



Civil Aviation Act 2012 **Questions & Answers**

Contents

General Q&A

What is the purpose of the Civil Aviation Act?	3
When does the Act come into force?	3
What does the Act do for passengers and the owners of air cargo?	4
What does the Act do to help passengers stranded by adverse conditions such as snow, volcanic ash or industrial action?	4
These new powers will not come into force until 2014. What is being done on winter resilience in the meantime?	4
What does the Act do to help economic growth?	5
What does the Act do for the environment?	5
Is the Act related to the issue of airport capacity in the South East or the Airports Commission?	6
Is the Act related to the forced sale of Stansted and the break up of BAA?	6

Airport Economic Regulation – Q&A

Why are airports subject to economic regulation?	7
Why are these reforms being introduced and how will they be achieved?	8
Who is affected? Will all the airports currently designated for economic regulation continue to be regulated under the new regime?	8
What tools will the CAA have to combat competition concerns at unregulated airports in the rest of the UK?	9
What role will there be for the Secretary of State in the airport economic regulatory regime?	9
What action can be taken to address poor performance from regulated airports?	10

CAA Reforms – Q&A

Why are these reforms being introduced? What do you hope to achieve, and how?.....	11
The CAA is being given new powers and increased freedom to appoint its own board members - how will the Government retain an appropriate level of oversight?.....	11
Could civil sanctions lead to the CAA taking enforcement action where it currently acts by dialogue and persuasion?	12
What civil sanction powers is the CAA being given access to and what impact are those powers going to have?	12
Will there be an appeals process?	12
What provisions are there to ensure the CAA operates in a more efficient manner?	13

Disclosing Medical Information – Q&A

What is the purpose of allowing the CAA to disclose medical information it holds on flight crew and air traffic controllers to medical researchers?	14
Is there a risk to the confidentiality of the information which the CAA holds?	14

Conferring Aviation Security Functions on the CAA – Q&A

Why are aviation security functions being conferred on the CAA?.....	15
Who will be responsible for aviation security regulation?.....	15
What expertise and resources will the CAA have to run aviation security operations?	15
Is it fair and proportionate to transfer the cost of regulating aviation security to industry?	16
Aviation security in the UK is good. How can the public be assured that this will continue to be the case once the CAA takes on its new functions?	16
How does conferring certain aviation security functions on the CAA link to the Government's plans to reform the regulatory framework for aviation security?	16

ATOL Reform – Q&A

Why are these reforms being introduced?	17
How do the reforms made in the Act fit in with wider ATOL reform?.....	17
What will be brought into the scheme?	18
Who will be affected?	18
What do you hope to achieve by this?	18
Does the Act allow for all flights sold by airlines to be covered by the ATOL scheme?	18

General Q&A

What is the purpose of the Civil Aviation Act?

The Civil Aviation Act 2012 (the Act) is designed to modernise key elements of the regulatory framework for civil aviation in the UK in order to enable the sector to make a full contribution to economic growth without compromising standards. The Act offers a package of reforms to make regulation – and the sanctions which support it – flexible, proportionate, targeted and effective.

The Government wants to see a successful and competitive aviation industry. However, much legislation governing civil aviation dates from the 1980s; it is therefore essential that the legislative framework is updated to reflect the many changes that the civil aviation sector has undergone over the past 30 years. In order to address this, the Act introduces and enables reform in four key areas:

- The economic regulation of airports;
- The legislative framework of the Civil Aviation Authority (CAA);
- Aviation security;
- The Air Travel Organisers' Licensing scheme (ATOL).

The Act also gives the CAA powers to disclose, in an anonymised form, medical information it holds on air crew and air traffic controllers for medical research purposes.

Above all, an important theme runs through the Act: putting the interests of the passenger and owners of air cargo at the heart of airport regulation.

When does the Act come into force?

Many of the provisions of the Act are to come into force by commencement order on a day to be specified by the Secretary of State. However, some provisions come into force either on Royal Assent or two months after Royal Assent.

It is intended that the new framework for airport economic regulation set out in Part 1 of the Act will be brought fully into force from the 1st April 2014. Airports that are designated for price control regulation on the date the relevant provision is brought into force will be subject to a transitional period from this date until April 2014.

The Government is currently working to a plan that would aim for the CAA to take on its aviation security functions from April 2014.

With regard to ATOL reform we plan to consult stakeholders on the use of powers. No decision on making regulations under these powers will be taken without a full impact assessment and consultation with all stakeholders.

What does the Act do for passengers and the owners of air cargo?

The main aim of the airport economic regulation reforms is to deliver better outcomes for passengers and air cargo owners in the provision of airport operation services.

At present three airports (Heathrow, Gatwick and Stansted) are subject to price regulation by the independent regulator, the CAA. Under the Act, the CAA will have more flexibility in choosing how to regulate market-dominant airports, but with a clear overriding duty to further the interests of users of air transport services - passengers and the owners of air cargo. The new system is designed to encourage efficient investment in airport facilities to the benefit of passengers and air cargo owners.

In addition the Act provides a new role for the CAA in promoting better public information about airline and airport performance, as well as about the environmental effects of aviation and measures taken to mitigate adverse effects. This will aid consumers in making informed choices.

What does the Act do to help passengers stranded by adverse conditions such as snow, volcanic ash or industrial action?

The Act requires that the CAA puts passengers' interests at the heart of their decision-making regarding the regulation of market-dominant airports. Specifically the Act allows the CAA to put operational resilience conditions into airport operators' licences, which could place appropriate obligations on airport operators to prepare for adverse conditions. The precise conditions will be determined by the CAA when they prepare the licences for regulated airport operators.

These new powers will not come into force until 2014. What is being done on winter resilience in the meantime?

Since the disruption to air services at UK airports during the winters of 2009 and 2010, the aviation industry has taken significant steps to improve its resilience to severe winter weather. For example, Heathrow has tripled its snow clearance vehicle fleet and quadrupled staff numbers available for snow clearance. The CAA also formalised its compliance monitoring team which is deployed at airports when there is major disruption to aviation operations to monitor the situation and ensure airlines comply with legislation on assisting passengers whose flights were delayed or cancelled.

What does the Act do to help economic growth?

Effective competition is a crucial enabler of growth. Competitive markets are the best way in the long run to deliver goods and services to consumers at minimum cost. Effective competition also incentivises firms to invest and improve efficiency, choice and service quality.

In most sectors of the UK economy, the degree of competitive rivalry between businesses and the threat of competition law is sufficient to protect consumers from the risk of businesses exploiting their market power – for example by charging unreasonably high prices or by providing unreasonably low levels of service quality.

However in some sectors of the economy – typically those which used to be state-owned monopolies and where circumstances limit the prospect for effective competition – economic regulation is needed to protect consumers.

The Act modernises the framework for airport economic regulation. The aim is to enable the sector to make a full contribution to economic growth without compromising standards.

What does the Act do for the environment?

The Act requires the CAA to make available appropriate information to inform the public about the environmental effects of civil aviation in the UK and measures taken to limit adverse environmental effects. Environmental issues include matters such as noise, vibration, emissions and the effects of works carried out at airports.

Furthermore, in conducting its airport economic regulation functions, the CAA is required to further the interests of passengers and air cargo owners in the provision of airport operation services. In doing this, they must have regard to the need to secure that the regulated airport operator is able to take reasonable measures to reduce, control or mitigate adverse environmental effects that are generated by activity of the airport, and aircraft using the airport, to which the licence relates.

An example of a reasonable measure could be an energy saving investment project, such as installing solar powered lighting in terminal buildings, which would lower the airport's future energy costs.

Is the Act related to the issue of airport capacity in the South East or the Airports Commission?

No. The Government's position on new runways in the South East remains unchanged and as set out in the Coalition Agreement, while the Airports Commission, which will report in summer 2015, has been established to identify options to maintain the UK's status as an international hub for aviation. Wider aviation issues will be addressed through the development of a new Aviation Policy Framework, on which the Government has recently consulted, which supports economic growth while addressing the environmental impacts of flying. We plan to adopt the Aviation Policy Framework in spring 2013.

The measures in the Act will, however, help improve the quality of service that passengers and air cargo owners receive at airports and will contribute positively to economic growth.

Is the Act related to the forced sale of Stansted and the break up of BAA?

No. This is a matter for the Competition Commission, which is one of the UK's independent competition authorities and carries out investigations independent of Government, industry or other parties. BAA (now Heathrow Airports Holdings Ltd.) was required to sell three of its airports as a result of an independent competition review by the Competition Commission published on the 19th March 2009.

The Government supports competition as an effective way to meet the best interests of users, but it is not for Government to comment on the Competition Commission's independent assessments and recommendations on divestment or on the merits of the airport owner's case.

Airport Economic Regulation – Q&A

Why are airports subject to economic regulation?

In most sectors of the UK economy the degree of competitive rivalry between businesses and the threat of competition law is sufficient to protect consumers from the risk of firms exploiting their market power, for example by charging unreasonably high prices or by providing unreasonably low levels of service quality.

However, in some sectors of the economy – typically those which used to be state-owned monopolies and where circumstances limit the prospect for effective competition – economic regulation is needed to protect consumers. Such regulation has typically capped the prices that dominant companies can charge in order to promote efficiency, while providing them a fair return on their investments.

In the UK, economic regulation is carried out by independent expert regulators in the following sectors: gas and electricity (Ofgem), water (Ofwat), telecoms and post (Ofcom) and rail (Office of Rail Regulation). The CAA has this responsibility for airports and air traffic services.

Airport economic regulation will only apply where regulation is needed. More specifically, the reforms apply to airport operators with substantial market power where the benefits of regulation exceed the costs and where competition law does not provide sufficient protection against the risk of abuse of substantial market power. Currently Heathrow, Gatwick and Stansted are designated for price control regulation under the existing regime.

Why are these reforms being introduced and how will they be achieved?

It is widely considered that the existing framework for airport economic regulation did not meet the standards expected from a modern regulatory regime. The existing regime did not permit the CAA to introduce alternative forms of regulation – for example by monitoring prices and regulating certain aspects of service quality – even if this would have benefited passengers and reduce costs for industry.

Reform to the framework of the economic regulation of airports has also been prompted by the significant changes that have taken place in the aviation sector since the existing legislation was brought in. These include large increases in passenger volumes, the expansion of regional airports and entry of low-cost airlines into the market.

Ultimately, the main aim of the reforms is to deliver better outcomes for passengers and owners of air cargo. This will be achieved by:

- Providing the CAA with a clear primary duty to further the interests of passengers and owners of air cargo in the provision of airport operation services;
- Providing a more flexible and targeted set of regulatory tools (including a licensing regime);
- Making the CAA's decisions more accountable through a system of appeals;
- Reducing unnecessary regulatory and central government involvement.

Who is affected? Will all the airports currently designated for economic regulation continue to be regulated under the new regime?

The reforms will apply to airports with substantial market power, where the benefits of regulation exceed the costs, and where competition law does not provide sufficient protection against the risk of abuse of substantial market power. Currently Heathrow, Gatwick and Stansted are designated for price control regulation under the existing regime.

Under the new regime, the CAA – as the independent expert regulator – will be able to carry out a market power determination to establish whether or not an operator of an airport (or part of an airport) should be subject to economic regulation. It will also be required to carry out a market power determination at the request of the airport operator, or a person who is likely to be materially affected by the decision, where the airport has more than 5 million passenger movements in the preceding year, unless there has been no material change of circumstances since the CAA's last determination.

What tools will the CAA have to combat competition concerns at unregulated airports in the rest of the UK?

The Act gives the CAA concurrent powers to enforce competition law and make market investigation references to the Competition Commission in the airports sector. These provisions will cover all airports in the UK, not just those which are subject to economic regulation.

What role will there be for the Secretary of State in the airport economic regulatory regime?

One of the key criticisms of the existing regime is that the Secretary of State decides which airports should be designated for price cap regulation. To rectify this situation, the Government proposes to empower the CAA to take this decision against clearly specified criteria set out in the legislation. This will align the framework for airport economic regulation with the Government's Principles for Economic Regulation.

This will also ensure that central government is rightly removed from the process of deciding which airports should or should not be subject to economic regulation, and that such decisions are taken by the body that has the expertise and capability to do so. This should provide a more stable and objective framework, enabling those affected by economic regulation to anticipate the context for future decisions and make investment decisions with confidence.

There is a provision in the Act for the Secretary of State to issue guidance to the CAA which the CAA must have regard to when making its decisions. The Secretary of State has no current plans to issue guidance.

What action can be taken to address poor performance from regulated airports?

The Government wishes to equip the CAA with similar tools for enforcing licence conditions as are currently available to other economic regulators.

Under the Act the CAA could impose licence conditions, such as a general licence condition requiring acceptance of a code of practice relating to operational resilience, if it considered it appropriate.

Furthermore, if an airport operator becomes non-compliant with licence conditions, the Act introduces a stepped series of enforcement notifications leading to the imposition of financial sanctions on the airport operator in order to encourage a prompt return to compliance.

Where there is, or is likely to be, an urgent need to address an immediate risk of serious economic or operational consequences of a licence contravention, a fast track process by way of an urgent enforcement order will allow the CAA to seek compliance and remedial action.

Failure to comply with an urgent enforcement order, which has been confirmed by the CAA, may incur a penalty from the CAA and/or may be subject to a third party claim for damages.

The Act provides for a range of financial penalties for licence contraventions. These are:

- A fixed penalty amount not exceeding 10% of qualifying turnover for the qualifying period (both terms are defined in the Act) or
- A daily fine of 0.1% of qualifying turnover for the qualifying period, or
- Both of the above

CAA Reforms – Q&A

Why are these reforms being introduced? What do you hope to achieve, and how?

The Act reforms the CAA in respect of:

- The appointment of board members;
- Criminal prosecution and civil proceedings;
- Charging schemes;
- Efficiency reporting;
- The disclosure of anonymised medical information;
- The provision of information about aviation.

These changes modernise the CAA in line with other regulators and complement other recent reforms to CAA governance, such as the separation of the posts of non-executive Chair and full-time Chief Executive.

These reforms will benefit the CAA through bringing aspects of its management and operation into line with other regulators. Industry will also benefit from better transparency and accountability in the CAA's efficiency measures. Finally, consumers stand to gain from the CAA having a more flexible enforcement toolkit and duties to publish information.

The CAA is being given new powers and increased freedom to appoint its own board members - how will the Government retain an appropriate level of oversight?

The Secretary of State will continue to appoint the Chair, any Deputy Chair and the other Non-Executive members who make up the majority of the board. The CAA's Non-Executive board members will appoint the Chief Executive (with the approval of the Secretary of State) to whom the Executive Directors will report. It follows logically for the appointments of the Executive Directors to be determined by the Chief Executive with the approval of the Chair and at least one other Non-Executive Director.

The Government believes this strikes the right balance between giving an independent regulator the freedom to appoint its own Executive Board, whilst maintaining the Secretary of State's influence over the composition of the board.

Could civil sanctions lead to the CAA taking enforcement action where it currently acts by dialogue and persuasion?

The CAA intends to operate through dialogue and persuasion wherever it is appropriate to do so and to maintain the culture of open reporting.

The Civil Aviation Act enables the Secretary of State, by Order under the Regulatory Enforcement and Sanctions Act 2008, to allow CAA to impose civil sanctions as an alternative to criminal prosecution for offences where it has an existing enforcement function. The CAA may be given a range of civil sanctions which are designed to lead to a flexible enforcement system.

In due course, the Government intends to bring forward proposals for which civil sanctions will be made available to the CAA by order, and in relation to which regulatory offences. The Government would consult on these proposals before putting the draft Order to Parliament.

What civil sanction powers is the CAA being given access to and what impact are those powers going to have?

The only individuals and businesses that will be significantly affected by either the current powers of criminal prosecution or the future alternative powers of civil sanctions are those that commit regulatory offences. Compliant individuals and businesses will be unaffected.

The Civil Aviation Act makes provisions to allow the CAA to impose the civil sanctions provided for in the Regulatory Enforcement and Sanctions Act 2008, as an alternative to criminal prosecution for offences where it has an existing enforcement function. This will be subject to full consultation and impact assessment before being brought to Parliament. The civil sanctions that may be granted to the CAA following the consultation are:

- Fixed monetary penalties;
- Variable monetary penalties;
- Compliance notices: requirement to take specified steps to ensure that the offence does not happen again;
- Restoration notices: requirement to take specified steps to ensure the position is restored, so far as possible, to what it would have been if no offence had been committed;
- Stop notices: a notice preventing a person carrying on a specified activity until they have taken specified steps;
- Enforcement undertakings: a person may volunteer a resolution by giving an undertaking to take one or more corrective actions.

The availability of civil sanctions will enable the CAA to use such sanctions where appropriate, reserving criminal prosecution for more serious cases.

Will there be an appeals process?

The Regulatory Enforcement and Sanctions Act 2008 makes provisions for an appeals process and the Government intends to provide one in this instance.

What provisions are there to ensure the CAA operates in a more efficient manner?

The Act creates a requirement for the CAA's annual report to include both an efficiency statement by the CAA and an assessment of that efficiency statement by the independent auditors. These provisions will give the CAA a further incentive to secure value for money and to be as efficient as possible in performing its functions.

Disclosing Medical Information – Q&A

What is the purpose of allowing the CAA to disclose medical information it holds on flight crew and air traffic controllers to medical researchers?

The CAA receives medical information on flight crew and air traffic controllers in the course of its licensing functions. The Act provides for the CAA to disclose this medical information, in anonymised form, to medical researchers. This information could be used for important medical research into the health risks to those individuals, for example the risk of heart problems, which in the aviation sector also has serious safety implications.

Is there a risk to the confidentiality of the information which the CAA holds?

The medical information provision includes stringent safeguards to protect the confidentiality of the information concerned. The safeguards include:

- i)** Medical information must be anonymised by the CAA before it is released to medical researchers;
- ii)** Disclosure must be for medical research purposes, approved by a research ethics committee;
- iii)** The CAA must consider if the research is likely to improve the understanding of the health risks to those individuals who are required to provide medical information to the CAA..

Conferring Aviation Security Functions on the CAA – Q&A

Why are aviation security functions being conferred on the CAA?

The Government believes that industry will benefit from the efficiencies that could be gained through having aviation security and safety regulation in one place. The CAA also has valuable experience of safety management systems designed to manage risks as effectively as possible. This move would also mean that the 'user pays' principle is applied to aviation security as it is currently applied to aviation safety.

Who will be responsible for aviation security regulation?

The Secretary of State will remain responsible for giving directions to industry detailing the aviation security measures required in the UK, in addition to the EU common basic standards for aviation security. The CAA will, as it considers appropriate, make recommendations to the Secretary of State about those directions and about the giving of further directions.

The CAA will also:

- Monitor and enforce compliance with UK and EU aviation security requirements;
- Undertake the security vetting of industry staff;
- Provide, when requested, advice and assistance to the Secretary of State;
- Provide such aviation security advice and assistance to industry as it considers appropriate.

What expertise and resources will the CAA have to run aviation security operations?

The Department for Transport and CAA are working together to ensure that the CAA will have the necessary aviation security expertise. The CAA has wide experience of risk based safety regulation, which will align well with the aviation security functions that are to be conferred on it. The Act also enables the transfer to the CAA of relevant aviation security staff and property.

The Government believes that the CAA's experience in aviation safety, coupled with the skills and experience of Department for Transport staff, could bring real benefits to the regulation of aviation security in the UK.

Is it fair and proportionate to transfer the cost of regulating aviation security to industry?

Charging industry for the regulation of aviation security will align it with the vast majority of other forms of regulation, including the CAA's regulation of aviation safety.

The aviation industry already meets the costs of providing security (close to £1bn p.a), and the estimated cost of regulation (£4.7m p.a).

Aviation security in the UK is good, how can the public be assured that this will continue to be the case once the CAA takes on its new functions?

Whilst aviation security is a new area for the CAA, the Government will be making sure that the right knowledge and skills are in place and, as part of this, we will be bringing the Department for Transport's experience of aviation security regulation to the CAA. This will compliment the CAA's very valuable experience not just of regulation, but of safety management systems designed to manage risks as effectively as possible.

Furthermore, while the CAA will be undertaking functions previously carried out by Department for Transport, the Secretary of State will remain responsible for aviation security policy.

How does conferring certain aviation security functions on the CAA link to the Government's plans to reform the regulatory framework for aviation security?

There is no direct link. However, the work to develop a Security Management Systems approach for aviation security is drawing on the lessons learned from a similar and successful approach which the CAA has led in the area of aviation safety.

ATOL Reform – Q&A

Why are these reforms being introduced?

There have been major changes over the past 15 years or so to the market in the UK for holidays that include a flight, particularly through the use of the internet to arrange and sell holidays. Some of the new ways of selling holidays did not sit easily within the definition of a 'package', which used to determine if a holiday should be protected under the ATOL scheme.

This has led to a lack of clarity for consumers, the travel trade and the CAA about which holidays are ATOL protected and which are not. Out of two very similar holidays, with the same flight or hotel, one may be ATOL protected, while the other may not, depending on which businesses the holiday was bought from or how it was put together. Consumers may be unaware of this, or seeing that ATOL protection applies to part of their holiday, believe that it covers all of it, leaving them out of pocket if their travel company fails.

How do the reforms made in the Act fit in with wider ATOL reform?

To start addressing this, the Government introduced the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 in April that brought 'Flight-Plus' holidays sold by tour operators and travel agents into the ATOL scheme, and also introduced the ATOL Certificate to provide further clarity when a holiday or flight is protected.

However, reforms using regulations made under the existing powers, in section 71 of the Civil Aviation Act 1982, can only go so far. The 2012 Act amends the regulation-making powers in section 71 to enable these reforms to go further in providing greater clarity for consumers about what holidays are ATOL protected, and also to provide a more consistent regulatory framework for businesses operating in this market.

What will be brought into the scheme?

The Act will allow new regulations to include the following types of holiday which incorporate a flight in the ATOL scheme:

- i) Holidays procured on an 'agent for the consumer' basis (where a business technically buys a holiday for, rather than sells a holiday to a customer). By organising themselves in this way, businesses could avoid the obligation of providing ATOL protection for their holidays. These businesses can now be required to come under the ATOL scheme for holidays procured for the consumer in this way;
- ii) Holidays sold by airlines. Some airlines already voluntarily protect the package holidays they sell under the ATOL scheme, but now all airlines selling holidays (whether a package holiday or a Flight-Plus holiday) can be required to do so, as far as is consistent with EU law;
- iii) Holidays procured through facilitating businesses (businesses who may argue that they are neither selling a holiday to a consumer nor buying one on their behalf as an agent, but merely 'facilitating' the purchase of a holiday). The powers in the Act mean that this potential way to avoid the ATOL scheme can now be prevented, by requiring such holidays to be ATOL protected.

Who will be affected?

Travel businesses and airlines selling or procuring holidays including a flight may be required to obtain an ATOL licence and to protect certain holidays they sell or procure under the ATOL scheme. Consumers who buy such holidays may benefit from the additional ATOL protection provided, as well as the greater clarity about what holidays are protected.

What do you hope to achieve by this?

The expanded regulation-making powers in the Act would allow more holidays to be included in the ATOL scheme and would provide even greater clarity for consumers whilst ensuring a level regulatory playing field for businesses selling flight-inclusive holidays. The Government's intention is that such a step would only be taken following full consultation with stakeholders including an impact assessment.

Does the Act allow for all flights sold by airlines to be covered by the ATOL scheme?

No. The new powers do not permit all flights sold by airlines to be protected under the ATOL scheme. It would not be possible to do so under the ATOL scheme unless insolvency protection for airline passengers was required at EU level. The European Commission are looking at this issue and we will consider any proposals if and when they are made by the Commission.