

Title: Modernising the Civil Aviation Authority's (CAA's) Governance and Operations IA No: DFT00038 Lead department or agency: Department for Transport Other departments or agencies: None	Impact Assessment (IA)	
	Date: 12/11/2011	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Primary legislation	
	Contact for enquiries: ben.smith@dft.gsi.gov.uk	
Summary: Intervention and Options		RPC Opinion: AMBER

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as One-Out?
-£0.002m	N/A	N/A	No	N/A

What is the problem under consideration? Why is government intervention necessary?

The current regulatory framework established under the 1982 Civil Aviation Act is now outdated. The Government has identified 4 specific problems where intervention is needed to update legislation: 1.) Government involvement in CAA Executive appointments is bureaucratic, hindering recruitment; 2.) Certain offences cannot be dealt with appropriately by the CAA due to a lack of appropriate sanctions; 3.) Taxpayers fund the CAA's prosecution work and it is more appropriate that the CAA charge payers fund it; and 4.) The CAA's process for publishing new charging schemes includes an inefficiently long notice period.

What are the policy objectives and the intended effects?

The policy objectives and intended effects are as follows: 1.) Remove unnecessary bureaucracy from the regulatory process by reforming the CAA's governance and charging-scheme arrangements; 2.) Improve industry compliance through the CAA's use or threat of civil sanctions; and 3.) Reduce the costs for the taxpayer of regulating the aviation sector where it is more appropriate for this work to be funded by the CAA's charges to payers from the aviation industry (e.g. the CAA's prosecution work).

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Against the "do-nothing" option (Option 1), we assess 4 stand-alone proposals. The preferred option (2) is to introduce legislation implementing all 4 of these proposals, resulting in a more efficient CAA with a greater ability to deliver benefits to users of air transport and the public. We have explored and eliminated non-legislative options on legal advice. The proposals are to: Option 2a: Amend legislation to empower the CAA to appoint its Executive Directors; Option 2b: Enable the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions; Option 2c: Grant the CAA a power to recover the cost of prosecution work from its charge payers rather than from general taxation; and Option 2d: Balance a new consultation obligation with shorter notice periods for the CAA's charging schemes.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2018

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Date: 12/11/2011

Summary: Analysis & Evidence

Policy Option 2

Description: Implementation of all four policy options (see breakdown of specific options below)

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -0.002

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	1	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	0.08		1.045	8.768

Description and scale of key monetised costs by 'main affected groups'

Specific options break these down, including recruitment costs of Executive Board members; and determining when to use enforcement powers. The CAA will charge industry for the use of these powers through its charging mechanisms. We expect these costs to be passed on to passengers (see second paragraph in One In One Out section on page 13 of the full IA).

Other key non-monetised costs by 'main affected groups'

Specific options break these down including: costs for industry/passengers from collecting information and reduced public influence over the CAA Board. Where non-monetised costs are incurred by the actions of the regulator as a result of this provision then, in general, we would expect them to be passed on to service users.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	0		1.054	8.766

Description and scale of key monetised benefits by 'main affected groups'

Specific options break these down including: Government not incurring Executive Board recruitment costs.

Other key non-monetised benefits by 'main affected groups'

The impact assessment records a small negative net present value (NPV) of £0.002m. However, it is considered that implementing the proposals will receive considerable non-monetised benefits, which are likely to exceed these costs. Furthermore, the CAA's charges which will fund the use of these reforms are scrutinised by industry who are well placed to ensure that the benefits must outweigh the costs. See breakdown of specific options for further details.

Key assumptions/sensitivities/risks

See breakdown of specific options in main Impact Assessment .

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 2a

Description: Amend legislation to empower the CAA to appoint its Executive Directors

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0.075

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0	0.045	0.374

Description and scale of key monetised costs by 'main affected groups'

Transfer of cost burdens to the CAA charge payers: £0.4m (PV)

On average, over the past nine years, the DfT has recruited one Executive Board Member per year, at an average cost of £45k per year, reflecting recruitment consultancy expense, advertising and staff time.

Option 2a assumes that, going forward, the CAA undertakes these responsibilities and faces similar costs.

Other key non-monetised costs by 'main affected groups'

Ministers (as representatives of the general public) would lose a degree of influence over the CAA board appointments and remuneration. However, this would be mitigated by the proposed safeguards regarding key positions and non-Executive positions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0	0.054	0.449

Description and scale of key monetised benefits by 'main affected groups'

Transfer of cost burdens away from the taxpayer: £0.4m (PV)

Reduction in recruitment costs enabled by the removal of the current two-term limit on Executive appointments, leading to longer term appointments: £0.1m (PV)

NB: due to rounding, the best estimate of **net** present value is £0.1m

Other key non-monetised benefits by 'main affected groups'

Reduced bureaucracy in making Board appointments should result in a more efficient process. Removing the two-term limit on posts and other constraints associated with Ministerial appointments could make executive posts more attractive, potentially increasing the pool of talent from which the CAA can recruit; and would allow for existing Executives to stay on beyond two terms where appropriate.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The loss of influence for Ministers is assumed to be mitigated to a large extent by the proposed safeguards regarding key positions and non-executive positions.

BUSINESS ASSESSMENT (Option 2a)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 2b

Description: Enable the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions.

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -0.08

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0.08	0.0	0.08

Description and scale of key monetised costs by 'main affected groups'

CAA/DfT resources required to determine the appropriate scope (i.e. which specific sanctions to grant the CAA and over which offences) and where appropriate to draft subsequent secondary legislation granting the CAA civil sanctioning powers: £0.08m over 1 year. If secondary legislation is passed, there would be additional costs associated with setting up the civil sanction processes and enforcement costs, to the extent that the CAA uses the powers. These costs will be quantified at the secondary legislation stage.

Other key non-monetised costs by 'main affected groups'

No other key non-monetised costs envisaged.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0.0	0.0	0.0

Description and scale of key monetised benefits by 'main affected groups'

No monetised benefits quantified at this stage. If secondary legislation is passed, we expect there to be monetised benefits associated with increased compliance and therefore improved protection of passengers (see non-monetised benefits below).

Other key non-monetised benefits by 'main affected groups'

The main benefit is the potential for increased compliance with certain areas of aviation regulation and therefore better protection of passengers and a more level playing field for businesses. This will depend on the extent to which the CAA uses the powers and could only be quantified at the secondary legislation stage.

Key assumptions/sensitivities/risks

Subsequent costs and benefits are attributable to the specific pieces of secondary legislation. The proposed primary legislation simply enables this later step.

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 2b)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 2c

Description: Grant the CAA a power to recover the cost of prosecution work from its charge payers rather than general taxation

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0.000

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0.0	1.0	8.317

Description and scale of key monetised costs by 'main affected groups'

Transfer of cost burdens from the taxpayer to the CAA charge payers: £8.3m (PV)
In recent years the CAA's prosecution work has involved a cost of approximately £1m per annum, comprising investigation and legal costs.

Other key non-monetised costs by 'main affected groups'

The Secretary of State would have less influence over the scope of the CAA's prosecution work. However in practice the Secretary of State does not currently exercise any influence over this work.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	1.00	8.317

Description and scale of key monetised benefits by 'main affected groups'

Transfer of cost burdens away from taxpayer: £8.3m (PV)

Other key non-monetised benefits by 'main affected groups'

Taxpayers may attach a particularly high value to the cost saving as they have a lower direct interest in the CAA's prosecution activity than the aviation industry. The CAA would be free from public spending constraints, which reduces the risk of its enforcement activities being negatively impacted by budgetary reductions. However, we do not envisage that the CAA would increase its prosecution work as a result of this reform.

Key assumptions/sensitivities/risks	Discount rate (%)
It is assumed that there is no resulting change in the overall amount of enforcement activity because the CAA already enforces where it should do so; though there is a risk that prosecutions that have not taken place due to resource limitations now may do so. It is assumed that the entire cost of this work will be borne by the CAA's charge payers and that users of air transport services (both direct and indirect) will derive greater benefit and perceive greater value for money from enforcement costs than the general public.	3.5

BUSINESS ASSESSMENT (Option 2c)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: N/A	No	NA

Summary: Analysis & Evidence

Policy Option 2d

Description: Balancing a new consultation obligation with shorter notice periods for the CAA's charging schemes

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0.0

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	0.0		0.0	0.0

Description and scale of key monetised costs by 'main affected groups'
In practice the CAA already conducts consultations before publishing its charging schemes. Therefore we do not anticipate that the statutory duty to consult will cause any increase in costs to industry or to the CAA.

Other key non-monetised costs by 'main affected groups'
We do not envisage that there will be any non-monetised costs from reducing the notice period as charge payers will continue to have an opportunity to comment on proposed charging schemes during the consultation stage but to a reduced timescale for planning and presenting comments. In practice, no representations have been made to Ministers during the notice period.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	0.0		0.0	0.0

Description and scale of key monetised benefits by 'main affected groups'
No monetised benefits.

Other key non-monetised benefits by 'main affected groups'
The accuracy of information provided in the CAA's consultations with industry on its proposed charges should be improved: a consultation closer to the date of implementation should be more aligned with the final budgeted position. This will assist the CAA in developing more appropriate schemes based on more accurate assumptions (to the benefit of its charge payers), and will afford the CAA greater flexibility in planning its operations (see Evidence Base for further details).

Key assumptions/sensitivities/risks Any efficiency saving for the CAA would be negligible.	Discount rate (%)	3.5
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BUSINESS ASSESSMENT (Option 2d)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/04/2013 ¹		
Which organisation(s) will enforce the policy?			DfT/CAA ²		
What is the annual change in enforcement cost (£m)?			0		
Does enforcement comply with Hampton principles?			Yes ³		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 100		Benefits: 100
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price) ⁴	Micro NQ	< 20 NQ	Small NQ	Medium NQ	Large NQ
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref (in IA)
Statutory equality duties ⁵ Statutory Equality Duties Impact Test guidance	No	29
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	30
Small firms Small Firms Impact Test guidance	Yes	30
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	30
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	30
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	31
Human rights Human Rights Impact Test guidance	No	31
Justice system Justice Impact Test guidance	Yes	31
Rural proofing Rural Proofing Impact Test guidance	No	31
Sustainable development Sustainable Development Impact Test guidance	No	32

¹This is a planning assumption. Actual implementation date will depend on timing of primary legislation required to implement these reforms.

² Whilst these policies do not inherently require statutory enforcement, CAA would be accountable to DfT and Parliament for the use of its new powers. The CAA will be given sanctions to enforce the proposed publication powers.

³ See footnote 2 above. The CAA's use of civil sanctions under option 2c will comply with Hampton principles.

⁴ The CAA will determine allocating its charges across charge payers and so it is impossible to say at this stage exactly how costs would be distributed between firms. However, CAA must consult the Secretary of State on the final charging proposals (see Specific Impact Tests below for further information on this point).

⁵ Race, disability and gender Impact Assessments are statutory requirements for relevant policies. Statutory equality duties which are part of the Equality Act 2010 apply to GB only.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment)

No.	Legislation or publication ⁶
1	Department for Transport <i>Regulating Air Transport: Department for Transport Consultation & Impact Assessment on Proposals to Update the Regulatory Framework for Aviation</i> . (10 December 2009 – 18 March 2010) http://www2.dft.gov.uk/consultations/archive/2010/regulatingairtransport/
2	Sir Joseph Pilling <i>"Report of the Strategic Review of the CAA"</i> Department for Transport (June 2008) http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/aviation/domestic/pillingreview.pdf
3	Macrory Review: Regulatory Justice, Making Sanctions Effective (November 2006)
4	House of Commons Transport Select Committee report on the <i>Work of the Civil Aviation Authority</i> (Thirteenth Report of Session 2005-06, October 2006)
5	The Civil Aviation Act 1982
6	CAA, <i>Research on the air passenger experience at Heathrow, Gatwick, Stansted and Manchester airports</i> March 2009
7	<i>AUC Report on Passenger Survey</i> July 2010
8	<i>The Coalition: our programme for government</i> May 2010
9	OECD <i>Experts Workshop on Information and Consumer Decision-Making For Sustainable Consumption</i> 2001
10	Environmental Audit Committee, <i>Environmental Labelling</i> March 2009
11	DfT <i>Transport Analysis Guidance</i>
12	"Which?" magazine press notice 2 June 2010 "Air New Zealand and Swiss soar in passenger survey But UK airlines fly low compared to foreign rivals" at http://www.which.co.uk/news/2010/06/air-new-zealand-and-swiss-soar-in-passenger-survey-215804/

⁶ Many of these documents were produced by, or under, the previous Government.

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits⁷ - (£m) constant prices

Option 2: implementation of all four policy options

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.080	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring cost	1.045	1.045	1.045	1.045	1.045	1.045	1.045	1.045	1.045	1.045
Total annual costs	1.125	1.045	1.045	1.045	1.045	1.045	1.045	1.045	1.045	1.045
Transition benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring benefits	1.054	1.054	1.054	1.054	1.054	1.054	1.054	1.054	1.054	1.054
Total annual benefits	1.054	1.054	1.054	1.054	1.054	1.054	1.054	1.054	1.054	1.054

Option 2a: Amend legislation to empower the CAA to appoint its Executive Directors

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring cost	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045
Total annual costs	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045	0.045
Transition benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring benefits	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054
Total annual benefits	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054

Option 2b: Enable the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.080	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring cost	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Total annual costs	0.080	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Transition benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Total annual benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000

⁷ For non-monetised benefits please see summary pages and main evidence base section.

Option 2c: Grant the CAA a power to recover the cost of prosecution work from its charge payers rather than general taxation

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring cost	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Total annual costs	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Transition benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring benefits	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Total annual benefits	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000

Option 2d: Balancing a new consultation obligation with shorter notice periods for the CAA's charging schemes

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring cost	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Total annual costs	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Transition benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Annual recurring benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Total annual benefits	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000

In calculating CAA resource costs, a Full Time Equivalent (FTE) employee is assumed to cost £80,000 per year, incorporating non-salary costs such as tax and national insurance. This figure is drawn from CAA estimates of the typical employee cost in the industry. Net Present Value (NPV) calculations are performed over a period of 10 years using a real discount rate of 3.5%. A real discount rate of 3.5% is in line with Government guidance. Ten years was regarded as a reasonable period over which to calculate the NPV of these proposals. However, since very few of the costs or benefits are one-off in nature, and recurring annual costs are assumed to be constant (in real terms), the choice of time period is not significant in determining the overall balance between costs and benefits and the ranking of the options.

Main Evidence Base

Overview of problems

The current regulatory framework established under the 1982 Civil Aviation Act is now out of date. The Government has identified 4 specific problems where intervention is required to update legislation:

- 1.) Government involvement in CAA Executive appointments is bureaucratic and hinders recruitment;
- 2.) Certain offences cannot be dealt with appropriately by the CAA due to a lack of appropriate sanctions;
- 3.) Taxpayers fund the CAA's prosecution work. It is more appropriate that the CAA charge payers fund this work; and
- 4.) The CAA's process for publishing new charging schemes includes an inefficiently long notice period.

Overview of proposals

Option 1: "do nothing"

Option 2: introduce new legislation to implement all 4 proposals, resulting in a more efficient CAA with greater ability to deliver benefits to users of air transport and the general public. This is the preferred option. This option breaks down into the following:

Option 2a: Amend legislation to empower the CAA to appoint its Executive Directors;

Option 2b: Enable the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions;

Option 2c: Grant the CAA a power to recover the cost of prosecution work from its charge payers rather than general taxation; and

Option 2d: Balancing a new consultation obligation with shorter notice periods for the CAA's charging schemes.

Each of these options is described in more detail and assessed in the relevant section of the Evidence Base below.

Consultation

The previous Government consulted on these proposals in December 2009. The policies have been reviewed in light of the consultation responses and, where appropriate, any changes to the proposals are set out in the Evidence Base below.

One In One Out

The Government is committed to cutting regulatory red-tape with the One In One Out (OIOO) approach to regulation, whereby new regulation with a direct impact on business cannot be introduced without an equivalent cut in regulation elsewhere. **This policy is out of the scope of One In One Out (OIOO) because any of CAA's costs incurred as a result of this policy will be funded through an increase in CAA's charges to industry but without any change in the level of regulatory activity⁸.**

The CAA derives its funding through charges to industry and so will pass on all additional costs incurred as a result of this policy to airports and airlines. Airports can be "designated" for

⁸ This methodological approach has been verified by the Regulatory Policy Committee in the context of a different impact assessment: Transfer of aviation security regulation and compliance functions from the DfT to the Civil Aviation Authority.

economic regulation, if they are judged to have substantial market power and the benefits of economic regulation are judged to outweigh the costs⁹. At regulated airports, any increase in the airport's costs will be reflected in an equivalent change in the airport's price control¹⁰ set by the CAA. For unregulated airports, there should be sufficient competition between airports such that any increase in an airport's costs is passed on to airlines through higher charges¹¹. Given the airline sector is generally competitive, in general, both of these costs would subsequently be passed on to the passenger or the owner of cargo¹². Therefore, we expect that the majority of the costs to business to be passed on to end users (i.e. passengers and those shipping cargo by air).

There is no change in regulatory activity as a result of this policy:

- Option 2a requires amending legislation to allow the CAA instead of the DfT to appoint Executive Directors. There are therefore no changes in regulatory activity from this option.
- Option 2b introduces civil sanctions for the CAA to secure compliance with civil aviation legislation. As in line with impact assessment guidance, we assume that there is 100% compliance with the enforcement regime and hence there is no change in regulatory activity from this option.
- Option 2c grants the CAA powers to recover the cost of prosecution works from industry. The CAA currently recovers its costs from the taxpayer. As this is only a transfer in costs (funded by CAA charges) there is no change in regulatory activity from this option.
- Option 2d reduces the statutory notice period for the CAA's charging system. This will have no impact on the CAA's regulatory activity.

⁹ Heathrow, Gatwick and Stansted are currently designated airports. 54% of UK passengers travelled through these airports in 2009.

¹⁰ The maximum price the airport can charge the airline for using airport services.

¹¹ In economic theory, there is 100% cost pass through when a market is perfectly competitive. In particular, this requires a large number of firms and no barriers to enter the market. A report produced by Vivid Economics on behalf of Defra or DfT (see <http://www.vivideconomics.com/docs/Vivid%20Econ%20Aviation%20Tickets.pdf>) provides evidence to support that this is the case for the airline industry. In particular, the report states "*When modelled, the theoretical range of cost pass-through is found to be 80–150%, with few exceptions*". However, where there are constraints on the supply of airlines services, these may not be fully passed on.

¹² A report produced by Vivid Economics on behalf of Defra and DfT (see <http://www.vivideconomics.com/docs/Vivid%20Econ%20Aviation%20Tickets.pdf>) provides evidence to support that this is the case for the airline industry. In particular, the report states "*When modelled, the theoretical range of cost pass-through is found to be 80–150%, with few exceptions*".

Option 2a: CAA's Governance Arrangements

1. The CAA Board, which oversees the activities of the CAA's four groups, currently comprises six executive and seven non-executive Members (including the Chair). This includes specific key positions, in particular the recently-created position of Chief Executive and the Directors of the four groups. The proposed policy change in this area concerns the mechanism by which these individuals are appointed to the Board.

Issue

2. The current statutory position under Schedule 1 of the Civil Aviation Act 1982 is that all CAA Board members are appointed by the Secretary of State and their remuneration is determined by both the Secretary of State and HM Treasury. Best practice for these appointments suggests that they conform to the Code of Practice for Ministerial Appointments to Public Bodies. In particular, this means that appointees may be in position for a maximum of ten years (two five year terms). Most CAA executive Board members continue to the end of their second term and the CAA has lost experienced Board members who could have continued to serve under a more flexible system. Sir Joseph Pilling, in his 2008 independent strategic review of the CAA¹³, noted that the time limited nature of the appointments could discourage potential applicants, including those from within the CAA, thereby reducing the pool of candidates.
3. Good practice in corporate governance is that non-executive directors should determine remuneration levels of executive directors and have a prime role in their appointment¹⁴. In these circumstances, appointment by the Secretary of State and determination of their remuneration by both the Secretary of State and HM Treasury is considered to represent unnecessary bureaucracy and unwarranted political interference.

Policy objectives

4. In his independent review of the CAA referred to in paragraph 2, Sir Joseph Pilling found that the modernisation and improvement of the CAA's governance structure, which had remained largely unchanged since 1982, would help the CAA to continue performing as a modern regulator. He made a number of recommendations, some of which, such as the appointment of a Chief Executive, did not require legislation and have already been accepted and progressed. He also suggested that the DfT and the CAA consider whether the CAA Board should in future appoint executive directors (apart from the Chief Executive) without Ministerial involvement and this was taken forward in the then Government's 2009 consultation "Regulating Air Transport"¹⁵.
5. Building on these recommendations, and in line with good practice in corporate governance, the Government therefore wishes to allow the CAA to appoint its executive members and determine their remuneration packages, bringing it in to line with some other public bodies such as OFCOM. The Secretary of State would retain responsibility for appointing the Chair, any Deputy Chair, and any Non-Executive Members (as well as approving the appointment of the Chief Executive). We also wish to remove the statutory duty of HM Treasury to approve the remuneration of CAA Board members. This is an anomaly and the CAA is the only regulator for which the Treasury has such a duty.

¹³ Joe Pilling "Report of the Strategic Review of the CAA" Department for Transport 2008 available at <http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/aviation/domestic/pillingreview.pdf>

¹⁴ Principle taken from the UK Corporate Governance Code published in June 2010 by the Financial Reporting Council.

¹⁵ Department for Transport *Regulating Air Transport: Department for Transport Consultation & Impact Assessment on Proposals to Update the Regulatory Framework for Aviation*. (10 December 2009)

Option 1: Do nothing

6. In paragraph 4 above we noted the Pilling Review's finding that the inflexibility of the current system has resulted in the CAA losing experienced executive directors. In addition to this non-monetised cost, there is the financial cost of recruitment.
7. The yearly cost of recruiting individuals to fill these positions can of course vary depending on staff turnover. On average, over the past nine years, the DfT has recruited one Executive Board Member per year, at an average cost of £45k per year, reflecting recruitment consultancy expense, advertising and staff time. As discussed below, this cost buys influence for Ministers but it is questionable whether this influence is necessary or justified, especially as the CAA's new Chief Executive (whose appointment would continue to be approved by the Secretary of State) is now line manager for the executive directors.

Non regulatory options

8. We have considered whether it would be possible to give the CAA more day-to-day control over the recruitment process for new executive directors, whilst retaining the Secretary of State's final approval of any candidate. However, it would be important to ensure that the ministerial role in appointments at the Department for Transport and in remuneration at the Treasury were fully and properly exercised with no question of appearing to 'rubber-stamp' a decision made by the CAA. To ensure that this happens, much of the decision making function (and the associated administrative costs which are currently funded by the taxpayer) would need to remain in government. These costs could only be effectively removed if the CAA was granted the powers to appoint these posts themselves.
9. Another option would be to allow appointments to be renewed beyond a second term, against the guidance in the Code of Practice for Ministerial Appointments to Public Bodies. However, this would risk undermining the credibility of the Code and its application.

Option 2a: Amend legislation to empower the CAA to appoint its Executive Directors

10. This option would amend legislation to allow the CAA's non-executives to appoint its executive members and determine their remuneration packages. The Secretary of State would retain responsibility for appointing the Chair, any Deputy Chair, and any Non-Executive Members. HM Treasury would no longer have a duty to approve the remuneration of any CAA Board members. As discussed above, this option would be in line with good corporate governance and with the recommendations of Sir Joseph Pilling's report referenced in paragraph 2 above.
11. We recognise that giving up all powers of appointment over CAA executives may not be appropriate in all cases and therefore propose to include certain safeguards to protect the public interest. In recognition of the importance of the post of Chief Executive and its influence over the other Executive Members, we propose to make the appointment subject to the approval of the Secretary of State. We also propose that an appointment to the post of Director of Airspace Policy would be subject to a statutory duty on the part of the CAA to consult Ministers because his / her decisions impact on issues of national security.
12. The policy itself does not directly change the number of appointments to be made, and we take the figure of £45k per year as a starting point for the recruitment cost for the CAA. However, we recognise that a key element of the proposed change is that the process would become free from bureaucratic constraints, in particular meaning that

appointments could last longer than the present maximum of two five year terms, resulting in lower recruitment costs and could provide a richer pool of candidates due to removing the fixed term nature of the appointments.

13. Consultation responses generally did not object to the proposals, though some emphasised the importance of transparency and accountability with respect to remuneration.

Benefits

14. The recruitment cost currently incurred by the DfT would be avoided, giving a direct and quantifiable benefit to the taxpayer. At a typical cost of £45k per year, this has a PV of £0.4m over 10 years. We note, however, that if the DfT retains influence (for example over the appointment of the Chief Executive and the Director of Airspace Policy), there will be some impact in the marginal cost of staff time, and the benefit could therefore be slightly lower than otherwise. Reduction in recruitment costs arising from the removal of the current two-term limit on Executive appointments leads to longer term appointments with a saving of £0.1m (PV).
15. The CAA may be able to reduce the burden of recruitment cost on industry if it can secure a longer average term of employment with less bureaucracy. The current situation suggests that over the course of ten years, ten Executive Board Members would need to be recruited. This implies that the average tenure of an Executive Board Member is 6 years.¹⁶ We instead assume that the CAA need only appoint eight Executive Board Members over ten years, implying average tenure increases to 7.5 years. In practice this means that, over ten years, in two cases where a new Member would have been recruited the CAA is able to retain an existing Member. Given that three of the current six Executive Board Members have been appointed for second terms and would therefore be in a position to extend their tenure in this way, we believe this is an achievable scenario. This results in a reduction of £9k in recruitment costs in a typical year, which has a PV of £0.07m over 10 years.
16. We recognise that there is uncertainty in this assumption and so we present low and high scenarios for the scale of the benefit. In the low case, we assume that recruitment costs continue at their present level, with no increase in average tenure and consequently no benefit. In the high case, we assume that average tenure can be increased to 10 years, which has a PV benefit of £0.15m over 10 years.
17. Finally, with a longer potential duration of employment (and a more transparent employment status) the posts may become more attractive, potentially increasing the pool of talent from which the CAA can recruit. However, we do not attempt to quantify this benefit.

Costs

18. We assume that the present £45k per year recruitment cost to the DfT is transferred to the CAA. The PV benefit to taxpayers of £0.4m is therefore mirrored by a £0.4m PV cost to industry (via the CAA's charging scheme). Any cost savings achieved relative to this benchmark are discussed in the 'Benefits' section above; we do not believe there is any convincing reason that the CAA would incur greater costs than the DfT does presently. Since this represents a simple transfer, we do not present a range for the costs.
19. In principle there is a cost to Ministers (as public representatives) as a result of loss of influence over appointments and remuneration. Ministers would no longer be able to challenge the proposed remuneration of the CAA's executive directors and the CAA would not be directly accountable for such decisions. However, remuneration levels are published in the CAA's annual report and accounts and the Secretary of State would remain accountable to Parliament for any such decisions. As the CAA is funded largely

¹⁶ With six Executive seats and one appointment per year, on average each seat will be re-appointed every six years.

by the industry and not by the taxpayer, there is a policy justification for the removal of this influence.

20. However, this can be considered as a positive step (it may reduce bureaucracy, for example, as noted in the preceding section). Additionally, this cost is in some measure compensated for by the proposed safeguards regarding certain posts.
21. Overall, this measure should provide monetised and non-monetised benefits, in particular regarding the CAA's ability to attract and retain high quality staff. We assume the potential for modest cost savings (due to reduced frequency of appointments) means that the proposal is likely to generate a positive net benefit. Hence, Option 2a is preferred to Option 1: Do nothing.

Micro-business Impact

22. It is not anticipated that there will be any need to recruit executive directors in the period between the Bill's commencement date (not expected to be before Spring 2013) and the end of the moratorium period (31 March 2014). If any recruitment is necessary, the CAA does not expect this to result in any increase in fees paid by micro- businesses.

Option 2b: Civil sanctions

23. The CAA relies on sanctions to secure compliance with civil aviation legislation. The existing range of options is limited. At one end of the spectrum, it can seek criminal penalties for serious non-compliance, administered in the criminal courts. In the year April 2009 – March 2010 the CAA prosecuted 25 such cases, the majority of which were safety-related. The CAA can also use its licensing powers under the Air Navigation Order 2009 to ensure compliance with safety regulations.
24. At the other end of the spectrum, the CAA has a number of informal compliance options available to it, including: providing education, guidance and advice to industry and consumers; dialogue with industry; issuing warnings to industry; and negotiating undertakings with industry. These informal powers are particularly relevant to non-compliance in the field of consumer protection legislation and economic regulation.
25. In addition, the CAA is able, for certain consumer protection legislation, to apply for enforcement orders from the courts under Part 8 of the Enterprise Act 2002. However, the injunctive approach does not allow the imposition of penalties.

Issue

26. The key issue is that there is currently a possible 'compliance deficit' where companies may be failing to comply with certain regulations which the CAA does not currently have appropriate sanctions to enforce. Industry stakeholders have in the past commented on the inappropriateness of criminal sanctions for enforcing non-safety legislation. At the same time, other informal enforcement measures may provide inadequate deterrence to non-compliance. The CAA has therefore raised the concern that in instances where criminal sanctions are disproportionate or inappropriate (and therefore unlikely to be used) it may not have sufficient means to enforce compliance.

Policy objectives

27. The ultimate aim is to establish for the CAA a flexible suite of sanctions that is capable of tackling the full range of non-compliance in a proportionate manner. In parallel to the proposals in this Impact Assessment we are proposing that the CAA should have civil sanctions to enforce compliance with airport economic licence conditions and to enforce its new publication powers. Consistent with this new approach, we also want the CAA, where appropriate, to have access to civil sanctions for its existing enforcement functions so that it can use these (where criminal sanctions are not appropriate). The new 'tool-kit' of enforcement powers would provide the CAA with greater flexibility in its choice of response to particular instances of non-compliance. It is not intended that the CAA would change its current practice of prosecuting serious safety breaches in the criminal courts. Nor is the policy designed to tackle disproportionate use of criminal sanctions by the CAA: there is no evidence to suggest that the CAA currently uses its criminal prosecution powers to penalise less serious non-compliance offences in a disproportionate manner.

Options Appraisal

28. We compare the do nothing option, in which the CAA retains its existing range of sanctions, to an option in which primary legislation grants the Secretary of State the power to give the CAA civil sanctions.

Option 1: Do nothing

29. Comments from industry stakeholders which are summarised in the analysis of responses to the consultation on "*Regulating Air Transport*" and which are published alongside this impact assessment have suggested that relying on criminal sanctions to enforce consumer protection or economic regulation is disproportionate and inappropriate, particularly for breaches of a relatively minor or administrative nature. The fact that these criminal sanctions have rarely, if ever, been used outside the field of safety legislation means that breaches of lower level offences have not been subject to a formal sanction. This scenario might lead to industry to think that it is possible to escape all sanctions for minor breaches.

Option 2b: Enable the Secretary of State to give the CAA powers to enforce existing offences through civil sanctions.

30. The proposed policy is designed to address the 'compliance deficit' described above, while ensuring that any additional sanctions available are proportionate. The proposal would follow the approach of the Regulatory Enforcement and Sanctions Act 2008 (RES Act). The primary legislation (which is what is assessed here) would empower the Secretary of State to grant civil sanctions to the CAA, where such sanctions are not already provided for in existing legislation (for example, civil sanctions for enforcement of EU requirements can be granted to the CAA by the Secretary of State through Regulations made under powers in the European Communities Act 1972). Whilst the majority of consumer protection legislation in the air transport field derives from European law, the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 are not made under European legislation and it would therefore not be possible to move from criminal to civil sanctions for the enforcement of these regulations simply through secondary legislation. This would leave a gap in the CAA's civil enforcement regime if civil sanctions are made available for the CAA's other consumer protection enforcement functions in the future.
31. Secondary legislation, subject to the affirmative Parliamentary procedure, would be required to give the CAA specific enforcement powers in relation to particular offences. The eventual range of civil sanctions (and their scope) is therefore not determined in advance by this legislation. However, the sanctions envisaged include: compliance notices; restoration notices; stop notices; fixed and variable monetary penalties; and undertakings. Given that the actual scope of these powers will be determined at a later stage, we do not quantify the benefits and costs associated with the CAA's eventual use of sanctions in this assessment, and instead discuss them qualitatively. It is expected that IAs accompanying the secondary legislation would go into further detail regarding the benefits and costs of specific sanctions.

Benefits

32. In the first instance, the direct benefits gained from the proposed primary legislation (giving the Secretary of State an enabling power) are minimal. Civil sanctions themselves would build on the informal compliance activity which the CAA currently undertakes, but would have the benefit of offering the possibility of more formal enforcement action, for instance, involving imposition of dissuasive financial penalties. This is more likely to be effective than informal approaches, particularly where there is reluctance to comply. As a result, it is anticipated that these sanctions would result in increased compliance. As mentioned at paragraph 27 above, this measure would achieve consistency by giving the CAA access to civil sanctions across the full range of its enforcement functions.
33. The CAA's consumer protection and economic regulation roles are designed to defend the interests of consumers and ensure that outcomes reflect those that would occur in a

competitive market. Both consumers and businesses would potentially benefit from improved compliance. Consumers could expect to receive better protection of their interests, and businesses would benefit from a level playing field in which competitors could be dissuaded from gaining financially from non-compliance.

34. In addition, civil sanctions would enable the CAA to bring its enforcement powers into line with other regulators named in the Regulatory Enforcement and Sanctions Act 2008. As noted above, it is not expected that civil sanctions would be used to substitute for the CAA's present use of criminal sanctions for more serious offences. Hence we do not expect any reduction in the cost burden associated with such enforcement.
35. It will only be possible to assess monetised and non-monetised benefits directly resulting from the civil sanctions regime itself if and when the Secretary of State grants the CAA any new enforcement powers under secondary legislation. These will therefore be assessed and reported on in the impact assessment for that secondary legislation if and when it is introduced. At that point an assessment would be made of how the CAA would be expected to use its new powers and how the use, or threat, of sanctions may affect industry behaviour.

Costs

36. In the first instance, the direct costs imposed by the proposed primary legislation are minimal. The CAA and the DfT would need to invest time and resources in determining the appropriate scope and nature of civil sanctions to be enabled in secondary legislation. In addition, under the RES Act it would be necessary to assess the CAA's compliance with regulatory principles before giving it the ability to impose civil sanctions. We anticipate that this transitional cost would amount to 1 FTE over the course of 1 year, a PV cost of £0.1m. Given the very small level of this cost, we do not present a range.
37. A full assessment of any monetised and non-monetised costs directly resulting from the civil sanctions regime itself will be made at the point that the Secretary of State grants the CAA any new enforcement powers under secondary legislation. These costs will therefore be assessed and reported on in the impact assessment for that secondary legislation if and when it is introduced. It would also depend on how the CAA chooses to use its new powers and the extent of any appeals. We would expect that the CAA would need additional staff members in order to apply civil sanctions. In addition, it would be necessary to establish a suitable appeals process (likely to be the First-Tier Tribunal). However, the CAA is already committing resources to develop its capability to apply a civil enforcement regime across other functions. For example, it wishes to develop a civil sanctions regime to enforce European air passenger rights legislation, which can be introduced through secondary legislation under the European Communities Act 1972. The sanctions which can be given to the CAA through secondary legislation under the RES Act are expected to be substantially similar to these and the work to develop this regime and prepare for its use could be carried out at the same time at little additional cost.
38. Since these costs would depend on the scope of the powers granted through secondary legislation, we do not quantify them here. Instead, they would be addressed in detail as part of subsequent consultations and impact assessments prior to making the requisite secondary legislation. However, we note that CAA do not expect these costs to amount to more than 1 FTE in additional resources for them on an ongoing basis, and probably significantly less. Subsequent secondary legislation would be designed to ensure that these additional costs were kept to a minimum, by avoiding duplication where civil sanctions are available through alternative channels.
39. Overall, the direct cost implications of the proposed primary legislation are minimal, amounting to at most £0.1m in PV terms. The benefit is that this enables the subsequent development of secondary legislation that could bring significant increases in compliance. Although the costs reflected in secondary legislation cannot be determined

in advance, they are expected to be relatively low, and impact assessments associated with such secondary legislation would ensure they were justified by net benefits.

40. Our judgement is therefore that the proposed policy would enable the development of beneficial secondary legislation at a negligible cost, and option 2b is our preferred option.

Micro-business Impact

41. Direct costs imposed by the primary legislation are minimal. Any costs borne by the CAA in determining the appropriate scope and nature of civil sanctions to be enabled in secondary legislation are not expected to result in any increase in fees paid by micro-businesses during the moratorium period.

Option 2c: Funding of CAA's prosecution work

Issue

42. The CAA has a range of options available to secure compliance with civil aviation legislation, ranging from non-statutory options, licensing powers and limited civil sanctioning powers through to prosecution of criminal offences in the courts. Whilst its other enforcement activity, as with its wider costs, is largely funded by those it regulates, the CAA's work to prosecute criminal offences has historically been funded by the Government. This cost to the taxpayer (approximately £1m per annum) should arguably fall to the industry, and indirectly to its customers who benefit from a well regulated aviation sector on the "user pays" principle. The Government believes there is no good reason why prosecution costs should be treated differently from the rest of aviation enforcement costs, particularly because only some taxpayers are consumers of air transport services. In paragraph 47 below, consultation responses bearing on this matter are described in further detail. A change to primary legislation is necessary to enable the CAA to charge its regulated sector for this work.

Policy objectives

43. In line with the CAA's regulatory functions and other enforcement work, the Government wishes to give the CAA the power to charge those it regulates for its prosecutions work. This would also support the Government's policy to tackle public spending in order to reduce the national deficit.

Options Appraisal

44. The CAA always seeks to recover costs from cases it successfully prosecutes, but in practice these costs are a small proportion of its total expenditure. This means it must recover the balance cost of prosecution from an alternative source. Under an agreement with the Secretary of State for Transport, it accordingly recovers the bulk of its prosecution costs from the Government, and therefore from general taxation.

Option 1: Do nothing

45. This would leave the CAA dependent on Government funding for this work. This is contrary to the funding of its wider costs, which are based on the principle that the CAA is funded by those it regulates. It is also out of line with the practice of some other regulators, including the Office of Rail Regulation and the Financial Services Authority. There seems to be no reason in principle why enforcement costs should be treated differently, in particular since not all taxpayers are consumers of air transport services.
46. In recent years this has involved a cost of approximately £1.0m per annum, comprised of investigation and legal costs¹⁷. There would be a risk that this budget would be reduced in future in line with public sector spending cuts. This could impact the CAA's ability to carry out appropriate enforcement work and thus have an adverse effect on aviation safety.
47. In arguing for the status quo, industry bodies in response to consultation suggested that it was appropriate for prosecution to be funded by the taxpayer since this was the position in relation to the funding of enforcement work by the police and the Crown Prosecution Service (CPS). They expressed concern about the fairness of law-abiding

¹⁷ Department for Transport *Regulating Air Transport: Department for Transport Consultation & Impact Assessment on Proposals to Update the Regulatory Framework for Aviation*. (10 December 2009) <http://www2.dft.gov.uk/consultations/archive/2010/regulatingairtransport/> page 171

companies having to pay for the prosecution of those who broke the law. In addition, it was felt that the prosecution of safety related offences, which form the bulk of CAA's prosecution work, was a matter of interest to the general public and therefore taxpayer funding was appropriate. These responses are summarised in the analysis of responses to the consultation on *"Regulating Air Transport"* which are published alongside this impact assessment. Our view is that the public benefit in state funding for CPS/Police prosecution costs is far more widely distributed across the population than the benefit in this case, which is essentially to purchasers of air transport services.

Option 2c: Grant the CAA a power to recover the cost of prosecution work from its charge payers rather than general taxation

48. We do not suggest any changes to the basis on which the decision to prosecute is made, and so there is no direct impact on the amount of enforcement activity carried out. Once the CAA has an explicit legal charging power, we propose that the related costs are transferred to industry: cost recovery for enforcement would then be through the CAA's charging schemes, in common with its existing functions. The same principle also applies to the proposal to give the CAA responsibility for compliance with aviation security requirements. Since the CAA determines (and consults on) its charging schemes, the precise details of the cost recovery mechanism – including whether it would be added to an existing scheme or introduced in a new scheme – cannot be determined with certainty in advance. However, the mechanism would conform to the CAA's charging principles.
49. The majority of consultation respondents were against recovery of related costs from charge payers. Some suggested that the proposed system would remove any downward pressure on prosecution cost levels; however, we see no reason for the volume of prosecuted cases to change. The proposal would not change the CAA's policy on when to prosecute. Accountability will remain as the CAA must consult on its charging scheme every year and therefore will justify its budget to its charge payers. Indeed, should charge payers feel that the CAA is not undertaking sufficient numbers of prosecutions; they would have greater influence over this as part of the annual process. Others suggested that general taxation should continue to fund the enforcement regime, although it is not clear that the general public (rather than industry and consumers of air transport services) derive the majority of benefits. Views specifically relating to the detail of how the cost burden should be shared would be taken up as part of the CAA's consultation regarding its charging schemes.

Benefits

50. The primary quantifiable benefit is to taxpayers (via the DfT), who will avoid the £1.0m annual cost related to prosecution. This has a PV over 10 years of £8.3m. We do not present a range for this benefit, since it represents a simple transfer of costs and does not imply that the volume of cases prosecuted will change.
51. At a time of public spending pressures, this would give the CAA assurance that it would have sufficient budgetary cover to undertake the appropriate level of enforcement work.
52. Overall, we do not expect the CAA to take a fundamentally different approach to enforcement from the current system as a direct result of its cost recovery process. Its level of enforcement activity has remained fairly constant in recent years. We judge that the resource burden involved is likely to remain the same as new enforcement and penalty powers proposed alongside the topic of this impact assessment have been fine tuned with the intention that they will not need to be invoked.
53. Not all taxpayers are consumers of air transport services. It is therefore difficult to justify their incurring the cost of enforcement, which does not necessarily benefit them directly.

54. Hence there is reason to believe that sharing the cost among consumers of air transport is preferable to sharing it among taxpayers. This suggests that overall there is a net benefit to society, although we do not believe there is sufficient evidence to quantify it.

Costs

55. The first category of costs relates to the transfer of the existing burden of prosecution. We have shown above why the overall burden of enforcement is unlikely to change and therefore have assumed a simple transfer of existing costs, and so the £1.0m annual benefit to taxpayers noted above will be reflected by £1.0m additional annual cost to industry, again with a PV of £8.3m. We therefore do not present a range for this cost since it reflects a simple transfer.
56. Again, there is a secondary question regarding the distribution of these costs. We argue above that a situation in which costs are spread across industry that benefits from the regulated service is preferable to one in which they are spread across taxpayers. This issue is also potentially affected by the way in which costs are distributed within industry – for example, between leisure and freight users of air transport, or between large and small businesses. Our assumption – supported by the fact that the CAA’s charging scheme is subject to consultation – is that the burden would be spread in a fair and reasonable manner, as per the CAA’s charging principles, taking into account that the CAA carries out prosecutions in order to support the efficient and safe functioning of the industry as a whole. Furthermore, since the magnitude of the cost involved is small as a proportion of total industry turnover, we conclude that any distributional consequences will be negligible, and any additional burdens on small businesses and individuals will be reasonable.¹⁸
57. Overall, Option 2c is likely to be neutral with respect to monetary benefits and costs, as compared to the do-nothing Option 1. We believe though that a more direct charging scheme would be more justifiable, and it would also bring the CAA into line with other, more modern regulatory regimes such as those of OFCOM. We therefore prefer Option 2c to the do-nothing option.

Micro-business Impact

58. Depending on the timing of Royal Assent, it is possible that the CAA could begin to recover the cost of its prosecution work through its charges in 2013-14. This would be within the moratorium period and it is likely that a small proportion of these costs would be incurred by micro-businesses. The CAA estimates that these costs would represent an increase of approximately 1.6% in its charges paid by micro-businesses. However, since the cost of this work relates to enforcement action to ensure compliance with regulations, we consider that the costs would fall outside the scope of the regulatory moratorium.

¹⁸ This is discussed further in the Small Firms Specific Impact Test.

Option 2d: The statutory notice period for CAA's charging schemes

Issue

59. The CAA's charging schemes are the mechanism by which it recovers costs from industry. These normally come into force on 1 April each year following consultation with the Secretary of State. Under the Civil Aviation Act 1982, the CAA is required to allow a minimum of 60 days between publication of its proposed charges and those charges coming into force. The CAA has reported that a delay of this length makes it very challenging for it to align its proposed charges with its financial planning and can adversely affect the accuracy of budgetary information on which CAA can consult with industry.

Policy Objectives

60. To give the CAA more flexibility in planning its operations and to improve the accuracy of information contained in consultations on its proposed charges, we wish to reduce the 60 day notice period to 14 days. This would be complemented by a new statutory duty to consult charge payers.

Options Appraisal

Option 1: Do nothing

61. At present, the CAA is required to allow a minimum of 60 days between publication of its proposed charges and those charges coming into force. This delay was intended to allow time for final representations to be made to the Secretary of State, although in practice such representations have not been made to date and Ministers have never taken action as a result of any representations. A delay of this length introduces difficulties for the CAA in aligning its proposed charges with its financial planning. It means that the budgetary information that CAA can include in the consultation is subject to extensive refinement in the budget setting process and so does not reflect CAA's eventual position.

Option 2d: Balancing a new consultation obligation with shorter notice periods for the CAA's charging schemes

62. Under the proposed policy change, the CAA would be required to consult its charge payers and allow a minimum of 14 days between publication of its proposed charges and those charges coming into force. This period would be to give adequate notice to its charge payers rather than to allow them to make representations.
63. When this policy was consulted on, a small number of responses to the initial proposal – which was to abolish the notice period entirely – objected, and instead suggested maintaining the status quo, although the arguments presented were not strong. The resulting shortened notice period is nevertheless in part a compromise option, which significantly increases the CAA's flexibility without eliminating the notice period entirely.

Benefits

64. The benefit to the CAA is that it can better align its charges with its financial planning as the planning will be at a more advanced and therefore realistic stage. The CAA will be

able to publish its proposed charging schemes closer in time to its actual implementation, at a point where its business plan and underpinning assumptions are more developed. The accuracy of information provided in the CAA's consultations with industry on its proposed charges should be improved as a later consultation should be more aligned with the final budgeted position. This improved process will reduce the risk of any misalignment between assumptions used for the charges review (currently between May and August) and any adjustments made for the actual financial budgeting process (currently between September and February of the following year). This will assist the CAA in developing more appropriate schemes based on more accurate assumptions, and will afford the CAA greater flexibility in planning its operations.

65. A reduction in the delay period has been consistently supported by the CAA's Safety Regulation Finance Advisory Committee, which represents a significant proportion of charge payers regulated by the CAA's Safety Regulation Group (whose charges make up the bulk of the CAA's total charges). Similar reforms were also recommended in the Pilling Strategic Review of the CAA in 2008.
66. In addition, with the proposed reduction in the statutory notice period, the CAA would find it less challenging to meet the required 12-week consultation period for all of its charging schemes. The legal duty will give industry certainty regarding the consultation. However, we have received little indication that there is currently insufficient consultation, and so this benefit is likely to be negligible.

Costs

67. The CAA already routinely consults on its charges, so a statutory duty merely formalises this practice and adds no new costs. As long as the CAA continues to carry out adequate consultation with industry regarding its proposed charging schemes in advance of their publication, this is a costless measure. As noted above, no consultation responses presented strong arguments against abolishing the notice period. This is supported by historical evidence, which suggests there has in any case been no interest from stakeholders in making representations to the Secretary of State during the 60-day period. The implication is that the CAA's own consultation process offers sufficient opportunity for stakeholders to express their views and the CAA routinely provides copies of responses submitted to consultations when consulting the Secretary of State.
68. The change will require businesses to adjust to the new charging scheme in a 14 day window, and therefore, those who have been accustomed to a longer period will need to adjust in less time than they may have previously. However, no increase in the level of industry input is proposed so no costs are associated with the change.
69. Overall, the proposed change should allow the CAA to make a small improvement to the efficiency and flexibility of its financial planning process. The change is also likely to be costless, and so we prefer Option 2d to the do-nothing option.

Micro-business Impact

70. As there is no cost, there is no impact on micro-businesses.

Annex 1: Post Implementation Review (PIR) Plan

71. A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences.

Basis of the review: The PIR plan represents a commitment to review the effectiveness of the proposed reforms after their effects have become clear. In most cases this can be done on an ongoing basis rather than at a pre-determined point in time.
Review objective: The objective in each case is a proportionate check that the desired outcome is being achieved, and a test of whether any unforeseen problems emerge.
Review approach and rationale: In each case it will be appropriate for the review to include seeking the views of interested parties. In line with the proportionate approach, consultations are intended to be light-touch in nature, and in many cases can be carried out as part of regular informal interactions between the DfT, the CAA and other interested parties.
Baseline: The baseline will vary for each area, but will reflect the 'do-nothing' option.
Success criteria: These will vary depending on the policy area. In most cases, the key criterion will be perceptions regarding the effect of the proposal.
Monitoring information arrangements: It is not anticipated that formal consultations or information gathering exercises will be needed, as the expense of these would be disproportionate. Rather, consultations and information gathering will be carried out as part of day-to-day activities.
Reasons for not planning a PIR: N/A.

Annex 2: Specific Impact Tests

Statutory equality duties

Race

72. The proposals relate to all passengers, therefore we do not anticipate that these reforms will lead to:

- Different consequences according to people's racial group;
- People being affected differently according to their racial group in terms of access to a service, or the ability to take advantage of proposed opportunities;
- Discrimination unlawfully, directly or indirectly, against people from some racial groups;
- Different expectations of the policy from some racial groups;
- Harmed relations between certain racial groups, for example because it is seen as favouring a particular group or denying opportunities to another; or
- Damaged relations between any particular racial group (or groups) and the DfT.

Disability

73. We do not believe that there will be a material impact on disabled people from the proposals. The Equality Act 2010 gives right to disabled people in the provision of air services (amongst other things). The proposals apply equally to all passengers, and so we do not anticipate any disadvantages or discrimination against disabled people, in line with this Act.

Gender

74. The proposals will apply to all passengers. Therefore, we do not anticipate that these reforms will lead to:

- Different consequences according to people's gender;
- People being affected differently according to their gender in terms of access to a service, or the ability to take advantage of proposed opportunities;
- Discrimination unlawfully, directly or indirectly, against genders; or
- Different expectations of the policy from between genders.

Competition

75. The proposals do not:

- Directly or indirectly limit the number or range of suppliers; or
- Limit the ability of suppliers to compete.

Small firms

76. The proposal regarding the transfer of unrecoverable costs of CAA's prosecution work from general taxation to CAA charge payers (via the CAA's charging schemes) will increase burdens on businesses, including small businesses, by a small amount. It may also increase burdens on individual pilots. This is particularly relevant for the General Aviation sector. It is important to note that this is considered preferable to the situation where such costs are recovered from general taxation, and so the issue discussed here is whether small firms should receive an exemption.
77. Prosecutions carried out by the CAA are intended to benefit and support the aviation sector as a whole, for example to ensure safety standards are complied with and to remove commercial incentives towards non-compliance with regulation. We therefore judge that it is appropriate that CAA charge payers – including small firms – funds these prosecutions.
78. The CAA's charging schemes currently distribute costs across industry, and any additions reflecting prosecution costs would be allocated according to the existing charging principles. The additional cost burden falling on the charge payers for CAA's prosecution work will be of the order of £1m per year. This represents a small proportion (1.3%) of the CAA's total regulatory turnover of £75.6m in 2010, and other things being equal the increase in charges would be similarly small. Hence there is no compelling reason to exclude small businesses from contributing, as long as their contributions are reasonable.
79. It is for the CAA to determine how to allocate its charges across charge payers and so it is impossible to say at this stage exactly how costs would be distributed between firms. However, the Secretary of State must be consulted on the final charging proposals.
80. We do not anticipate that other proposals will affect the burden placed on small firms in particular. While the charging scheme notice period will introduce a narrow window for consultation, the consultation requirement being made of small businesses is no greater than before.

Greenhouse gas assessment

81. The aviation sector already has targets and policies in place to ensure it plays its part in helping to reduce greenhouse gas emissions and thus achieve the UK's climate change targets. These proposals do not affect such policies or targets.
82. The proposals are not expected to affect the production of greenhouse gases.

Wider environmental issues

83. There are three wider environmental issues relevant to the aviation sector as a whole: noise pollution, air quality and impact on protected species and habitats.
84. The proposals are not expected to affect wider environmental issues.

Social impacts

Health and well-being

85. None of the proposals are expected to have a direct impact on health. There is no potential for any of the proposals directly to affect wider determinants of health such as income, nor is there any potential for the proposals to affect relevant lifestyle related factors such as physical activity or diet. There is no anticipated impact on the demand for health and social care services.

Human rights

86. The proposals include provisions allowing for the imposition of financial penalties (in relation to option 2b). To this extent the proposals will engage the Convention right to property (Article 1 of Protocol 1 to the Convention). The right to property is not an unqualified right. Deprivation of property in the public interest and subject to the conditions provided for by law is allowable. So, too, is the enforcement of laws to control the use of property in accordance with the general interest. These proposals will empower the CAA as regulator to interfere with property rights in various ways. However, these powers are to be exercised in the public interest and in accordance with the relevant statutory duties.
87. The enforcement of these rules will be by the CAA and may engage the right to a fair trial (Article 6). The imposition of civil penalties by the regulatory body is part of the package and is a common feature of regulatory regimes. Penalties should be reasonable and proportionate and the CAA will be acting as a “public authority” for the purposes of the Human Rights Act 1998. Appropriate appeal rights will be in place.
88. In so far as the proposals relate to the functions of the CAA in undertaking prosecutions, the proposals might again engage the right to a fair trial (Article 6). Prosecutions, where appropriate, will be by means of a fair trial with access to appropriate appeal rights.
89. The proposals do not appear to engage Convention rights significantly. We expect to be able to advise the relevant Minister that he may properly make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (i.e. “a section 19 statement of compatibility”).

Justice system

90. A Justice Impact Test has been undertaken and submitted to the Ministry of Justice (MoJ) to assess whether the proposals have the potential to impact on the justice system. The MoJ has concluded that the proposals will have a negligible impact on the justice system.

Rural proofing

91. We do not believe that any of the proposals will have a different impact on people in rural areas because of their particular circumstances or needs.

Sustainable development

92. Sustainable development entails the current generation satisfying its basic needs and enjoying an improving quality of life without compromising the position of future generations. The proposals do not affect the resources available to future generations, and are therefore compatible with sustainable development.