

**CAA consultation on proposals for  
a revised airspace change process  
(CAP 1389)**

Responses submitted by post or email  
(where permission has been given for publication)

Some personal information has been redacted by the CAA

Aberdeen International Airport Consultative Committee

Airport Operators Association

British Gliding Association

East Hampshire Association of Parish and Town Councils

East Midlands Airport Independent Consultative Committee

Edinburgh Airport

David Fenwick

Future Airspace Strategy Industry Implementation Group

Future Airspace Strategy VFR Implementation Group

General Aviation Alliance

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Lasham Gliding Society

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Response

## MINISTRY OF DEFENCE RESPONSE – CAA CONSULTATION ON PROPOSALS FOR A REVISED AIRSPACE CHANGE PROCESS

### Introduction

1. As the UK's single largest operator of aircraft and aerodromes as well as the operator of 158 notified Danger Areas, the MoD welcomes the opportunity to provide a consolidated response to the CAA's Consultation on Proposals for a Revised Airspace Change Process (ACP) (CAP 1389).
2. Specific answers to the questions posed by the CAA within its consultation document are at Annex A.

### Aim

3. The aim of this consultation response is to articulate the MoD's position, that the new processes proposed by the CAA (in relation to the ACP) should not apply in full to MoD activities; in regard to Military Aircraft, Government Aerodromes and Danger Areas. The response also argues that, where information is published by the CAA, for the purposes of notifying airspace users of MoD activity, a change to the published information should not constitute a change in airspace use and thus require the ACP to be invoked.

### Summary

4. The MoD undertakes a diverse range of activities that have an impact on UK airspace. The MoD is dis-applied from certain Environmental requirements due to the nature of its activities. The CAA's statutory duties do not extend to Military aircraft, Government aerodromes or activities undertaken within Danger Areas. A conflict is introduced in the CAA's Air Navigation Function by the proposals to expand the requirements of the ACP to include environmental considerations, from those associated with the designation, classification and promulgation of airspace structures, in respect to any future MoD requirements. MoD advocates that additional tiers of ACP, building upon a scalable process, be incorporated into the proposed revision of CAP 725 to accommodate any future MoD airspace requirements.

### CAA Consultation on Proposals for a Revised Airspace Change Process

5. In précis, the CAA's consultation on a revised airspace change process is predicated on the concept of greater transparency surrounding its decision making processes, additionally taking into consideration the views of the wider public, especially in relation of the environmental impact associated with aircraft noise. As such, airspace changes are considered in the wider context of airspace use; as a result, the proposed change process is not solely confined to the designation of

airspace structures but would include any published aircraft procedure irrespective of the airspace classification.

6. Within the consultation document it states that 'the CAA is not in a position to change the Transport Act 2000', but the document offers the 'opportunity for the CAA to be transparent about the way in which [it] carries out [its] statutory duties'<sup>1</sup>.

7. In examination, the MoD does not agree that the CAA's statutory duties extend beyond the civil aviation arena, in respect of the environmental impact associated with aircraft noise. As such a conflict is introduced by the proposals outlined by the CAA in respect to the proposed application of its Air Navigation Function and any future MoD airspace requirements. Additionally, the requirements set out in the consultation document have the potential to impact on the MoD's operations and potential basing decisions associated with Government Aerodromes.

8. The guidance provided by the DfT to the CAA setting out the Environmental Objectives Relating to the Exercise of its Air Navigation Functions <sup>(LINK)</sup> clearly bounds the CAA to only consider civilian aviation conducted from civilian aerodromes. As such, any ACP relating to a Government aerodrome or Danger Area should not be treated in the same fashion, but rather a scalable approach should be adopted to contend with such possibilities.

9. The concept of scalability is further articulated by the DfT in its guidance to the CAA at Para 1.4 and 9.2:

*(1.4) When considering airspace changes, there may be other legitimate operational objectives, such as the overriding need to maintain an acceptable level of air safety.*

*(9.2) Some airspace changes are of a technical nature and have no significant environmental impact, such as a change to airspace classifications which does not affect airspace usage, and therefore might require no consultation with environmental stakeholders.*

## Legislation

10. **European Legislation.** European Council IR 216/2008<sup>2(LINK)</sup> and as amended by IR 1108/2009<sup>3(LINK)</sup> (commonly referred to as the 'Basic Regulation') Article 1, Scope. This overarching European legislation forms the basis by which all Military aviation conducted for the purposes of operations or training is exempted from [this and] subsequent regulation. As such the European regulations pertaining to commercial or recreational civilian aerodromes and aircraft do not apply to the MoD.

11. **Environmental Protection Act 1990.** The MoD is dis-applied from certain sections of the Environmental Protection Act 1990; of note is Section 79 'Statutory nuisances and inspections therefor' in relation to noise and pollutants; Subsection 2 and 6A<sup>(LINK)</sup>.

12. **Civil Aviation Act 1982.** Under the Civil Aviation Act 1982, Part 1, Regulation of performance by CAA of its functions; subsection 5(1)<sup>(LINK)</sup> it is the duty of the CAA to consider environmental factors when licensing certain aerodromes. Specifically, under sub-Para (b) the CAA shall have regard to any disturbance to the public, from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation.

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<sup>1</sup> Para 6.2 CAA Consultation on Proposals for a Revised Airspace Change Process.

<sup>2</sup> REGULATION (EC) No 1108/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC.

<sup>3</sup> REGULATION (EC) No 1108/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Directive 2006/23/EC.

13. **Air Navigation Order 2009.** Whilst in general The Air Navigation Order 2009 does not apply to Military aircraft (Section 252<sup>(LINK)</sup> and 251<sup>(LINK)</sup>), in reviewing the legislation pertaining to aircraft noise the MoD also notes Section 215<sup>(LINK)</sup> of this Act, which states:

*215.—(1) The Secretary of State may prescribe the conditions under which noise and vibration may be caused by aircraft (including military aircraft) on Government aerodromes, licensed aerodromes or on aerodromes at which the manufacture, repair or maintenance of aircraft is carried out by persons carrying on business as manufacturers or repairers of aircraft.*

*(2) Section 77(2) of the Civil Aviation Act 1982(1) applies to any aerodrome in relation to which the Secretary of State has prescribed conditions in accordance with paragraph (1).*

## MoD Airspace Use

14. The MoD undertakes a diverse range of activities that have an impact on UK airspace; such activities are not limited to aviation but also include ground to air firings and maritime operations. All MoD activities are undertaken at the direction of the Secretary of State for Defence and either directly contributes to the defence of the Realm or are undertaken for the purpose of training to support this requirement or to prepare HM Forces to fulfil UK foreign policy objectives.

15. The aviation (or other) activities that the MoD undertakes cannot be directly compared to civilian aviation, either commercial or recreational. This point has been universally accepted since the establishment of the CAA in 1972 and forms the basis by which MoD aviation, and associated activities, are neither regulated by nor the responsibility of the CAA.

16. The MoD does however accept the CAA's responsibility in regard to the designation, classification and publication of airspace structures in performing its Air Navigation Function as set out within Chapter 3 of the Transport Act 2000<sup>(LINK)</sup>. As such, close collaboration between the MoD and CAA, under the concept of a Joint and Integrated approach to airspace management, has and continues to prevail to ensure the safe operational freedom of HM Forces. The purpose of which is to establish and notify formal airspace structures<sup>4</sup> or inform other airspace users of MoD activities<sup>5</sup>.

17. **Government Aerodromes.** The UK Military Aeronautical Information Publication (Mil AIP) currently lists details of 51 Government Aerodromes and their associated procedures, all of which are regulated by the Military Aviation Authority (MAA). In addition, the CAA publishes details of the location of such aerodromes within the UK AIP. Within the UK the vast majority of such aerodromes are located within Class G airspace and are supported by an Air Traffic Zone (ATZ)<sup>6</sup> and, additionally, a Military Air Traffic Zone (MATZ)<sup>7</sup>. Whilst the MoD acknowledges the environmental impact that such aerodromes produce, it seeks to reduce such impact by: publishing noise abatement procedures for aircraft to follow, as well as interacting with the local population to mitigate the effects of its operations. However, the MoD undertakes these activities on the basis of being a 'good neighbour'; the overriding factor being the MoD's ability to deliver the operational requirement. This imperative, coupled with the nature of MoD aircraft and their flying activities, can run contrary to these environmental considerations. As such, Military aircraft and premises (aerodromes) are dis-applied from the Environmental Protection Act 1990 as set out in Section 79<sup>(LINK)</sup> regarding noise. If alternative classifications of airspace were considered necessary, to support the provision of ATS around Government aerodromes, which could have an impact upon

<sup>4</sup> Formal structures may include: Air Traffic Zones, Control Zones / Areas, Military Training Areas within CAS, Danger Areas, Restricted Areas, Prohibited Areas.

<sup>5</sup> Information may include publishing the boundaries of: The UK Low Flying System, Areas of Intense Aerial Activity, Training Areas within Class G, Airspace Co-ordination Notifications, unusual aerial activities, or other such information the conveyance of which is considered appropriate to prevent collisions between aircraft.

<sup>6</sup> ATZ definition See Air Navigation Order 2009 Section 258 <sup>(LINK)</sup>

<sup>7</sup> At certain military aerodromes, Military Aerodrome Traffic Zones (MATZ) have been established to provide a volume of airspace within which increased protection may be given to aircraft in the critical stages of circuit, approach and climb-out. A MATZ acquires the status of the airspace classification within which it lies; however, additional mandatory ATC requirements are invariably specified for military pilots. In the airspace outside the Aerodrome Traffic Zone (ATZ), observation of MATZ procedures is not compulsory for civil pilots.

other airspace users, the MoD accepts its responsibility, as it has in the past, to consult with such users.

18. **Danger Areas.** The MoD undertakes a variety of activities that produce a danger to airspace users. Where such activities are sited at a permanent location they are invariably notified to airspace users by the CAA in the form of a Danger Area. The establishment of a Danger Area does not in itself Restrict or Prohibit airspace user access<sup>8</sup>, and does not remove the responsibility of the MoD to ensure that such activity is carried out in as safe as possible manner. Although, where restriction of flight is required, within such areas, this is undertaken by the enactment of Bye Laws made under the Military Lands Act 1892<sup>(LINK)</sup> by the MoD<sup>9</sup>. Whilst the MoD continues to follow its 'good neighbour' policy in regard to such activities, they are by virtue of their dangerous nature also covered by the dis-application of the Environmental Protection Act 1990. However, given the inferred requirement for other airspace users to avoid such designation of airspace on the grounds of safety the MoD accepts its responsibility to consult with other airspace users, if and when new requirements for airspace designation are necessary.

19. **Prohibited and Restricted Areas.** The Secretary of State for the Department for Transport is empowered under the Air Navigation Order 2009 Section 161<sup>(LINK)</sup> to make regulations prohibiting, restricting or imposing conditions on flight by civil aircraft within UK airspace. Restrictions of Flying Regulations are made only when the Secretary of State deems it necessary in the public interest. This concept is not captured within the consultation document but forms part of the CAA's Air Navigation Function. The MoD, as well as other Government Departments and Agencies, may make application for such restrictions to be imposed; the CAA should therefore articulate that such Restrictions and Prohibitions are undertaken under the concept of National Security or public protection and as such are not necessarily subject to consultation or environmental consideration.

20. **General Airspace Activities.** The MoD undertakes a variety of aviation based activities both within and outside of Controlled Airspace within the UK. The CAA either publishes such information in order to either achieve segregation for these activities or to provide other airspace users with information to aid flight safety.

a. **Within Controlled Airspace.** Activities are normally segregated on a permanent basis by the publishing of Military Training Areas or temporarily by negotiation and publication of an Airspace Co-ordination Notification by Airspace Regulation (Utilisation). As with Danger Areas, where segregation is required on a permanent basis<sup>10</sup> the MoD accepts the requirement to conduct a consultation, albeit such consultation would normally only be required with NATS, prior to the CAA publishing such airspace features. However, where a temporary construct is required the existing protocols are considered sufficient.

b. **Outside Controlled Airspace.** MoD activities are either promulgated by the CAA on a permanent basis i.e. the description of the UK Low Flying System, Areas of Intense Aerial Activity or Training Areas within the UK AIP, or on a temporary basis by NOTAM. Such promulgation is undertaken to facilitate safety; it neither changes the classification of Class G airspace nor should be construed as a change in its overall use. As such, any amendments to the above information should not be considered as part of the ACP.

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<sup>8</sup> Definition UK AIP GEN 5.1.3 - Danger Area - Airspace which has been notified as such within which activities dangerous to the flight of aircraft may take place or exist at such times as may be notified.

<sup>9</sup> References to such Bye Laws are also published by the CAA within the UK AIP. See GEN 5.1.3.2.3 and ENR 5.1

<sup>10</sup> Permanent in this concept refers to a published construct of airspace; the MoD remains committed to the concept of Flexible Use Airspace.

## Resolution

21. To resolve the issues highlighted above the MoD advocates that:

- a. Government Aerodromes not designated under Section 215 of the Air Navigation Order 2009 should be exempted from the ACP where any such change in airspace use does not alter the classification of airspace supporting that aerodrome.
- b. MoD aviation activity within Class G airspace, notified by the CAA for the purposes of safety, should not be considered as a change in airspace use and therefore subject to the ACP.
- c. Additional Tiers in the ACP should be introduced that complement the concept of a scalable process in regard to the classification of airspace structures. These Tiers should clearly articulate the level of responsibility the CAA has towards Military Aircraft and Government Aerodromes as well as other airspace activities that the MoD undertakes, whilst supporting the CAA's responsibility in respect of its Air Navigation Function.

22. Table of proposed amendment to CAA's advocated Tier process:

LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4
<p>High impact changes to notified airspace structure.</p> <p>These will typically be large scale changes which change aircraft tracks, or dispersion or reduce height over land, up to and including 7,000 feet (above mean sea level), such as changes to departure and arrival routes at airports, or changes which have a significant impact on other aviation stakeholders.</p> <p>To include Government Aerodromes that have been designated by the Secretary of State under Section 215 of the Air Navigation Order 2009.</p>	<p>Medium to low impact changes to notified airspace structure.</p> <p><b>Level 2A:</b> These will typically be changes which change aircraft tracks or reduce height over land, below 20,000 feet (above mean sea level) but above 7,000 feet (above mean sea level), such as changes to Air Traffic Service (ATS) routes, or establishment of new controlled airspace below 20,000 feet (above mean sea level).</p> <p><b>Level 2B:</b> These will typically be changes to controlled airspace that occur over the sea or at 20,000 feet (above mean sea level) and above. These may also be changes outside controlled airspace above 7,000 feet (above mean sea level) or;</p> <p><b>Level 2C:</b> These will typically be changes which reflect the current use of the airspace concerned or the removal of established airspace structure i.e. DCT to ATS Route, SID Truncation. These types of changes will not alter traffic patterns below 7,000 feet (above mean sea level).</p>	<p>Airspace changes specific to the MoD</p> <p><b>Level 3A:</b> Airspace classification or description changes associated with Government Aerodromes not designated by the Secretary of State under Section 215 of the Air Navigation Order 2009.</p> <p><b>Level 3B:</b> Danger Areas.</p> <p><b>Level 3C:</b> Military Training Areas within Controlled Airspace.</p>	<p>Prohibited and Restricted Areas</p>

23. In respect of the consultation requirements:

Step 1A Assess Requirement	No amendments required
Step 1B Design Principles	<b>Level 3</b> – The change sponsor should engage with the following: <ul style="list-style-type: none"> <li>• Directly affected local aviation stakeholders</li> <li>• National Air Traffic Management Advisory Committee</li> <li>• Relevant national organisations and representatives.</li> </ul>
Step 2A Option Development	<b>Level 3</b> - The change sponsor should engage with the following: <ul style="list-style-type: none"> <li>• Directly affected local aviation stakeholders</li> <li>• National Air Traffic Management Advisory Committee</li> <li>• Relevant national organisations and representatives.</li> </ul>
Step 2B Options Appraisal	No amendments required
Step 3A Consultation Preparation	<b>Level 3</b> – The change sponsor should consult with the following: <ul style="list-style-type: none"> <li>• Directly affected local aviation stakeholders</li> <li>• National Air Traffic Management Advisory Committee</li> <li>• Relevant national organisations and representatives.</li> </ul> <p>The minimum consultation period required is 12 weeks, and the maximum is 14. The CAA will also consider a reduced consultation period where a change sponsor provides a strong rationale and justification for pursuing a shortened consultation.</p> <p>No environmental impact assessment required.</p>
Step 3B Consultation Validation	<b>Level 3</b> – Whilst the MoD accepts the concept of transparency, it will not release information of an operational nature.
Step 3C Commence Consultation	No amendments required
Step 3D Collate and Review Responses	No amendments required
Step 4A Update Design	<b>Level 3</b> – The MoD will make note of consultation responses but may be unable to change the design criteria due to operational reasons, the specifics of which cannot be made public. In such circumstances the MoD will discuss the issue with the CAA.
Step 4B Submit Proposal	<b>Level 3</b> – No environmental report required.
Step 5A CAA Assessment	<b>Level 3</b> – Where the CAA requires additional information it should first approach the MoD to confirm that such information can be released.
Step 5B CAA Airspace Change Decision	<b>Level 3</b> – The CAA would need to consider the level of decision making required.
Step 6 Implement	<b>Level 3</b> – The CAA would need to determine the length of lead in time required to publish the change.
Step 7 Post- Implementation Review	<b>Level 3</b> – The CAA would need to determine the appropriate length of time required to conduct a post implementation review.

24. For **Level 4** ACPs, the CAA should state that consultation and environmental considerations will not be undertaken if the change is associated with either National Security or Public Safety.

Annex A.

MoD Responses to CAA Specified Questions.



## MOD RESPONSES TO CAA SPECIFIED QUESTIONS

### **Question 1: Will the new process gateways improve the airspace change process?**

The MoD is not opposed to the concept of additional or a revised gateway process; however, it does note that the extent of the advocated process for Tier 1 requirements will undoubtedly extend the process, introducing significant extra cost and thereby potentially dissuading applicants from undertaking an ACP. As articulated in the main paper of the MoD's response, the MoD does not believe that the CAA statutory duties extend beyond the civilian aviation arena and as such not all advocated steps within the Gateway process are required to accommodate Military ACPs.

### **Question 2: Should the sponsor engage local stakeholders to agree design principles for the airspace change?**

The MoD has set out the level of consultation requirements it believes appropriate to accommodate Military ACPs. Whilst the MoD acts under the 'good neighbour' principle, it is dis-applied from the Environmental Protection Act 1990 in respect of aircraft noise and pollutants.

### **Question 3: What types of data would you find it useful for the sponsor to provide when engaging local stakeholders about design principles? How should this data be presented?**

Movement statistics, forecast traffic growth, operational requirements.

### **Question 4: In addition to specific detail, what general background information would you find it useful for the sponsor to provide as context for its proposals?**

Nil Response.

### **Question 5: Overall, will Stage 1 improve the airspace change process?**

Within the context of the level of consultation requirements the MoD believes appropriate to accommodate Military ACPs or the view that the CAA's environmental statutory duties do not extend beyond the civilian aviation arena; the MoD would not be obligated to undertake the majority of steps set out in Stage 1.

### **Question 6: Will introducing the options appraisal we propose improve the airspace change process?**

Where the MoD undertakes an ACP relating to a Danger Area, the design principles regarding the required dimensions of the airspace may be based on classified material. Whilst it is understood that the revised process is primarily related to ac noise associated with civilian aerodromes, the CAA should be mindful of proposing a process that cannot be undertaken in all circumstances.

### **Question 7: Overall, will Stage 2 improve the airspace change process?**

Nil Response.

### **Question 8: Would an independent third-party facilitator make a sponsor's consultation more effective?**

If so, should a facilitator be a mandatory requirement for certain types of airspace change?  
Please give your reasons and any other views (including benefits and dis-benefits) on facilitators.

Given the MoD's assertion that the CAA's statutory duties do not extend beyond the civil aviation arena and that the MoD is dis-applied from the Environmental Protection Act 1990 in respect of aircraft noise, the MoD holds no opinion on the concept of independent facilitators other than such a requirement would not apply in respect of MoD related ACPs.

## MOD RESPONSES TO CAA SPECIFIED QUESTIONS

**Question 9:** Should the CAA publish all consultation responses in full, except to moderate them for unacceptable content?

Given the number of potential responses this may be difficult to achieve for contentious proposals. The MoD may wish to make objection to an ACP based on the grounds of National Security or reduction of Military capability. As such, the details of the objection would be made known to the CAA but the MoD may not wish such details to be distributed more widely.

**Question 10:** Should the CAA publish airspace change consultation responses as they are submitted, rather than at the end of the consultation period?

The MoD would advocate that responses are published after the period of consultation has ended.

**Question 11:** Should consultation responses be made solely through the online portal.

No, to ensure that the source of the response can be verified the MoD will always submit a response directly to the CAA or to the applicant.

**Question 12:** Do you think that the consultation process proposed in Stage 3 achieves the right balance between fairness, transparency and proportionality?

Nil Response

**Question 13:** Overall, will Stage 3 improve the airspace change process?

Nil Response

**Question 14:** Should sponsors be required to adhere to a standard template for their airspace change submissions?

No, submissions should be scalable and relevant to the proposal being made. A standard format would not achieve this.

**Question 15:** Is it reasonable for the CAA to publish a redacted version of the submission, with commercially sensitive details removed, as soon as we receive it, before we have assessed and decided upon it?

Redaction of information could also include sensitive data provided to the CAA by the MoD. Subject to such redaction the MoD would have no issues with the CAA publishing before assessing the proposal.

**Question 16:** Overall, will Stage 4 improve the airspace change process?

Nil Response

**Question 17:** Will introduction of a new Public Evidence Session improve the airspace change process?

Given the MoDs assertion that the CAA's statutory duties do not extend beyond the civil aviation arena and that the MoD is dis-applied from the Environmental Protection Act 1990 in respect of aircraft noise, the MoD holds no opinion on the concept of Public Evidence Sessions other than such a requirement would not apply in respect of MoD related ACPs.

## MOD RESPONSES TO CAA SPECIFIED QUESTIONS

**Question 18:** Is Step 5B (CAA decision) a clear and transparent way of making an airspace change decision?

Nil Response

**Question 19:** Overall, will Stage 5 improve the airspace change process?

Nil Response

**Question 20:** What are your views on our proposal not to introduce an appeal against process irregularities into the airspace change process?

Nil Response

**Question 21:** What types of data would you find it useful for the sponsor to provide, and in what form, when seeking feedback for its post-implementation review?

Confirmation of expected traffic levels that were used to support the original proposal have materialised and data on refusals of access to the airspace construct.

**Question 22:** Overall, will Stage 7 improve the airspace change process?

Nil Response

**Question 23:** Overall, will the airspace change process proposed in Chapter 4 achieve the right balance between fairness, transparency and proportionality?

Nil Response

**Question 24:** Should the CAA set up an Oversight Committee?

The MoD does not believe that an oversight committee is required. However, if the CAA wishes to pursue this concept the MoD would expect to be represented on this committee to fulfil the requirements of Section 67 of the Transport Act 2000.

**Question 25:** Are there any other areas where the CAA should provide guidance?

The CAA should acknowledge the MoDs exemption from the Environmental Protection Act 1990 and the limitations of its responsibilities towards Military aircraft and Government Aerodromes.

**Question 26:** Does Table 5.1 give sufficient clarity and detail of how the process will be scaled?

No, additional scales are required to accommodate MoD ACP requirements.

**Question 27:** Do you have (i) any views on the way the Levels are categorised in Table 5.1, (ii) alternative suggestions as to how we might categorise different airspace changes, or (iii) other views about the proposed scaling of the process generally?

The MoD has provided its views within the main body of its consultation response.

**Question 28:** Do you agree that the number of airspace change proposals put forward to the CAA is likely to increase in the future?

Due to the requirement to introduce GNSS based airport procedures and the yet undetermined

## MOD RESPONSES TO CAA SPECIFIED QUESTIONS

ramifications of the ATM IR (Part ATS) notice of proposed amendment, it is fully anticipated that the number of ACPs will increase.

**Question 29:** Do you have any views about the CAA's interpretation of section 70 of the Transport Act 2000, as set out in Chapter 6?

The CAA has elected not to highlight Section 67 of the Transport Act 2000 in respect to National Security within its consultation material. The Assistant Chief of The Air Staff (ACAS) as a Non-Executive Member of the CAA Board fulfils this role. Whilst under Section 70, the CAA is required to Take Note of National Security, were its opinion to prevail in respect of its Air Navigation Function that in the opinion of ACAS had a detrimental effect on National Security, then the actions set out in Section 67 would apply. The MoD requires airspace to be segregated from other users due to the nature of its activities; this could be argued as not the 'most efficient' use of such airspace given the criteria advocated by the CAA in its consultation document. Under the umbrella of National Security the MoD asserts that the ability to train is inherent within this criterion.

**Question 30:** Do you have a preference for either of the options for recovering the CAA's airspace change costs that are set out in Chapter 7?

Nil Response

**Question 31:** In the short term the CAA will still have to set up a new statutory charge. On which entity would it be most appropriate to levy this charge? Please give your reasons.

Nil Response

**Question 32:** Are our proposed transition arrangements between the old process and the new process reasonable?

Nil Response

**Question 33:** Are our timescales for introducing the new process reasonable?

Nil Response

**Question 34:** Do you agree with the concept of an online portal?

The MoD agrees with the concept of an online portal in order to act as a central location for all ACPs to be held. However, the portal needs to have the ability to upload documents in addition to the answering of set questions.

**Question 35:** Should the online portal contain any functionality beyond what we describe, or documentation other than that shown in Table B1?

The ability to submit written responses.

**Question 36:** What are your views on locating the sponsor's consultation on a CAA portal where the sponsor administers the documentation and responses?

Nil Response

## MOD RESPONSES TO CAA SPECIFIED QUESTIONS

**Question 37:** Is it essential that the online portal is a single website or could different websites (CAA, sponsor, consultation portal) be used for different aspects of the process?

The MoD has experienced issues with consultancies not distributing ACPs to NATMAC members, a single focus point highlighting on going ACPs would therefore be useful. If the MoD were to undertake an ACP, without the aid of a consultative organisation, it would host the consultation document on the Government website unless the CAA required the proposal to be hosted on its site.

**Question 38:** Do you have any views on the CAA's analysis of the three options for an online portal, bearing in mind that the CAA will need to recover its costs through charges on those it regulates?

Nil Response

**Question 39:** Is our assessment of the effects of the new process in Table D1 reasonable?

The MoD believes that the effects of the proposed changes will be more significant in regards to the length of time that an ACP will take to deliver. The current timescale is approximately 75 weeks and the revised process is estimated to take 107 weeks, an increase of approximately 75%. Whilst it is arguable that the process will be more transparent and open it will ultimately require a decision to be made at the end. The MoD has provided revised Tiers that would accommodate MoD ACP requirements whilst still requiring consultation with airspace users.

**Question 40:** We are interested in your views on the additional costs in terms of time and resources that the proposed process will create for all parties. We are particularly interested in estimates of the monetary costs and benefits to sponsors of previous airspace changes and how these would have been affected by the CAA's proposed new process.

Costs will inevitably increase due to the increase in process and thus time required to undertake such procedures.



## **NATS response to CAP1389**

# Consultation on proposals for a revised airspace change process

This document provides the NATS response to the 40 questions presented in CAP1389 relating to proposed revision of the CAA Airspace change process.

### **Summary of Principal points**

#### **Practical Implications and Examples**

The proposed process is built around positive principles, but lacks sufficient detail as to what it would mean in reality for detailed sponsor requirements, costs and timescales for particular types of change. Hence for the questions asking whether it is an improvement or not, many of the answers are “don’t know” as we cannot commit to the principles without understanding their true impact.

To resolve this we strongly recommend that the CAA engage with sponsors directly to work through case studies what the detailed requirements and timescales would be if running with the new process. This should case studies representing:

- a large scale multi organisation network redesign changing routes below 4000ft, between 4000ft and 7000ft and above 7000ft
- a network redesign involving only Upper ATS routes,
- local low level redesign – eg changes to SIDS STARs & arrival transitions below 7000ft
- low level replication – eg replication of SIDS STARs & arrival transitions below 7000ft

These case studies should be part of the guidance document set so there is complete transparency and minimal risk of misinterpretation by either sponsors or stakeholders.

#### **Process Flexibility to deal with Large scale, Complex and Contentious Network Changes**

The proposed process appears relatively rigid; however, it is vital that the regulatory process is flexible enough to work for proposals which may differ widely in scope and complexity. For example changes may range from local route changes sponsored by individual airports, to those involving multiple ANSPs in complex/contentious TMA environments (eg LAMP).

Our impression is that the proposed process has been developed with a focus on the latter and therefore may not be entirely practical for the former.

NATS is therefore keen to ensure that the new CAP725 process can accommodate the “adaptive process” approach for large scale, complex and contentious changes, eg PLAS, LAMP Phase 2 and changes for additional runways in the SE. In particular such ACPs need to accommodate phased implementation, modular ACPs with different elements sponsored by different organisations, and use of the “design envelope consultation” methodology (previously referred to as swathe consultation) – all as used in the recent LAMP1A process.

### **Greater CAA involvement through the development process**

NATS welcomes the addition of gateways where CAA will formally assess the process to date. This will reduce the risk that sponsors carry when CAA assessments are made only at the end of the ACP process.

### **"Third Party" Involvement in the Regulatory Process**

The proposal considers third party facilitation, moderation and oversight of various elements of the change process. The NATS position is that the CAA should be the independent presence in the process. It is recognised that not all stakeholders currently see the CAA as independent; however the whole point of the new guidance is to assert this independence. Third parties may introduce their own bias, or short term political influence into a process that should be balanced and focussed on the long term.

### **Gateway and Decision timescales**

The proposed new process will inevitably take longer and as such the effect of any further delays will be amplified. Clarity on the CAA's maximum turnaround time for all gateways is critical for planning. In this context the CAA's failure to suggest any maximum time limit to the decision making steps is a serious oversight. Time afforded to the CAA, as decision maker, should mirror the planning system where failure to determine even major applications within 16 weeks is de-facto grounds for appeal.

### **Appeals process**

NATS supports the CAA's proposal to not introduce an appeal process as it would be of limited added value given other safety nets built into the process. It also would have practical consequences to timescales that would make scheduling implementations impossible without impacting other improvement projects and service delivery.

### **ANSP stakeholder Role**

An ANSP may have a direct role in implementing a change that has been sponsored by another organisation. For example an airport may sponsor a change to a SID, which is largely operated by NATS. NATS may not object to the change per se, but there may be practical issues if implementing this change would require NATS to invest in, and schedule changes to, internal documentation, safety assurance and systems, simulation programmes, and which also may have a training requirement for operational staff.

In this case it is vital that the CAA should specifically ask the sponsor whether any other ANSP has to undertake work to enable the implementation of the proposed change. This must be a consideration from the outset and an ongoing consideration throughout the process. If so they must be required to provide evidence that the 3<sup>rd</sup> party ANSP has been engaged and is willing and able to facilitate the proposal before the decision on implementation dates is finalised.



The process must avoid the situation where a third party ANSP is unable to comply with a decision to implement because of investment or scheduling conflicts that the sponsor has not taken into account..

### **Stakeholder Obligations**

NATS proposes an additional CAA role in Stage 3: the CAA is expected to ensure that the information put into the public domain by the sponsor is based on robust evidence, is clear and factually correct – they should also ensure that the same standards are applied to information introduced by stakeholders. This should ensure that the ‘trust’ element as discussed by the CAA in 3.24 is preserved and not inflamed by incorrect, misleading or ambiguous information from stakeholders with little or no technical knowledge, or from those who would gain/loss from an ACP being implemented.

It is not practical for the CAA to review all material in the public arena, but should be in position to make public statements to clarify their position on incorrect, misleading or ambiguous information presented by either sponsor or stakeholder, where it is brought to their attention.

### **CAA resourcing**

Without formal coordination, it is reasonable to expect that many UK airports will seek to delay investment in the PBN changes required by European Implementing Rule's (IR) until the latest possible point. This is because in many cases PBN will not offer the sponsors any immediate commercial benefit.

It would appear from the proposal that the CAA expects the demand for change to rise and plateau over the coming years as a result of PBN IR. However the above scenario would not present a plateau as such - rather a sharp peak around 2022. It is not clear how this peak could be processed by the CAA.

There may also be a peak of change more immediately as sponsors seek to complete changes that have been initiated on the extant process, prior to new guidance being issued.

In both cases, a lack of CAA resources to manage peaks would likely result in prioritisation of changes, effectively imposing a schedule where some are dealt with first and others are delayed. Rather than being reactive and applying a first come first served basis, we would seek clarity from the CAA on how such scheduling conflicts are to be actively managed to the benefit of industry as a whole.

### **Funding**

The CAA recovers a significant amount of money from airlines in for its activities in relation to air navigation services generally and airspace regulation specifically, whether directly through the UK Unit Rate or indirectly through CAA fees. In total, the CAA recovers c. £20m a year from NATS NERL alone. NATS supports that the appropriate mechanism for the CAA to recover its airspace change

costs is to continue to use the UK Unit Rate and would expect that the CAA finds significant efficiencies in its own operation to minimise pass cost pass through.

In the short term the CAA can either finance additional cost through its own reserves or borrowing. Not only is the CAA likely to be able to find more favourable borrowing rates than private entities (which will already be bearing their side of the increased process costs), as a UK Government regulator it could also seek to recover these borrowing costs through the Small Gaps FAS Facilitation Fund.

### **Confliction of interests**

The CAA has acknowledged in the document (4.47) that there may be a confliction of interests in certain airspace structures especially in the competitive environment of the LTMA. There could be competitive 'bids' for the airspace or refusals to amend procedures to support other airspace ACPs. Although the CAA has acknowledged this complexity NATS would like to see a specific reference to the importance of changes fitting into the overall long term strategy for the airspace system - including the plans for airspace modernisation being progressed by neighbouring ANSPs. We seek a clear statement that this would be a key decision aiming criteria alongside assessment of the change in isolation.

## Response to Individual Consultation Questions

**Question 1: Will the new process gateways improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

NATS response:

Don't Know.

More CAA involvement and incremental assessment of the process is welcomed. However, we have marked this as "don't know" as there are a number of unknowns in the proposed process,

1. how flexible it is,
2. how much extra will it cost and
3. how much additional time will it take.

Regarding 1: not all airspace changes are alike – redesigning a network comprising of many routes to and from a number of airports is a very different design problem to the redesign of a single route – the process must have the flexibility to accommodate both (this is discussed further at Q14).

Regarding 2 and 3: Sponsors are commercial entities and these factors will impact the commercial case for change, meaning that some proposals will not be progressed due to cost and/or time issues. In turn this may impact the benefits available from PBN roll out.

**Question 2: Should the sponsor engage local stakeholders to agree design principles for the airspace change?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes. Most design principles are generic and should be established at a policy level (eg height based priorities) but recommending wider engagement to identify additional principles for consideration is a sensible proposal to avoid surprise additions at a later stage.

However, expectations of what this stage could/should achieve must be managed, in particular:

### **Gaining agreement for principles**

We have to accept that even at the point of setting out design principles, stakeholders can hold legitimate views which are different and in some cases mutually exclusive. As such we do not believe that an airspace change sponsor should be required to 'agree' design principles with local stakeholders. Engagement at this stage should require that the sponsor is able to demonstrate that engagement of an appropriate nature and scale has taken place and that the views of stakeholders have been considered in documenting the proposed design principles. It would then be for the CAA to agree the design principles before a change advances through the staged airspace change process.

### **Risks associated with fixing design principle before relative impacts have been determined**

Ruling in or out specific design requirements which preclude certain solutions/options is risky if done at too early a stage. This is because establishing these key parameters on limited evidence and with limited engagement with a subset of the wider stakeholder group may mean that potentially good ideas are lost on the basis of individual points of view.

For example, consider respite routes. Stakeholders under the existing flight concentrations are most affected and therefore tend to be those who are active through pressure groups and consultative committees/forums. These stakeholders are often in favour of respite routes as it relieves the impact of the flight concentration on their area, but these solutions will usually mean spreading noise over different areas.

However, the stakeholders who would be affected by spreading noise over a wider area are less likely to be engaged/represented/motivated at the early stage of the process because the extant airspace does not affect them significantly. Early engagement has the risk of this in-built bias that needs to be managed carefully. The risk is that opposition to the principles may only be exposed at a later stage when the process goes to wider consultation.

NATS would suggest that this stage should involve identifying design principles with stakeholders and determining their views on relative priority, but should stop short of ruling any solution in or out.

NATS does support the principle of early engagement and would suggest that the process is flexible to allow for the formal consultation to occur earlier in the process. This would ensure that the wider stakeholder group are engaged as early as is practicable (including those who are potentially newly affected as per the example above). This could be achieved through “design envelope” consultation as discussed in appendix A.

**Question 3: What types of data would you find it useful for the sponsor to provide when engaging local stakeholders about design principles? How should this data be presented?**

There will be limited information available regarding the design options at this stage as the design process will not have begun in earnest. Sponsors should provide:

- Statistics/diagrams showing the current status
- Air traffic demand forecast for growth
- Anticipated generic benefits and consequences
- Design requirements such as dimensions of airspace likely to be required and general use principles (separation, distance for containment etc.), SID design PBN restrictions, metrics considered for use, safety issues, noise descriptors and impacts at an industry wide CAA agreed level for local communities.

**Question 4: In addition to specific detail, what general background information would you find it useful for the sponsor to provide as context for its proposals?**

It is important for sponsors and stakeholders to have a common understanding of the governmental/regulatory/European/Legal context with respect to airspace modernisation. This context should be provided by government and/or the CAA in a form that is accessible to the wider stakeholder audience. Clarifying the national policy and economic case or change will simplify the

airspace change process by ensuring it remains focused on the change rather than policy. Providing this clarity would also represent an improvement in transparency.

**Question 5: Overall, will Stage 1 improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**Please give your reasons and any other views on Stage 1.**

Don't know

We have marked this "don't know" because it depends on how it is enacted. We are for greater stakeholder involvement from the outset but stakeholders' expectations on what is achieved at this stage must be managed: this stage should not constrain the design to specific solutions as discussed in Question 2.

We also note that for major airspace changes the estimate of 1 month FTE cost is a gross underestimation. Major changes will involve many stakeholders across a number of disciplines and geographical locations. Collating opinion, documenting, reviewing and agreeing the position will be a significant task. If the changes are in contentious areas this exercise could trigger a public reaction that would require resource/cost for both sponsor (either directly or increased 3<sup>rd</sup> party contractor costs) and the CAA.

**Question 6: Will introducing the options appraisal we propose improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**If so, should this initially be a 'full' or 'indicative' options appraisal? Please give your reasons and any other views on options appraisal.**

Yes

The positive aspect is that the options appraisal which is already undertaken by NATS is not currently exposed to regulatory scrutiny until the formal assessment stage. A formal framework and earlier regulatory assessment of this work will be of benefit to sponsors as it will give confidence that the design decisions being made are in line with regulatory requirements before investing in the following stages of the design.

The process should be flexible to allow for either a full or indicative approach to be taken depending on the circumstances of the change. For a change with relatively few dimensions, for example replication of a single route full appraisal may be possible and appropriate. However, for large scale and complex proposals it can only be indicative.

NATS has been criticised in the past for determining the options in advance of consultation on large scale complex changes - with accusations of consultation being a "done deal" (ref to TCN in 2008). In response we have developed and utilised the "design envelope" consultation methodology used for the network elements of LAMP Phase 1a which brings the wider communities (not just a selection of individuals who may or may not be representative – see Question 2) into the design process at an earlier stage, and before detailed option assessment.

NATS would seek a process that maintains the ability to take this approach for network proposals which are characterised by change affecting a number of routes into and out of neighbouring airports, generally above 4000ft, and which are dependent on one another (ie so options for 1 route will impact the possibilities for the other routes). Further discussion of design envelope consultation methodology is provided in Appendix A.

**Question 7: Overall, will Stage 2 improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**Please give your reasons and any other views on Stage 2.**

Don't know

We have marked this as "don't know" because while some elements of Stage 2 are generally positive, it will not be an improvement *if* it impacts the sponsor's ability to tailor the design process to the circumstances and undertake an early 'design envelope' consultation where appropriate.

**Question 8: Would an independent third-party facilitator make a sponsor's consultation more effective?**

Yes ☐ No ☐ Don't know ☐

**If so, should a facilitator be a mandatory requirement for certain types of airspace change? Please give your reasons and any other views (including benefits and disbenefits) on facilitators.**

No.

It is not clear how this would work or be perceived. If the sponsor appoints and remunerates a third party facilitator it is questionable whether their independence would be recognised. If the third party facilitator was voluntary it must be assumed that they would have a vested interest to make it worth their while and therefore not truly independent.

The NATS position is that the CAA should be the independent presence in the process. It is recognised that not all stakeholders currently see the CAA as independent; however the whole point of the new guidance is to assert this independence. Once that is achieved NATS would suggest that the CAA are the only party that have: 1) sufficient interest to be involved whilst being independent in its constitution, and 2) the technical knowledge to be able to facilitate effectively where there are complex issue being considered.

The above comments also apply to the question of a separate oversight committee.

Note that NATS is in support of using third parties to test the consultation material for accessibility, however this is different to the proposed process which gives a third party a more formal role in moderating during the consultation which raises the independence issue discussed above.



**Question 9: Should the CAA publish all consultation responses in full, except to moderate them for unacceptable content?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes – with redaction only for personal/commercially sensitive/anti-competitive information. Care will have to be taken that the redaction process doesn't become a limiting factor in large scale consultations with tens of thousands of responses.

**Question 10: Should the CAA publish airspace change consultation responses as they are submitted, rather than at the end of the consultation period?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

No – as early publication may prejudice the opinion of other stakeholders that is not the true basis or cause or actual experience, thereby harming or misleading the outcome.

We believe that the responses are best published as a body of evidence of so that those with an interest can see and consider the full range of opinion that has been expressed. As such we believe all consultation responses should be made available at the same time at the conclusion of the process.

**Question 11: Should consultation responses be made solely through the online portal?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes – NATS believes that the availability of the web and the widespread use of computers across the population means that it will be open to all but a few, and even those few would be expected to know someone who could help them submit a response if unable (eg at local libraries).

NATS view is therefore that the formal requirement should be online consultation, but note that would not prevent individual sponsors from allowing different methods of response if they considered it appropriate for their communities and the particulars of their proposed change.

**Question 12: Do you think that the consultation process proposed in Stage 3 achieves the right balance between fairness, transparency and proportionality?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Don't know, because the answer is different depending on whether you are considering fairness transparency or proportionality.

Subject to the comments that we have made to previous questions, and in respect of fairness and transparency it does strike an appropriate balance.

However, In terms of proportionality, it is difficult to conclude as there is insufficient detail. In principle the proposal seems fine; however there are some more involved questions as to how things would work in practice which will define the scale of the consultation activity. For example:

1. The proposal references the potential need to contact individual properties. The guidance should clarify the circumstances in which this would be required as there is likely to be a mismatch between what is practical and cost effective and what local communities would ideally want.
2. Responding to stakeholder questions. Previous consultations (in particular TCN in 2008 which gained 15,000 responses) have shown that individually replying to all questions can become untenable, and may even open the process up to spoiling tactics. Of course NATS fully supports answering questions where consultation material is unclear or incomplete and for smaller consultations would seek to respond to individuals. However, for larger consultation where responses measure in thousands we would not suggest that it is proportionate to individually answer queries **on elements of the proposal that are appropriately covered in the published material, or on issues not directly related to the subject of the consultation.** As an alternative we would seek to create and maintain FAQs on the portal, providing answers in a forum where they can be shared by everyone.

In both cases NATS would wish to see more detail of the CAA expectations before we could comment on the proportionality of the proposed process.

<p><b>Question 13: Overall, will Stage 3 improve the airspace change process?</b></p> <p>Yes <input type="checkbox"/>    No <input type="checkbox"/>    Don't know <input type="checkbox"/></p> <p><b>Please give your reasons and any other views on Stage 3.</b></p>
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Don't know

The overall principle of a CAA role in overseeing a consultation is a good step forward which NATS fully supports. Having the regulatory assurance that correct process has been followed before investing in following steps is something that is missing from the extant process.

Answering the question whether it is overall an improvement will depend on the details which are not included in the proposal – hence our answer “don’t know”. NATS supports the principle of more and better engagement both through consultation and the design work that is undertaken before and after. However, the process must strike the right balance so that stakeholders are given an appropriate opportunity to contribute whilst remaining practical and cost effective; there is a risk that if it slows the process or increases the cost disproportionately it may put the business cases for airspace modernisation at risk (these may be NATS business cases, or those for airports) and thereby increase costs for sponsors and/or make 3<sup>rd</sup> party suppliers less competitive in the open market.

Additional points:

1. We do not support proposal for a role for a third party facilitator or oversight committee in the consultation (see Q 8)
2. **Stakeholder Obligations**



3. NATS proposes an additional CAA role in Stage 3: the CAA is expected to ensure that the information put into the public domain by the sponsor is based on robust evidence, is clear and factually correct – they should also ensure that the same standards are applied to information introduced by stakeholders. This should ensure that the ‘trust’ element as discussed by the CAA in 3.24 is preserved and not inflamed by incorrect, misleading or ambiguous information from stakeholders with little or no technical knowledge, or from those who would gain/loss from an ACP being implemented. It is not practical for the CAA to review all material in the public arena, but should be in position to make public statements to clarify their position on incorrect, misleading or ambiguous information presented by either sponsor or stakeholder, where it is brought to their attention.
4. We do not have experience of citizen space and so do not yet understand the cost implications of doing so. In particular, we would like clarity on the licencing requirement for this software, especially whether sponsors would be required to maintain a licence or whether the CAA licence would cover sponsor use.
5. While we are happy to use a CAA portal, as the repository for documents and to collate and manage responses, we would wish to retain the flexibility to use new and innovative techniques to communicate complex information (interactive maps, video or even online design tools). NATS has yet to use citizen space or the online portal and so we are not able to comment on whether it has this flexibility.

**Question 14: Should sponsors be required to adhere to a standard template for their airspace change submissions?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes in principle. NATS already use a template which has been developed over a number of years. We would be happy to adopt a new standards template. However, the template must have the flexibility to accommodate complex multi-agency proposals.

NATS worked with the CAA to develop the “adaptive process” for such changes in 2012. This work aimed to identify a way of meeting the extant CAP725 process that allows for phased consultation and ACP submission for different ACP modules sponsored by NATS and/or airports (who have different investment cycles and who are in direct competition with one another).

This process defines a modular ACP and phased implementation process to overcome the practical difficulties where disparate competing organisations must effectively collaborate to achieve airspace modernisation. This is documented in the CAA file system at CAA ERMS ref 290464110.

This approach was partially used for LAMP1A as it involved submissions from NATS, London City and Stansted. The ACP was submitted in a modular form that allowed as much independence as possible between each organisation’s contribution, whilst also painting a picture of the overall, combined impact. LAMP Phase 1A did not, however require the phased implementation detailed in the adaptive process work.

The outstanding requirement to modernise the London TMA will mean that this “adaptive process” or something similar will be required in the future and so any template will need to bear this in mind.

**Question 15: Is it reasonable for the CAA to publish a redacted version of the submission, with commercially sensitive details removed, as soon as we receive it, before we have assessed and decided upon it?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes, as long as:

Personal and commercially sensitive information (including safety data) is redacted

The CAA has safeguards to ensure that early publication does not open the decision process to undue influence by short term political pressures or vocal minorities.

**Question 16: Overall, will Stage 4 improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**Please give your reasons and any other views on Stage 4.**

Yes – in particular the CAA review of the design process post consultation as this will reduce the risk that the sponsor commits the significant investment in preparing and submitting a proposal, where there is already a flaw in the process which will prevent it gaining approval.

In the current process these flaws may not be exposed until the formal assessment.

Given that the CAA will review the information at this stage we are unclear why this stage is not a defined ‘gateway’.

**Question 17: Will introduction of a new Public Evidence Session improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Don't know. NATS has no issue with a public evidence session in principle, however whether it is an overall improvement to the process depends on its impact on the decision making process, hence we have marked this “don't know”. In particular we would seek assurance that it does not increase decision timescales, and that the CAA will have safeguards to ensure that the decision process remains balanced, rational, and not unduly influenced by short term political influences or vocal minorities.

We would seek assurances that this stage is specifically an opportunity for stakeholders to state their case, to ensure that the CAA have sufficient clarity of information upon which to taken an

informed decision. We seek assurance that it is not a forum where parties expect to cross examine – it is for them to clarify their evidence for the purposes of the approving officer(s).

Challenges on the evidence presented in the ACP submission will be likely especially in terms of safety redactions. We would seek assurance that the CAA redacted information will remain confidential throughout the process.

NATS would like to point out that the CAA appears to have left room for verbal communications in the 14 day rules which we are sure they do not intend.

**Question 18: Is Step 5B (CAA decision) a clear and transparent way of making an airspace change decision?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes, NATS and stakeholders would benefit from more clarity around the decision making criteria so that designs can be tailored and expectations managed. It is vital that issues that the CAA will deem a significant blocker to approval are highlighted early in the process.

For example in the LAMP 1A proposal, all issues had been addressed to the satisfaction of the case officers and CAA management team. However, the final director level of the approval process identified a localised issue relating to a small piece of airspace over the Isle of Wight as being decision critical, effectively holding the whole proposal to ransom over the solution. If such issues are to be considered critical, the process must ensure that they are highlighted as they arise and not at the final stages of decision making.

**Question 19: Overall, will Stage 5 improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**Please give your reasons and any other views on Stage 5.**

Yes, as long as it is time-bound and does not significantly increase the length of time currently allocated to decision making.

We note that the consultation document does not appear to establish the maximum timescales within which the CAA would be expected to take a decision. We note that, by way of example, the land use planning system requires the approval body (local planning authority) to take a decision within defined timescales and that failure to take decision is de-facto grounds for an appeal by the applicant. We would ask the CAA to look closely at this issue, at all gateways, with a particular emphasis on Stage 5.

**Question 20: What are your views on our proposal not to introduce an appeal against process irregularities into the airspace change process?**

NATS supports the CAA's proposal not to introduce an appeal process for the following reasons:

- there is no value in asking the CAA to review its own processes
- judicial review processes remain available
- the new process includes a number of gateways for approvals and validation which provide more opportunities for challenge during the process when sponsors still have the opportunity to respond to legitimate challenges through redesign
- the appeal process may delay the implementation by up to year making planning for implementation impossible. NATS has a crowded schedule of system changes (of which airspace is only one element). Implementation has an impact on service provision due to training requirements and run in periods and therefore implementation slots are limited and scheduled well in advance. The only practical way of accommodating an appeal process of up to 12 months without introducing risk to the whole schedule would be to plan implementation assuming a 12 month delay for appeal processes.

**Question 21: What types of data would you find it useful for the sponsor to provide, and in what form, when seeking feedback for its post-implementation review?**

NATS would always seek to replicate any analyses undertaken in the development of the proposal using actual post implementation data with the aim of showing that claims were justified. We would not support introducing new metrics or measurement for the post implementation review.

**Question 22: Overall, will Stage 7 improve the airspace change process?**

Yes ☐ No ☐ Don't know ☐

**Please give your reasons and any other views on Stage 7.**

Yes. NATS welcomes the greater clarity that Stage 7 provides. However we have some concern regarding 4.125. This value that this would add is questionable as communities overflowed more will be likely to raise their issue, often through organised campaigns, whilst those not impacted will be unlikely to contribute. NATS has concerns that this could be construed as some form of re-consultation and encourage vociferous minorities to lobby to reverse changes. The PIR process should be to test whether the prediction of benefits and costs in the ACP have been borne out and so it should be data driven rather than being a test of public opinion that will have an inevitable negative bias.

NATS would be keen to understand to work through case studies to see what the proposed process would mean in practice. The CAA should provide examples using recent changes as case studies (ie if the Gatwick PIR was run with this requirement what would "the manner instructed by CAA at the time" have looked like).

As per Q13, we would expect the submitted and published materials published by stakeholders on the online portal or otherwise, to be subject to the same scrutiny as those provided by the sponsor to ensure that all parties meet the required standard of rigor.



**Question 23: Overall, will the airspace change process proposed in Chapter 4 achieve the right balance between fairness, transparency and proportionality?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Don't know

For the most part the process is a clear step forward that NATS supports, however there are a number of points of clarity that we require before we can determine the practical implications of the changes. Some relatively small parts of the process description could have the most significant bearing on timescale and costs, which in turn could influence the ability of industry to invest in airspace modernisation (see answer regarding proportionality to Question 12).

We would like to see more of the process illustrated through practical examples – either real or fabricated – so that there is clarity on the expectations for sponsors. NATS would be happy to support the development of practical examples to help inform the next phase of the proposal development.

**Question 24: Should the CAA set up an Oversight Committee?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer, including what benefits or drawbacks it would deliver compared with the proposed process.**

No. The NATS position is that the CAA should be the independent presence in the process. It is recognised that not all stakeholders currently see the CAA as independent; however the whole point of the new guidance is to assert this independence. Once that is achieved NATS would suggest that the CAA are the only party that is independent in its constitution, politically unbiased, and which has the technical knowledge to be able to facilitate effectively where there are complex issues being considered.

**Question 25: Are there any other areas where the CAA should provide guidance?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes.

NATS would wish that all guidance is illustrated with practical examples of all kinds of changes so that there is complete transparency and minimal risk of misinterpretation by either sponsors or stakeholders.

Also:

- Best practice options appraisal guidance specifying methodologies for assessing all impacts not just monetising them
- Best practice guidance on consultation change log
- Guidance for change sponsor on managing and dealing with questions and queries in the portal

- Publication of submission – what can be redacted
- Role of the change sponsor in the Public Evidence session
- Post implementation review guidance
- Failure and overload of the portal
- Noise metrics and comparators
- Classification of responses
- Resolution of conflicts of interest. The CAA has acknowledged in the document (4.47) that there may be a conflict of interests in certain airspace structures especially in the competitive environment of the LTMA. There could be competitive ‘bids’ for the airspace or refusals to amend procedures to support other airspace ACPs. NATS contend that although the CAA has acknowledged this complexity in 4.48 there needs to be consideration of the overall efficiency of the airspace structure in support of a hierarchical overarching review as opposed to a simple monetising, environmental or similar measurement. There would also need to be a mechanism to enforce changes in other airspace structures or procedures if required to support an ACP provided appropriate discussion between competing sponsors cannot be resolved through discussion.

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**Question 26: Does Table 5.1 give sufficient clarity and detail of how the process will be scaled?**

Yes ☐    No ☐    Don't know ☐

**Please give reasons for your answer.**

No

NATS has a number of concerns

### **Timescales**

Decision timescales are discussed in step 5B, referring to decision in “at least 16 weeks” for level 1 and “typically 16 weeks” for level 2. These do not define a maximum decision timescale which will create problems establishing implementation dates. As discussed under Question 20, the dates for implementing major changes are often not flexible. They become more inflexible as implementation approaches because other changes will be programmed in around them. Missing an implementation date is not simply a case of choosing the next AIRAC instead. NATS therefore needs the process to be clear about maximum decision timescales to enable implementation planning.

(The issue with implementation inflexibility has been illustrated recently by the LAMP Phase 2 changes. These changes were delayed as a consequence of the uncertainty around the DfT guidance, and as a consequence the planned implementation slot becomes unworkable. On its own the guidance change added c.1-2 year to the airspace design process, however, because the following implementation slots were packed with system developments for the deploying SESAR, the result has been a much longer delay to the LAMP Phase 2 programme – delaying it by 2-4 years.)

### **Consultation expectations**

Note on Step 1A and Sept 2A: the level 1 box suggests engagement with communities affected. This should be clarified as community representatives so as to manage expectations.

### **ANSP consultation**

The consultation boxes do not reference ANSPs. It is vital that the CAA should specifically ask the sponsor whether any other ANSP has to undertake work to enable the implementation of the proposed change. This must be a consideration from the outset and an ongoing consideration throughout the process. If so they must be required to provide evidence that the 3<sup>rd</sup> party ANSP has been engaged and is willing and able to facilitate the proposal before the decision on implementation dates is finalised.

It is not suggested that affected ANSPs have a veto, but given that they may be required to invest in the implementation of changes it is suggested that there should be clear requirements about engagement with them. Early co-ordination of implementation dates is important because even if an ANSP does not object to the proposal, there may a host of actions that have to take place just to implement the change. The sponsor of the change may not be aware that these actions are necessary.

In the case of an impasse, where sponsor and 3<sup>rd</sup> parties cannot cooperate the CAA should consider how it would arbitrate (this is a plausible scenario as competition between airports increases, and particularly where routes for new runways at one airport impact the routes at its local competition).

This has been partially captured in the recent administrative update of CAP 725 (para 2.4 and 4.14) and it is important that these are reflected and made clearer in the new process as it is vital that all the practical implementation considerations are factored in from the earliest stages, and throughout the development process, to ensure that planned timescales consider ANSP constraints. This requirement should also apply to RCSA changes.

**Question 27: Do you have (i) any views on the way the Levels are categorised in Table 5.1, (ii) alternative suggestions as to how we might categorise different airspace changes, or (iii) other views about the proposed scaling of the process generally?**

The description is missing any reference to replication.

The CAA have previously published "Guidance on PBN SID Replication for Conventional SID Replacement" which implicitly recognises that changes aimed solely at modernising conventional route structures are a special case, the replication principles have also been applied when considering some arrival changes (Bristol and London City).

The background to this policy was discussion through FAS Forums about the scale of change required for PBN modernisation. There was concern that because the extant CAP725 process required consideration of options, PBN modernisation would have to consider options in all cases. This would mean that when simply seeking to modernise the route, the sponsor would also end up having to consider realignment/redesign.

In principle this is not a problem, however, in practice realignment/redesign is a much bigger/more costly design objective than replication. In turn this would impact the individual business cases for modernisation and potentially delay investment in modernisation of some parts of the system.

Concerns were also raised about the CAA's ability to assess changes in a timely manner if all route modernisations became full blown ACPs. There are approximately 150 SIDs in the UK that requires modernisation and countless more STARS, holds and arrival transitions. If the CAA was required to regulate a full redesign process for each, each considering options, then there were concerns raised that the CAA would become the choke point for the modernisation programme (this will be exacerbated if proposals are concentrated in the year or two prior to the European IR as discussed for question 28).

**Question 28: Do you agree that the number of airspace change proposals put forward to the CAA is likely to increase in the future?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes. The EC implementing rule will place a hard target on ANSPs modernising their routes of which there are c. 150 SIDs and many more STARS/holds/transitions. In the UK this means NATS and the airport operators. While some airports may have a business case to push forward with modernisation in an earlier timeframe, it is expected that a significant number that do not have an immediate business need will delay investment for as long as possible. In addition the delay to the LAMP programme means that NATS will not be seeking the LAMP Phase 2 developments until 2022/23, and this is also the broad timescale for airport led airspace development associated with additional runways in the south east (subject to a government decision). This all leads to expectation of a 'bow wave' of proposals in the period immediately prior to the implementing rule coming into force.

Whilst the CAA proposal to increase its resource will address this to a degree, it is not match the expected 'bow wave' demand profile and so it is still not clear how the CAA will be able to manage this without taking an active role in scheduling changes.

**Question 29: Do you have any views about the CAA's interpretation of section 70 of the Transport Act 2000, as set out in Chapter 6?**

NATS has the following views.

#### **Impartial advice**

NATS welcomes the text in 6.14 which states the CAA will provide impartial advice to the sponsors prior to the proposal being submitted about how conflict could be minimised. We note that one potential result would be for the CAA to encourage the sponsor to engage further with affected parties which is sensible, however we would like clarity on what happens where the conflict is intractable.

For example suppose there is a clear choice between 2 routes with no further compromise available, and where each option is passionately supported/opposed by different stakeholder groups. We would like clarity as to whether the CAA's impartial advice would extend to indicating which option the CAA *would be minded to consider most optimal, should no further information come to light*. We understand that any such advice would be without prejudice to the final decision, which would be based on the formal submission and any additional information contained within, or gleaned through, the assessment process (for example during the public evidence session).



Such advice is particularly important for NATS as the proposer of network changes where multiple routes interact. For simpler changes – for example a single new route between points A and B, it may be feasible to submit a proposal with full detail for more than one option. This would mean that if the CAA determines that the proposed option is not the best balance of Section 70 objectives then the alternatives are also available for consideration without need for rework/delay. However a network proposal has more dimensions; for example consider a proposal including two routes that cross one another. With one option for each route there is only one crossing to be analysed, however if there are two options for each there are 4 possible crossing points. Network proposals have to consider multiple routes and so the permutations quickly reach a number where it is not practical to develop full detail for all.

### Efficiency of airspace

Para 6.24 proposes that all flights are considered equal and states that it is not technically feasible to measure the efficient use of airspace in terms of numbers of passengers. NATS contends that there should be a distinction between large commercial passenger flights and small recreational flights. For example, consider a portion of uncontrolled airspace within which there are currently 10 recreational flights per day. Should a proposal identify that this airspace could alternatively be utilised by 9 full commercial 747 flights per day, NATS would contend that there is a clear case for the most efficient use, and wider value to the national economy, to be from the latter even though the aircraft count is lower.

It is possible to make reasonable assumptions about the numbers of passengers on commercial flights and NATS contends that should be a factor in considering the efficient use of airspace.

**Question 30: Do you have a preference for either of the options for recovering the CAA's airspace change costs that are set out in Chapter 7?**

**Please give your reasons and any other views on how the CAA recovers its airspace change costs.**

NERL would like to emphasise that the CAA recovers a significant amount of money from airlines in for its activities in relation to air navigation services generally and airspace regulation specifically, whether directly through the UK Unit Rate or indirectly through CAA fees to NERL. In total, the CAA recovers c. £20m a year:

- c. £ 14m via the UK Unit Rate, of which £5-6m relates to airspace regulation specifically
- c. £4m via the safety licence fee, which includes some airspace regulation activity and
- c. £1m via the economic regulation fee.

NATS has experienced some delays in CAA's handling of some areas of airspace change proposals, which we assume has been due to increased demand and diminishing resources. Furthermore, as noted in Q28, NERL expects demand for airspace change to increase further. Therefore, we welcome the CAA's proposal to double its resources in this area, subject to the CAA being subject to clearer turnaround targets for reaching decisions in part 5B of the revised airspace change process (see response to question 26).

NERL supports that the appropriate mechanism for the CAA to recover its airspace change costs is to continue to use the UK Unit Rate.

**Question 31: In the short term the CAA will still have to set up a new statutory charge. On which entity would it be most appropriate to levy this charge? Please give your reasons.**

NERL strenuously objects to a new statutory charge being levied on it until 2020 to recover additional CAA costs relating to the revised airspace change process.

As the CAA notes, NERL already incurs costs as an airspace change sponsor. Further, it is in exactly the same position as the CAA in that the amount NERL receives from airlines is set until the next regulatory control period. Airports are likely to be in a similar position as well because this additional cost has not been anticipated in either their contracts with airlines, either commercially or through price control settlements.

If the CAA is concerned about the 'unfairness' or competition implications of only being able to levy this new statutory charge on UK airlines, then it should 'carry over' this cost until RP3, at which time it can then recover the 2016-2019 historical costs as well as the future 2020-2025 costs through the UK Unit Rate for RP3 on all airlines. In the interim, the CAA can either finance this cost through its own reserves or borrowing. Not only is the CAA likely to be able to find more favourable borrowing rates than private entities, as a UK Government regulator, but it could also seek to try and recover these borrowing costs through the Small Gaps FAS Facilitation Fund.

**Question 32: Are our proposed transition arrangements between the old process and the new process reasonable?**

Yes ☐ No ☐ Don't know ☐

**Please provide any further comments or evidence that would inform our proposed transition arrangements.**

NATS response

Yes

**Question 33: Are our timescales for introducing the new process reasonable?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

NATS response

Yes

**Question 34: Do you agree with the concept of an online portal?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

NATS response

In principle yes, however, the information must be monitored to ensure it is accurate.

**Question 35: Should the online portal contain any functionality beyond what we describe, or documentation other than that shown in Table B1?**

NATS response

- Overall time line/programme from start to implementation for the ACP
- Under 3C it would be good to see a heat map or other graphical representations showing the number of consultation response received and areas they are received from

It must be possible to export data from the system so that any new as yet unknown analysis requirements in the future can be undertaken without the need for system changes. Whilst the system should be the central repository for information we should not be completely tied to it – there should be the opportunity to export data, process in new ways, and then resubmit results for transparency on the portal.

**Question 36: What are your views on locating the sponsor's consultation on a CAA portal where the sponsor administers the documentation and responses?**

NATS response

In principle this appears acceptable, but at the time of writing NATS has not had practical experience of the system and therefore does not know its limitations. In the past NATS has categorised different consultations in different ways and/or used a third party organisation to independently analyse consultation responses. The latter is particularly relevant in large scale consultations where there may be tens of thousands of responses to categorise. The system must be flexible and complementary to the tools used by commercial consultation suppliers such as IPSOS MORI.

By stipulating one consultation supplier, Citizen Space, the CAA is committing themselves and industry to a monopoly supplier, who may not offer the best value for money or the best product in the future.

**Question 37: Is it essential that the online portal is a single website or could different websites (CAA, sponsor, consultation portal) be used for different aspects of the process?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

NATS response

NATS would wish to have the flexibility to link from the portal to/from its own website particularly because we are investigating innovative ways of communicating the complex concepts that lie behind airspace change proposals; it may be limiting to be tied to a particular website framework. We cannot predict what the innovations might be, it is not possible to illustrate this argument, however, maintaining flexibility is a reasonable requirement given today's pace of technological change.

**Question 38: Do you have any views on the CAA's analysis of the three options for an online portal, bearing in mind that the CAA will need to recover its costs through charges on those it regulates?**

Yes ☐ No ☐ Don't know ☐

**Please give reasons for your answer.**

Yes

NATS has experience of developing bespoke consultation support tools. In addition to the significant setup cost, given the pace of change of technology it is quite likely to get out of date and incur ever increasing support costs. NATS strongly supports an off the shelf solution with CAA and sponsor websites used to plug the gaps.

**Question 39: Is our assessment of the effects of the new process in Table D1 reasonable?**

Yes ☐ No ☐ Don't know ☐

**Please provide evidence of what you believe the effect will be on you, your organisation or on other stakeholders involved in the airspace change process, including estimates of the monetary costs and benefits where possible.**

No

Table D1 is reasonable assessment for a straightforward change proposal. However NATS suspects that the time and cost implications would be much more significant for a major network proposal involving multiple agencies over contentious environmental areas. NATS recommends that the CAA work through a number of detailed case studies with industry to identify how it would work in practice and what the costs might be.



**Question 40: We are interested in your views on the additional costs in terms of time and resources that the proposed process will create for all parties. We are particularly interested in estimates of the monetary costs and benefits to sponsors of previous airspace changes and how these would have been affected by the CAA's proposed new process.**

NATS recognises that the nature of upcoming changes and the increasing public desire for transparency and engagement requires some changes to the way in which airspace changes are developed. As such much of the proposed new process defines steps that NATS are already planning to take for future changes and are built into our model for the design process lifecycle. The proposed process is therefore generally welcomed as it will formalise and recognise these improvements.

The amount of additional time and cost in the process as a direct result of the proposed process will be dependent on:

- Flexibility to use design envelope consultation is key to NATS for network changes, in particular the next phase of modernisation for the London TMA
- The detail of CAA expectations on elements of the process, for example the circumstances in which the CAA would expect sponsors to contact individual properties in a consultation (see question 12 on proportionality)
- CAA timescales for decision making

## Appendix A

### **“Design Envelope” Consultation for Network Proposals**

The aviation industry has undertaken a number of public consultations in recent years for a range of different types of airspace change.

This experience has led to the development of alternative approaches to consultation depending on the nature of the change and the objective of the consultation.

#### **Consultation objectives**

Consultation is always about engaging stakeholders, but depending on *when* a consultation occurs in the airspace design cycle, the specific objective of the consultation may differ. For our, NATS-led consultations, the objective is typically characterised in one of two ways:

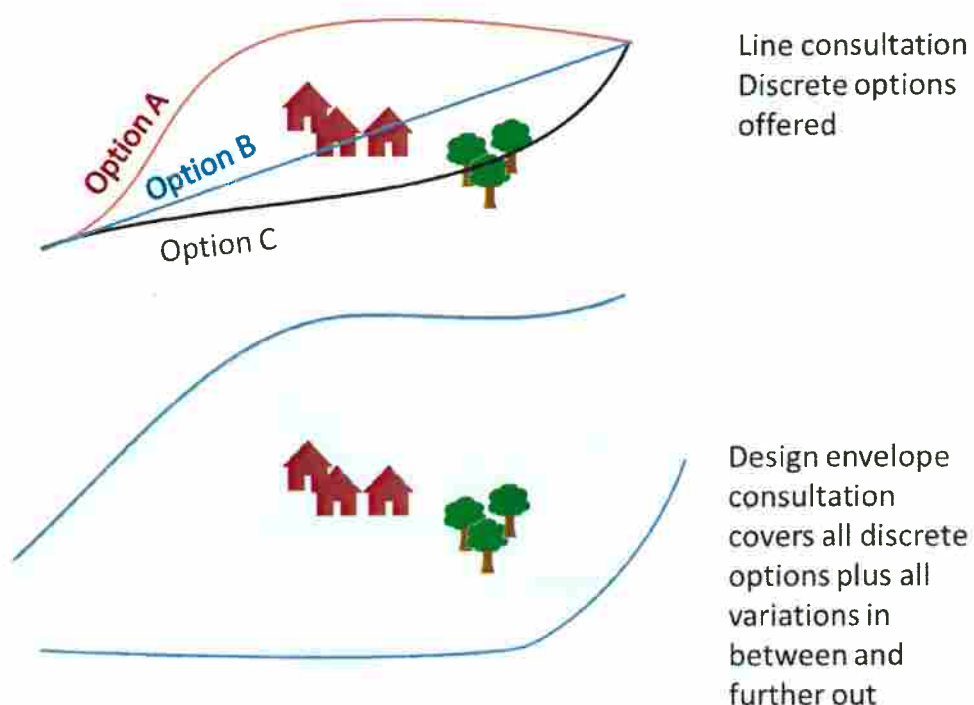
##### **Objective 1: Information Gathering**

In airspace terms we see this as finding out whether there are specific local criteria which should be considered alongside the national guidance and policy from the DfT and CAA.

The national guidance and policy provides the default objectives for airspace design, but the case-specific information that we seek to gather through consultation is important as it will help us develop options that are specifically tailored to local circumstances. For example a community of

local stakeholders may agree that avoiding rural areas valued for their tranquillity is more important than avoiding more populated urban areas.

For such information to be used in the ongoing design process it is important that consultation is early and broad, covering a wide range of possibilities. Therefore instead of presenting a limited number of discrete route options after detailed analysis has already taken place, an information gathering consultation would instead present the generic design envelope within which the solution could feasibly lie. In geographical terms this would be a geographic “swathe”, which defines an area within which the route must fall without committing to specific solutions. Because this can be done before detailed analysis it can be undertaken much earlier in the design process.



This type of consultation is referred to herein as design envelope consultation; note that it has previously been referred to as corridor or swathe consultation, but these terms are no longer being used by NATS to describe consultation methodology because they are also the names used to refer to specific airspace structures and so it can cause confusion.

For a design envelope consultation, stakeholders need to be given enough information to understand:

- if they might be affected, and if so
- what that **potential** impact would be (what is the worst case for those affected).

An information gathering consultation would be run early in the design process before detailed design options have been generated, and so there would be no specific lines presented. However we would ask a question about what is special about their locality with reference to worst case impacts (this is illustrated later)

## **Objective 2: Comparing options**

This is where a sponsor of a change presents discrete options for stakeholders to consider and choose between. As such it is suited to a line consultation as illustrated the diagram above). The key to this is identifying discrete options. For example in the diagram above the options each may be seen as being optimal for different reasons and may therefore present a reasonable set of discrete options to consider.

Defining a set of discrete options is however more problematical when considering wide-scale changes in a more flexible/complex design environment such as a network redesign.

In airspace design terms the 'network' is a term used by NATS to describe airspace where the design of low altitude routes in and out of airports start interacting with one another. Therefore the design of each route option may have an impact on the performance, or even the feasibility of some of the options for neighbouring routes. This means that individual route options are often not discrete from one another, and that the number of permutations for discrete packages of routes across an area is large<sup>1</sup>.

### **Comparing the consultation objectives/methodologies**

If Objective 1 is the aim then the consultation would be early in the process and be based on broad swathes which show where potential impacts may be. It would reference the default national policy/guidance and ask a question along the lines of "what local factors should be taken into account alongside the national guidance when determining the optimal design".

If objective 2 is that aim then the consultation is more towards the end of the design process, presenting discrete options with detailed impact assessments specific to those options. The focus of the questions would be "which of these options is optimal and why" and "how might the options be adjusted to improve the outcome".

Both objectives have benefits and drawbacks and each can be a valid approach for given circumstances.

### **Design Envelope Consultation method for complex network proposals**

For complex network proposals dealing with multiple route interactions, NATS believe that the formal consultation should be used to cast the net wide and gather information before detailed options are developed. The 'design envelope consultation' method has been developed to achieve this by presenting the range of potential impacts in terms of geographical areas overflown, noise/CO2 metrics and even operational impacts. Stakeholders are then asked to consider the worst case scenario in terms of potential impacts to their area of interest and respond to the consultation accordingly.

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<sup>1</sup> for example consider a proposal including two routes that cross one another and so each affects the others design and therefore impact. With one option for each route there is only one combination of impacts to be analysed, however if there are two options for each there are 4 possible crossing points. Network proposals have to consider multiple routes and so the permutations quickly reach a number where it is not practical to develop full detail for all.

In order to understand whether they will be affected and provide relevant feedback, a local stakeholder will in first instance need to identify whether they fall within the design envelope under consideration for the introduction of a new route. They then would make use of data provided in the consultation material (how many aircraft could be overhead, their potential height and how loud they would be) to estimate to what degree they would be affected.

The design envelope consultation provides this information through maps and supporting data. This method is illustrated in the LAMP phase 1 network consultation which is still available online at [www.londonairspaceconsultation.co.uk/?s=airspace112](http://www.londonairspaceconsultation.co.uk/?s=airspace112). Future consultations would seek to improve on this consultation, in particular around the accessibility of information; however, this demonstrates the basic principle of the design envelope consultation methodology.

### **Design envelope consultation and options development**

Before a design envelope consultation can commence it is necessary to undertake sufficient design work to establish the design envelope (which defines the range of potential impacts). This may involve developing illustrative designs to enable modelling, but these illustrative designs would not be presented in the consultation. This is because presentation of any discrete design options, even if clearly highlighted as illustrative, will prejudice consultation response.

This view is based on anecdotal experience: even where presenting a wide geographical area where impacts may be felt, if there is a line shown within that area, then stakeholders beneath the line are more likely to assume that they will be more impacted and respond. Conversely, even if the line is marked as illustrative those that are offset from the line are less likely to assume they will be impacted and respond - even if they are shown within a wider geographical area within which the route could be positioned. It is possible that stakeholders react to pictures rather than pictures in the context of the supporting text. This can be exacerbated if pictures are used out of context – ie reprinted in the media or on 3<sup>rd</sup> party website without all the supporting text.

The consequence is that the response design envelope consultation can be biased by the inclusion of illustrative options.

When utilising a design envelope consultation methodology, the detailed options development and appraisal would follow formal consultation. Should the detailed work highlight impacts that were outside the design envelope that was consulted on, then formal re-consultation would be required. Any re-consultation would have to cover the revised design envelope to ensure that stakeholders have a chance to provide information relating to all impacts.

If the options all fall within design envelope options then further consultation would not be undertaken. We would still undertake informal engagement following the detailed options appraisal stage so that key representative stakeholders (identified through the design envelope consultation) could be involved in determining the optimal option. We would seek to achieve this through targeted focus groups rather than further formal consultation.

Transparency of the final design and the detailed options considered would be provided through online publication (through the CAA portal), and the public evidence session would offer a further opportunity for community engagement.



### **Adaptive ACP process**

Note that the design envelope methodology also has a very important practical application with respect to developing network airspace changes that impact a number of different airports, and which have a phased implementation timeline. These developments face practical difficulties because they involve neighbouring airports that have their own investment plans and which are direct competitors to one another. Such changes will include PLAS, LAMP Phase 2 and changes for additional runways as these will require intercompany collaboration.

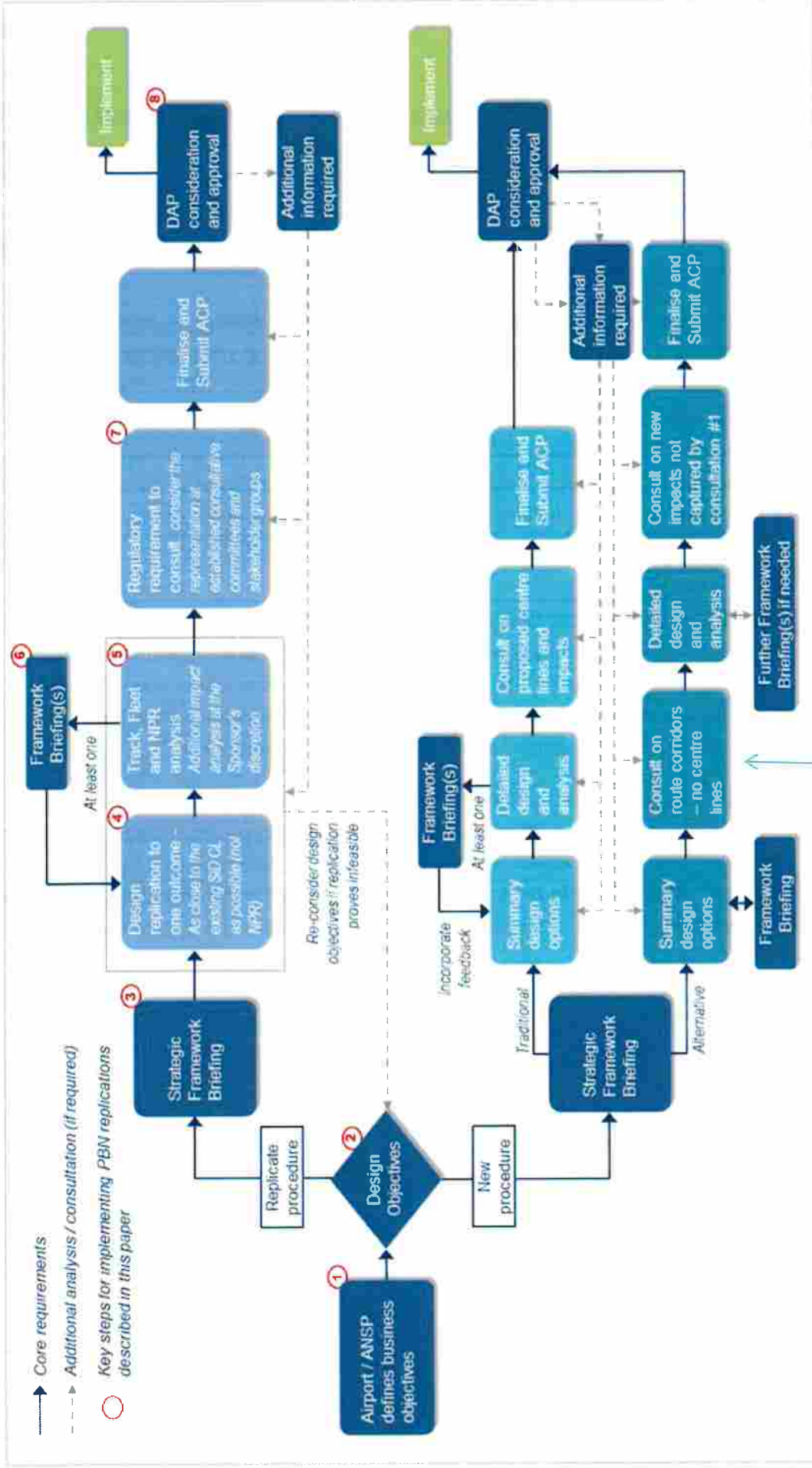
NATS worked with the CAA to develop the “adaptive process” for such changes in 2012. This work aimed to identify a way of meeting the extant CAP725 process that allows for phased consultation and ACP submission for different ACP modules sponsored by NATS and/or airports. The design envelope methodology is an important part of the resultant adaptive process as it maintains design flexibility for the network whilst local solutions are being developed by the airports. This is documented in the CAA file system at CAA ERMS ref 290464110 – note that in this documentation the design envelope consultation methodology is referred to as swathe consultation.

### **Keeping options open**

Whilst NATS would suggest the design envelope consultation method for complex network changes, we recognise that a line consultation after options appraisal may be appropriate in some circumstances. This is particularly for the less complex proposals where there is a natural limit to the number of sensible options (examples are the recent SID changes at Luton and the RNP routes at Stansted where the local geography pointed to clear optimal solutions).

NATS therefore suggests that the CAA proposal for CAP725 is designed to have the flexibility to position formal consultation at different stages of the design cycle depending on the particular circumstances. This would be similar to the SID redesign process produced by the Future Airspace Strategy (FAS) SID task force in 2013 (which involved the CAA) which describes two separate approaches to design and consultation. An extract from this process is shown overleaf.

### 3. Process for Implementation of PBN SID Procedures in line with CAP 725







**CAP 1389****Consultation on proposals for a revised airspace change process****Comments by****Stephen Turner MA, MSc, HonFIOA****1. Introduction**

- 1.1 This document provides my comments on the above consultation. I recognise that, at paragraph 1.11 of the consultation document, the CAA would prefer that the responses are made on-line, providing answers to the specific questions set out. However, there did not seem to be any way of providing comments on Chapters 1 – 3 of the consultation document through that means. Consequently, I am providing a self-contained response with all my comments.
- 1.2 My area of interest is noise, and I have been working in the field of acoustics and noise management for nearly 39 years. For well over 30 years I have worked on the monitoring, assessment and management of aviation noise related to many airports including, London Heathrow, London Stansted, London Luton, London Gatwick, London City, London Ashford Airport (Lydd), Birmingham, Liverpool John Lennon and George Best Belfast City. That work has also involved the preparation and presentation of expert evidence. This included the Public Inquiries regarding Heathrow Terminal 5 (1997) and the Stansted G1 (2007). For about 10 years, I was the noise consultant for London Luton Airport (c2001 – 2011).
- 1.3 In 2006 – 07, I was one of the so-called Non Stated Preference peer reviewers of the Department for Transport's (DfT) study entitled: Attitudes to Noise from Aviation Sources in England (ANASE), and I am currently involved in various aviation noise peer review work.
- 1.4 From 1999 – 2015, I provided day to day technical support to the Noise and Statutory Nuisance unit of the Department for Environment, Food & Rural Affairs (Defra) and, occasionally for other Government departments (OGDs), including DfT. For four years between 2011 and 2015 I fulfilled that role as a Civil Servant. That work included providing technical input to a wide range of specific and strategic policy issues, and liaising with OGDs, Local Authorities,

the European Commission and the European Environment Agency. (1999 – 2015).

- 1.5 During that time, I was closely involved in the drafting of the Noise Policy Statement for England (NPSE); and the noise elements of the English National Policy Statements for Major Infrastructure Projects, the National Planning Policy Framework (NPPF), the Planning Practice Guidance on noise (PPG(N)) and the Aviation Policy Framework (APF).
- 1.6 I am an Honorary Fellow and former Vice President of the Institute of Acoustics and I currently Chair the British Standards Institute Committee (EH/1/2) which deals with transportation noise.
- 1.7 On leaving Defra in January 2015, I set up Stephen Turner Acoustics Limited and now work as an independent acoustics consultant.
- 1.8 The comments below are mine and are not to be regarded as being on behalf of any organisation.
- 1.9 The comments are presented in tabular form, showing the relevant Paragraph or Page number from the consultation document, the Issue and my observation or comment.



## 2. Comments on Chapter 1

2.1 My comments on Chapter 1 are shown in Table 1 below:

**Table 1**  
**Comments on Chapter 1**

Paragraph / Page No.	Issue	Observation / Comment
Page 4, 2 <sup>nd</sup> para	However, this consultation is not about government policy, which is not a matter for the CAA.	But the proposals must take account of and implement Government policy
1.5	Often there are differing requirements and conflicting interests between different groups of stakeholders. When this is the case, section 70 requires us to apply its provisions in the manner we think reasonable, while having regard to them as a whole.	Throughout the document, reference is made to the possibility of there being an Independent Aviation Noise Authority (IANA). In this context, is there a role for IANA to confirm or otherwise whether the CAA has been reasonable?
1.7	Your comments will help us to design a fair, transparent and engaging process for handling airspace change proposals, striking the right balance between the interests of passengers and the aviation industry (including private flyers), and people affected by aircraft noise and emissions that impact on air quality (and, more widely, climate change).	On noise the <b>objective</b> should align more overtly to the overarching Government policy on noise as set out in the Noise Policy Statement for England (NPSE) and not just the Aviation Policy Framework (APF).
1.19 and 1 <sup>st</sup> bullet	Policy areas where there could be a <i>knock-on impact on the CAA process</i> : Changes to the statutory guidance which the Secretary of State gives the CAA on how it should take environmental impacts into account (see Chapter 2). This includes, by way of example: the policy objective to limit and where possible reduce the number of people in the UK significantly affected by aircraft noise;	The approach to airspace change should also reference the 2 <sup>nd</sup> and 3 <sup>rd</sup> bullet points of the aims of the NPSE. In my view, one of the reasons why there have been the issues with airspace change is that there seems to have been a focus on just 'significant impacts'. Whereas those affected are worried about adverse impacts (as mentioned in the 2 <sup>nd</sup> aim of the NPSE). Ironically, within airspace change, the 3 <sup>rd</sup> aim of NPSE is implemented at times, but it is not overtly referenced.
1.19 4 <sup>th</sup> bullet	Whether changes to flight paths where the 'notified' airspace structure is unchanged are subject to an approval process	It is questionable whether such exemptions to the approval process should continue given that any change in flight path could change the noise impact. This review could be an opportunity for noise to be properly and proportionately considered for every change and avoid some of the recent issues that have arisen.
1.19 7 <sup>th</sup> bullet	The standard metrics for quantifying the amount and level of noise	Here is an opportunity to move away from just using standard metrics, and instead to consider using metrics that best describe the impact and likely effect, as required by Government policy.

### 3. Comments on Chapter 3

3.1 My comments on Chapter 3 are shown in Table 2 below:

**Table 2**  
**Comments on Chapter 3**

Paragraph / Page No.	Issue	Observation / Comment
3.5 and footnote 7	A more efficient route structure reduces emissions and gives aircraft the potential to climb faster, thus also reducing the area in which people are expected to be significantly affected by noise. <i>(Footnote 7) The definition of the area in which people are expected to be significantly affected by noise can be found in the Government's Aviation Policy Framework 2013.</i>	The statement in the footnote is not correct. Presumably it is making reference to Paragraph 3.17 of the APF which states: <i>We will continue to treat the 57dB LAeq 16 hour contour as the average level of daytime aircraft noise marking the approximate onset of significant community annoyance. However, this does not mean that all people within this contour will experience significant adverse effects from aircraft noise. Nor does it mean that no-one outside of this contour will consider themselves annoyed by aircraft noise.</i> The APF does not define the area where people are significantly affected by noise
3.25 – footnote 10	Noise Preferential Routes are not decided by the CAA, but are the remit of the Secretary of State (SoS).	Is this statement accurate? SoS has a role for the designated airports. From the following comment on the CAA web site - <i>Complaints or comments about NPRs should be addressed to the Secretary of State for Transport for issues at Heathrow, Gatwick or Stansted and to the airport itself for other locations</i> - the responsibility for their design etc. seems to be for the airports themselves except for the designated airports. It would help if the applicable legislation was made clear on this point.
3.30	Helios also commented on a lack of information on the Government's strategic priorities for airspace policy, and on factors relevant to flight paths and noise which fall outside the airspace change process but which affected stakeholders (particularly communities) saw as part and parcel of the same problem.	Although the Helios report states that they reviewed the NPSE, with respect to noise, the Government's desired outcome with regard to noise is clearly stated in the NPSE.
3.30	Helios also noted that unlike other planning processes, there was no appeal mechanism other than judicial review.	True – might this also be a role for IANA?
3.31	Helios recommended that the CAA seek greater clarity and guidance from the Government on policy and strategic priorities associated with airspace change.	Presumably this is about such issues as concentration vs. dispersion. Arguably that is not the judgement that needs to be made <i>per se</i> . The NPSE makes clear what the noise outcome should be. That could be achieved by concentration or dispersion depending on the situation

#### 4. Comments on Chapter 4

4.1 My comments on Chapter 4 are shown in Table 3 below:

**Table 3**  
**Comments on Chapter 4**

Paragraph / Page No.	Issue	Observation / Comment
4.5	This includes new incremental sign-offs by the CAA at particular 'gateways' in the process, new evidence to be developed by the sponsor for the CAA to use in reaching its decision,	This new evidence should include a better noise impact assessment evaluating the impact of the proposed change against the NPSE. In addition, in order to assist the assessment process, the principles described in the Planning Practice Guidance noise (PPG(N)) could be used.
4.5	It should allow communities to see that their voice has a more formal place in the process, and it should help to rebuild trust of communities in sponsors and the CAA,	This proposal is good. Just like normal planning applications
4.7	By building this in to the new process in a more formal way than before we can ensure that we target the extra rigour on those airspace changes that really demand it, and avoid putting all changes through an unnecessary and disproportionate process.	I completely understand this philosophy, but with regard to noise, care must be taken not to fall into the trap of thinking that a small airspace change does not need an assessment. Any change could affect the noise impact and it is important that the effect is understood.
4.8	In order for the CAA to get this right, it is very important that sponsors and other stakeholders quantify for us what impacts our proposals will have, so we can take these into account. We are hoping that sponsors will recognise that while an expanded process may lengthen timescales and increase the resources required, it will, if designed properly, also reduce the risk of decisions being challenged because the process leading up to the decision has not properly demonstrated that it has taken account of the needs of those affected by the change. Such challenges could lead to the proposal being delayed or even withdrawn, as has happened in the recent past.	I believe this is key. A good, well thought through assessment, testing the impact against policy would increase the chance of the optimum outcome being found and reduce the risk of justifiable challenge.
4.32	The design principles encompass the safety, environmental and operational criteria and the strategic policy objectives that the change sponsor seeks to achieve in developing the airspace change proposal. They take account of Government policy documents (such as the Air Navigation Directions and environmental guidance) and any local criteria such as section 106 planning agreements or other planning conditions, and Noise Preferential Routes or other noise abatement procedures imposed on the airport by the Secretary of State.	This is where, for noise, account must also be taken of NPSE and the principles in the PPG(N)

Paragraph / Page No.	Issue	Observation / Comment
4.35	The design principles will be developed in a local context, in accordance with national policy. They might address local trade-offs that need to be made, for example by addressing whether aircraft should, as a priority, avoid flying over specific local parks or populations. Engagement should identify whether stakeholders can identify common priorities, although unanimous agreement on the principles will be unlikely.	This is good. It recognises the local context which, as can be seen, is an important element of Government noise policy.
4.47	There could be conflicts between the interests of sponsors, those affected by noise, or other airspace users such as General Aviation or the military. Greater airport competition, in particular between airports in the London area, could even result in competing bids for a given volume of airspace – or proposals to change the same volume of airspace in different ways. Given the commercially driven nature of such proposals, our consideration of the most efficient use of airspace would almost certainly need to incorporate the value to each proposer of the airspace change in question (which in turn should reflect the value to users and end consumers of the airspace change).	As this type of balance is at the heart of Government's noise policy, the proper application of the policy would mean that the balance is struck between the value of the noise making activity vs. the extent of the impact
4.48	Numerical values are not a substitute for policy direction as to which outcomes are important in the design of airspace – for example, whether a negative noise or carbon impact would prevent a change that would have a positive economic impact, is a determination that should be set in policy objectives.	For noise, the principles in judging this type of balance are already in policy (NPSE, National Planning Policy Framework (NPPF), PPG(N)). For example, in the PPG (N), it states that despite the economic benefit that might be derived from a proposal, noise can override it and prevent its implementation. It does go on to indicate that this is an unlikely outcome if the promoter properly addresses noise.
4.65	If the Government were to accept the Airports Commission's recommendations regarding an Independent Aviation Noise Authority, that body could have a similar role at Step 3B in validating the sponsor's proposed consultation process (as regards its description of the anticipated noise impact of a proposed change).	Or at least IANA could be able to investigate any appeal to them that the process was not up to standard
4.77	Consultees should respond using the online portal. Before responses are published on the portal, the CAA would moderate them to remove material that is unacceptable in a public consultation (see Appendix B).	This gives the impression that all responses will be published. In Government consultations (and this one, in fact), respondents can opt to remain anonymous. Suggest the same rules apply here.
4.102	how the CAA evaluates and balances various elements such as strategic policy, environmental impacts such as noise, and economic gain.	For noise, the evaluation must be based on the Government policy.
4.107	For airspace changes which might have a significant effect on the level or distribution of noise and emissions the CAA must seek the approval of the Secretary of State. These circumstances are set out in the Air Navigation Directions and the process is described in the Air Navigation Guidance	This is where the use of appropriate metrics is needed to determine, for noise at least, whether there is a significant effect.

Paragraph / Page No.	Issue	Observation / Comment
4.111	Whether or not a decision is reasonable, based on the evidence available, essentially means whether or not the CAA followed a fair and lawful process in reaching it.	..and whether or not Government policy has been properly applied
4.114	The second is that we believe the courts are the right place for a judgement as to whether we have followed due process, if such scrutiny is needed. Offering our own cheaper and more accessible version of this scrutiny is not proportionate, nor is it a good enough reason to provide a version of that function in-house, especially considering that a judicial review would still be available after the internal appeal in any event.	But IANA could have a role, if it exists, to save the Courts being the only means of raising concerns
4.126	Oversight Committee	It is noted that the CAA is not minded to pursue this. However, the CAA may find some form of peer review process helpful within the system, but this may not need to be in the form of an oversight committee. If a peer review approach is adopted, it probably could not perform the function of coping with appeals or complaints about the process not working. That could be a role for IANA.

## 5. Comments on Chapter 5

5.1 My comments on Chapter 5 are shown in Table 4 below:

**Table 4**  
**Comments on Chapter 5**

Paragraph / Page No.	Issue	Observation / Comment
5.5	<ul style="list-style-type: none"> <li>• Level 1: A change that affects traffic patterns below 7,000 feet (which is derived from the altitude-based priorities in the Government's Air Navigation Guidance to the CAA); or</li> <li>• Level 2: A change that does not affect traffic patterns below 7,000 feet.</li> </ul>	<p>It is recognised that the 7,000ft cut-off comes from DfT guidance, where it states</p> <p><i>in the airspace above 7,000 feet (amsl), the CAA should promote the most efficient use of airspace with a view to minimising aircraft emissions and mitigating the impact of noise is no longer a priority</i></p> <p>Although it says here that, above 7,000 ft, the impact of noise is no longer a priority, it does not mean that there is no impact from noise, although that sometimes seems to be how it is interpreted. Government noise policy requires the noise impact to be assessed and any adverse impacts identified (i.e. those &gt;Lowest Observed Adverse Effect Level (LOAEL)). It is worth noting from the NATS web-site that L<sub>max</sub> levels for arriving aircraft at 7,000 ft are: 56 – 60 dB(A) and 56-68 dB(A) on departure. This means that in areas that otherwise have a low level of ambient sound (say 35 dB(A)), each aircraft event would change the sound level by around 20 – 30 dB(A) as it flies over. That is undoubtedly a noise impact.</p> <p>Therefore, a Level 2 assessment should still evaluate the noise impact as diligently as a Level 1 assessment.</p> <p>Also, natural topography means that 7,000 feet amsl is not necessarily 7,000 feet above ground level.</p>



## 6. Comments on the remaining parts of the consultation document

6.1 My comments on the remaining parts of the consultation document are shown in Table 5 below:

**Table 5**

### Comments on the remaining parts of the consultation document

Paragraph / Page No.	Issue	Observation / Comment
Section 6	Interpretation of Section 70 (2) and (3) of the Transport Act 2000	The proper application of current noise policy with the implied balance does fit with the requirements of these clauses. It might make it more straightforward for the CAA, with respect to noise, to use the existing policy to assist in the implementation of these clauses
Appendix A16	The CAA acknowledges that airspace change decisions cannot be reduced to a purely numerical problem. Numerical values are not a substitute for policy direction as to which outcomes are important in the design of airspace – for example, whether a negative noise or carbon impact would prevent a change that would have a positive economic impact, is a determination that should be set in policy objectives.	For noise, policy objectives/outcomes do exist.
Appendix A21	for external costs such as noise, tranquillity, etc., to ensure that the trade-offs made between these competing factors are made on an equivalent basis.	WebTag can provide some assistance. Potential methodologies do exist regarding tranquillity but these are not so well developed.

## **7. Conclusions**

- 7.1 In conclusion, I agree that the process for evaluating airspace change does need reviewing. As can be seen from my comments, with respect to noise, I believe that the proper application of the Government's overarching policy, following the principles to be found in related planning documents, would improve the process and help avoid some of the issues that have been encountered recently.
- 7.2 I would be happy to be contacted should have any queries or wish to have any clarification on the comments I have made.
- 7.3 I am content for my comments to be placed on your website.

Stephen Turner

15<sup>th</sup> June 2016

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## **Strategic Aviation Special Interest Group (SASIG)**

# **Response to the CAA Consultation on the Airspace Change process**

### **Introduction**

1. SASIG is the Strategic Aviation Special Interest Group of the Local Government Association and currently represents 35 local authorities across England; all types of authority - from rural district and county councils to urban metropolitan boroughs and unitary authorities – are involved. SASIG's remit is to provide networking and knowledge sharing opportunities for those working in local authorities whose responsibilities include interface with the aviation sector, and where appropriate to initiate engagement with key policy makers whose decision impact on the sector or respond collectively to formal consultations published by Government parties or their agencies. This consultation on the airspace change process is one such example where SASIG wishes to submit a collective response in addition to the individual responses being made by each of our members.
2. As an over-arching representative body, our focus is naturally on high level generic policy of common interest to all our members, rather than on detailed aspects or issues associated with that policy that may affect individual members differentially. Our response has been circumscribed in this way, and consequently focuses only on those matters in the consultation we believe merit a collective view. It also means we have adopted a free-standing written response as our primary means of replying to the consultation and the online response has been used solely to register our interest and direct you to this response.

### **Concerns About this Consultation Process and Response Handling**

3. Whilst we welcome the opportunity to respond to what is an important and extremely detailed consultation, and are grateful for the time that two members of the CAA's team spent discussing the consultation process and issues with our Environment Airspace and Planning Technical Working Group, we do feel we need to register briefly at the outset our concerns about the way the consultation has been structured and organised.
4. For complex multi-headed organisations, having a single "Survey Monkey" style portal does not make it easy to co-ordinate a collective corporate view and secure the necessary approvals to allow submissions. The facility provided may be efficient for the CAA and suit small organisations or individuals, but there should have been a facility to allow more generic contributions such as this one to be made.

5. The concern we expressed when the TWG met the CAA's representatives about what exactly happens to written textual, as opposed to tick box, responses remains; indeed, if anything it is considered even more justified. The defensiveness shown by one of the CAA representatives at the meeting suggests we were probing in a sensitive area; notably, how our views will be played back to key policy advisors and decision-makers. The insistence on conforming to the online platform structures and the tick box nature of how written contributions are converted into a form that fits that pre-determined form of output, both sit uncomfortably in such a complex policy environment where concepts cannot always be captured by ticking a box. This leaves major question marks in our minds as to whether it is finding the optimum policy and procedures for airspace change that is driving this consultation, rather than the desire to impose a convenient and automated process for generating analysis of consultation responses. Old-fashioned civil service skills such as objective scrutiny, careful evaluation and balanced informed briefing have their value too!
6. It is for this reason that we have submitted this response in conventional form as well as responding electronically in so far as the format on the online platform allows us to do. It should be noted that without exception all members of the Chairman's Advisory Group of SASIG endorsed these views.

### SASIG's Position on the Airspace Change Process

7. SASIG's generic concerns about the current airspace change process can be summarised briefly as follows:
  - a. In order to ensure that airspace change proposals are devoid of frippery and naked commercial self-interest, existing air space arrangements should only be subject to change if they are demonstrably unsatisfactory, or if alternative arrangements have been identified that are capable of producing substantially better outcomes for many stakeholder interests and consequently have wide ranging support both industry and local stakeholder communities, amounting to a clear prima facie case for change, before such a process can be initiated.
  - b. Examples might include - significant disturbance to certain populations or sensitive receptors that could be substantially ameliorated; or air space structures and procedures are a key bottleneck preventing airport expansion for which planning approval has already been received. We accept that safety driven changes may need to be expedited and driven by those with relevant expertise.
  - c. The constraints that the airspace change is seeking to address should be clearly defined at the outset, and ideally some form of stakeholder consensus (and this must be demonstrably wider than purely industry interests) is built around the objectives the proposal is seeking to achieve.



- d. Equally environmental constraints 'on the ground' (i.e. significant or particularly sensitive receptors – schools, hospitals, built up areas, areas of tranquillity), that need to be respected by any change proposals need to be mapped properly and agreed with stakeholders in advance of any design work, in the same way that safety (aircraft performance, segregation from other users, obstacles, bird strike risk) and operational desiderata (continuous descent, early turns, reduced stacking and delays) are pre-defined.
  - e. We would like to see the flight level at which CO2 reduction is given priority over other environmental considerations (i.e. principally noise and air quality metrics) raised either across the board from 7,000 ft to 8,000 ft, or differentially where this can give flexibility to the way in which other constraints are handled in the design process.
  - f. Air space change sponsors must be required to work much more closely with local communities and their representatives before any formal proposal is submitted, and be able to demonstrate this, as in the Development Consent Order process, before the CAA formally accept a proposal for initial consideration (i.e. the first gateway).
  - g. Transparency throughout the process is essential – it should be possible for all stakeholders to see and comment upon all the evidence submitted by sponsors and other consultees at all stages of the process. The proposed use of an online portal similar to that employed by the planning inspectorate, is prospectively a major step-forward in this regard. Just as important will be to make visible the advice put to decision-makers and their explanation of the way in which they weighed-up the evidence in coming to their conclusions.
8. Much of what the CAA is now proposing addresses these fundamental principles. In particular, the gateway concept gives what is a complicated process a welcome clarity of structure. We also welcome the fact the CAA is willing to take a more 'hands on' approach, looking at everything in detail before enabling the next step to be made. This adds a measure of independent integrity, although the absence of an 'Oversight Committee' or independent ombudsman will inevitably leave lingering doubts over complete objectivity given the source of CAA's funding and its heavy top to toe and day to day engagement with the industry.
9. We recognise the CAA's arguments against this, but do not necessarily agree with them. This is a case of resources being made available to ensure all parties have access to the right technical expertise. Where such provisions have been made, as in the case of large infrastructure projects, the process has run much more smoothly, than where there has not – the CTRL and Crossrail projects are good examples. Reliance on court procedures and the technical determinations of Judicial Review is a far less satisfactory procedure and one that could build time into the change process.

10. Points (b) and (c) amongst our core concerns are aimed squarely at our principle objective of ensuring there is more work undertaken during the community engagement process to draw-up common principles that both sponsors and wider stakeholders support. This seems to have some resonance with what the CAA is proposing.
11. But perhaps our biggest outstanding concern is the issue of the boundary between CAA and DfT responsibilities. Theoretically and simplistically, the CAA airspace change process could only grant approvals where the proposal conforms to Government policy. But we are far from certain that will always be clear and sponsors, consultees and decision-makers would all benefit substantially from greater clarity about the policy principles they are working to, as well as having a better orchestrated change application and decision-making procedure. With the tearing up of the 2003 White Paper and its replacement with the less than satisfactory 2013 Airport Policy Framework, the policy principles, the way in which they are tiered and the boundary between policy-making and procedural decision-making became much more difficult to recognise.

## Conclusions

12. Despite our reservations, it is clear to us that CAA are taking seriously the objective of making controversial airspace change decisions more structured, transparent, inclusive and objective. We welcome much of what is proposed with the caveats we have attached above. Ultimately, of course, the industry's desire for this process to be de-politicised cannot happen. Trading environmental impacts against operational efficiency is inevitably a difficult and ultimately political process. This puts the onus firmly on Government to substantially improve the policy framework decisions are taken within; procedural enhancements alone cannot overcome the current shortfall in that regard.

SASIG  
15 June 2016







# **TEDDINGTON ACTION GROUP**

## **Against Increased Aircraft Noise and Pollution**

Andrew Haines

Chief Executive

Civil Aviation Authority

7 June 2016

Dear Mr Haines

### **Consultation on CAP 1389: Airspace Change Process**

I am writing with comments relating to the above consultation which is due to close on 15 June 2016.

Teddington Action Group has responded in detail to the 40 somewhat “closed” questions that make up the consultation but there are other key points, which we wish to be taken in to account.

*Firstly, it is wholly inappropriate that the CAA is consulting on the Cap 1389 framework in advance of the publication by the Department of Transport of the revised Airspace Policy Framework. The Cap 1389 consultation seeks detailed feedback in a context of the existing policy framework, which itself is due to be reviewed by the DfT later this year. Fundamental concerns have been raised by communities about the aviation governance framework and in particular, the inherent conflicts of interest that exist within the CAA and the lack of an appropriate balance between industry ambitions and the noise and environmental impacts on the public. Any revisions to the policy framework would potentially result in amendments to the airspace change process, the way priorities are interpreted and potentially, the decision making process itself – which is why the Cap 1389 consultation is ill-advised and premature.*

*As a consequence, the CAP 1389 consultation is based on an assumption of “no change” to the status quo. This gives communities little confidence that the CAA has any intention of applying a “balanced view” to airspace change proposals. Providing communities with more information about potential changes is not enough – they need absolute faith that someone is looking out for their interests and these will be properly balanced against the ambitions of the aviation industry when a decision on a change is made. However, the proposals put forward by the CAA appear to be designed to have quite the opposite effect in that:*

- It is proposed that the public consultation on a change could be managed by the change sponsor who will also have discretion over the evidence to be submitted as part of the change proposal as well as the design principles and the list of options to be appraised.

- There is no independent assessment of the sponsor's evidence including the estimated noise, health and environmental impacts of the change.
- There are no incentives or requirements for a change sponsor to put forward a proposal where the primary benefit is an improvement in the noise or environmental impacts. In fact, there will be a financial disincentive because of the costs associated with a change proposal. *Communities can only assume therefore, that it is the Government and the CAA's clear intention that it will only support changes that will worsen conditions for communities.*
- The CAA appears to arrogantly assume that it has the expertise and remit to make judgements on health and environmental impacts as part of the change process, which it does not. These are the responsibilities of other government departments and local councils and the CAA would need to draw on advice from external experts to give appropriate consideration to these factors.
- There is no right of appeal against the CAA's decision, other than judicial review.
- There is no mechanism for changes to be reversed if the impacts are not as were presented in the public consultation/change proposal. Furthermore, there are no penalties if a change sponsor is found to have deliberately manipulated the consultation process or evidence. *In fact, there is a clear perverse incentive within the proposed process for the sponsor to play down the potential impacts of a change from the very beginning, knowing that once a CAA decision is made there will be no consequences in terms of an appeal or the possibility that the change will be reversed.*
- The CAA has fundamentally misinterpreted section 70 of the Transport Act 2000 to interpret the "most efficient use of airspace" as the "most" use of airspace. With this interpretation, it is highly unlikely that the CAA will ever reject a change proposal because the impact on the public is too great.

If the Department for Transport and the CAA are to have any hope of engaging communities in a sensible dialogue about airspace change proposals, there needs to be a fundamental change of approach as to how communities and the public's interests are balanced with those of the industry. This needs to start with the revised Aviation Policy Framework.

Finally, we feel compelled to point out that in no circumstances should a 140 page highly technical document with 40 complex questions be considered an appropriate means of consulting the public on hugely important issues that will affect their health, well-being and enjoyment of their property. Given the significant time required to compile a considered response to the CAP 1389 documents, this will inevitably raise questions as to whether the documents were specifically designed to minimise the number of public and community responses.

Yours sincerely,

**TEDDINGTON ACTION GROUP**

Please use [info@teddingtonactiongroup.com](mailto:info@teddingtonactiongroup.com) for all correspondence



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Members of the Environmental Audit Committee  
Members of the Aviation Communities Forum  
Kate Jennings, Department for Transport  
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