the 1982 Act which deals with the powers of the Secretary of State to limit or mitigate the effect of noise and vibration from aircraft taking off and landing at Heathrow, Gatwick and Stansted. This clause will give the Secretary of Sate more flexible powers to impose restrictions that would limit the cumulative amounts of aircraft noise: he would retain the power to impose a cap on the number of aircraft movements in addition to acquiring the option of simplifying noise control regimes and providing an incentive to switch to quieter aircraft at night. The powers of the Secretary of State to direct aerodrome authorities on noise and vibration avoidance, limitation or

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[30] All provisions are in compliance with the ICAO 'balanced approach' as set out in ICAO Resolution A33/7 and, where applicable, the EU operating restrictions directive (Directive 2002/30/EC) and its implementing statutory instrument SI 2003/1742 (available to view at: http://www.uk-legislation.hmso.gov.uk/si/si2003/20031742.htm).

[31] *Regulatory Impact Assessment: Civil Aviation Bill 2005/06*, p8

[32] This clause also applies to emissions (see section III, below).

mitigation will also be strengthened. **Subsection 6** of **clause 2** amends the level of fines applicable when aerodromes fail to comply with the Secretary of State's orders under section 78(8) of the 1982 Act.

Clause 3 inserts new sections 78A and 78B into the 1982 Act to make provision for financial penalties on aircraft operators for breaches of noise requirements under section 78. The Secretary of State is given powers to require amendment or revocation of any penalty scheme.

Clause 4 gives aerodrome authorities the power to make noise control schemes and to impose penalties for non-compliance with such schemes by inserting new sections under section 38 of the 1982 Act. This is for non-designated aerodromes: designated aerodromes (i.e. Heathrow, Gatwick and Stansted) have schemes set by the Secretary of State.

The RIA states that it is 'not possible' to accurately estimate the total compliance costs of these measures, it gives three reasons why this is the case:

- There is 'no such thing as a typical aerodrome'; as such individual proposals made under these clauses would be aerodrome-specific and would be subject to public consultation and individual RIAs;
- Much of the provision for non-designated aerodromes legislates for existing good practice, therefore the costs for a 'typical' aerodrome are 'likely to be minimal'; and
- Airlines would typically only be expected to incur significant costs in the event of non-compliance without reasonable cause.

III Aircraft emissions

A. Background

The UK aviation sector contributed to 5.5% of the UK's carbon dioxide emissions in 2000.[33] However, the radiative forcing effect[34] of aviation emissions means that they are responsible for 11% of the total UK climate change impact.[35] Forecasts have suggested that by 2030 carbon dioxide emissions from UK aviation will amount to some 16 to 18 million tonnes of carbon (MtC), of which 97% would be from international flights. This could amount to about a quarter of the UK's total contribution to global warming by that

[33] The background to the climate change aspects of aircraft emissions was contributed by Oliver Bennett, Science and Environment Section.

[34] A term used to reflect the climate change induced by all aircraft emissions, not just the contribution from the release of fossil carbon alone.

[35] Sustainable Development Unit, *Securing the future: delivering the UK sustainable development strategy* (Cm 6467), March 2005, p85: http://www.sustainable-development.gov.uk/documents/publications/strategy/SecFut_complete.pdf

date.[36] The Government made clear its commitment to reducing aircraft emissions in its response to the Environmental Audit Committee's report into Budget 2003 and aviation:

> The Government is committed to taking a lead in tackling the problem of climate change, and to putting the UK on a path towards reducing CO_2 emissions by some 60% from current levels by 2050… The aviation sector needs to take its share of responsibility for tackling this problem… In particular, the Government actively supports the inclusion of aviation into the EU Emissions trading scheme. This would create a mechanism for the integration of aviation emissions into the overall carbon policy framework. The Government is also considering options for the development of other economic instruments in this area, in line with our commitment to internalising environmental costs. The Government will continue to explore and discuss options for the use of other economic instruments for tackling aviation's greenhouse gas emissions.[37]

In June 2005, the DfT announced a 'sustainable aviation' strategy that would include 'measurable goals and best practice that each sector of the industry has agreed to achieve in order to balance future growth in the industry with the needs of the environment and social responsibilities'. For example:

> **Aircraft manufacturers** have committed to improving fuel efficiency by 50% per seat kilometre and reducing NO_X emissions (nitric oxide and nitrogen dioxide) by 80%
>
> **Airlines** have pledged to develop solutions for the inclusion of aircraft CO_2 emissions in the EU Emission Trading Scheme by 2008 (or as soon as possible afterwards)
>
> **Airports** will actively work on methods to improve noise, air quality and traffic congestion levels in their local communities.[38]

Aircraft emissions impact at two levels: on a macro-level (i.e. on climate change) and on a local level (i.e. in the immediate vicinity of airports).

On the macro-level, the UK Climate Change Programme (CCP) was published in November 2000. It outlined a range of policies to help achieve greenhouse gas reductions in line with Kyoto Protocol agreements, as well as moving towards more ambitious domestic goals. In relation to the aviation industry the CCP said that the Government would 'begin to consider the sort of action which may be needed to reduce future greenhouse gas emissions from aviation and shipping and who is best placed to take it.'

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[36] DEFRA, *Review of the Climate Change Programme – Consultation document*, December 2004, p61: http://www.defra.gov.uk/corporate/consult/ukccp-review/ccpreview-consult.pdf

[37] DfT, *The Government's Response to the Environmental Audit Committee's Report on Budget 2003 and Aviation* (Cm 6063), December 2003, p21: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/page/dft_aviation_026255.pdf

[38] DfT press notice, "Karen Buck welcomes launch of 'sustainable aviation' strategy, 20 June 2005

The CCP went on to say:

> The Government is keen to ensure that best use is made of existing capacity. In particular, the integrated transport white paper stated the Government's intention to encourage people to use regional airports across the UK to meet local demand for air travel, where this is consistent with sustainable development principles. This should help to reduce the need for long surface journeys, especially by road, to airports in the South East of England.
>
> It is also recognised that aviation should meet the external costs, including environmental costs, which it imposes. Evaluation of external costs is not an exact science, but the Government will attempt to evaluate these costs. […]
>
> The Government wants to see a higher proportion of journeys to airports being made by public transport. This will help to combat traffic congestion around airports and to reduce both local air pollutants and greenhouse gases. As mentioned above, all local authorities are required to develop local transport plans. As part of these plans, all airports in England that have 1,000 or more scheduled and charter passenger air transport movements per annum should lead an Airport Transport Forum. [39]

The 2003 White Paper said that the Government believes that an emissions trading scheme would be the best way to reduce the impact of aviation on climate change. They stated that they would press for 'the inclusion of intra-EU air services in the forthcoming EU emissions trading scheme (EU ETS), and to make this a priority for the UK Presidency of the EU in 2005, with a view to aviation joining the scheme from 2008, or as soon as possible thereafter.'[40]

On a local level, the 2003 White Paper set out several measures for dealing with the problem of local air quality near airports. Whilst on a national scale the contribution of air transport and associated activities to air quality is small, locally the effect can be significant. The most important emissions are of nitrogen oxides (NO_x) and particulates (PM10). There are mandatory EU limits for levels of these pollutants in the air, irrespective of the *source* of the emissions. These limits come into effect in 2005 for particulates and 2010 for NO_x. The Government is committed to meeting these standards. The White Paper states:

> … it is clear that major new airport development could not proceed if there was evidence that this would likely result in breaches of the air quality limits. The Government has also set national objectives in the Air Quality Strategy. These targets have a different legal status from the EU limit values, but they form part

[39] DETR, *The UK Climate Change* Programme (CM 4913), November 2000, p100: http://www.defra.gov.uk/environment/climatechange/cm4913/pdf/section2.pdf

[40] *The Future of Air Transport*, p40

of a joint DfT/Defra Public Service Agreement target and they will help underpin decisions on the future development of aviation in the UK.

Compliance with mandatory air quality standards is an issue that extends beyond the air transport sector. But we must make significant progress in reducing the expected impacts of airports on local air quality over the next six years and beyond if the mandatory EU limits are to be fully met. This will be particularly challenging at very busy airports served and surrounded by high levels of road traffic. (Clearly measures will also be required to reduce emissions from vehicles.)[41]

Complying with air quality standards around airports will require a combination of measures. The White Paper proposes several initiatives, including: reducing airport ‘airside’ emissions through technological and operational improvements; local authorities and transport bodies working with airports to limit road traffic emissions; pressing through ICAO for more stringent international standards to limit emissions from aircraft engines; and promoting research in industry and universities aimed at better understanding the problem and how it can be controlled. The only proposal that would require legislation was to allow aerodromes to fix landing charges by reference to emissions and for the Secretary of State to be given the power to require aerodromes to use this method of charging:

The Government intends to bring forward legislation, enabling the Secretary of State to require an emissions-related element to be included in landing charges at airports where there are local air quality problems. In the meantime, the Government sees merit in individual airport operators modifying their charges to take account of local air quality impacts. There may also be scope, subject to compliance with international laws and obligations in relation to slot allocation, for other instruments such as permit trading schemes for NO_2 at individual airports…[42]

The Environment Agency raised concerns about emission standard compliance:

In 2002, the Government consulted on the future development of air transport in the UK based on a three-fold growth in demand for air travel to 2030. If pursued, the consultation’s airport expansion proposals could result in a significant worsening of air quality in and around some of the proposed sites.

The Agency called for:

The Government to make a fuller assessment of the effect of a growth in air transport and associated infrastructure on local air quality in the autumn White Paper. This should include an assessment of off-site impacts arising from

41 *Ibid*, pp37-38
42 *Ibid*, p38

> increased traffic. There should be a greater emphasis on the provision of public transport when considering development.

The position statement goes on to say:

> Air traffic not only directly adds to ambient levels of pollutants but also indirectly, due to associated land-based traffic. The Agency has identified that a number of the airport sites are located within and/or adjacent to areas where targets for pollutants are already exceeded.[43]

The Government did meet criticism on its emissions policy as set out in the 2003 White Paper. For example, the Environmental Audit Committee, in its March 2004 'follow up' report to *Budget 2003 and Aviation* stated:

> The aviation White Paper actively promotes a huge growth in air travel over the next 30 years. The environmental impact of this—in particular in terms of emissions and the contribution of aviation to global warming—will be massive. The DfT has failed to recognise this adequately or to accept the disparity between its policy on aviation and the major commitments the Government has given to reduce carbon emissions and develop a sustainable consumption strategy.[44]

The Royal Commission on Environmental Pollution similarly observed:

> The Aviation White Paper acknowledges th[e] … need to take steps to make the cost of air transport reflect its environmental damage. It even recognises the role that emissions charges might play in this, as recommended by the Royal Commission. But it makes no clear commitment to action, and at the same time it announces a huge expansion in airport capacity. This leaves a major question mark over the extent to which the government is serious about the carbon dioxide reduction targets set out in its Energy White Paper.[45]

Friends of the Earth called the proposals in the White Paper 'window dressing' and stated that it was contradictory to aim to reduce emissions while at the same time hugely increase airport capacity:

> Alistair Darling's decision to massively expand aviation will not only be felt by people living near airports, it will affect people worldwide and impact heavily on generations yet to come … In the face of the dire warnings from climate scientists

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43 http://www.environment-agency.gov.uk/aboutus/512398/289428/655053/?version=1&lang=_e&lang=_e

44 Environmental Audit Committee, *Pre-Budget Report 2003: Aviation Follow-up* (HC 233-I, 3rd report of session 2003-04), p7: http://www.publications.parliament.uk/pa/cm200304/cmselect/cmenvaud/233/233.pdf

45 RCEP press notice, "Royal Commission responds to aviation White Paper", 16 December 2003

> and its own official targets, our Government has chosen to allow huge increases in emissions from aircraft.[46]

However, the then Conservative spokesman on transport, Damian Green MP, recognised the difficulties for any national government in reducing aircraft emissions on a local scale:

> …striking the right balance between a flourishing aviation industry and the need to control emissions is something that cannot even be done effectively at a European level. We really do need as many countries as possible to band together either to set standards, or to set tax rates, or to use any other economic instruments to cope with these issues … British Governments will have to do what they can. We can and should apply increasingly stringent standards on emissions and noise—leading to the withdrawal of the noisiest and dirtiest aircraft.[47]

B. The Bill

The provisions in **clause 1** of the Bill are designed to enhance and clarify the powers of the Secretary of State when regulating environmental controls at designated aerodromes[48] and or aerodrome authorities at all other (non-designated) sites. The RIA states that the clause would 'remove the ambiguity over an airport's powers to introduce emissions charging and provide a discretionary power for the Secretary of State to direct an airport in that regard'.[49]

Clause 1 of the Bill replaces section 38 of the 1982 Act with a new section on aerodrome charges. The new section 38(1) empowers an aerodrome authority to fix its charges by reference to the amount or nature of emissions produced by an aircraft or the atmospheric pollution resulting from those emissions; and the effect of an aircraft on atmospheric pollution in the vicinity of the aerodrome or the failure of an aircraft operator to comply with emission limits. New section 38(2) specifies the purposes for which such charges can be made. These include: to encourage the use of aircraft which produce lower emissions; to control atmospheric pollution in the vicinity of aerodromes; and to promote compliance with emission limits.[50]

The RIA states that there are two cost implications of the clause: administration costs for aerodrome operators in the setting up and operation of an emissions charging scheme, and costs for aircraft operators being charged under such a scheme.

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[46] Friends of the Earth press notice, "Aviation: Government abandons environmental responsibilities", 16 December 2003

[47] Speech to the Royal Aeronautical Society, 1 April 2004. Text available at: http://www.damiangreen.org.uk/record.jsp?type=speech&ID=1

[48] Heathrow, Gatwick and Stansted.

[49] *Regulatory Impact Assessment: Civil Aviation Bill 2005/06*, p13

[50] This clause also applies to noise (see section II, above).

IV Public airport companies

A. Background

The Conservative Party's 1983 Manifesto contained a firm commitment to privatise "as many as possible" of the publicly owned airports in the United Kingdom. Those airports included the fifteen operated by the British Airports Authority (BAA) and the Civil Aviation Authority (CAA) as well as the fifty-three owned by local authorities. In June 1985 the then Government published a White Paper which reiterated this commitment and the Government's belief that moving local authority airports onto a private footing would bring financial and other rewards. Part II of the resulting *Airports Act 1986* ('the 1986 Act') provided the means whereby relevant airport companies could introduce private capital.

Part II of the 1986 Act applied to the 15 municipal airports with a turnover of £1 million in at least two of the previous three financial years. These airports were Birmingham, Blackpool, Bournemouth, Bristol, Cardiff, East Midlands, Exeter, Humberside, Leeds/Bradford, Liverpool, Luton, Manchester, Newcastle, Norwich and Teesside. Under the provisions of the Act these municipal airports had to be set up as arm's length companies. Any subsidies from authority to airport whether financial or human had to be entirely transparent. Later the Government restricted access to finance. New developments had effectively to be financed from internal resources or from supplementary credit approvals. The Autumn Statement of November 1992 provided further financial incentives for local authorities to sell their airports when the Chancellor announced a timed relaxation of rules governing local authorities' use of their future capital receipts, allowing them to retain all the proceeds of asset disposals rather than putting 50 per cent into debt repayment.[51]

The then Secretary of State for Transport stated in a written answer that to further encourage local authorities to privatise their airports he had reduced the amount allocated to local authority airports for capital investment to the level necessary for safety and security measures.[52]

Seven of the 15 regional airports mentioned in Part II of the 1986 Act, and previously owned by local authorities, have been privatised:

- **Bournemouth** was sold in 1995 by National Express to Manchester Airport plc.

[51] HC Deb 12 November 1993, c997
[52] HC Deb 29 November 1993, c344-345W

- **Bristol International** was sold in December 2000 by First Group (51%) and Bristol City Council (49%) to Cintra, a Spanish construction group, and Macquarie, the Australian bank.

- **Cardiff** was sold in April 1995 by Cardiff City Council and Cardiff County Council to TBI plc.

- **East Midlands** was sold in July 1993 by Derbyshire, Leicestershire and Nottinghamshire County Council and Nottingham City Council to National Express who sold the airport in February 2001 to Manchester Airport plc.

- **Humberside** was sold in June 1999 by Hull, East Rising, North Lincolnshire and North East Lincolnshire councils to Manchester Airport plc.

- **Liverpool** had 76% of its ownership sold off in July 1997 by British Aerospace to Peel Holdings.

The 1986 Act restructured the old British Airports Authority into a main holding company, BAA plc, with seven separate airport companies operating Heathrow, Gatwick, Stansted, Edinburgh, Glasgow, Aberdeen and Southampton airports and an intermediate holding company over the four Scottish airports.

The following airports are owned by local authorities and operated by airport companies formed under the 1986 Act: Manchester, Newcastle, Leeds/Bradford, Norwich, Exeter, Blackpool, Teesside, Gloucestershire and Plymouth. The following airports are owned and operated by local authorities: Carlisle, Dundee, Exeter, Isle of Man, Isles of Scilly (St Mary's) and Londonderry. Luton airport is owned by the local authority, Luton Borough Council, but the council has sold a 30-year concession to run the airport to a consortium consisting of Barclays Private Equity, Barclays UK Infrastructure Fund and US companies, Airport Group International and Bechtel.

Section 17(4) of the 1986 Act bars a local authority owned airport company (known as a 'public airport company'), or any other subsidiary, from engaging in activities in which none of its shareholding local authorities has the power to engage. There have been two legislative attempts to amend this section of the 1986 Act, to allow public airport companies to engage in a wider array of activities. The first such attempt was made in 2000, during the House of Lords' consideration of the *Transport Bill 1999/2000* (which became the *Transport Act 2000*). Lord Smith of Leigh[53] put down Amendment 194 which stated:

> After Clause 160, insert the following new clause--

[53] Lord Smith at this time was a local authority-appointed, unpaid director of Manchester Airport plc.

("Public airport companies
CONTROL OVER ACTIVITIES OF PUBLIC AIRPORT COMPANIES

> .--(1) The Secretary of State may make regulations to authorise public airport companies or any of them—
> (a) to engage in a type of activity, specified in the regulations, in which the controlling authority have no power to engage, or
> (b) to permit any subsidiary of the company to engage in any such type of activity,
> and section 17(4) of the Airports Act 1986 shall not apply to any activity authorised by regulations under this section.
>
> (2) In considering whether to make regulations under this section, the Secretary of State may take into consideration transport policy, the business of the airport as a commercial undertaking and the potential benefit to the economy of the implementation of the powers to be authorised by the regulations.
>
> (3) In this section, the expressions "controlling authority" and "public airport company" have the meanings given by section 16 of the Airports Act 1986.").

In proposing his amendment, Lord Smith argued that public airport companies felt excluded from one of the central themes of the *Transport Bill*, that of ‘mutually beneficial partnerships’. Using Manchester as an example, Lord Smith stated:

> …the current constraints of vires which affect airport companies like Manchester are too inflexible for us to create the partnerships which are necessary to enable us to expand as we would like to do. The amendment seeks to give the Secretary of State discretion to allow for greater freedom to pursue those commercial activities which will be beneficial to airports, transportation policy and local economies.[54]

The then Transport Minister, Lord MacDonald, expressed sympathy with the aims of the clause but felt unable to support it given the constraints on parliamentary time and the extent of the clause as drafted. However, he did state that: “We shall consider whether we can deal with the subject of local authority and airport company powers in a future DETR Bill”.[55] Consequently, Lord Smith withdrew his amendment. Three years later, Lord Smith tabled a similar clause during Lords’ consideration of the *Local Government Bill 2002/03* (which became the *Local Government Act 2003*). Once again, the Minister responding for the Government, this time Lord Rooker, indicated that he was “sympathetic to the principle” of giving additional freedoms to local authority companies. He also went further, stating that:

[54] HL Deb 10 July 2000, c114GC
[55] *Ibid*, c116GC

> …the Government would be happy to take work forward on this issue outside the Bill to see what more can be done to give airport companies increased freedoms, with a view to legislating when a suitable opportunity occurs.
>
> The following bit is not in my speaking note. I am translating the above as a firm commitment that the Government will stay awake and do something about it. In other words, it should not now be left to my noble friend Lord Smith to come along for a third time to be told, "We are sympathetic but you have not quite got it right". So I see this as a commitment.[56]

B. The Bill

The provisions in **clause 5** of the Bill will give the Secretary of State the power to relax constraints on the *vires*[57] of public airport companies and remove uncertainty over their *vires* in certain areas, so that they can compete more fairly with other airports. The RIA goes into greater detail. It states that the proposal will allow the Secretary of State to differentiate between airports in exercising the power, and thereby take account of the circumstances of the case and the views of the parent local authority(ies). Further, the Secretary of State will acquire the discretion to set geographical limitations on the relaxation of a public airport authority's *vires* 'but he will only do so when he considers it necessary and expedient'.[58] This is essentially a de-regulatory matter that will allow airport companies 'to offer their expertise to others on a commercial basis and to enter into joint ventures not related to their core airport business' and to develop and grow their businesses.[59] It is expected to slightly increase competition in the airports sector.

Clause 5 of the Bill amends section 17 of the 1986 Act to permit the Secretary of State to specify, by regulations, 'permitted activities' for public airport companies.[60] Any such regulations will be subject to the negative resolution procedure.[61]

The changes to public airport companies' powers have been examined in terms of economic, environmental and social costs in the RIA. They are considered to fit in to the existing financial structure as set out in the *Local Government and Housing Act 1989* and the *Public Airport Companies (Capital Finance) Order 1990*.[62]

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56 HL Deb 17 June 2003, c278GC

57 *Vires* is the term used under the legislation to mean 'one's powers'.

58 *Regulatory Impact Assessment: Civil Aviation Bill 2005/06*, p17

59 *Ibid*, p18

60 'Permitted activities' are those which the Secretary of State considers to be incidental to or connected with the business of operating a commercial airport.

61 Under the negative resolution procedure, a statutory instrument (SI) will become law on the date stated on it but can be annulled if either House passes a motion calling for its annulment within 40 sitting days of the SI being laid.

62 SI 1990/719

V Appeals in respect of route licences

A. Background

Non-EU air routes are licensed by governments, usually on a bilateral basis.[63] Since the introduction of the Third Package on the liberalisation of European Aviation, an airline which meets common safety, nationality and fitness criteria is entitled to an operating licence anywhere in Europe.[64] From 1 January 1993, airlines of EU Member States have had full access to all routes within the EU. They do not need route licences; but negotiate slots at the airports they want to fly to.[65]

The UK's air service agreements with most countries outside the EU have developed historically. These agreements provide the framework for the operation of air services between two countries. Where there is no existing air service agreement, as was the case of the countries of the former Soviet Union, the UK government may be approached either by the foreign government or the airline and, after negotiation, an agreement reached. Each agreement is registered with the UN and has treaty status. The details of the service to be operated under each agreement, such as the number of flights per week and the airlines to fly the route, are contained in a memorandum of understanding. This can be varied later but the agreement remains unaltered.

If a new airline wants to come in on an existing route it applies for a route licence and then to the Department for Transport. The DfT will then set up talks with the relevant foreign government with a view to changing the memorandum of understanding. Usually, the other country will want some reciprocal benefits for its own airlines such as an increase in the permitted level of flights. In a parallel process the airline will need to negotiate slots at the airports to and from which it wants to fly. A UK airline wanting to fly a particular route has to have a route licence issued by the CAA. The CAA issued a revision of its policies on route and air route licensing in June 2001. It sets out the Authority's approach to allocating licences for 'scarce capacity' on bilateral routes:

> Where bilateral restrictions prevent British airlines from operating all of the services they plan to provide, the Authority will allocate scarce capacity between competing British airlines. In such cases, the Authority's overarching objective will be to maximise economic efficiency. However, the Authority will aim to ensure that this objective is not threatened by the creation or strengthening of a dominant position. It will therefore adopt a two-stage approach in order to deal separately with issues of industry structure and competition on the one hand and

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[63] Probably the UK's most important bilateral agreement is with the United States. This goes back to 1946 (superseded in 1977 and amended in 1991) and is referred to as 'Bermuda 2'.

[64] Aviation within the EU was liberalised between 1987 and 1992 in three liberalisation packages. Before 1987 the intra-Community market was governed by bilateral agreements between each Member State.

[65] In practice, many of the popular airports are full and airlines cannot always obtain the slots when and where they want them.

> of economic efficiency on the other. The Authority will employ a standard competition test in order to establish whether an award of scarce capacity would, or would be likely to, create or strengthen a dominant position. In the event of such a finding, the Authority will consider whether or not any resulting detriments to competition would be offset by other benefits.
>
> The second stage will be for the Authority to consider how the scarce rights should be allocated so as to maximise economic efficiency. The most comprehensive approach would be to conduct a full economic analysis of the costs and benefits that would accrue to airlines and users, with capacity being awarded to the airline that provided the highest level of consumer benefit at the lowest resource cost. In practice, given the difficulties which might arise in identifying airlines' true economic costs, decisions may need to be based primarily on analysis of the consumer benefits each would deliver.
>
> In a limited number of cases competition may be precluded, or unattainable on acceptable terms, because of bilateral constraints. In these circumstances, the Authority will be ready to consider substituting one carrier for another, in whole or in part, so as to safeguard or further the interests of users. It will expect to do so sparingly, and only when to do so would manifestly enhance the achievement of the objectives of the Act. It will take into account the length of time the incumbent has had to establish itself on the route and the degree of commitment it has shown in serving it. It will pay particular attention to the quality of service (capacity, seat availability, frequency, timings and price) offered by the newcomer relative to the incumbent's established standard.[66]

Following these considerations, the allocation of route licences proceeds as described below:

> [There is] a public hearing at which the airlines concerned, and other interested parties, are allowed to, amongst other things, appear in person, produce oral and written evidence and have the opportunity of cross examination. The CAA considers this evidence and decides between the applicants on the basis of its view on which proposal will bring the greatest benefits to consumers. The successful airline or airlines are awarded the additional number of flights or passenger seats, and other airlines have their route licences conditioned to prevent them operating more (or perhaps any) services on the same routes until bilateral circumstances change.[67]

There is currently a right of appeal pertaining to the CAA's decision, set out in section 67 of the 1982 Act and Regulation 26 of the *Civil Aviation Authority Regulations 1991*.[68] These regulations permit the Secretary of State to uphold the CAA's decision or to direct

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[66] CAA, *Review of the CAA's statement of policies on route and air transport licensing*, date, pp12-13: http://www.caa.co.uk/docs/5/ergdocs/sopconsult.pdf

[67] *EN Bill 12 of 2005/06*, para 45

[68] SI 1991/1672

it to re-hear the case or to reverse or vary its decision. After appealing to the Secretary of State the parties have the option of seeking to have his decision reviewed in the Courts via the usual judicial review process.[69]

B. The Bill

The provisions in **clause 6** of the Bill are designed to remove the right of appeal to the Secretary of State in air route licensing cases; the CAA will be solely responsible for capacity allocation as a consequence. The RIA offers more detail:

> …the first stage of the process would stay the same: the CAA would hear the case and come to a decision in exactly the same way as it does now. The difference is that instead of being able to appeal to the Secretary of State, the parties would be left with the option of seeking judicial review in the Courts.
>
> The reform could accordingly increase the chances of the parties seeking judicial review, as this would be the only appeal route open to them. However, the risk might not be great in practice. Appeal to the Secretary of State has become almost an automatic part of the process, with losing airlines appealing as a matter of course and the other parties having little choice but to become involved as counter-appellants. If the possibility of appeal to the Secretary of State is removed it should concentrate the minds of the parties more on whether an appeal is worthwhile in given circumstances.[70]

Clause 6 of the Bill amends section 69A of the 1982 Act and regulation 27 of the 1991 Regulations to remove the right of appeal to the Secretary of State. Instead, parties would be able to challenge the CAA's decisions in the courts by judicial review. The clause also modifies the CAA's powers, allowing it to delay the implementation date of any allocation transfers from an incumbent airline to a new one in order to ensure service continuity. It also includes transitional protection for any appeals being considered by the Secretary of State when the legislation comes into force.

The RIA flags up four issues pertaining to **clause 6** that might have cost implications:

- Although air transport route licensing cases are relatively infrequent,[71] this legislation could lead to an increase in the number of cases being taken to judicial review, involving costs to all parties.

- The CAA, not the DfT, would be the defendant in any cases that go to the High Court; therefore any costs incurred by the CAA would be recovered from air

[69] *Regulatory Impact Assessment: Civil Aviation Bill 2005/06*, pp20-21
[70] *Ibid*, pp21-22
[71] There were only eight cases in the decade to 2005.

transport users via the CAA's charges rather than from the taxpayers in general as is the case under the present rules.

- Under the current system, airlines are not charged for their appeal to the Secretary of State; judicial review could be marginally more expensive.

- There could be training or resource implications for the judiciary if the change in the legislation meant an increase in the number of cases being taken to review. The DfT has agreed with the Department for Constitutional Affairs (DCA) that it would bear any such costs.

Over-all, however, additional costs to the industry (if any) would be 'marginal'.[72]

VI Aviation Health Unit

A. Background

In 2001 the DfT initiated a review of the way in which the health aspects of air travel were managed. This was in response to a report by the House of Lords Committee on Science and Technology. *Air Travel and Health* stated that there was a lack of clarity about the allocation of responsibilities for air travel health issues, with responsibility being shared between the CAA, the DfT, the Department of Health (DoH) and the Health and Safety Executive (HSE):

> CAA is the United Kingdom's regulatory authority for aviation. Its responsibilities are set out in the *Civil Aviation Act 1982* alongside those of the Secretary of State for the parent Department, currently DETR. The Secretary of State is responsible for encouraging the promotion of safety in civil aviation, and for ensuring that international obligations are fulfilled. CAA is responsible for advising the Secretary of State on all civil aviation questions including safety, and for regulating air safety through licensing, certification, and the setting and monitoring of standards.
>
> CAA lays down aviation safety standards in areas broadly similar to those of ICAO and JAA, and sets them out in regulations made under the *Air Navigation Order* (ANO). CAA's prime responsibilities for passengers are to regulate for their safety. It has no direct responsibilities for passenger health or comfort
>
> The lead on the health implications of the aircraft cabin environment is taken by DETR... DoH's wider responsibilities for general public health give it a clear interest in pre-flight medical advice … and in flight-related medical problems because treatment of those arising on flights into the United Kingdom falls mainly to the National Health Service. DoH's responsibilities also bear upon civil

[72] *Regulatory Impact Assessment: Civil Aviation Bill 2005/06*, p24

> aviation in the areas of infectious disease, airline catering and passengers at airports.
>
> The *Health and Safety at Work etc. Act 1974* applies to aircraft in and over Great Britain but has no role outside the airspace above Great Britain. The Executive (HSE) set up under the Act seeks to avoid duplicating the activities of other regulatory bodies associated with health and safety. Its interface with CAA is the subject of a Memorandum of Understanding. Aircraft have been exempted from many regulations made under the governing Act. Thus, HSE has no active responsibilities in relation to the health of airline passengers or crew.[73]

In its response to the Committee's report, the Government announced its intention to appoint consultants to look at where there were gaps in the knowledge base as far as aviation health was concerned; and to set up an Aviation Health Working Group (AHWG):

> To ensure a coherent approach is taken with regard to aviation health issues by the relevant organisations in the public sector, the Government proposes to establish a standing inter-departmental Aviation Health Working Group, chaired by DETR, which will meet on a regular basis. By overseeing all aspects of the Government's work on aviation health matters (including follow-up to the consultants' study) and by monitoring future developments, the Group will act as a focal point for examination of relevant issues and be able to provide soundly-based advice to Ministers. Whilst permanent membership of the Group will be confined to representatives of Government departments and the appropriate regulators, it is envisaged that industry representatives and other interested parties will be frequently invited to attend meetings of the Group, and the Group will be able to monitor progress on those recommendations the Committee has addressed to parties outside Government.[74]

In July 2002 the Government published a consultation paper, *Giving Aviation Health Policies a Better Focus*. It sought views on how best to organise the work to be done to support the Government's policies on air passenger and crew health. The paper did not ask what those policies should be, but on which organisation or organisations should have responsibilities in this area with the aim of establishing a clear initial focal point within Government for all matters relating to aviation health. The closing date for responses was 18 October 2002.[75] The Government's response to the consultation set out the proposed way forward:

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[73] Science and Technology Committee, *Air Travel and Health* (5th report of session 1999-2000), 15 November 2000, paras 3.18-3.21: http://www.publications.parliament.uk/pa/ld199900/ldselect/ldsctech/121/12105.htm#a42

[74] DfT, *Air Travel and Health: Government's Response to Select Committee Report*, 26 February 2001, para 1: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/pdf/dft_aviation_pdf_503565.pdf

[75] Consultation paper and responses available at: http://www.dft.gov.uk/stellent/groups/dft_control/documents/contentservertemplate/dft_index.hcst?n=9921&l=3

It is clear from the responses to the consultation that a clarification of organisational responsibilities is required. We intend to establish a clear focal point with specific responsibility for organising the necessary work to support the Government's policies on a range of aviation health issues. Wherever possible we will look to place aviation health issues on the international agenda and will co-operate with European led initiatives so as to promote international standards in this field. We consider that there will be little scope for UK-only regulation in this field. Responsibility for incorporating in aircraft standards any potential "health" related requirements would in future be a matter for the European Aviation Safety Agency…

We confirm that we do not intend to pass responsibility for strategic policy making to the new unit. It is for Government to weigh up the evidence and make the necessary judgements in this area between health, comfort and economic considerations. We note that most respondents confirmed that the DfT should retain the lead responsibility within central Government. We note also that most respondents acknowledged that there was still a role for the Aviation Health working group, or a similar body, involving industry representation, to provide strategic guidance. The current working group is fairly settled, but we will consider further requests for membership on a case by case basis…

We welcome the clear support for most of the responsibilities outlined in the consultation paper to be taken on by the new unit. We acknowledge doubts about whether the unit should assume responsibility for regulatory matters and concern about increasing unilaterally the regulatory burden on UK aviation. However, we consider the scope for national regulatory action to be very limited. We consider that the treatment of passengers with disabilities in general, although an important issue, lies beyond the proposed scope of the new unit…

The majority of respondents agree that the CAA should lead the new unit. We accept that the CAA would need to acquire some further expertise to meet fully its responsibilities. We note the arguments in favour of setting up a new body but consider that they are outweighed by the potential cost and delay involved in such an exercise, plus the loss of flexibility inherent in placing a unit within the CAA where a range of aviation expertise would be readily on call. We note also the arguments of those in favour of placing responsibility within the HSE but consider these are outweighed by the Executive's lack of experience of aircraft systems, cabin design and the specialised nature of aircraft as a work environment. We note the concerns of industry regarding the unit's research role. As noted earlier, the Government does not intend to devolve responsibility for aviation health in the same way as safety regulatory oversight, and we will therefore oversee the Unit's research activities. We envisage these activities to be limited to identifying, prioritising, recommending further areas of research and, once funding is agreed elsewhere, possibly managing research projects. The unit should also be responsible for analysing research carried out elsewhere, but would not have its own research budget.

> We note the differences of opinion about the appropriate staffing level for the unit. The unit will need to have sufficient in-house expertise to establish its credibility within the industry, but the range of expertise that might be required would mean that it would uneconomic to attempt to provide all of it from full-time in-house staff. We are clear that the new unit should be independent of the CAA's existing medical division, although interaction between the two at the working level would be inevitable. We will discuss with the CAA the most appropriate level of staffing now that we have a clearer picture of the range of responsibilities the new unit should assume. A small unit of around 3 staff looks likely to be most appropriate…
>
> The work of the CAA, whether on aviation safety, economic regulation or consumer protection (including support for the Air Transport Users Council, the consumer watchdog for the air transport industry) is funded by the industry. We maintain that it would be consistent with Government policy to ensure that the cost of a CAA Unit carrying out aviation health responsibilities should be paid for by the aviation industry, not the taxpayer. In order for the CAA to recover its costs in this way, it would be necessary to give the CAA specific statutory duties and we will do so at the first available legislative opportunity. In the meantime, we will fund the establishment of the unit in order that this important work can be taken forward as efficiently and quickly as possible. We expect that a budget of around £200,000 a year will be sufficient. The financing and operation of this unit will closely monitored by DfT and the Aviation Health working group and will provide a necessary input to the development of the regulatory impact assessment supporting legislative proposals.[76]

Consequently, the Aviation Health Unit (AHU) was formed on 1 December 2003. Based at Gatwick within the CAA's Medical Division, its main role is to advise Government, through the AHWG, on passenger and crew health issues. As this is a different requirement from the safety regulation role of the CAA, the DfT retains responsibility for any policy changes arising from health recommendations. Funding for the unit is currently provided by the DfT; costs are currently £200,000 per year.[77]

B. The Bill

The Government stated in its response to the 2002 consultation that it would give the CAA specific statutory duties at the 'first available legislative opportunity' to recover the costs of the AHU from the aviation industry rather than the taxpayer. This would allow the CAA to introduce or amend a charging scheme to impose a levy on either airlines or airports. The mechanism to be used would be subject to industry consultation carried out by the CAA and would be effective from 2007. These costs would be recovered from the travelling public. The RIA further explains that:

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[76] DfT, *Giving Aviation Health policies a Better Focus: Consultation response*, May 2003, pp2-6: http://www.dft.gov.uk/stellent/groups/dft_aviation/documents/pdf/dft_aviation_pdf_507556.pdf

[77] *Regulatory Impact Assessment: Civil Aviation Bill 2005/06*, p25

> The charging schemes used by the CAA are linked to licensing or certification arrangements, without which airports or airlines are not able to operate. Existing measures to ensure compliance with the charging schemes would therefore be extended to the recovery of the funds needed to run the AHU.[78]

Clause 7 of the Bill extends the general duties of the Secretary of State relating to civil aviation to include measures for safeguarding the health of people onboard aircraft. It also confers on the CAA such functions relating to the health of such people as are provided for by, or under, any Air Navigation Order and widens the scope of matters that may be dealt with by such an order to include provision for safeguarding the health of passengers and aircrew. This will allow the CAA to recover the cost of the AHU from the industry.

Separately, the clause also amends section 16 of the 1982 Act, clarifying the arrangement whereby the Secretary of State can require the CAA to provide advice and assistance in connection with his civil aviation functions on a continuing basis but precluding the CAA from recovering such costs as might be involved in providing such advice and assistance.

The £200,000 per year needed to fund the AHU represents less than 0.5% of the amount UK airlines currently pay to the CAA. According to the RIA, such a small amount is ‘unlikely to have any impact on competition’. The CAA will have the power to levy industry and enforce charges through the Air Operators Certificate or the airport licensing regimes.

VII Air Travel Trust Fund

A. Background

Prior to 1973, trade associations, principally the Association of British Travel Agents (ABTA) and the Tour Operators Study Group (TOSG) (which later became the Federation of Tour Operators (FTO)) established voluntary arrangements to give UK air travellers some financial protection should a tour operator become insolvent. The first bonding scheme was introduced by TOSG in 1970, through a specially created trust company. Members had to obtain bonds equivalent to 5% of their annual turnover, which were payable in the event of the member’s failure to provide money to rescue stranded holidaymakers and to refund people who had paid in advance for their holidays. ABTA followed suit in 1972, when it also introduced bonding requirements on its members (this replaced the common fund arrangements that ABTA had introduced in the mid 1960s).

The legal basis of the CAA is set in the *Civil Aviation Act 1971* (‘the 1971 Act’) and one of its main functions is the licensing of air travel organisers. Regulations, made under the 1971 Act, required all travel organisers, tour and travel firms who sold air travel to hold a

[78] *Ibid*, p27

licence. Airlines or airlines' agents were specifically excluded from this licence requirement because at the time most scheduled airlines were state-owned and, it was thought, less likely to fail. Bonding was a precondition to obtaining a licence from the CAA. However, for ABTA or TOSG members, bonds from either trade association were deemed acceptable by the CAA for the grant of a licence. This Air Travel Organisers' Licence (ATOL) system came into force in 1973. It was not designed to provide a comprehensive consumer protection scheme; not all UK air passengers were covered. It had two main aims:

1. to prevent fraudulent operators engaged in the growing charter market from taking money for non-existent flights; and

2. to introduce a compulsory bonding scheme to ensure that people were not stranded abroad after the failure of a tour operator (without bonding, the responsibility of getting people home had fallen to the Foreign Office).

To obtain an ATOL, each travel operator had to deposit a bond with the CAA. This bond could be 'called-in' by the CAA if the licence-holder went into liquidation. In the early 1990s, ABTA and the FTO ceased to hold their members' ATOL bonds. All ATOL bonds are now held by the CAA, which manages the rescue and refund exercises.

Since 1975 ATOL bonds have been backed-up by a statutory trust fund. Originally, this back-up fund was the Air Travel Reserve Fund (ATRF)[79] but in 1986, the ATRF was wound up and its assets were transferred to the new Air Travel Trust Fund (ATTF) under the control of the CAA. Trustees of the fund are CAA board members and officials. The *Air Travel Trust Report and Accounts* for the year ending 31 March 2004 ('the accounts') includes the following statement by the trustees about the scope of the scheme:

> The Air Travel Trust exists as a reserve fund to back up the bonds provided as part of the Air Travel Organisers' Licensing system (ATOL), which is managed by the Civil Aviation Authority.
>
> The ATOL scheme is a UK statutory system that provides financial protection to air travellers and air holidaymakers against the insolvency of their tour operator or travel company. With a few exceptions, all travel firms either advertising or selling air travel in the UK must hold an ATOL. The Civil Aviation Authority holds bonds provided by ATOL holders and, if a company fails, the money from its bond can be used to allow customers abroad to complete their holiday and then return to the UK, and also to refund customers' advance payments for those who were still due to travel. When individual bonds prove to be insufficient to meet all

79 The Air Travel Reserve Fund (ATRF) was set up by the *Air Travel Reserve Fund Act 1975*.

> the claims made upon them, the Air Travel Trust Fund provides money to meet all the deficit.[80]

Although the ATOL system is dependent on the ATTF to back-up ATOL bonds, there is no general power to raise a levy to replenish the fund. The accounts include the following statement by the trustees about the financial position of the Trust Fund:

> The Trust Fund continues to be in deficit … Liquid funds are provided from a credit facility with the Bank of Scotland which is guaranteed by the Government. During the year, the Trustees reviewed the adequacy of the available liquidity in the light of potential claims and a new facility based on different terms has been arranged.[81]

The accounts show an end of year deficit of £9,657,911, relying on a bank loan facility of up to £21m backed by a Government guarantee:

> This Fund underpins a protection system which, although highly valued by UK consumers, has been obliged to exist on deficit financing for the last eight years: as a result, in the last year the amount of loan interest paid was nearly double the amount of compensation paid to holidaymakers.[82]

According to the report and accounts, the Fund was exhausted as early as 1996:

> The Fund was exhausted in summer 1996 and subsequently the Trustees have continued to meet customer claims through a borrowing facility guaranteed by the Government. In being satisfied that the Trust can continue to meet its obligations, the Trustees also rely on assurances from the Department for Transport that the Government remains committed to ATOL and that the guarantee will be further extended if the need arises.[83]

Appendix 3 to the Report and Accounts sets out the historical movement of the reserve fund against industry turnover.[84] In effect, the ATTF meets its day to day working capital requirements through bank loans which are currently secured by the Government guarantee. Trustees have been informed that the Government will continue to support the ATTF by continuing the loan guarantee which will be further extended if the need arises.[85] However, there is currently no mechanism in place to replenish the ATTF by means of levies authorised by legislation or otherwise.

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[80] CAA, *The Air Travel Trust Report and Accounts*, 31 March 2004: http://www.caa.co.uk/docs/152/ATT_2004.pdf
[81] *Ibid*.
[82] *Ibid*.
[83] *Ibid*.
[84] *Ibid*, p11
[85] *Ibid*.

According to the CAA, there are full statistical records only since January 1986, when the management of the ATRF moved to the CAA. Statistics collated by the CAA on calls on the Air Travel Trust for the period between January 1986 and March 2001 indicate that:

- 303 licensed companies failed, collectively authorised to provide 4.9 million holidays.
- 181,814 people were abroad when their tour operator failed, and arrangements were made at a cost of £28.8 million for them to complete their holidays and return home.
- A further 1,069,107 people were given refunds of advance payments totalling £126.9 million from bonds and the Air Travel Trust.
- Total expenditure from bonds and the Air Travel Trust was £155.7 million.
- Approximately one third of all failures in the period resulted in a call on the Air Travel Trust Fund, which provided £42.4 million of total expenditure.[86]

The decline into financial difficulty began with the failure of the Court Line Group in 1974, though claims against the new ATRF were relatively small until Laker Airways failed in February 1982. Although £5.3 million was paid out of the ATOL bond to Laker customers, a further £6.5 million was paid out of the ATRF. The International Leisure Group, then the UK's second largest holiday group, failed in March 1991. The cost to the ATTF was £11 million. Between 1992 and 1997 there were no failures quite so large, but there was a constant stream of medium-sized failures; some of these led to substantial calls on the Fund. The Fund's investment income was no longer sufficient to offset the claims on it, and by 1996 its assets were finally exhausted.

To put a stop to these heavy costs on the ATOL system, in 1997 the CAA introduced a requirement in most cases for personal guarantees from tour operators' principals, which could be called to repay the Air Travel Trust if it had to make payments in cases where the licence holder had traded in excess of its licence authorisation. CAA statistics show that since 1997, annual claims on the Trust Fund have been greatly reduced.

In its Report, *Financial Protection for Air Travellers*, published in July 2004, the Transport Committee expressed concern about the continued deficit funding of the ATTF:

> There is no power to raise a new levy to replenish the Fund, despite the fact that its Trustees have called for one for over 12 years. Successive Governments have promised the necessary primary legislation, but it has not been brought before

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[86] CAA, *History of Consumer Protection*, available at: http://www.caa.co.uk/default.aspx?categoryid=152&pagetype=90&pageid=180

> Parliament. The Fund was exhausted in 1996 and is now £96m in deficit. It now meets its liabilities through commercial borrowing against a Government guarantee. The interest costs ATOL-bonded operators £500,000 every year. **We welcome the Government's commitment to the ATOL system, as demonstrated by the guarantee it provides for the Air Travel Trust Fund's borrowing. However, it is lamentable that for over 10 years no government has seem fit to propose to Parliament the simple legislation which would correct an underlying anomaly in the Fund's operation. A public protection scheme should not be forced to rely on deficit financing for so long. The Government must swiftly introduce legislation to provide the long overdue levy-making power, even if it rejects the case for wider reform of financial protection**.[87]

It was recently reported in the press that John Cox, Chairman of the Air Travel Insolvency Protection Committee, had also expressed concern that the Trust Fund was continuing to meet its liabilities through commercial borrowing:

> The committee has pressed the government for 12 years for legislation to provide a levy to replenish the air travel trust fund…It is completely unacceptable that there is still no parliamentary slot available.[88]

In assessing the overall effectiveness of the ATOL model, the CAA concludes that it has been robust over most of the period during which it has operated, but the funding of the Trust Fund was an inherent weakness:

> The general shape of the ATOL model and the balance between the contribution from individual bonds and that from the mutual fund are thought generally to have been robust over most of the period during which it operated. The principal pressure points have come from the absence of levy powers to replenish the Air Travel Trust, and perhaps the CAA's inability in the absence of such powers to consider other mutual solutions […] [89]

The accounts include the following assessment by the Chairman, Roger Mountford:

> Total expenditure on customers' claims during the past year remained relatively low, despite a difficult year in the industry. Continued changes in holiday buying patterns, including further growth in direct bookings with airlines, add to the pressures on the traditional travel companies.
>
> The ability of the CAA to manage failures effectively is dependent on having immediate access to funds to make payments to airlines and overseas

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[87] Transport Committee, *Financial Protection for Air Travellers*, (HC 806-1, 5th report of session 2003-04), 5 July 2004, p5: http://www.publications.parliament.uk/pa/cm200304/cmselect/cmtran/806/806.pdf

[88] "£1 levy on package holidays to bail out fund for stranded travellers", *The Guardian*, 17 May 2005

[89] CAA, *Financial Protection for Air travellers and Package Holidaymakers in the Future – CAA consultation*, July 2003.

> accommodation suppliers. To this end the Trust needs to be adequately funded to meet the cost of future failures which can happen without much, if any, warning. Although progress made in drafting a Bill is encouraging, it is very disappointing that pressures on Parliamentary time continue to delay legislation to re-introduce the levy needed to restore the Fund. This Fund underpins a protection system which, although highly valued by UK consumers, has been obliged to exist on deficit financing for the last eight years: as a result, in the last year the amount of loan interest paid was nearly double the amount of compensation paid to holidaymakers.[90]

Travel agents also want the Air Travel Trust to be extended to cover scheduled airlines, which currently offer no protection to consumers, quoting the collapse of start-up operations such as Duo and Planet Air in 2004 as an example of a collapse that left thousands of ticket holders out of pocket. A spokeswoman for the Association of British Travel Agents is reported to have said:

> We hope the government will take the opportunity not only to place a discreet sum on existing bond holders but to extend the protection scheme to all airlines.[91]

B. The Bill

Clauses 9 and **10** of the Bill provide for a levy to replenish the ATTF. The CAA sees this as being separate from the wider issues of consumer protection because of its urgency:

> …any changes which flow from the wider review may necessarily take some time to implement, while the issue of the ATTF deficit needs to be remedied as soon as possible.[92]

Clause 9 of the Bill inserts new sections 71A and 71B after section 71 of the 1982 Act. The new sections provide the Secretary of State with additional powers to make regulations requiring persons applying for a licence (an ATOL) to make contributions to the ATTF. The contributions are to be in respect of the period for which the licences are to be issued. By regulations, the CAA is to act as agent for the ATTF in collecting and recovering contributions from licence holders, and for the reimbursement of associated costs. However, before making any regulations under section 71A, the Secretary of State must consult the CAA and the trustees of the Trust Fund. Further, before responding to the consultation, the CAA must in turn consult both any person who holds licences (ATOLs) and any other person or body appearing to the CAA to have an interest in the matter.

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[90] *Air Travel Trust – Report and Accounts.*
[91] *Ibid*.
[92] *Financial Protection for Air travellers and Package Holidaymakers in the Future.*

Whilst new section 71A(1) confers the general power to make regulations, section 71A(2) sets out particular matters for which the regulations will be able to make provision. For instance, new regulations may prescribe the factors the CAA is to use when calculating contributions payable by applicants for licences; or they may authorise the CAA, with the consent of the Secretary of State, to set the rates and dates for the payment of those contributions by different descriptions of persons. Importantly, new regulations may require contributions to be paid (or undertakings to pay contributions to be given) in advance of licences being issued. New regulations may also require licence holders to pay additional contributions to the Trust Fund should the contribution rate increase during the licence period. Persons applying for the variation of a licence may also be required to pay additional contributions.

It is significant that any new regulations made under section 71A are permitted to make provision for the payment of interest in relation to unpaid contributions and for this interest to be recoverable as a debt due to the ATTF.

New regulations may also authorise the CAA to refuse to issue a licence to a person; to refuse to vary a licence held by a person; or to vary, suspend or revoke a licence held by a person where that person has failed to comply with a prescribed requirement of regulations or has breached an undertaking given in relation to the payment of contributions.

However, at the discretion of the CAA, new regulations will also be able to make provision to reimburse persons in respect of payments they have already made to the Trust Fund. The regulations may also permit the CAA to exempt persons from the requirement to make contributions on such conditions as the CAA, after consulting the Secretary of State, thinks fit.

Finally, new regulations to impose a levy to fund the ATTF may also make provision for creating criminal offences to be tried summarily and punishable with a fine which does not exceed level 5 on the standard scale (currently £5,000).

Clause 10 of the Bill contains only miscellaneous provisions relating to the ATTF.

VIII Other

Clause 8 of the Bill amends section 96(1)(b) of the 1982 Act to remove obsolete references and to amend deficient descriptions.

Clause 11 amends the *Scotland Act 1998 (Transfer of Functions to Scottish Ministers) Order 1999* to reflect the amendments to the 1982 Act made by clauses 1, 3 and 4.

The Government is content that the provisions in the Bill are compatible with the European Convention on Human Rights.

IX Comment

Both the Conservative and Liberal Democrat parties expressed their views on some of the issues covered by the Bill in a Westminster Hall debate on 22 June 2005. For the Conservative Party, Julian Brazier MP stated that:

> I do not want to foreshadow the Civil Aviation Bill that will be discussed next week, except to say that we strongly support the view that the polluter must pay. There are issues where we can build on relationships with the industry and I welcome the initiative that was announced a day or two ago that the industry wants to become part of a robust European emissions trading scheme, which would allow it to trade permits with other European airlines. Along with its contribution, we shall be debating other ways in which we can consider the matter on Monday.[93]

The Transport Spokesman for the Liberal Democrats, Tom Brake MP, also emphasised the party's support for the principle that 'the polluter must pay':

> The aviation White Paper seemed to accept two important planks of Liberal Democrat aviation policy: first, that a "predict and provide" approach is the wrong approach for future requirements; and secondly, the principle that the polluter must pay. The Minister has an opportunity to prove that her Government are not just paying lip service to those principles but are prepared to implement them.[94]

Since the Bill was announced in the Queen's Speech on 17 May 2005, there has also been some comment by pressure groups and airport companies on its intended provisions. While some have expressed concerns about whether the Bill would have any real positive environmental impact, others are concerned that it would impede regional airport growth.

For example, the Green Party called the Bill "a total paradox" as "the Government, with one hand tries to limit the emissions that it is creating with the other through airport expansion".[95] Similarly, the Campaign to Protect Rural England (CPRE) has argued that the Bill is 'weak' in its aspirations for environmental improvement in that many of the proposals are permissive rather than mandatory. CPRE has also expressed concerns that the Bill leaves control for environmental issues largely in the hands of airport operators which, in the case of Coventry Airport for example, can lead to a direct conflict of interests.[96]

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[93] HC Deb 22 June 2005, c253WH

[94] *Ibid*, c251WH

[95] Green Party press notice, "Greens slam Government for 'worryingly regressive agenda'", 17 May 2005: http://www.greenparty.org.uk/news/1983

[96] CPRE communication, 17 June 2005. The operator of Coventry Airport is TUI plc, the company behind ThompsonFly for which Coventry Airport is the main hub. This would mean that the company would, in effect, be fining itself.

With regard to the noise provisions of the Bill, the *Nottingham Evening Post* reported the views of Steve Charlish, leader of DEMAND (Demand East Midlands Airport is Now Designated), that the Bill would be ‘a disaster’ from the point of view of anti-noise campaigners living near East Midlands Airport.[97] In a later report, Mr Charlish was quoted as saying that the Bill was “appalling”, “it will strengthen the powers of the airport. But they are not doing their job now, with the powers they already have. It's the worst thing that could have happened”.[98]

Both CPRE and DEMAND have called for an independent body to be put in place to monitor environmental and noise breaches, rather than leaving this responsibility to airport authorities.[99]

HACAN ClearSkies, which campaigns on behalf of those living under the Heathrow flight paths, has raised concerns about the provisions in clause 2 of the Bill to retain a system of ‘noise quotas’, which could be used in preference to ‘movement quotas’ to lessen noise at airports:

> Unless aircraft are very small and quiet, it is the number of flights, i.e. the number of time they can be potentially woken up, that concerns people. As the Department for Transport admits in the separate Night Flights Consultation which it has just published, at Heathrow there is very little scope for bringing in quieter planes at night as all the night flights are the large, long-distance planes coming from the Far East, America and Africa. The retention of a movements limit is very important to the half million (DfT figures) who live under the Heathrow night flight paths. The Civil Aviation Bill doesn’t propose abandoning the movements limits as such. It merely confers the power to do so. At Heathrow it may not be used before 2012 as the current Night Flights Consultation for the night flight regime from 2005-2012 suggests retaining the night flights limit. But the concern remains very real about the longer-term.[100]

The Stop Stansted Expansion Campaign offered a more positive view of the Bill, that it “has the potential to improve conditions round airports and also to encourage airlines to purchase aircraft with the lowest emissions, whether noise or fuel emissions” but that this would only be effective if the Government “actually requires airports to institute charges and insists that the levels at which charges are made are sufficient to make a difference”.[101]

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97 “ ‘Bill’s a load of baloney’ ”, *Nottingham Evening Post*, 18 May 2005
98 “Noisy flights fines rapped”, *Nottingham Evening Post*, 10 June 2005
99 CPRE communication, 17 June 2005 and DEMAND statement on the Civil Aviation Bill (BN-12), 22 June 2005
100 HACAN ClearSkies briefing, *The Civil Aviation Bill*, June 2005.
101 Stop Stansted Expansion Campaign press comment, “Civil Aviation Bill”, 10 June 2005

From a different perspective, the *Exeter Express & Echo* reported that the Bill "could hamper the ability of airports to expand. New routes have led to a 71 per cent increase in traffic at Exeter in the last year".[102]

Manchester Airports Group (MAG) has broadly welcomed the Bill, in particular the provisions for public airport companies, which the Group has been campaigning on for a number of years:

> MAG is seeking a clear framework within which to operate, with the ability to invest overseas, participate in joint ventures and realise the potential of our core strength in selling our expertise to other airports. Greater clarity would avoid the need for specific ministerial consent for individual projects in commercially sensitive situations.
>
> As currently drafted, the Bill will go some way towards clarifying the framework for public airport companies. We would welcome a dialogue with DfT and others as to the precise wording of the text, to ensure that legislation is consistent with related Acts and that enough flexibility is built in to avoid the need for further amendment.
>
> MAG welcomes the provisions set out in the Civil Aviation Bill. These should give airport operators greater powers to tackle noise, emissions and track keeping in partnership with our airline customers, for the benefit of the local communities around us. We particularly welcome the proposals to amend the Airports Act, which should give MAG airports the ability to compete more effectively with privately owned airports.[103]

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[102] "Aviation bill expected to help cut noise", *Exeter Express & Echo*, 19 may 2005
[103] MAG, *Briefing Paper: Civil Aviation Bill*, June 2005