



Civil Aviation Bill

Bill 275 2010-12

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This paper has been prepared for the Second Reading debate in the House of Commons on the *Civil Aviation Bill*, scheduled for 30 January 2012. The main changes proposed in the Bill are intended to modernise the regulatory framework for civil aviation in the UK through:

- reforms to the legislative framework for the economic regulation of airports;
- the legislative framework of the Civil Aviation Authority (CAA); and
- by conferring certain aviation security functions on the CAA.

It also contains a provision to widen the Secretary of State's powers so that holidays sold by airlines or arranged on an 'agent for the consumer' basis could be included in the ATOL scheme in the future.

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Summary

The *Civil Aviation Bill* proposes measures intended to modernise the regulatory framework for civil aviation. The main areas where reforms are proposed are the legislative framework for the economic regulation of airports; the legislative framework of the Civil Aviation Authority (CAA); the transfer of certain aviation security functions from the Secretary of State for Transport to the CAA; and to widen the Secretary of State's powers so that holidays sold by airlines or arranged on an 'agent for the consumer' basis could be included in the ATOL scheme in the future.

The changes in the Bill have been extensively trailed, both in consultation papers published under the previous Labour and present Coalition governments, and in a draft Bill, published in November 2011. The draft bill was scrutinised by the Transport Select Committee, who published their report on 19 January 2012.

The Bill has by and large been welcomed by the industry, as expressed to the Transport Committee when it was taking evidence.

Aviation policy is a reserved matter; the Bill applies to the whole of the United Kingdom.

1 Introduction

The basic aim of this Bill is to modernise the regulatory framework for civil aviation. This has been an aspiration of successive governments and work on the changes included in the Bill was begun under the previous Labour Government. The Conservative-Liberal Democrat Coalition Government that took office in May 2010 has an aspiration to 'put passengers at the heart of airport operations'.¹ The measures in this Bill are intended to go some way towards accomplishing that.

The case for updating the regulatory framework was made by the Secretary of State for Transport, Justine Greening, on the publication of the draft Bill in November 2011. She said:

Much of our aviation regulation is governed by 1980s legislation and needs to be updated. This draft Bill offers a package of reforms to make both regulation and the sanctions which support it flexible, proportionate, targeted and effective. It proposes removing unnecessary regulation and unnecessary intervention by central Government. It devolves more responsibility to the independent specialist regulator, the Civil Aviation Authority (CAA), while ensuring that the CAA is accountable and weighs the costs and benefits of its decisions. The draft Bill proposes that certain costs of regulating aviation should be moved from general taxation to the aviation industry.

Above all the draft Bill puts the consumer first. In the economic regulation of airports with substantial market power the CAA's primary duty will be to consumers; that is passengers and owners of cargo now and in the future. In addition, the Bill gives the CAA a role in promoting better public information about airline and airport performance and about the environmental effects of aviation and measures taken to mitigate adverse effects.

Aviation enables people to travel for business, leisure and to visit friends and family; and it enables the rapid movement of goods to and from markets overseas. The Government want to see a successful and competitive aviation industry. We are taking forward the work of the South East Airports Taskforce to improve our major airports within the constraints of existing runways. In the longer term, we have committed to producing a sustainable framework for UK aviation by 2013 which supports economic growth and addresses aviation's environmental impacts.²

The Transport Committee broadly concurred with this assessment, calling for 'light touch' regulation of the aviation sector in its January 2012 report on the draft Bill. The Committee said:

The UK needs a healthy, competitive and sustainable aviation industry, which includes regional airports and air services. The bill provides new powers for the CAA to undertake its regulatory roles, and some new duties. The aviation industry has some concerns about the way in which the CAA will implement some of these provisions. Given the greater degree of competition that now exists between airports in the south east of England and the difficult business conditions facing many regional airports, we are clear that the CAA should undertake its economic regulatory duties with a relatively light touch. We believe this would be consistent with the Government's better regulation principles and with what the Government would expect of the CAA. The

¹ [HC Deb 23 November 2011, c24WS](#)

² *ibid.*

Government should be open to proposals and suggestions for amendments to the bill to reinforce this principle.³

The Bill was published on 19 January. It includes a provision not in the draft Bill, to widen the Secretary of State's powers so that holidays sold by airlines or arranged on an 'agent for the consumer' basis could be included in the ATOL scheme in the future. The aim is to make it easier for consumers to understand which holidays are ATOL covered, and to restore protection to what looks like a package holiday but now falls outside the legal definition.⁴

2 Legislative framework of the Civil Aviation Authority (CAA)

2.1 The CAA: history

In 1967 the President of the Board of Trade set up a committee to look into "the economic and financial situation and prospects of the British civil air transport industry".⁵ The committee was chaired by Sir Ronald Edwards who was then Chairman of the Beecham Group and was formerly Chairman of the Electricity Council; the Committee has thus generally been referred to as the Edwards Committee. The Committee reported to the President of the Board of Trade, Antony Crosland, in May 1969. It set out how the civil aviation sector operated at that time and proposed reforms. In the late 1960s the various civil aviation duties (for regulating airports, managing air traffic control and en route navigation) were divided between the Air Transport Licensing Board (ATLB); various branches of the Board of Trade, including the Director General of Safety Operations (who was statutorily responsible for aviation safety); and the Air Registration Board.⁶ The Committee took a view that there was a strong case for rationalising these functions and looked at four possible methods of achieving this.⁷ Ultimately, the Committee recommended that an independent, statutory 'civil aviation authority' should be set up.⁸ The report concluded:

There are interlocking relationships between the economic, technological and operational aspects of regulation and this should be recognised by bringing them under the auspices of one body. We have therefore concluded that all these functions, together with the forward planning of the infrastructure, including airports, should be concentrated in one new Civil Aviation Authority.⁹

In November 1969 the Labour Government published its White Paper on civil aviation policy. This accepted the Edwards Commission's recommendation for a civil aviation authority:

The encouragement of structural changes on the lines now envisaged calls for more purposive regulation of the industry than the present legislation and licensing system permit. The Government accept that the task should be carried out by a Civil Aviation Authority charged by Statute to act in accordance with the objectives and policies laid down in the Government's formal policy statements.

[...]

The Government believe that the economic regulation of the industry should continue to be carried out by an expert body that is not subject to detailed supervision by

³ Transport Committee, *Draft Civil Aviation Bill: Pre-Legislative Scrutiny* (thirteenth report of session 2010-12), HC 1694, 19 January 2012, para 84

⁴ [HC Deb 19 January 2012, c46WS](#)

⁵ *British Air Transport in the Seventies: Report of the Committee of Inquiry into Civil Air Transport*, Cmnd. 4018, May 1969, para 1

⁶ *ibid.*, para 985

⁷ *ibid.*, paras 988-1003

⁸ *ibid.*, paras 1004-1008

⁹ *ibid.*, para 1085

Ministers in its day to day decisions and which, therefore, should lie outside the normal framework of a Government department. As the Report points out, a separate body can speak authoritatively both to and for the industry. Within the discretion allowed it by the Government's formal policy statement and directives, detailed decisions can be taken with full knowledge and understanding and with undivided attention.¹⁰

The White Paper was followed by the new Conservative Government's *Civil Aviation Bill* in the 1970-71 session of Parliament. In his speech at Second Reading, the Minister for Trade, Michael Noble, introduced the concept of the [Civil Aviation Authority \(CAA\)](#) as follows:

In the civil aviation context the Civil Aviation Authority has two main aspects. It reflects the fact that airlines are increasingly operating in a single environment. There are, indeed, very close links between the economics and the financial health of the airlines and the safety of their operations, and between operational safety, airworthiness, air traffic control, and navigational services. It does not, I think, make sense to try to regulate all these different things in different compartments and this is why the Civil Aviation Authority is, I believe, very much needed at this moment.

It is, of course, a constitutional innovation. The key point perhaps is that we are in this Bill hiving off a regulatory function. Ministers remain responsible to Parliament for policy, but detailed decision rests with the Authority.¹¹

The [Civil Aviation Act 1971](#) was given Royal Assent on 5 August 1971 and the CAA was established as a public corporation on 1 April 1972.

2.2 Pilling strategic review of the CAA, 2007-08

The Pilling strategic review of the CAA was published in July 2008. The review followed a recommendation by the Transport Committee in its November 2006 report on the CAA (see below). The Labour Government's [response](#) to the Committee, published in March 2007, accepted the Committee's recommendation to undertake a strategic review of the CAA and indicated that it would be completed in 2008. On 9 October 2007 the then Secretary of State, Ruth Kelly, announced that Sir Joseph Pilling would lead the strategic review.¹²

The Pilling Review was published in June 2008. It made over 40 recommendations, most to do with the internal organisation and working of the CAA.¹³ Sir Joseph particularly noted that the CAA had identified a need to bring the legislative framework up to date. In particular, he highlighted parts of the 1982 Act that required amendment:

Section 4 of the 1982 Act gives the CAA a duty to "secure that British airlines provide air transport services which satisfy all substantial categories of public demand ...". This duty is not aligned with European legislation and has on a number of occasions had to be disapplied in UK legislation. The section has also been the subject of a recommendation by the CAA's Strategic Review of General Aviation to remove any suggestion of bias toward commercial air transport over General Aviation. Further, the section makes no reference to the environment or the consumer/passenger.

[...] Under section 11, the CAA sets a scheme of charges defining the amount that the CAA will charge the aviation community for each of its regulatory activities. It is reviewed and amended on an annual basis. Section 11 requires a sixty-day delay between the publication of the CAA's charging schemes and the charges coming into

¹⁰ Board of Trade, *Civil Aviation Policy*, Cmnd. 4213, November 1969, paras 15 and 89

¹¹ [HC Deb 29 March 1971, c1173](#)

¹² DfT press notice, "[Strategic review of the Civil Aviation Authority](#)", 9 October 2007

¹³ DfT, [Report of the strategic review of the CAA](#), June 2008, pp66-70

force. The sixty-day delay was initially intended to allow time for any final representations to the Secretary of State.

Since this legislation was enacted the CAA has established a more comprehensive and effective approach to consulting the aviation community [...] The sixty-day delay makes it difficult for the CAA to align the development of its charges schemes with its financial planning cycles. The need for the delay was considered during a joint review of safety regulation charges by the CAA and the aviation community in 2004/05. The consensus was that the period should be reduced [...]

Part 2 of the Act makes provisions to allow the CAA to manage aerodromes. It has not managed an airport since Highlands & Islands Airports Ltd was transferred to the Secretary of State for Scotland in 1995. It is difficult to envisage a situation where the CAA will be given responsibility in the future to manage an airport.¹⁴

Sir Joseph recommended that the Department for Transport work with the CAA to develop and propose amendments to address the specific issues identified in the review to bring the legislative framework up to date.¹⁵

In a November 2008 statement to the House the then Secretary of State, Geoff Hoon, set out how Sir Joseph's recommendations would be taken forward:

I accept that the CAA's current status as a public corporation should be retained. As Sir Joseph recommended, the department will work with the CAA to develop amendments to bring the legislative framework up to date, addressing specific issues identified in the report [...] I am pleased to be able to announce that I have accepted in broad principle Sir Joseph's recommendations, as has the CAA board. Implementation of the report's many recommendations, and corresponding revisions to the sponsorship statement which defines our relationship, are in hand with two exceptions. We are deferring a decision on changing the route of appeal for fitness of character decisions until the general regulatory chamber and the supporting first tier tribunals are fully established. Also, in the financial downturn which has developed since Sir Joseph Pilling reported, I have agreed with the CAA that it is not a priority to recruit additional international staff or rent separate premises for the AUC although the CAA will endeavour to meet the principle of these recommendations in other ways.¹⁶

2.3 Labour Government's proposals for reform, 2009-10

In December 2009 the Labour Government published a consultation on the future of the CAA's regulatory role. Part 2 of the consultation set out the proposals to give the CAA a clear statutory focus in the future. This would be achieved by replacing section 4 of the 1982 Act with new objectives for the CAA which "reflect modern priorities for civil aviation regulation" – consumers, safety and the environment:

These objectives are likely to take the form in legislation of a general statutory duty for the CAA when exercising its regulatory functions to act in a manner which it considers is best calculated to achieve its new objectives {...}

The other area where aviation affects the public is in terms of aviation's impact on the UK economy (e.g. the employment and trade benefits that result from a strong aviation sector). We think the best contribution that the regulator can make to ensure a strong aviation sector is to make sure that aviation is safe, meets the needs of consumers and

¹⁴ *ibid.*, pp18-19

¹⁵ *ibid.*, p19

¹⁶ [HC Deb 26 November 2008, cc106-107WS](#)

mitigates as far as possible its environmental impact. We think this is captured by the three proposed objectives. We are therefore not proposing a separate economic objective as we do not think this would lead to different regulatory outcomes and it would be inappropriate to impose an objective on a regulator which did not have a clear and distinct purpose.

In pursuing its new objectives, the CAA will continue to identify what considerations it deems relevant in reaching a balanced decision and judge the relative importance of each consideration based on the specific circumstances. However, as now, the CAA will only be able to act where it is reasonable and proportionate and where it has legal power to act. Given the breadth of the CAA's regulatory activity we anticipate that there will be individual decisions where one or more of these objectives would not be relevant to the decision. But taken together we consider that they represent a balanced set of priorities for the organisation.¹⁷

In a statement, the CAA broadly welcomed the changes:

The Government's proposals to improve and modernise the nearly 30-year-old legislative framework around aviation are welcomed by the CAA. The proposals establish statutory priorities for the CAA around pursuing the consumer's interests, seeking environmental improvements and securing high safety standards. This balanced set of objectives will allow the CAA to operate more effectively, and adherence to the Better Regulation principles will minimize the burden that regulation places on industry.

The DfT's proposals build on many activities already undertaken by the CAA, but give them a clear statutory basis and ensure that the CAA can focus on the public interest in aviation. The CAA welcomes the proposals to establish access for the CAA to civil sanctions, which would expand the CAA's enforcement powers and supplement the current criminal penalty regime.¹⁸

Nothing further happened before the 2010 General Election.

2.4 The Bill

In November 2011 the Department for Transport published the draft *Civil Aviation Bill*. The policy paper published alongside the draft bill outlined the government's plans for reform of the CAA's legislative framework as follows:

We have concluded that the legislative framework of the CAA, established almost three decades ago, needs to be updated so that its governance and operation reflect best practice and fit the regulator for the tasks that face it. These changes include:

- (a) Empowering the CAA to appoint its Executive Directors;
- (b) Balancing a new consultation obligation with shorter notice periods for the CAA's charging schemes;
- (c) Enabling the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions;

¹⁷ DfT, [Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation](#), December 2009, p26

¹⁸ CAA press notice, "[CAA response to the DfT's consultation on proposals to update the regulatory framework for aviation](#)", 10 December 2009

(d) Giving the CAA an explicit power to carry out criminal proceedings as part of its enforcement work; and

(e) Giving the CAA a role in promoting better public information on customer service and environmental impacts.¹⁹

In its January 2012 report on the draft Bill, the Transport Committee expressed concerns that the powers granted to the CAA in the draft Bill to require publication of consumer and environmental information, were too widely drawn and risked “creating bureaucracy and additional costs to the aviation industry while the benefits are less tangible”. It recommended:

... that the Government specify the types of transport service provider and information to be brought within these provisions. We also recommend that the bill make clear that publication requirements should not create disproportionate burdens for the aviation industry and that the CAA be required to demonstrate the value to passengers.²⁰

The Committee was also concerned that the CAA is the only economic regulator which does not fall under the remit of the National Audit Office (NAO) and recommended that an explicit efficiency duty for the CAA be inserted in bill.²¹

Part 2 of the Bill contains the provisions pertaining to reform of the CAA’s legislative framework. The main areas are:

- **CAA membership (clauses 95-99)** –for the CAA Board to appoint its own executive directors and determine their remuneration packages.
- **Civil sanctions (clause 102)** –CAA to make use of alternative civil sanctions alongside existing criminal penalties.
- **Charging schemes (clause 100)** –statutory obligation on the CAA to consult charge-payers about the charges it makes to recover its regulatory costs from industry and reduces to 14 days from the current 60 days the notice period between publication of its proposed charges and those charges coming into force.
- **Criminal proceedings (clause 101)** –for the CAA to institute criminal proceedings as part of its enforcement function and to ensure that costs associated with carrying out enforcement work, including prosecutions, will be recoverable from the industry under the new charging scheme arrangements rather than the taxpayer, as is currently the case under present arrangements.
- **Information, guidance and advice (clauses 83-93)** –a new duty for the CAA to publish or arrange for the aviation sector to publish such information and advice as the CAA considers appropriate to enable better consumer choice and to inform on environmental matters.
- **Disclosure of medical information (clause 104)** –the CAA to disclose medical information relating to flight crew and air traffic controllers, in anonymised form, for medical research purposes.

¹⁹ DfT, *Draft Civil Aviation Bill: An effective regulatory framework for UK aviation, Volume 1: Policy Paper*, Cm 8234-I, November 2011, para 2.38; other documentation, including the draft bill and explanatory notes, impact assessment and summary of responses to consultation are available on the [DfT website](#)

²⁰ op cit., *Draft Civil Aviation Bill: Pre-Legislative Scrutiny*, para 61

²¹ *ibid.*, para 64

3 Economic regulation of airports

3.1 CAA responsibilities for regulating airports

The CAA's duties and powers are currently set out in the [Civil Aviation Act 1982](#) and the [Airports Act 1986](#). Broadly, the CAA is responsible for four main areas of regulation – economic, safety, airspace policy and consumer protection. The CAA's [Regulatory Policy Group \(RPG\)](#) has four core functions:

- economic regulation of the three designated airports (Heathrow, Gatwick and Stansted) and NATS (National Air Traffic Services);
- enforcement of consumer legislation - for example, the protection of consumers if flights are cancelled or if they are denied boarding, and protection of disability rights on flights;
- provision of expert policy and economic advice and analysis across CAA, to government and others on airports, airlines and air traffic services; and
- collection and analysis of aviation statistics and survey responses.²²

The parts of the 1986 Act directly relevant to economic regulation are:

- Definition of turnover (section 14)
- Definition of "operational activities" (section 30(4))
- Economic regulation of airports (section 36-56)
- Furnishing of information to the CAA (section 73-74)
- General definitions (section 82)
- Treatment of associated companies (Schedule 1)

Economic regulation applies in general to airports with an annual turnover in excess of £1 million in two of the last three financial years. In its written evidence to the House of Lords Committee on Regulators in 2007 the CAA gave the following summary of its economic regulatory role regarding airports:

The powers available to the CAA as an economic regulator of airports are more limited than those available to other regulators. There is no economic operating licence, and the key functions are essentially limited to:

- setting maximum limits on the airport charges levied by airports that have been designated by the Secretary of State, broadly every five years;
- referring public interest matters in respect of designated airports to the Competition Commission, and setting conditions to remedy public interest findings made by the Commission, again every five years; and
- investigating unreasonable discrimination—or other forms of anti-competitive conduct—by airports.²³

²² CAA, [Regulatory Policy Group](#) [accessed 24 November 2011]

Of these functions, the one which is most often in the public eye is the CAA's responsibilities regarding airport charges. UK airports are regulated under Part IV of the 1986 Act. Section 40 requires the CAA to make quinquennial references to the Competition Commission as regards airport charges at designated airports (i.e. London Heathrow, Gatwick and Stansted). The references cover two aspects: firstly, the maximum amount that should be capable of being levied by way of airport charges; and secondly, whether the airport has pursued a course of conduct which has operated or might be expected to operate against the public interest in relation to airport charges or operational activities. Section 36 of the 1986 Act defines airport charges as:

charges levied on operators of aircraft in connection with the landing, parking or taking off of aircraft at the airport (including charges that are to some extent determined by reference to the number of passengers on board the aircraft, but excluding charges payable by virtue of regulations under section 73 of the 1982 Act (air navigation services etc)); and

charges levied on aircraft passengers in connection with their arrival at or departure from the airport by air.

Under section 40 of the 1986 Act the CAA is required to impose conditions on the operators of designated airports to regulate the maximum they may levy in charges over a five year period (or quinquennium). The quinquennial review has been in place since the privatisation of BAA plc in 1987.

In March 2008 the CAA published the results of its review of charges at Heathrow and Gatwick for the fifth quinquennium, running from April 2008 to April 2013. It concluded that the price caps would be RPI+7.5 per cent at Heathrow and RPI+2 per cent at Gatwick.²⁴ In March 2009 it published price controls for Stansted from April 2009-March 2014 with a cap of RPI+0 from 2009-10 to 2010-11, rising to RPI+1.63 per cent from 2011-12 onwards.²⁵ Following consultation, Manchester Airport was de-designated for regulatory purposes from 1 April 2009.²⁶

In March 2009 a European Directive on airport charges was agreed ([2009/12/EC](#)). The Directive sets common principles for the levying of airport charges at Community airports. It applies to any airport located in the EU and open to commercial traffic whose annual traffic is over five million passenger movements and to the airport with the highest passenger movement in each Member State. The Directive was brought into force in the UK on 10 November 2011; it applies to: Heathrow; Gatwick; Stansted; Manchester; Luton; Birmingham; Edinburgh; Glasgow; Bristol and Liverpool.²⁷

3.2 Proposals to reform economic regulation, 2006-09

The system of airport economic regulation has been criticised for a number of years; sometimes by the CAA itself.

For example, in November 2006, the Transport Select Committee published a report on the CAA and recommended that, in relation to the economic regulation of airports, the government should review the whole process of price control; review the continuing need for

²³ HL Regulators Committee, [UK Economic Regulators](#) (first report of session 2006-07), HL 189, 13 November 2007, [memorandum by the CAA](#)

²⁴ CAA, [Economic Regulation of Heathrow and Gatwick Airports 2008-2013: CAA decision](#), 11 March 2008

²⁵ CAA, [Economic Regulation of Stansted Airport 2009-2014: CAA Decision](#), 13 March 2009

²⁶ DfT, [Consultation on the status of Manchester airport](#), July 2007; and: the [Economic Regulation of Airports \(Designation\) Order \(Amendment\) Order 2008 \(SI 2008/2702\)](#)

²⁷ [Airport Charges Regulations 2011 \(SI 2011/2491\)](#); and: CAA, [Airports In The United Kingdom To Which European Directive 2009/12/EC On Airport Charges Shall Apply In 2012](#), January 2012

the designation of airports subject to economic regulation and who should so designate; and make CAA airport review decisions subject to the standard regulatory model.^{28,29}

In its evidence to the House of Lords Regulators Committee in 2007 the CAA stated that the powers in the 1986 Act to regulate airports raised a number of issues, including:

- whether the CAA should have the power to designate or de-designate airports for price control purposes;
- whether the CAA's concurrent powers to apply competition law should be extended to encompass airports as well as air traffic control services;
- whether there should be an automatic reference to the Competition Commission; and
- how the CAA interprets the 'public interest'.

More generally, there was an issue as to whether the 1986 Act offered the CAA "the requisite powers and tools to regulate effectively".³⁰

Departmental review of airport regulation and the work of the Independent Panel

In April 2008 the then Secretary of State for Transport, Ruth Kelly, announced a review of the economic regulation of the UK airport system, "supported by a panel of experts".³¹ The terms of reference stated that the scope of the review would cover three areas:

- I. What should be the objectives of effective economic regulation of airports?
- II. What are the weaknesses in the current systems of regulation?
- III. What lessons can be learned from alternative regulatory systems?³²

The review would be undertaken by the Department, with the advice of a panel of experts, chaired by Professor Martin Cave of Warwick University. It was further intended that the work would complement the Competition Commission's inquiry into BAA and the independent Strategic Review of the CAA being undertaken by Sir Joseph Pilling. There followed a [call for evidence](#), a [seminar](#) and, in November 2008, an 'emerging thinking' document was published.³³

On 9 March 2009 the then Secretary of State, Geoff Hoon, published the Cave Review report, alongside a consultation document looking at reforming the economic regulation of UK airports. In his statement to the House, he said that the proposals he was putting forward were designed to 'put the passenger at the heart of the regulatory regime'. They were that:

- the CAA should be given a primary duty towards the passenger;
- consumer representation for air passengers should be put on a statutory footing;

²⁸ in which the CAA reaches airport price control decisions based on its own review and the airports, as the regulated organisations, subsequently have the right of appeal to the Competition Commission

²⁹ Transport Committee, *The work of the Civil Aviation Authority* (thirteenth report of session 2005-06), HC 809, 8 November 2006, paras 31-36

³⁰ op cit., *UK Economic Regulators*, memorandum by the CAA

³¹ [HC Deb 22 April 2008, cc100-102WS](#)

³² DfT, *Review of the framework of economic regulation of UK airports: terms of reference*, 28 April 2008

³³ DfT, *Emerging thinking of the independent panel on airport regulation*, 27 November 2008

- economic regulation should be made targeted, flexible and efficient via the introduction of a licence-based scheme of regulation, similar to that which exists already in other regulated sectors, applying only the very largest airports—those with over 5 million passengers per annum or with significant market power; and
- the CAA should have an environmental duty with respect to its economic regulatory functions.³⁴

The consultation closed on 1 June 2009.³⁵ The final report of the Cave Review, submitted to the Secretary of State in January 2009, concluded that the airport regulator's primary duty should be the promotion of the interests of passengers and freight users:

In practice this will require that the airports' proximate customers, airlines and freight operators, are fully consulted, and that their proper needs for airport services are met. The CAA, as regulator, would simultaneously undergo governance changes to adapt to this duty.³⁶

The report also proposed a tiered approach to airport licensing. There would be:

...a licence-based regime in which airports with significant market power (i.e. Gatwick, Heathrow and Stansted) would be subject to price control, in a manner chosen and implemented (subject to appeal) by the CAA. The CAA will receive guidance from the Secretary of State requiring it to have due regard to the National Planning Statement as it concerns major airport runway developments. A second group of about ten airports, subject like the first to the Airport Charges Directive, would have obligations under that directive, including that of consulting users on airport charges. A further dozen or so airports, with more than a million passengers per annum, would remain subject to the conditions which currently apply to them.³⁷

It also recommended:

- a 'special administration regime' for the small number of airports found to have significant market power;
- a duty on the CAA to protect the environment, subject to guidance on specified environmental matters by the Secretary of State; and
- an obligation on the dozen or so largest airports to publish an annual environmental report.

The intent behind these changes was to limit regulation to where necessary, focus on the passenger, encourage investment in airports where desirable, and achieve environmental objectives.³⁸

Competition Commission investigation into BAA

Following a referral by the Office of Fair Trading (OFT) the Competition Commission (CC) announced an investigation into the airport group BAA in March 2007.³⁹ At the time, BAA

³⁴ [HC Deb 9 March 2009, cc4-6WS](#)

³⁵ DfT, [Reforming the framework for the economic regulation of airports](#), 9 March 2010

³⁶ DfT, [Report of the independent panel on airport regulation](#), 27 January 2009, summary

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ OFT press notice, "[OFT refers BAA airports to the Competition Commission](#)", 30 March 2007; and CC press notice, "[Competition Commission airports investigation: invite for evidence](#)", 3 April 2007; all material associated with the investigation available on the [CC website](#)

owned Heathrow, Gatwick and Stansted airports in London as well as other airports around the country. In March 2009 the Commission published its final report, which included recommendations about the regulation of airports by the CAA.⁴⁰ The Commission's three main concerns in this area were:

- a) the absence of statutory duties and economic licence provisions on BAA;
- b) the limited scope for the regulator to act between quinquennial reviews, including by means of agreed changes to licence provisions; and
- c) the narrow focus of the CAA's statutory duties in economic regulation (which is to set maximum airport charges at designated airports every five years) and the way in which the CAA has given effect to its four statutory objectives in fulfilling those duties.⁴¹

As to how the Commission's recommendations would feed into the consultation by the DfT – published ten days before the Commission published its report – it stated:

Towards the very end of our inquiry, on 9 March 2009 the DfT published a consultation document on reforming the framework for economic regulation of airports together with the final report to the Secretary of State by an independent Expert Panel. Many of the proposed changes to the regulatory framework for airports currently proposed by the DfT would contribute to the reforms that we consider necessary to address the AEC [adverse effects on competition] we have found and are therefore the starting point for our discussions in this section.

The DfT is consulting on some other changes, aspects of which we comment upon, where appropriate. In particular, it sets out proposals for improving the passenger experience. Ultimately, the aim of our remedies, both structural and behavioural, is to deliver a better outcome for customers. However, we are limited in what we can do by our terms of reference, which relate specifically to the supply of airport services by BAA.⁴²

The Commission indicated its support for the tiered approach to airport licensing, as set out in the DfT's consultation document:

We fully support a licensing regime of the kind favoured by the DfT with different licence obligations for airports of different sizes and market power, as it would introduce more flexibility to the regulation of airports. In particular, the operation of licensing regimes in other sectors demonstrates that under such a regime, regulators are able to relax the intensity of regulatory scrutiny, where they see opportunities for increased competition, or increase it, where they identify increased risks resulting from the exercise of market power.⁴³

The Commission went on to make detailed recommendations on how three aspects of this licensing regime should be shaped to remedy the adverse effects between airlines of the current system of regulation. Those aspects are: the airport regulator's principal objectives and duties; rights of appeal; and aspects of the full regulatory model as applied to Heathrow. The recommendations regarding the regulator's principal objectives and duties were as follows:

⁴⁰ Chapter 6 went into some depth about the deficiencies the Commission perceived in the current regulatory system and its recommendations on airport regulation begin on p269

⁴¹ CC, *BAA airports market investigation: A report on the supply of airport services by BAA in the UK*, 19 March 2009, p270

⁴² *ibid.*, p270

⁴³ *ibid.*, p272

- It was not necessary to go so far as to impose on the regulator a 'substantive duty to further the interests of airlines' in the primary obligation. Instead, there should be an ancillary duty of a procedural nature to consult and to have regard to the views of airlines, allied with, but subsidiary to, the primary objective to promote the consumer interest through competition.
- Airlines have specific knowledge and experience that is of special value to the regulator, in particular in regulating Tier 1 airports with substantial market power. The regulator should therefore be specifically required to take account of airline views through an ancillary duty and to consult designated passenger groups and airport operators.
- There should be a number of secondary regulatory obligations, including obligations to have regard to Better Regulation principles, to ensure that reasonable demands for services are met, and that licence holders can finance their licence obligations.
- The CAA should have information-gathering powers, and powers to impose penalties, commensurate with its new role.
- The necessary rights of appeal must recognise the cost and other consequences of vexatious appeals.⁴⁴

3.3 Labour Government's proposals for reform, 2009-10

In December 2009 the Labour Government published its decision document on reforming the framework for the economic regulation of airports. This set out proposals for the CAA's future financial resilience, enhancing its accountability and changing passenger representation. However, the main changes proposed were to do with reforming the CAA's statutory duties as economic regulator, in particular introducing a new licensing regime and aligning airport services with passenger need. The document summarised the main changes as follows:

Reforming the statutory duties of the economic regulator

In addition to certain supplementary duties, the single primary duty of the CAA will be to require it:

"to promote the interests of existing and future end consumers of passenger and freight services at airports in Great Britain, wherever appropriate by promoting effective competition".

The supplementary duties will require the CAA:

"to have regard to the airport operator's legal obligations to comply with applicable environmental and planning law;"

"to secure, so far as it is economical to meet them, that all reasonable demands for airport services are met efficiently;"

"to ensure that licence holders are able to finance the activities which are subject to the relevant licence obligations;"

"to have regard to guidance issued by the Secretary of State, as well as any National Policy Statement on airports;" and

⁴⁴ *ibid.*, pp276-277

“to have regard to the principles of Better Regulation and to consult with stakeholders, including airlines”.

These duties will replace the four co-equal duties of the CAA. The supplementary duties are intended to provide further clarity to the CAA about the additional factors it should take into account when making its decisions. These duties are subordinate and will not override, individually or collectively, the primary duty. The exact wording of the duties will be subject to further input by Parliamentary Counsel and Parliament.

Introducing a new licence regime

We will be introducing a new licensing regime that is similar to many other regulated sectors. The main elements of our decisions are to:

Introduce a two tier licensing structure. Airports in Tier 1 will be those with substantial market power where regulatory intervention is warranted, while those in Tier 2 will be all other airports meeting the 5 million passenger a year threshold in the Airport Charges Directive (ACD). Currently, apart from provisions necessary to ensure that the licence is effective, such as a revocation condition, the DfT is anticipating that the Tier 2 licences will only include provisions directly related to the ACD.

Introduce primary legislation based on the current designation/designation criteria to determine whether an airport has a Tier 1 licence. The appeal mechanism for the CAA’s decision about whether an airport should have a Tier 1 licence is discussed in Chapter 6.

Seek advice under Section 16 of the Civil Aviation Act 1982 from the CAA regarding the drafting of some licence conditions. This advice will be taken into account by the Secretary of State in formulating draft licence conditions to be published for consultation. Following consultation, the Secretary of State would be responsible for deciding upon the precise content of and issuing the initial licences.

Give the CAA sanctions and enforcement powers for breach of licences similar to the powers held by other economic regulators in the UK. This includes the use of enforcement orders to incentivise compliance with licence conditions. The CAA will be required to develop and publish an enforcement policy.

Give the CAA powers to impose financial penalties for the breach of licence conditions up to a maximum of 10% of the annual turnover of the regulated business.

Give the CAA concurrency competition law enforcement powers for services provided by airport operators. We are separately consulting⁶ on giving the CAA additional concurrent power, which would cover services provided at the airport by parties other than the airport operator.

Introduce provisions which enable airports to retain their status as statutory undertakers.

[...]

Aligning airport services with passengers’ needs

To ensure that the CAA has the powers and flexibility to regulate to best meet the interest of passengers, we have decided that:

To help ensure that Tier 1 airports’ expenditure programmes are better linked to passengers’ needs, the CAA should build on the process of Constructive Engagement through enhanced information and consultation provisions in licence conditions. These

conditions will build on the requirements of the ACD (the provisions of which will also be applicable to Tier 2 airports).

The CAA should be encouraged to consider whether wider service quality measures would be appropriate to improve the overall passenger experience.

Inter-terminal competition should not be precluded under the new regulatory regime, if and where the CAA considers that it will bring benefits to passengers.⁴⁵

In a statement, the CAA broadly welcomed the changes:

The Government has decided to give the CAA a primary duty for its economic regulation role to promote the interests of existing and future consumers, alongside a new licensing regime for airports. These changes will provide a framework for a more flexible, licence-based approach to economic regulation, enabling us to put the interests of passengers at the centre of our activity, and ensuring that our regulation is transparent and proportionate. These changes bring the CAA in line with other economic regulators and provide clarity for airlines and airport operators. Operating in accordance with this new duty will mean we need to work closely with airlines and other stakeholders to better understand different perceptions of the passenger interest, alongside maintaining close working relationships with all stakeholders.⁴⁶

Nothing further happened before the 2010 General Election.

3.4 The Bill

The new Government's first Queen's Speech in May 2010 included a Bill to "reform the economic regulation of airports to benefit passengers".⁴⁷ Preliminary information indicated that it would "replace the existing system for setting price caps at airports which are subject to economic regulation with a more flexible framework focused on the outcomes that matter to passengers".⁴⁸

On 21 July the then Secretary of State for Transport, Philip Hammond, announced how the Coalition Government intended to proceed on the reform of airport regulation. This was in many ways a continuation of the review and policy process begun under Labour, and the conclusions of the new Government were similar to those announced in December 2009.⁴⁹ At the same time, the government published more detailed information on its decisions regarding the grant to the CAA of concurrent competition powers and promoting financial resilience for major airports.⁵⁰

In November 2011 the Department for Transport published the draft *Civil Aviation Bill*. The policy paper published alongside the draft bill outlined the plans for reform of the CAA's economic regulation powers as follows:

⁴⁵ DfT, *Reforming the Framework for the Economic Regulation of Airports Decision Document*, December 2009, paras 1.11-1.14 & 1.19

⁴⁶ CAA press notice, "CAA response to the DfT's consultation on proposals to update the regulatory framework for aviation", 10 December 2009

⁴⁷ HC Deb 25 May 2010, c31

⁴⁸ Number 10 press notice, "Queen's Speech – Airport Economic Regulation Bill", 25 May 2010

⁴⁹ HC Deb 21 July 2010, cc20-21WS

⁵⁰ DfT, *Granting CAA Concurrent Competition Powers: Analysis of Consultation Responses and Government's Decision*, 21 July 2010; and: DfT, *Promoting Financial Resilience for Major Airports: Analysis of Consultation Responses and Government's Decision*, 21 July 2010

As part of [the] Government's aim to improve the passenger experience at our major airports and fully address the shortcomings of the current economic regulation regime, ... the Government plans to:

- (a) Replace the CAA's current multiple priorities with a primary focus on furthering passengers' interests.
- (b) Transfer responsibility for deciding which airports should be subject to economic regulation from the Secretary of State to the CAA.¹⁸ Decisions will be taken against clearly specified criteria to ensure airports are only subject to economic regulation where the benefits of regulation outweigh the costs.
- (c) Replace the current 'one size fits all' approach to economic regulation with a modern flexible licensing regime where licence conditions can be tailored to the specific circumstances facing individual airports.
- (d) Introduce new civil enforcement powers, including financial penalties (up to 10% of turnover), which will enable the CAA to tackle poor performance more speedily and effectively.
- (e) Introduce a new system of appeals to improve accountability of key regulatory decisions.
- (f) Provide powers for the CAA to investigate and remedy anti-competitive behaviour in the provision of airport services at all UK airports.⁵¹

In its January 2012 report on the draft Bill, the Transport Committee made a number of recommendations aimed at improving the Bill. On the key issue of licence conditions, the Committee cautioned against imposing disproportionate costs on the users of air transport services and recommended that the Bill be amended to require the CAA to provide impact assessments for the licence conditions imposed on airports.⁵² It also stated that airport licences should be structured so that they address key areas of passenger dissatisfaction such as immigration and baggage handling and that airports and airlines should be deterred from making 'frivolous or vexatious appeals to delay licence conditions' by ensuring that the Competition Commission and other relevant appeals bodies have the power to strike out frivolous or vexatious appeals. This could also be addressed via an amendment to the Bill to specify more clearly what constitutes a "materially affected" provider of air transport services.⁵³

On the interests of users of air transport services, the Committee recommended that users be defined as "passengers and shippers of cargo both present and future" and that the special position of airlines be recognised by way of a secondary duty in the Bill.⁵⁴ It also asked for more specificity in the CAA guidance regarding the relative weight that should be put on current versus future air transport users' interests and clarity from the CAA on "how it intends to ascertain the interests of transport users and how the proposed Aviation Consumer Advocacy Panel will relate to the regulatory process".⁵⁵

The Committee also questioned whether the CAA should be given a separate, supplemental duty on the environment, given that "there remains a doubt about whether the costs of discretionary measures, such as improved public transport access, can be recovered by

⁵¹ op cit., *Draft Civil Aviation Bill: An effective regulatory framework for UK aviation, Volume 1: Policy Paper*, para 2.09

⁵² op cit., *Draft Civil Aviation Bill: Pre-Legislative Scrutiny*, para 43

⁵³ *ibid.*, paras 46&52

⁵⁴ *ibid.*, para 31

⁵⁵ *ibid.*, paras 31&33

airports in charges to airlines".⁵⁶ It further expressed disappointment that there was no condition in the CAA's draft licence requiring airports to develop passenger welfare plans and to provide support to stranded passengers during periods of disruption (this is pertinent to passengers affected by adverse weather conditions).⁵⁷

The Committee's recommendation on tackling frivolous or vexatious appeals by specifying more clearly what constitutes a "materially affected" provider of air transport services is included in clause 24(5) of the Bill.

Part 1 of the Bill contains the provisions pertaining to reform of the CAA's powers in economic regulation. As trailed extensively in consultation and in the draft Bill, the main provisions are intended to:

- provide the CAA with a clear primary **duty to further the interests of passengers and owners of cargo (clause 1)**;
- provide a more flexible and targeted set of **regulatory tools** (including a **licensing regime**) (**clauses 3-12, 14-23 and 31-59**);
- make the CAA's decisions more accountable through a system of **appeals (clauses 13, 24-30)**; and
- grant the CAA powers to enforce **competition law** by enabling the CAA to exercise powers concurrently held with the Office of Fair Trading (OFT) (**clauses 60-65**).

The meat of the proposals is the new set of regulatory tools, including the proposed new licensing regime. This is explained in detail in the policy paper published alongside the draft Bill, the Transport Select Committee's January 2012 report and in the Explanatory Notes to the Bill.⁵⁸ To summarise:

- **Persons who operate a dominant area at a dominant airport require a licence to levy charges**; the procedure for granting a licence is set out in clause 15 and Schedule 2. The CAA may refuse to grant a licence on the ground set out in clause 16, these include an application from a person whose licence for that airport area has previously been revoked and circumstances where a licence is considered not to be required.
- **The CAA may include in the licence any conditions it considers necessary** and expedient having regard to the risk that the licence holder may engage in conduct amounting to an abuse of substantial market power in a market for airport operations services. It is further empowered to impose any other licence conditions it considers necessary or expedient having regard to its duties under clause 1. Clause 19 requires the CAA to impose price control conditions where it considers this necessary or expedient. Clause 20 provides that a licence may include conditions requiring payment of the CAA's charges.⁵⁹
- **An appeal against a decision by the CAA** to include or not to include a licence condition may be brought by either the holder of the licence (the operator of the

⁵⁶ *ibid.*, para 38

⁵⁷ *ibid.*, para 40

⁵⁸ *op cit.*, *Draft Civil Aviation Bill: An effective regulatory framework for UK aviation, Volume 1: Policy Paper*, and *Draft Civil Aviation Bill: Pre-Legislative Scrutiny*; and *Explanatory Notes to Bill 275, 2010-12*, 19 January 2012

⁵⁹ the CAA has sought views on an indicative licence intended to give Parliament a flavour of what the licensing regime might mean in practice, available on [the CAA website](#) [accessed 19 January 2012]

airport area), or a provider of air transport services (an airline) whose interests are materially affected by the decision. Such an appeal is made to the Competition Commission. The Commission may allow an appeal only to the extent that it is satisfied that the decision was based on an error of fact and/or that it was wrong in law and/or that it was based on the wrong exercise of discretion.

- **The CAA may issue a contravention notice** where it reasonably believes that a person has broken or not met a licence condition. **The CAA may issue an enforcement order** to a person if it has determined that the person is contravening a condition set out in a contravention notice. An urgent enforcement order may be given where the CAA has reasonable grounds for believing that a contravention poses an immediate risk of a serious economic or operational problem for users or providers of air transport services.
- A person who has been given an enforcement order or urgent enforcement order (whether or not it is a 'confirmed' order) must comply with it. **The CAA may enforce compliance in civil proceedings** for an injunction or any other appropriate remedy or relief **and impose a penalty**. The amount of a penalty, which may be either or both of a fixed or daily amount, must be appropriate and proportionate to the contravention for which it is imposed. The fixed amount of a penalty must not exceed 10% of a person's qualifying turnover for the qualifying period; the daily amount of a penalty must not exceed 0.1% of the person's qualifying turnover for the qualifying period.
- **The CAA may, by notice, revoke a licence** in the circumstances specified in the licence. A person affected may appeal against a decision to revoke a licence.
- **The CAA may, by notice, require a person to provide information or a document** that it reasonably requires for the purposes of carrying out its functions and may impose a penalty that is appropriate and proportionate of a fixed amount up to £2,000,000 and/or a daily amount up to £100,000 on a person who fails to comply with a notice to provide information or a document. The CAA may impose a penalty that it considers appropriate and proportionate on a person who knowingly or recklessly provides information that is false or misleading.
- Clause 59 provides for the **protection from disclosure by the CAA of commercial information and information relating to the private affairs** of an individual where such disclosure would cause significant harm except where information is disclosed by the CAA to facilitate carrying out its regulatory functions under the Bill and disclosure for the purposes of law enforcement or criminal proceedings.

4 Aviation security functions

4.1 Responsibilities for aviation security in the UK

The Tokyo Convention⁶⁰ was originally enacted in UK legislation by the *Tokyo Convention Act 1967*, which was replaced by section 92(1) of the *Civil Aviation Act 1982*. The *Civil Aviation (Amendment) Act 1996* closed a previous loophole in the 1982 Act by the insertion of section 92(1B) so that acts or omissions which take place on board UK-bound foreign aircraft should constitute offences had they occurred in, or in a part, of the UK. It also provides that proceedings may be brought in relation to any such offence on a UK-bound foreign aircraft, whether the landing of the aircraft in the UK was scheduled or not.

⁶⁰ The Convention is applicable to offences against penal law and to any acts jeopardising the safety of persons or property on board civilian aircraft while *in-flight* and engaged in international air navigation

Proceedings could not previously be brought if the aircraft had not in fact landed in the UK, or if the aircraft had landed abroad following the incident and before its arrival in the UK.

Both the hijacking provisions of the Hague Convention (which were given effect in the UK by the *Hijacking Act 1971*) and the provisions of the Montreal Convention (which were enacted in the UK by the *Protection of Aircraft Act 1973*) are now contained in the [Aviation Security Act 1982](#), as amended. Under this Act offences are covered regardless of the nationality of the aircraft or the person committing the offence and the whereabouts of the aircraft; it also contains provisions that give the Secretary of State power to issue Directions to airport and aircraft operators.

The [Aviation and Maritime Security Act 1990](#) enabled the government to ratify the 1988 Montreal Protocol adopted after the Lockerbie bombing. The aviation security provisions of this Act were framed as amendments to the *Aviation Security Act 1982*. They widened the category of person to whom the Secretary of State could give Directions to include businesses which go on at airports. In practice this meant that catering suppliers, cleaning firms, aircraft maintenance and servicing firms and suppliers of aircraft stores were brought within the scope of the 1982 Act. The Act gave powers to aviation security inspectors to issue enforcement notices when there is a failure to comply with a direction. The Act also created new offences relating to security at aerodromes, bringing individuals within the scope of aviation security legislation so that certain acts prejudicial to aviation security became offences. For example, it became an offence for a person to give false information in answer to questions relating to baggage cargo or stores.

On 4 July 1994 it was made a legal requirement for each item of hold baggage, placed on board an aircraft for a flight outside the UK to be accounted for and authorised for carriage. This was referred to as 'Triple A', Accounting and Authorising for Carriage.⁶¹ Previously it was a legal requirement for aircraft operators to ensure that all passengers and operating crew, whose baggage had been loaded onto an aircraft, had boarded and would travel on that aircraft. The baggage of passengers who checked in but did not board the aircraft were removed and not carried unless it was subjected to security controls.

The government has the power under section 60 of the *Civil Aviation Act 1982* to make an Order in Council to give effect to the Chicago Convention which regulates international civil aviation. Under Article 232 of the *Air Navigation Order 2009* ([SI 2009/3015](#)), the [Civil Aviation Authority \(CAA\)](#) or an authorised person may detain aircraft for reasons of airworthiness or other grounds.

Responsibility for searching and screening baggage is divided between the airport which checks hand baggage and boarding passengers, and the airline which checks the hold baggage. Most airlines contract this function out to private companies. There have been intermittent reports over the years of lax security at airports.

The role of [Transec](#), the Department for Transport's Transport Security and Contingencies Directorate, is:

[to] protect the travelling public, transport facilities and those employed in the transport industries, primarily from acts of terrorism, and to retain public confidence in transport security, whilst not imposing requirements that impact disproportionately on the travelling public or on the effectiveness and efficiency of industry operations; and to co-

⁶¹ DoT press notice, "New aviation security measures come into force", 4 July 1994 [PN 94/248]

ordinate the DfT's arrangements for responding to serious disruption of national life, actual or threatened, however caused.⁶²

Transec was established in 1991, following the Lockerbie disaster, as a replacement for the then Aviation Security Division of the Department of Transport. Its responsibilities were extended to include maritime security in the 1990s, then further extended to include the Channel Tunnel. Since 2000, it has had oversight of national rail, London Underground, and the Docklands Light Railway. Since 2005, it has also had responsibility for the Glasgow Subway and the security of dangerous goods in transit.

As to Transec's budget for aviation security, the previous Labour Government said:

Government policy is that the UK aviation industry meets the costs of security—as it does other running costs—and to pass these on to the consumer as appropriate. The Department does fund the Transport Security and Contingencies Directorate (TRANSEC) which carries out the Department's regulatory responsibilities for transport security and as part of that funds a programme of research and provides training aids to encourage improvements in transport security in the UK.⁶³

Transec's 2009-10 annual report states that it spent £25.7 million during the financial year, an increase of £4.67 million from the previous year. Most of this increase was "due primarily to additional spending on new crosscutting work programmes, such as the Olympics transport security and the personnel security programmes, and on a comprehensive programme to improve the Directorate's compliance capabilities (the compliance improvement programme)".⁶⁴

In July 2011 Transec moved to a new structure following internal reorganisation. Rather than a stand alone security Directorate the Department moved to a distributed transport security organisation to bring modal security and policy teams together to enable them to work more closely with the industry concerned to counter mode-specific threats. There were no changes to the Department's remit or responsibility regarding transport security and a dedicated Transport Security Strategy division continued to have overall responsibility for transport security. Aviation security policy and regulation is now part of the aviation directorate.

4.2 The Bill

In November 2011 the Department for Transport published the draft *Civil Aviation Bill*. The policy paper published alongside the draft bill outlined the plans to transfer some of the Secretary of State's aviation security functions to the CAA as follows:

The proposed new functions of the CAA include the review of aviation security directions, advice and assistance to industry on security measures and monitoring and enforcing compliance with EU and domestic requirements. It is proposed to transfer property, rights (including employment contracts), powers, duties and liabilities from the Secretary of State to the CAA that are relevant to the aviation security regulatory functions.

The Secretary of State would remain responsible for aviation security policy and for making aviation security directions under the Aviation Security Act 1982. The Secretary of State would also continue to have the power to direct the CAA as to the performance of its functions in the interests of national security and this would apply

⁶² Transport Committee, *UK Transport Security – preliminary report* (first report of session 2005-06), HC 637, 30 November 2005, Ev 1

⁶³ [HC Deb 19 December 2006, c1755W](#)

⁶⁴ DfT, *TRANSEC Annual Report April 2009–March 2010*, Cm 7941, September 2010, Annex A

equally to the CAA's new security functions. This change will also bring aviation security within an operationally focused organisation, helping to develop further the security regulation function.⁶⁵

The DfT estimates that the transfer of aviation security regulation functions will save the taxpayer of £24.6 million in present value terms over ten years. The CAA will incur costs of £5 million per year from the transfer and a one off cost of £1.54 million.⁶⁶ This will be passed onto airports and airlines and ultimately, to passengers. The DfT states that the cost, if transferred to the passenger, “would equate to approximately £0.02 per passenger movement per year, based on the 211 million passengers who moved through UK airports in 2010”.⁶⁷

In its January 2012 report on the draft Bill, the Transport Committee expressed concerns that the security changes were not subject to the same level of consultation as the rest of the Bill; that the CAA had not demonstrated that it has the security expertise to undertake this new role and that the changes might result in financial costs to the aviation industry without compensating security benefits.⁶⁸

It recommended that the government:

... publish an explanation of how the proposed changes to security regulation will be more efficient while maintaining high levels of aviation security. We further recommend that the transfer of security staff and costs is timed to occur with the introduction of the OFRB [outcomes-focused risk-based] regime.⁶⁹

Clauses 78-82 and Schedules 11-12 of the Bill contain the provisions pertaining to changes to aviation security. The main power is in clause 78, which confers various aviation security functions on the CAA, including duties on the CAA to:

- review aviation security directions that are currently in force and to make recommendations to the Secretary of State about those directions and about the giving of further directions;
- make arrangements for carrying out national security vetting on individuals, including arrangements for renewing and withdrawing clearance and arrangements for appeals; and
- carry out the functions conferred on it by or under Part 2 of the *Aviation Security Act 1982* with a view to achieving the purposes to which that Part applies (i.e. the protection of civil aviation against acts of violence).

The CAA will also be permitted to appoint ‘authorised persons’ to inspect aircraft and aerodromes.

⁶⁵ op cit., *Draft Civil Aviation Bill: An effective regulatory framework for UK aviation, Volume 1: Policy Paper*, paras 2.55-2.56

⁶⁶ DfT, *Impact Assessment: Transfer of aviation security regulation and compliance functions from DfT to the Civil Aviation Authority*, 6 January 2012

⁶⁷ *ibid.*, para 2.54

⁶⁸ *ibid.*, paras 71&73

⁶⁹ *ibid.*, para 80

5 ATOL

The Air Travel Organisers' Licensing (ATOL) scheme, introduced in the 1970s, is managed by the CAA. Currently, it protects those buying flight inclusive package holidays and certain flights against the insolvency of their tour operator.

It is proposed by the government to introduce ATOL reform by way of short-term reforms, to be implemented by new secondary legislation, and longer term reforms, to be implemented by new primary legislation.

A 'Flight-Plus' is a booking for a flight which is sold together with accommodation and/or car hire at the same time or within a day of each other. New regulations to extend the ATOL scheme to 'Flight-Plus' sold by travel agents and tour operators are expected to come into force in April 2012. It is anticipated that a new ATOL certificate will be introduced at the same time.

There are two longer-term reforms. The first is to bring all Flight-Plus and package holidays sold by airlines into the ATOL scheme, so to remove any remaining confusion about financial protection for holidays. The second is to extend the ATOL scheme to include all 'agent for the consumer' arranged holidays. Clause 94 of this Bill would provide the Secretary of State with the regulation-making powers needed to implement the reforms to include holidays sold by airlines and 'agent for the consumer' arrangements in the ATOL scheme.

5.1 The current ATOL model

Statutory travel insolvency protection in the UK is based on two separate strands of legislation:

- The [Civil Aviation \(Air Travel Organiser's Licensing\) Regulations 1995](#) (known as the ATOL Regulations) made under the *Civil Aviation Act 1982*; and
- The [Package Travel, Package Holidays and Package Tour Regulations 1992](#) (known as the Package Travel Regulations 1992) which implement the [Package Travel Directive in the UK](#).

The ATOL scheme provides financial protection for consumers who purchase air package holidays in the event of a travel company going into insolvency. Affected passengers are entitled to a full refund if they are yet to travel or repatriation, after completing their holiday, if they have already reached their destination. The payment of refunds and repatriation expenditure due under ATOL is met by the Air Travel Trust Fund (ATTF), managed by the CAA.

The basis of the ATOL scheme is that any UK business selling a package holiday including a flight or a flight on its own where the ticket is not issued within 24 hours, has to have an ATOL licence. At present airlines are exempt from the ATOL scheme, so do not have to have an ATOL licence for package holidays they sell (see below). There are also other exemptions from the need to have an ATOL licence, for example, for businesses acting as an agent of an ATOL licensed business.

Before an ATOL licence is granted, each operator is examined by the CAA to ensure it is properly managed and financially sound. There is not a general requirement for ATOL licensed businesses to lodge a bond (i.e. a financial guarantee provided by a bank or insurance company) with the CAA, although this is required for businesses that are new to the ATOL scheme for their initial 4 years of trading and other businesses where the CAA consider that there is a high risk to the ATTF. However, it is a general requirement for each business to pay £2.50 per booking ATOL Protection Contribution (APC) into the pooled

ATTF. If the travel operator's business collapses, it is generally the ATTF that meets all repatriation and refund costs (except in the circumstances noted above where a bond is available).

Almost 20 years after the creation of the ATOL scheme, the European Union passed the *Package Travel Directive in 1990*.⁷⁰ This Directive requires insolvency protection, and a range of other consumer protections, for all package holidays sold in the EU, both those including a flight and others. The Directive was implemented in the UK by the *Package Travel Regulations 1992*. Holding an ATOL licence is the way in which UK businesses selling package holidays with a flight can comply with the 1992 Regulations in so far as providing insolvency protection is concerned.

As already mentioned, the current ATOL scheme does not apply to airlines; they are specifically excluded from it under legislation.⁷¹ Airline agents are only exempt from the ATOL scheme if they meet the conditions of the 'ticket provider' exemption, essentially that they provide a valid ticket within 24 hours of receiving payment from a passenger. At present there is no requirement for any business to protect Flight Plus holidays under the ATOL scheme, although as announced on 9 February 2012, tour operators and travel agents will be required to do so from 30 April 2012.

However, under the Package Travel Directive, airlines are required to provide financial protection for the sale of package holidays.⁷² In practice, some airlines have decided to sell package holidays with ATOL protection through subsidiary companies, whilst others protect the holidays through private insurance arrangements or other permitted options under the Package Travel Directive. However, there is no legal requirement at present for any business to provide protection for Flight-Plus holidays.

For the consumer, the ATOL logo on websites and in brochures signify that the business in question holds an ATOL licence and thus meets the CAA's financial fitness criteria. This does not mean that every holiday they sell is an ATOL protected one. The ATOL holder may also sell holidays and travel arrangements that are not ATOL protected since these fall outside the (legal) scope of the scheme. In effect, it is for the consumer to check whether all of their holiday arrangements are covered by ATOL. The ATTF accounts for 2010/11 estimate that 18.5 million passengers were ATOL protected in that year. This estimate was based on APC payments received.

5.2 Limitations of the ATOL model

ATOL scheme has not kept up with changes in the travel industry

The last decade has seen important changes in the UK market for holidays and flights. In particular, a move away from traditional package holidays in favour of independent travel. This has been facilitated by the emergence of low cost 'no frills' airlines and the use of the internet; holidays are often created by consumers buying the various component parts from a range of flight, accommodation and other options. This may involve purchasing from a single provider, or in many instances, through the use of linked websites (an airline website may, for instance, contain a link to an accommodation provider's site). Holidays created and sold in this way are often referred to as 'dynamic packaging', 'mix and match holidays', a 'DIY package' or 'tailor made holidays'. This development could not have been foreseen when either the ATOL scheme or the Package Travel Directive was agreed.

⁷⁰ [Council Directive 90/314/EEC](#) on Package Travel, Package Holidays and Package Tours

⁷¹ Airlines are subject to Operating Licences issued under EU law

⁷² [Council Directive 90/314/EEC](#) on Package Travel, Package Holidays and Package Tours

There is a strong case for reforming the ATOL scheme to better reflect today's holiday market, so that consumers can be clear when their holiday is protected. In addition, the scheme has operated with a deficit for some years (see below) and reform is deemed necessary if the scheme is ever to become self-sustainable.

The CAA has summarised the reasons why the current ATOL scheme is no longer adequate:

In recent years, evolving trade practices in the travel industry have resulted in more consumers booking holidays that appear to them to be packages, but are sold with either limited, or no financial protection.

In recent years, there have been significant changes in the way that holidays are sold, principally as a result of the Internet. The Regulations were written prior to these developments and in some instances are not appropriate to the industry as it operates today. This has resulted in confusion for the industry, and consumers, in determining whether holidays should be and are financially protected or not. Government believes that ATOL needs reform to provide clarity and to remove the risk of increasing financial detriment to consumers. The CAA agrees that achieving clarity for consumers must be the main aim of reforms, and there is widespread agreement to that approach from industry.

The problem consumers face is that they are able to buy both package holidays, which have full financial protection under the CAA's ATOL scheme, and holiday arrangements which are sold as separate components and which are not all ATOL protected, and in many instances they cannot tell the difference. In the latter sale the consumer may be offered some form of financial protection, but in most cases it will not be as comprehensive as ATOL and because the customer is buying separate components, if a supplier fails, the customer may lose part of their holiday and have to rebook, often at a higher price. In addition, in the event of an airline failure, holidaymakers may have to pay again for flights to get home, even though they may be able to claim back some of their additional expenditure if they are covered by a specific insurance policy. These issues bring fundamental uncertainty for the consumer in a market where significant sums are expended well in advance of travel.⁷³

The CAA attempted to clarify the definition of a 'package holiday' through the UK court. They argued that 'dynamic' or 'mix and match' holidays should be considered a 'package' holiday and so covered by the ATOL scheme. However, the court has ruled that holidays made up of components sold at the same time, but separately, are not package holidays.⁷⁴

In addition, holidays purchased on an 'agent for the consumer' basis may also be outside the ATOL scheme. Traditionally, travel agents act as agent for the supplier, where they 'sell' holidays to customers on behalf of travel trade suppliers. However, travel agents can also sometimes act as an agent for the customer, where they technically 'buy' the holiday on behalf of a customer. This is an important distinction. 'Agents for the consumer' are not legally 'making available' flight accommodation, so they are currently not required to have an ATOL licence, or provide any other form of financial protection for holidays. However, it can be very difficult for consumers to know in what capacity a travel agent is acting, and this can create considerable detriment and uncertainty for consumers.

According to the Government, some travel companies are not fully aware of what acting as 'agent for the consumer' entails, or their obligations to explain to consumers the implications

⁷³ Civil Aviation Authority, [ATOL Reform –FAQ](#) [accessed 24 January 2012]

⁷⁴ In July 2010, the Supreme Court decided not to hear the CAA's appeal against the High Court's decision in the Travel Republic case, relating to whether holiday elements sold separately but at the same time were package holidays and so required ATOL protection

of this for ATOL protection.⁷⁵ Consumers may believe that they are fully ATOL protected, only to discover in the small print of their holiday documents, or when they try to make a claim under the scheme, that they are not.⁷⁶

The conclusion reached is that the ATOL scheme no longer completely fulfils its intended purpose; there are now many holidays which look like packages but do not fall under the legal definition and so do not carry protection. The proportion of holidays with ATOL protection has fallen; 97% of all leisure flights in 1997 were ATOL protected compared to less than 50% in 2010.⁷⁷ According to the CAA, widespread customer confusion over protection arrangements has been apparent following recent travel company failures – making clear the need for reform to bring clarity.⁷⁸ Further, the ATOL Regulations now impose burdens on package operators that some of their competitors are able to avoid.

The Government's main aim in reforming the ATOL model is to introduce greater clarity, transparency and coherence for consumers. To make it easier for everyone to understand which holidays are covered, and to restore protection to what looks like a package holiday but now falls outside the legal definition. In addition, reform should make it possible for the ATOL scheme to become financially self-sustaining, enabling the Government to withdraw its guarantee.

Deficit funding of the Air Travel Trust Fund (ATTF)

From the 1990s onwards the ATTF has operated on deficit funding. Bonds provided by ATOL businesses as a condition of obtaining a licence were not sufficient to meet the full costs of tour operator failures. The ATTF could only meet its obligations through commercial credit facilities supported by a Government guarantee.

The introduction of the ATOL Protection Contribution (APC) at £1 per booking in April 2008 was intended to pay off the Fund's deficit, which then stood at £21m, and so allow the Government guarantee of up to £30m to be phased out over 3 years. Continued income from the APC would then be used to meet all refund and repatriation costs in the future. In effect, the ATTF would become financially sustainable.

However, following the insolvency of XL Leisure Group in September 2008, the largest ever failure of an ATOL licensed business, the APC was increased to £2.50 per booking as from October 2009. At the same time, the government guarantee was increased and extended in duration. The guarantee is currently £42m, programmed to reduce to £30m in August 2011, and £20m in August 2012 before being withdrawn in August 2013.

The Fund's estimated deficit, as of March 2011 is £42m. The Government believes that the full cost of ATOL protection must be met by holidaymakers and the travel trade, with no on-going risk for taxpayers. The Government's position was given by Theresa Villiers in a Ministerial Statement in February 2011:

Reform is needed to secure the sustainability of the fund so it can continue to provide financial protection for consumers, while reducing and eventually eliminating the exposure to taxpayers. It is envisaged that the ATOL protection contribution (APC)

⁷⁵ Department for Transport, [ATOL Reform Consultation Document](#), 23 June 2011

⁷⁶ It is a criminal offence under the *Consumer Protection from Unfair Trading Regulations 2008* for businesses to mislead consumers so they make a decision to buy something they otherwise may not have done, including by omitting relevant information

⁷⁷ Ibid

⁷⁸ Following the failure of XL Leisure Group in September 2008, see: [CAA FAQ](#)

paid into the fund will remain at £2.50 per holiday sale until the fund is restored to health.⁷⁹

5.3 Consultations on proposals to reform the ATOL model

The previous Government consulted on options for ATOL reform as part of its '*Regulating Air Transport*' (RAT) consultation.⁸⁰ The consultation proposed five measures for reforming the scope of the ATOL scheme with the main objective of providing greater clarity to consumers.⁸¹

On 3 February 2011, the Government announced its 'in principle' decision to reform the ATOL scheme.⁸² This 'in principle' decision was taken forward by the publication of the '*ATOL Reform Consultation*' document on 23 June 2011,⁸³ with attached *draft secondary legislation*.⁸⁴ The consultation ran for three months, from 23 June to 15 September 2011. The document is in two parts: short-term reforms to the ATOL scheme that can be implemented by new secondary legislation; and longer term reforms where new primary legislation would be needed.⁸⁵

There are two short-term proposals. The first is to extend the ATOL scheme to so-called 'Flight-Plus' holidays (i.e. holidays which resemble but are not 'package holidays' as currently legally defined under EU law). This would require tour operators and travel agents who are selling 'Flight-Plus' to have an ATOL licence or belong to a consortium organisation or approved body which holds an ATOL licence on behalf of its members. A 'Flight-Plus' holiday would include the following elements:

- a flight out of the UK, or an inbound flight where the outbound trip from the UK was not by air (return flights would also be protected as part of the Flight-Plus where applicable); and
- hotel (or other) accommodation and/or car hire, both outside the UK and supplied under the same contract as or in connection with the flight; and
- where overnight accommodation is not included (that is where the Flight-Plus comprises a flight and car hire) the arrangements must cover more than 24 hours
- In order to form part of a Flight-Plus, the various elements of a holiday such as hotel accommodation, car hire or other tourist services must be requested by a consumer either the day before, on the same day, or the day after the flight was requested.

Ultimately, the legal definition of a Flight-Plus holiday sold by travel agents will depend on what a consumer requests and not what a retailer makes available. Any firm selling this type of Flight Plus holiday would be required to obtain an ATOL. They will also be required to pay the £2.50 APC for the booking to guarantee their customers' protection against their failure. It

⁷⁹ HC Deb 3 February 2011 cs.79-80WS

⁸⁰ Department for Transport, '*Regulating Air Transport: consultation on proposals to update the regulatory framework for Aviation*', December 2009,

⁸¹ Department for Transport, '*Regulating Air Transport: Consultation on proposals to update the regulatory framework for aviation – summary of responses to Part 4: Reforming the scope of the ATOL scheme*',

⁸² HC Deb 3 December 2011 c.s56-57WS

⁸³ Department for Transport, '*ATOL Reform Consultation Document*', 23 June 2011,

⁸⁴ *Draft Civil Aviation (Air Travel Organisers' Licensing) Regulations 2011*, Draft date 15 June 2011,

⁸⁵ A CAA document, outlining how ATOL policies and procedures would need to change to incorporate the proposed short and long term reforms, was also annexed to the consultation document

has been predicted that the collection of this additional APCs should help the ATOL scheme become financially self-sustaining within three years.⁸⁶

The second short-term proposal is that every consumer booking an ATOL protected holiday (i.e. a package and Flight-Plus) should receive an ATOL Certificate at the point of purchase, confirming their right to a refund, replacement or repatriation as appropriate should their travel company fail.⁸⁷

It was originally proposed that new regulations to bring Flight-Plus holidays sold by travel agents and tour operators into the ATOL scheme would come into force on 1 January 2012, in time for the peak booking season of January and February for summer 2012 holidays.⁸⁸ However, on 25 October 2011, the Minister announced that the date would be postponed to April 2012 in order to give the industry enough time to respond to these new consumer protection requirements.⁸⁹ It is anticipated that the new ATOL certificate will come into force at the same time as the new regulations.⁹⁰

Two longer-term reforms to the ATOL scheme are outlined in the consultation document – both would require new primary legislation. One reform is to bring all Flight-Plus and package holidays sold by airlines into the ATOL scheme, so to remove any remaining confusion about financial protection for holidays.

The other reform is to extend the ATOL scheme to include all ‘agent for the consumer’ arranged holidays. This would ensure that all package holidays by air and Flight-Plus holidays sold by or purchased through travel agents and tour operators are ATOL protected.

Both longer term reforms are now to be implemented by clause 94 of this Bill.

On 15 December 2011, the Transport Committee invited written evidence on the Government’s proposed reforms to the ATOL scheme with a view to taking oral evidence from Theresa Villiers, Minister for State, and others on 31 January 2012.⁹¹ This evidence session is further to the Committee’s inquiry into the Government’ draft *Civil Aviation Bill*.

5.4 The Bill – Clause 94

The purpose of clause 94 of the Bill is to bring airlines and ‘agent for the consumer’ transactions into the scope of the ATOL scheme.

Clause 94 of the Bill amends section 71 of the CAA 1982 to broaden the Secretary of State’s powers to regulate the provision of flight accommodation, the legal basis for the ATOL scheme.⁹² The amendments enable the Secretary of State to make regulations requiring airlines to hold and act in accordance with an ATOL licence when making available flight accommodation except where they are doing so on a flight-only basis on air-craft which they operate. For the purposes of this clause, ‘flight accommodation’ is taken to mean accommodation for the carriage of persons on flights in any part of the world. In effect, all airline package holiday and Flight-Plus sales are to be ATOL protected. However, the

⁸⁶ Department for Transport, ‘[ATOL Reform Consultation Document](#)’, 23 June 2011,

⁸⁷ The proposed ATOL certificate would replace the current ATOL receipt and ATOL confirmation invoice

⁸⁸ [Written Statement by Theresa Villiers](#), Minister of State for Transport, 23 June 2011

⁸⁹ [Written statement by Theresa Villiers](#), Minister of State for Transport, 25 October 2011

⁹⁰ On 14 November 2011 the CAA published an Information Paper for industry about how proposed reforms to the ATOL scheme, which provides financial protection for holidaymakers, could be enacted by the regulator when they come into force next year, [CAA publishes more information about ATOL reform plans](#)

⁹¹ ‘[Call for Evidence: Air Travel Organisers’ Licensing \(ATOL\) Reform](#)’, Select Committee announcement SCA 116/2010-12, 15 December 2011,

⁹² Section 94(5) of the Bill

Government has also stated that such a step would only be taken following full consultation with stakeholders including an impact assessment.⁹³

The amendments also enable the making of regulations requiring businesses acting as an 'agent' for another person (i.e. a consumer) in procuring flight accommodation to be licensed, unless exempted by the regulations. This would provide a greater level of consumer financial protection and clarity by ensuring that all package holidays by air and Flight-Plus holidays sold by or purchased through travel agents and tour operators are financially protected by the ATOL scheme.

In addition, clause 94 further amends section 71 by adding a power for the Secretary of State to make regulations imposing statutory obligations on licence holders and conferring rights of action for contravention of those regulations, as well as imposing criminal sanctions for their breach.⁹⁴

As a tidying-up exercise, clause 94 also removes elements of the current regulation-making power that are no-longer required.

Taken as a whole, clause 94 enables the inclusion of holiday sales by airlines and 'agent for the consumer' transactions into the scope of the ATOL scheme. In so doing, the aim is to improve consumer financial protection and ensure a fair and workable solution for the travel industry.

Many responses to the RAT consultation in 2009 were in favour of extending ATOL to airlines.⁹⁵ The inconsistency of the current situation was highlighted: when selling an identical holiday, airlines are not required to provide ATOL protection, whilst travel agents and tour operators are. It was claimed that this created confusion for consumers and an unlevel playing field for holiday providers, as airlines did not face the costs of providing ATOL protection.⁹⁶ It was claimed that bringing airlines into ATOL would provide a more consistent approach, where each business would pay the same APC for providing ATOL financial protection.⁹⁷ However, not all consultation responses were in favour of including airline holiday sales in ATOL:

Some responses suggested that adequate protection was already available. Airlines protect their package holidays through subsidiary businesses that hold an ATOL licence or some other private insurance arrangement. There is also some financial protection available for individuals purchasing airline Flight-Plus sales, through scheduled airline failure insurance, credit card protection and voluntary repatriation arrangements. However as there is currently no standard requirement for Flight-Plus protection, it can be problematic for consumers to work out what level of protection is provided with each holiday.⁹⁸

5.5 EU initiatives for reform

Two closely inter-related EU initiatives are relevant to how the ATOL scheme may be reformed in the longer term:

⁹³ HC Deb 19 January 2012 c.46WS

⁹⁴ On summary conviction, a fine of the statutory maximum; on conviction on indictment, a fine and imprisonment for a term not exceeding 2 years

⁹⁵ Department for Transport, *'Regulating Air Transport: Consultation on proposals to update the regulatory framework for aviation – summary of responses to Part 4: Reforming the scope of the ATOL scheme'*

⁹⁶ Department for Transport, *'ATOL Reform Consultation Document'*, 23 June 2011

⁹⁷ Ibid

⁹⁸ Ibid

- the review of the *Package Travel Directive*⁹⁹; and
- options for airline insolvency protection

The Package Travel Directive is currently under review as part of the European Commission's [Review of the Consumer Acquis](#). In 2007 the Commission published a [Commission Working Document](#), which set out the main regulatory problems in the area of package travel and to consult stakeholders on issues related to the Directive.

The consultation showed strong support for the Directive's revision. It was recognised that the legal framework is not well suited to regulating the current market for package holidays, in particular, the emergence of 'dynamic packages', has meant it may not be clear what holidays the Directive applies to. The outcome of the consultation is presented in this [summary of responses](#).

In January 2009 the Commission initiated a study [on Consumer Detriment in the area of Dynamic Packages](#)'. Against this background, the Commission launched a public consultation on the revision of the Package Travel Directive in November 2009. While the consultation in 2007 sought to identify the problems with the existing Directive, this consultation focused on possible ways of solving the main problems with the existing package travel rules. It also aimed to quantify the impact of various possible legislative options. The outcome of the consultation is presented in this [summary of responses](#).

The Commission is now developing policy options. Momentum appears to be behind reform and broadening of the scope of the Directive. EU consumer research indicates consumer desire for air ticket sales to be brought into the protection regime. The Commission is particularly mindful of the fact that the [Consumer Rights Directive](#), adopted on 10 October 2011, does not include holiday travel.¹⁰⁰ This new Directive will lead to different levels of protection between customers booking package holidays and those booking other forms of travel arrangements.

The Commission is also looking at whether to introduce insolvency protection to consumers in relation to sales of all flight tickets, including those that aren't sold as part of a package but are sold directly from airlines. According to the DfT, this would go further than the current ATOL scheme and the proposed reforms which only protect some 'Flight-Only' tickets bought from third parties. The Commission is also reviewing passengers' rights as set out in the [Denied Boarding and Cancellation Regulations](#). It has initiated two studies on this subject.¹⁰¹

In terms of a timetable, proposals for a revised Package Travel Directive are expected by late 2012. It's understood that the Impact Assessment Board will consider proposals alongside the Airline Insolvency proposals (i.e. coordination with DG MOVE on air passenger rights). This would be followed by the drafting and committee process with potentially a new directive being agreed in 2013/14.

The DfT has said that while the expected proposals to revise the Directive may cover similar ground to the options for ATOL reform, any proposals published by the Commission would be unlikely to be agreed and transposed into UK law before 2014 at the earliest. The

⁹⁹ [Council Directive 90/314/EEC](#) on Package Travel, Package Holidays and Package Tours

¹⁰⁰ [Directive 2011/83/EU](#) - once implemented, consumers across the EU will have uniform rights to withdraw from online and distance purchases under new consumer rights laws that are required to be implemented in all Member States before 13 December 2013

¹⁰¹ Department for Transport, '[ATOL Reform Consultation Document](#)', 23 June 2011

Government believes that it cannot wait until then to address today's problems with the ATOL scheme in terms of its finances and the potential detrimental effects on consumers.¹⁰²

¹⁰² Ibid