

CIVIL AVIATION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Note on abbreviations

12. In these notes-
- “the CA Act 1982” means the [Civil Aviation Act 1982 \(c.16\)](#);
 - “the AS Act 1982” means the [Aviation Security Act 1982 \(c.36\)](#);
 - “the 1986 Act” means the [Airports Act 1986 \(c.31\)](#); and
 - “CAA” means the Civil Aviation Authority.

Section 1: Aerodrome charges

13. [Section 1](#) replaces section 38 of the CA Act 1982 with a new section on aerodrome charges. Section 38 applies to licensed aerodromes. These are aerodromes licensed by the Civil Aviation Authority under an Air Navigation Order for the landing and take-off of aircraft which can be used for the public transport of passengers, or for giving instruction in flying to a person, or for conducting a flying test.
14. The new section 38(1) empowers an authority owning or managing a licensed aerodrome to fix its charges by reference to:
- the noise caused by an aircraft or the inconvenience resulting from that noise;
 - the amount or nature of emissions produced by an aircraft or the atmospheric pollution resulting from those emissions;
 - the effect of an aircraft on noise or atmospheric pollution in the vicinity of the aerodrome; or
 - any failure of an aircraft operator to comply with noise or emission limits.
15. The new section 38(2) sets out the purposes for which such charges can be made, namely:
- to encourage the use of quieter aircraft and reduce inconvenience from aircraft noise;
 - to encourage the use of aircraft which produce lower emissions;
 - to control noise and atmospheric pollution in the vicinity of aerodromes; and
 - to promote compliance with noise and emission limits.
16. The new section 38(4) empowers the Secretary of State to direct specified aerodrome authorities to fix their charges using the powers in subsections (1) and (2) of the new section 38. In determining whether to make use of this power, and if so how, the

Secretary of State will be required by new section 38(5) to have regard (amongst other things) to the interests of people who live in the area of the aerodrome.

Section 2: Regulation by Secretary of State of noise and vibration from aircraft

17. This section amends section 78 of the CA Act 1982. Section 78 enables the Secretary of State to take steps to limit or mitigate the effect of noise and vibration connected with the taking off or landing of aircraft at designated aerodromes (currently Heathrow, Gatwick and Stansted).
18. *Subsection (2)* inserts a new subsection (6A) after section 78(6) of the CA Act 1982, to augment the powers of the Secretary of State to give to the manager of a designated aerodrome such directions as the Secretary of State considers appropriate for the purpose of avoiding, limiting or mitigating the effect of noise and vibration connected with aircraft landing or taking off. The manager is placed under a duty to comply with any such directions. New section 78(6A) will allow directions under subsection (6) to be given for the purposes of avoiding, limiting or mitigating the effect of noise and vibration either generally or in any particular area, for example arising from use of a particular runway. So directions could be used to move noise from one area to another, even if this does not limit or mitigate the total amount of noise suffered generally, so long as it avoids, limits or mitigates the amount of noise in a particular area.
19. For example, Heathrow has two main independently operable runways, as may other airports designated under section 78 in future. The power to direct the aerodrome manager to use a particular runway would provide local residents with predictable periods of relief from aircraft noise. Requiring aircraft to take off or land in a given direction at a given time could also reduce the numbers of people subjected to the most severe aircraft noise.
20. *Section 78(8)* empowers the Secretary of State to require the manager of a designated airport to install, operate and maintain noise measuring equipment and to provide noise measurement reports as specified by him. The manager is placed under a duty to comply with any such requirements.
21. Where an airport manager fails to perform any of the requirements set down in an order under subsection (8), section 78(9)(a) empowers the Secretary of State to take such steps as he considers appropriate to remedy that failure, including the provision, operation and maintenance of equipment. The Secretary of State may recover any expenses he has incurred in so doing: section 78(9)(b). Where the airport manager has failed to provide reports to the Secretary of State, he is guilty of an offence: section 78(9)(i) and (ii).
22. *Subsection (3)* amends section 78(9) to provide that the maximum fine laid down in subsection (9)(i) is increased to level 5 on the standard scale (currently £5,000) and the daily fine in subsection (9)(ii) is not to exceed 10% of level 5.

Section 3: Penalty schemes

23. This section inserts into the CA Act new sections 78A and 78B.
24. Section 78 of the CA Act does not explicitly provide for aerodromes to impose financial penalties on aircraft operators for breaches of noise requirements set under section 78.
25. The effect of new section 78A is to confer on the manager of a designated aerodrome a power to levy financial penalties on an aircraft operator in respect of any breach by that aircraft operator of noise abatement requirements imposed by the Secretary of State under section 78.
26. New section 78A(8) requires the aerodrome manager to make payments, equal to the amount of penalties received, for the benefit of persons who live in the area in which the aerodrome is situated.

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which received Royal Assent on 8 November 2006*

27. New section 78B(1) to (4) enables the Secretary of State to direct an aerodrome manager to make, amend or revoke a penalty scheme and sets out the duty to consult before doing so.
28. New section 78B(5) makes it an offence to fail to comply with a direction given under section 78B(1) with a provision for a daily fine if failure continues after any conviction.

Section 4: Power of aerodrome authorities to make noise control schemes

29. This section inserts into the CA Act 1982 new sections 38A, 38B and 38C.
30. Although the CA Act 1982 contains a number of provisions relating to environmental issues, those provisions do not include any explicit statutory provision for aerodrome operators to implement noise control schemes.
31. New section 38A(1) to (5) provides operators of non-designated aerodromes with powers to regulate noise and vibration from aircraft similar to those conferred on the Secretary of State by section 78 of the CA Act 1982 (as amended by *section 2* of this Act).
32. New section 38A(8) excludes any aerodrome already designated under section 78 of the CA Act 1982 because in that situation the noise control regime would be set by the Secretary of State rather than the aerodrome operator.
33. New section 38A(10) provides that the use of the powers contained in the new sections 38A, 38B and 38C does not prejudice the use of any other power at the aerodrome operator's disposal to control aircraft noise.
34. New section 38B makes supplementary provision for noise control schemes. New section 38B(2) defines the maximum area within which the aerodrome operator's powers to control aircraft noise apply. There is also provision for the Secretary of State to define (by order) this maximum area, in respect of individual aerodromes.
35. New section 38B(5) provides for consultation by the Secretary of State before making an order under subsection (2).
36. New section 38C provides aerodrome operators with the power to impose penalties where the noise control scheme it is permitted to establish is not complied with.
37. New section 38C(2) and (3) provide for a financial penalty to be imposed on an aircraft operator if he breaches the requirements of a noise control scheme.
38. New section 38C(4) and (5) ensures that the scheme will provide for aircraft operators to be able to make representations to the aerodrome operator as regards the imposition of penalties and for the aerodrome operator to take such representations into account.
39. New section 38C(6) requires the aerodrome authority to make payments, equal to the amount of penalties received, for the benefit of persons who live in the area in which the aerodrome is situated.

Section 5: Public airport companies: power of Secretary of State to specify additional activities

40. Section 17(4) of the 1986 Act bars a local authority owned airport company (known as a "public airport company"), or any subsidiary, from engaging in activities in which none of its shareholding local authorities has the power to engage.
41. *Section 5* amends the 1986 Act in two ways. *Subsection (2)* amends section 17 of the 1986 Act to provide that the bar in section 17(4) shall not apply in relation to activities permitted under a new section 17A.
42. *Subsection (3)* inserts a new section 17A into the 1986 Act which allows the Secretary of State, by regulations, to specify what activity will be a permitted activity. To be so

specified, he must consider the activity to be incidental to or connected with the business of operating a commercial airport. The regulations may set conditions on the permitted activities, for example limiting their scope to activities of a commercial nature or to activities carried out in certain countries or territories. By virtue of section 79 of the 1986 Act, the regulations are subject to the negative resolution procedure.

Section 6: Policing of airports

43. *Section 6* gives effect to the provisions of *Schedule 1*, which amends the provisions of the *AS Act 1982 (c.36)*.

Section 7: Removal of appeal to Secretary of State in respect of route licences

44. The UK has special procedures to govern the allocation of scarce capacity between airlines on routes between the UK and third countries, designed specifically for circumstances where market forces are prevented from operating properly owing to restrictions in bilateral air services agreements.
45. The available capacity is allocated by the Civil Aviation Authority following a public hearing at which the airlines concerned, and other interested parties, are allowed to, amongst other things, appear in person, produce oral and written evidence and have the opportunity of cross examination. The CAA considers this evidence and decides between the applicants on the basis of its view on which proposal will bring the greatest benefits to consumers. The successful airline or airlines are awarded the additional number of flights or passenger seats, and other airlines have their route licences conditioned to prevent them operating more (or perhaps any) services on the same routes until bilateral circumstances change.
46. Section 69A of the CA Act 1982 provided a right of appeal to the Secretary of State for Transport against a route licence decision of the CAA, by the application of air transport licence provisions with modifications. In his determination of an appeal the Secretary of State could uphold the CAA's decision or direct it to re-hear the case or to reverse or vary its decision. *Section 7* amended section 69A of the CA Act 1982 and regulation 27 of the *Civil Aviation Authority Regulations 1991 (S.I 1991/1672)* to remove this right of appeal. Affected parties will instead be able to challenge a decision of the CAA in the courts by judicial review. *Subsections (2) and (3)* achieve this amendment by modifying the application of the relevant sections of the CA Act 1982 to route licence cases. *Subsection (3)* ensures that, where the CAA has decided to transfer allocation from an incumbent airline, or issue a new allocation, the CAA may delay the date of implementation of the change in order to ensure continuity of service provision. *Subsection (5)* ensures that any appeal to the Secretary of State in train at the time of coming into force of this section is not affected by the amendments.

Section 8: Functions with respect to health

47. *Subsection (2)* amends section 1(1) of the CA Act 1982 to extend the general duties of the Secretary of State relating to civil aviation to include measures for safeguarding the health of people on board aircraft.
48. *Subsection (3)*, which amends section 3(c) of the CA Act 1982, confers on the CAA such functions relating to the health of such people as are provided for by or under any Air Navigation Order.
49. *Subsection (4)* amends section 16 of the CA Act 1982. Firstly, this amendment makes clear that the Secretary of State can require the CAA to provide advice and assistance in connection with his civil aviation functions on a continuing basis. Secondly, the amendment precludes the CAA from recovering from the Secretary of State the cost of advice and assistance provided to him in relation to the health of people present on board aircraft. The CAA's health functions will be funded by a charges scheme already provided for under section 11 of the CA Act 1982.

50. *Subsection (5)* widens the scope of matters which may be dealt with in an Air Navigation Order to include provision for safeguarding the health of passengers and air crew.

Section 9: Documentary evidence: updating of references

51. This section amends section 96(1)(b) of the CA Act 1982, in order to remove references to documents which are no longer in use and to substitute the current correct description.

Section 10: Funding of Air Travel Trust Fund by contributions paid by air travel organisers

52. Section 71 of the CA Act 1982 currently allows the Secretary of State to make regulations in relation to the provision of flight accommodation, under which powers the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 have been made.
53. *Section 10* adds two new sections (71A and 71B) to the CA Act 1982 providing the Secretary of State with powers to make regulations requiring persons applying for licences by virtue of section 71 to make contributions to the Air Travel Trust. The contributions are to be in respect of the period for which the licences are to be issued.
54. New section 71A provides as follows.
55. Subsection (1) confers the general power to make such regulations, while subsection (2) sets out particular matters for which the regulations will be able to make provision.
56. Subsection (2)(a) permits the regulations to prescribe the factors the CAA is to use when calculating contributions payable by applicants for licences.
57. Subsection (2)(b) permits the regulations to authorise the CAA, with the consent of the Secretary of State and after consultation, to set the rates and dates for the payment of those contributions by different descriptions of persons.
58. Subsection (2)(c) permits the regulations to require contributions to be paid, or undertakings to pay contributions to be given, before a licence is issued under section 71.
59. Subsection (2)(d) permits the regulations to require licence holders to pay additional contributions where the contribution rate increases during the licence period.
60. Subsection (2)(e) permits the regulations to require persons applying for the variation of a licence to pay additional contributions.
61. Subsection (2)(f) permits the regulations to make provision for persons, in prescribed circumstances, to be reimbursed in respect of payments which they have made.
62. Subsection (2)(g) permits the regulations to make provision for the payment of interest in relation to unpaid contributions and for this interest to be recoverable as a debt due to the Air Travel Trust.
63. Subsection (2)(h) permits the regulations to make provision for the CAA to act as agent for the trustees of the Air Travel Trust in collecting and recovering contributions from licence holders, and for the reimbursement of associated costs.
64. Subsection (2)(i) permits the regulations to make provision for the CAA to suspend the requirement to make contributions in respect of a period either generally or for a particular description of persons.
65. Subsection (2)(j) permits the regulations to make provision for the CAA, after consulting the Secretary of State, to make exemptions from the requirement to make contributions on such conditions as the CAA thinks fit.

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66. Subsection (2)(k) permits the regulations to make provision to require the CAA to publish prescribed matters in a prescribed manner; this would allow regulations to require publication of details of exemptions in the CAA's Official Record.
67. Subsection (2)(l) permits the regulations to make provision for creating criminal offences to be tried summarily and punishable with a fine which does not exceed level 5 on the standard scale (currently £5,000).
68. Subsection (3) permits the regulations to authorise the CAA: a) to refuse to issue a licence to a person; b) to refuse to vary a licence held by a person and c) to vary, suspend or revoke a licence held by a person, if the person concerned has failed to comply with a prescribed requirement of the regulations or has breached an undertaking in relation to the payment of contributions.
69. Subsection (4) disapplies section 4 of the CA Act 1982 in relation to any functions conferred on the CAA by regulations made under this new section. Section 4 relates to the performance by the CAA of its general functions.
70. Subsection (5) defines the Air Travel Trust for the purposes of the new provisions of the CA Act 1982.
71. New section 71B provides as follows.
72. Subsection (1) obliges the Secretary of State to consult the CAA and the trustees of the Air Travel Trust before making regulations under new section 71A.
73. Subsection (2) requires the CAA, on being so consulted, to consult those who hold licences issued in accordance with section 71 and any other person who appears to the CAA to have an interest in the matter, so far as it considers it reasonably practicable to do so.

Section 11: Miscellaneous provisions relating to the Air Travel Trust

74. *Subsection (1)* obliges the Secretary of State to lay before Parliament a copy of every report received from the trustees of the Air Travel Trust in accordance with the terms of the trust deed.
75. *Subsection (2)* seeks to prevent any court changing the terms of the deed establishing the Air Travel Trust unless the variation is sought by, or with the consent of, the Secretary of State.
76. *Subsection (3)* defines the Air Travel Trust for the purposes of the section.

Section 12: Scotland

77. *Section 12* amends the Scotland Act 1998 (Transfer of Functions to Scottish Ministers) Order 1999 to reflect the amendments to the CA Act 1982 being made by *sections 1, 3 and 4*. The Order provides that certain functions conferred on a Minister of the Crown by the CA Act 1982 are, in or as regards Scotland, exercisable by the Scottish Ministers instead.

Section 13: Consequential amendments

78. *Section 13 and Schedule 2* amend the CA Act 1982 and the 1986 Act in consequence of the amendments of those Acts provided for in *sections 1, 3, 4 and 10*.

Section 14: Short title, commencement and extent

79. *Subsection (2) of section 14* provides for *sections 6 and 14 and Schedule 1* of the Act to come into force on the day of Royal Assent. Otherwise, *subsections (3) and (4)* provide for the provisions of the Act to come into force on a day or days to be appointed by order made by the Secretary of State.

80. Subsections (6), (7) and (8) set out the territorial extent of different provisions of the Act.

Schedule 1: Policing of airports

81. Part 3 of the AS Act 1982 deals, inter alia, with the policing of airports that have been designated for policing purposes by the Secretary of State under section 25 of the Act. Under the Act responsibility for policing activity at these airports lies with the relevant chief officer of police and the airport manager must make such payments in respect of policing the airport as the manager and the relevant police authority may agree. If they cannot agree, the Secretary of State may be required to determine the amount to be paid to the police authority by the airport manager (under section 26(3)).
82. *Schedule 1* amends the AS Act 1982 in relation to the policing of airports that have been designated under section 25 of the Act.
82. *Paragraph 2 of Schedule 1* inserts new sections 25A and 25B into the AS Act 1982. New section 25B requires the manager of a designated aerodrome, the police authority and the chief officer of police to enter into a police services agreement.
83. Before entering into a police services agreement the aerodrome manager and chief officer of police, both of whom have operational responsibility, will be required under new section 25A(2) to consult with those who also carry out protective activities at an airport (specified at section 25A(3)). Section 25A(4) gives the Secretary of State a delegated power to modify these consultation requirements, section 25A(5) providing that the degree of Parliamentary scrutiny should depend on whether the changes to the requirements are agreed by the manager of the aerodrome and the chief officer of police.
84. New section 25B(3) requires that the police services agreement should set out the level of policing services to be provided and specify for the manager of the aerodrome to make the payments for that policing and to provide accommodation and facilities for the police at the aerodrome. Under subsections (3)(b) and (4) of new section 25B, payments may be set out as specified sums or sums assessed in a specified manner and may include references to amounts paid or expected to be paid to the police authority in respect of policing at the airport from sources other than the airport manager. For example, the Home Office may make grants to fund a particular initiative.
85. The police services agreement will need to recognise that circumstances might change during the course of the year, requiring changes to the agreement itself; subsection (6) of new section 25B therefore makes provision for it to be varied if there is such a change.
86. *Paragraph 3 of Schedule 1* inserts new subsections (2A) to (2E) into section 26 of the AS Act 1982. These provisions apply to aerodromes designated under section 25 of the Act; they define and clarify the relationship between the activities of an airport manager (and other directed parties at an airport) and policing activities.
87. New section 26(2A) therefore requires the chief officer of police to ensure that an appropriate level of policing is provided at a designated aerodrome.
88. New sections 26(2B) and 26(2C) make provisions regarding payments, and the provision of accommodation and facilities, by the aerodrome manager to the police authority in respect of policing at the aerodrome.
89. *Paragraph 4 of Schedule 1* inserts new sections 29A to 29D into the AS Act 1982. These new sections make provision for cases where the aerodrome manager, police authority and chief officer of police cannot reach a police services agreement because they disagree on a particular aspect such as the level of policing to be provided, or are in dispute over the terms, construction or operation of an agreement they have previously made. In these cases, the matter will be referred to determination by an independent expert or tribunal of experts.

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90. Under subsection (1) of new section 29A, the aerodrome manager, police authority or chief officer of police is entitled to ask the Secretary of State to set up the expert determination.
91. New section 29B provides that the expert should be an independent person appointed by the Secretary of State for the particular dispute, and agreed by the aerodrome manager on one side and the police authority and chief officer of police, acting jointly, for the other side. If these parties cannot agree, the Secretary of State will require each side to appoint an expert and those two experts to appoint a further panel member to act as chairman.
92. New section 29C makes provision for the removal of an expert by the Secretary of State in specified circumstances and sets out how any vacancies in the tribunal are to be filled.
93. New section 29D then sets out how the expert or experts (referred to as the "tribunal") should go about making a determination. Under subsection (2), the expert shall determine the procedure to be followed in determining a dispute, but subsection (3) (b) requires that any procedure must give each party to the dispute an opportunity to make representations. The Secretary of State is also given an opportunity to make representations before the expert by subsection (3)(b), since the policing of airports is part of the wider security measures that the Secretary of State puts in place at an airport.
94. Where the case is referred because the parties cannot reach an agreement, subsections (5) to (7) of new section 29D provide for the expert to declare what the terms of the agreement should be and make an order about costs.
95. Where the dispute concerns a police services agreement which has already been entered into, new section 29D(4) enables the expert to give a declaration about how a provision of an Agreement is to be construed or operated, to vary the terms of an Agreement, to determine that the aerodrome manager is obliged to pay a specified sum to the police authority, and to make an order about costs.
96. Under subsections (8) and (9) of new section 29D the expert or tribunal's decision will be final and binding, save that a party may appeal to the High Court. An expert's decision may, with the permission of the High Court, be enforced as if it were a judgment of the High Court (and may, in particular, be enforced by the use of powers in relation to contempt of court).
97. *Paragraph 6 of Schedule 1* sets out the transitional provisions that will apply in the period from 21 November 2005, the date on which the Secretary of State made the announcement regarding these amendments to the AS Act 1982, until Royal Assent. These are intended to define the responsibilities of the aerodrome manager, chief officer of police and police authority (set out in new sections 26(2A), (2C) and (2D), and to bring the dispute resolution provisions in new sections 29A to 29D into effect, from that date. The other provisions relating to the policing of designated airports (i.e. regarding the police services agreement) will come into force on Royal Assent.
98. *Paragraph 6(1) of Schedule 1* will mean that new sections 26(2A), 26(2C) and 26(2D) of the AS Act 1982 will have taken effect on 21 November 2005. Thus, with effect from that date, policing at designated airports must take into account the security activities of directed parties and any other security or policing activities performed by customs officers, immigration officers or the airport manager. Airport managers must pay police authorities for the reasonable costs incurred for that policing (and provide facilities) and in deciding the amount payable account must be taken of any money available to the police authority from other sources.
99. *Paragraph 6(2) of Schedule 1* makes two changes to the provisions which will apply in the period from 21 November 2005 to Royal Assent: firstly, section 26(2A)(b) is adjusted to refer to the preservation of the peace and the prevention of crime. This is because the new terminology of "policing purposes" will not take effect until Royal Assent and the terminology in sections 25 and 26(2A)(b) needs to be consistent in the

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interim period. Secondly, in the period between 21 November 2005 and Royal Assent there is no requirement for the aerodrome manager and police to enter into a police services agreement. Accordingly, in that period the opening words in section 26(2C) are inappropriate. Paragraph 6(2)(b) of the Schedule adjusts section 26(2C) so that no reference is made to the absence of a police services agreement.

100. *Paragraph 6(3) of Schedule 1* back-dates the repeal of the existing section 26(3) of the AS Act 1982 to 21 November 2005, but protects anything done under that section in relation to policing provided before that date.
101. *Paragraph 6(4) of Schedule 1* applies the new dispute resolution procedures in sections 29A to D to the period commencing 21 November 2005, so that any disputes that arise now and relate to policing provided after that date can be dealt with in the new way. (Any dispute will be judged against the requirement that policing should complement other security/protective activity at an airport, which is set out in new section 26(2A).)
102. *Paragraph 6(5) of Schedule 1* applies the new definition of immigration officer in paragraph 5 of the Schedule in the period commencing on 21 November 2005. (The actions of immigration officers are to be taken into account in the policing of the airport under section 26(2A).)
103. *Paragraph 6(6) of Schedule 1* ensures that there is a definition of "relevant persons" that applies in the period 21 November 2005 to Royal Assent. The definition is needed in relation to the references to "relevant persons" in sections 29A to 29D. On Royal Assent the definition in section 25B(10) will come into force to replace the definition inserted into section 31(1) of the AS Act 1982.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
House of Commons		
Introduction	9 June 2005	Vol. 434, Col 1404
Second Reading	27 June 2005	Vol. 435, Cols 1036-1111
Committee	5 July 2005 (two sittings)	Hansard Standing Committee B Cols 1-108
	7 July 2005 (two sittings)	
Report & Third Reading	10 October 2005	Vol. 437, Cols 57-125
Commons Consideration of Lords Amendments	8 May 2006	Vol. 446, Cols 40-88
	12 October 2006	Vol. 450, Cols 466-484
House of Lords		
Introduction	11 October 2005	Vol. 674, Col 161
Second Reading	1 November 2005	Vol. 675, Cols 127-169
Committee	5 December 2005	Vol. 676, Cols GC53-106
	8 December 2005	Vol. 676, Cols GC107-182
Report	8 March 2006	Vol. 679, Cols 762-814, 830-858
Third Reading	28 March 2006	Vol. 680, Cols 669-721
Lords Consideration of Commons Amendments	28 June 2006	Vol 683, Cols 1196-1220
	25 October 2006	Vol 685, Cols 1221-1233
Royal Assent - 8 November 2006		House of Commons Hansard Vol 451 Col 825

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House of Lords Hansard Vol 686 Col 749