

Improving the Delivery of Aviation Permits for Foreign Registered Aircraft

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.dft.gov.uk
General email enquiries FAX9643@dft.gsi.gov.uk

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Executive summary

- 1.1 This Consultation Paper invites views on proposals to remove the objection process, which allows UK and Community carriers established in the UK to object to the grant of a permit under Article 223 of the Air Navigation Order 2009 in respect of a non-scheduled flight by a foreign registered aircraft (the 'Objection Process').
- 1.2 This paper also invites views on the Government's proposals to transfer from the Secretary of State to the Civil Aviation Authority the administration of permits required by foreign registered aircraft taking on board or discharging passengers or cargo in the UK, and carrying out aerial work under the Air Navigation Order 2009.
- 1.3 In addition to the two proposals above, there is also an opportunity to put forward your views, in the event that a decision is made to transfer the administration of permits to the CAA, on potential ways of making the permits process more efficient.

How to respond

- 2.1 The consultation period began on **15 April 2013** and will run until **5 July 2013**. Please ensure that your response reaches us before the closing date. Please contact Jeremy Ketley if you would like alternative formats (Braille, audio CD, etc).
- 2.2 Please send consultation responses to:
- Jeremy Ketley
International Aviation, Safety & Environment
Department for Transport
Zone 1/22
Great Minster House
33 Horseferry Road
London SW1P 4DR
- Fax: 00 44 (0) 207 944 2194
Email: Jeremy.ketley@dft.gsi.gov.uk
- 2.3 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- 2.4 There will be a consultation event on **Wednesday 5th June 2013**. If you would be interested in attending this event, please contact [Jeremy Ketley at Jeremy.ketley@dft.gsi.gov.uk](mailto:Jeremy.ketley@dft.gsi.gov.uk).
- 2.5 A list of those consulted is attached at Annex C. If you have any suggestions of others who may wish to be involved in this process please contact us.
- 2.6 After the formal consultation period is closed, we will analyse and publish a summary of responses on the DfT's website.

Freedom of Information

- 2.7 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.
- 2.8 If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 2.9 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the DfT.
- 2.10 The DfT will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Introduction to the proposals

- 3.1 Aviation in the UK operates in a competitive domestic and international market. The Government supports competition as the most effective way to meet the interests of consumers of passenger and cargo services. The opening up of air services to genuine competition has driven down the cost of air transport and greatly improved the range and quality of services available to UK consumers. One of our main aviation objectives is to ensure that the UK's air links continue to make it one of the best connected countries in the world. This includes increasing our links to emerging markets so that the UK can compete successfully for economic growth opportunities.
- 3.2 Scheduled air services between the UK and non-EU countries are governed by bilateral and multilateral treaties agreed between states known as Air Services Agreements (ASAs). The Department for Transport (DfT) is responsible for managing the UK's existing ASAs and for negotiating new ones. Under the ASAs, states grant rights to operate scheduled services, to be exercised by their designated carriers.
- 3.3 Before foreign registered aircraft can take on board or discharge passengers or cargo in the UK, they must be in possession of an operating permit issued by the Secretary of State under Article 223 of the Air Navigation Order 2009 (the ANO). This requirement extends to all foreign aircraft that are not exercising rights to operate within the EU¹.
- 3.4 The Article 223 permit process helps us ensure that scheduled services operated by foreign registered carriers do so in accordance with the rights granted to them under the relevant ASA. However, if a foreign registered carrier wishes to perform a non-scheduled charter flight (passenger or cargo), and no relevant rights have been agreed under an ASA in respect of the service (an extra-bilateral service), the DfT places certain limitations on the grant of the permit:

¹ Regulation 1008/2008 on common rules for the operation of air services in the Community.

- a. The Objection Process: the applicant must copy their permit application to UK and EU carriers established in the UK, who can object to the DfT if they have a suitable aircraft that meets the customer's original requirements and is available to perform the flight. The UK introduced this as a measure of protection for UK airlines competing against cheap foreign operators in the UK market.
- b. A discretionary limit on the number of extra-bilateral non-scheduled passenger charter flights a foreign registered carrier may perform in an IATA season². This is occasionally applied to ensure that foreign charter carriers do not exercise greater traffic rights than those granted in respect of scheduled flights under the relevant ASA.

3.5 Aircraft registered in a foreign country outside the European Economic Area may not carry out aerial work without a permit from the Secretary of State under Article 225 of the ANO (see paras 4.7 & 4.8).

3.6 The permits system also forms part of the UK's aviation safety oversight regime. It provides the UK with the first opportunity to ensure that an aircraft's documentation is in order before an aircraft enters UK airspace. Although DfT currently issues these permits, the Civil Aviation Authority (CAA) has primary responsibility for safety in the UK.

3.7 We are reviewing the permits functions, including the Objection Process, within the context of the Government's priorities to:

- create smaller government;
- reduce bureaucracy and cut red tape;
- improve the delivery of public services; and
- reduce the fiscal deficit.

3.8 This paper outlines two proposals:

² In any IATA season (1 November – 31 March and 1 April – 31 October), any one foreign airline may be given permission to operate up to 10 return flights from the UK. In making its decision, the Department will take into account the number of scheduled flights which have been given under the relevant ASA on the same route. The Department is most unlikely to give permission in excess of this limit other than in exceptional circumstances.

- a. to remove the Objection Process, and
- b. to transfer from the Secretary of State to the CAA the administration of permits under Articles 223 and 225 of the ANO.

3.9 In particular, we want to improve the outcome for consumers of passenger and cargo services. In proposing to remove the Objection Process, we intend to promote competition between UK and foreign carriers and thereby improve consumer choice. In proposing to transfer the administration of permits to the CAA, we intend to exploit efficiencies arising from the CAA's expertise and its exercise of its existing functions including airline licensing and safety, and to ensure that the costs of carrying out the function are borne by the applicant.

3.10 If a decision results in the transfer of the administration of permits under Article 223 and 225 of the ANO to the CAA, the CAA has indicated to us that it would want to look at means of creating a more efficient and streamlined permits process for applicants. In addition to the two proposals above, we would therefore like to draw your attention to the questions in paragraph 8.4 which the CAA has posed. Whilst question 8 does not form part of the formal consultation questions on the removal of the objection procedure, we consider that it is favourable to collect participants' views on potential streamlining at an early stage, in order that, should the function be transferred to the CAA, participants' comments can be taken into early account in designing the transferred procedure.

Background to the Permit Scheme

Article 223 Permits

- 4.1 Under Article 223 of the ANO, all flights by foreign registered aircraft taking on board or discharging passengers or cargo for valuable consideration in the UK require the permission of the Secretary of State before they are permitted to operate in the UK. This requirement extends to all scheduled and non-scheduled services (except those exercising rights under Regulation 1008/2008 on common rules for the operation of air services in the EU). Most other countries have similar requirements.
- 4.2 Before granting an Article 223 permit in respect of a scheduled service, DfT checks that the applicant has been granted the necessary traffic rights to perform the flight on that route as a designated carrier under the ASA agreed between the UK and the applicant's state.
- 4.3 Most scheduled services operate on a seasonal basis (the IATA summer season broadly runs from 1 April – 31 October and the winter season runs from 1 November – 31 March) and under a seasonal Article 223 permit issued by the DfT. The permit system helps ensure that the proposed scheduled services operate in accordance with the rights granted under the relevant ASA.
- 4.4 Non-scheduled services by passenger and cargo charter carriers are not usually granted traffic rights under an ASA (such flights are described as 'extra-bilateral'). However, there are some exceptions, the reciprocal arrangement between the UK and US on 5th³ and 7th⁴ Freedoms, for example. DfT may subject applications for Article 223 permits in respect of such services to the Objection Process outlined below.
- 4.5 Passenger and cargo charter services operate on a different model to scheduled services. Charter carriers, which are in the business of renting the use of their aircraft, compete for many contracts across

³ 5th Freedom is the right to fly between two foreign countries where the flight originates or ends in ones own country.

⁴ 7th Freedom is the right to fly between two foreign countries while not offering flights to ones own country.

a wide market, often filling gaps which cannot be filled by scheduled carriers. Markets include passenger charter and general cargo for both civilian customers and the military (UK MOD), humanitarian flights, UK Border Agency repatriations, medical flights and private charters (such as sports teams, VIPs, etc).

- 4.6 DfT also ensures that a number of administrative requirements are completed before an operating permit is granted. This includes requiring the provision of certain supporting documents relating to safety and that foreign airlines are operating in compliance with international obligations and UK national requirements. These include provision of valid certificates that are recognised by the International Civil Aviation Organisation (ICAO) on competency (i.e. air operators certificate), insurance, registration, aircraft airworthiness and noise, together with written confirmation that aircraft are fitted with a recognised enhanced ground proximity warning system, airborne collision avoidance system and that crews are aware of the UK approach requirements and comply with aerodrome operating minima requirements.

Article 225 Permits - Aerial Work

- 4.7 Under Article 225 of the ANO, aircraft registered in a foreign country outside the EEA cannot be used to carry out aerial photography, aerial survey or other aerial work unless permission has been granted by the Secretary of State.
- 4.8 As for Article 223 permits, the requirement for a permit allows DfT to ensure that a number of administrative arrangements are completed before an operating permit is granted as evidence that foreign registered aircraft are safe and capable of operating in compliance with international obligations and UK national requirements.
- 4.9 Unlike in the case of Article 223 of the ANO, the provisions of the relevant ASA are not relevant.

Overseas Territories and the Crown Dependencies

- 4.10 A permit is also required by all foreign registered aircraft wishing to operate in and out of the Overseas Territories⁵ and Crown Dependencies⁶.
- 4.11 While most permits for foreign registered aircraft operating into and out of the Overseas Territories are currently granted by the DfT, the power may be delegated to the Governor of an Overseas Territory⁷. To date, DfT has delegated the full power to Bermuda, the Cayman Islands and the Turks and Caicos Islands, and delegated a more limited power to certain other Overseas Territories to issue ad hoc permits and short season permits of up to 14 days.
- 4.12 DfT currently grants permits on behalf of the Crown Dependencies. While the Secretary of State has the power to delegate the function to the authorities in the Isle of Man⁸ and Guernsey⁹, there has been no delegation to date. There is no power under existing legislation¹⁰ to delegate the function to the Minister in Jersey.

Objection Process

- 4.13 In mid 1990's the DfT introduced a policy to exercise a degree of control over extra-bilateral flights (the Objection Process), generally permitting ad-hoc extra-bilateral charter flights on an exceptional basis, providing that no suitable UK carrier could undertake the flight. The original intention was to protect UK charter carriers from losing business to cheap foreign operators from outside the EU.
- 4.14 In practice this means that when a foreign charter carrier applies for an Article 223 permit to operate an ad-hoc extra-bilateral flight (passenger or cargo), they are required to copy their application to all UK carriers and EU carriers established in the UK. These carriers will be able to object to the DfT if they have a suitable aircraft available. Other countries apply a similar process.

⁵ Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and St Helena Dependencies (Ascension and Tristan da Cunha), South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia, The Turks & Caicos Islands.

⁶ Isle of Man, Channel Islands: Bailiwick of Jersey, Bailiwick of Guernsey

⁷ Article 135 of the Air Navigation (Overseas Territories) Order 2007

⁸ Article 138 of the Civil Aviation (Subordinate Legislation) (Application) Orders 2006/2008

⁹ Article 1 of the Aviation (Foreign Aircraft Operations) (Bailiwick of Guernsey) Ordinance, 2009

¹⁰ Air Navigation (Jersey) Order 2008 applies Article 138 of the Air Navigation Order 2005

Passenger Charter

4.15 The Secretary of State will normally uphold an objection provided the aircraft offered by the objecting airline has no more than 20 seats above the capacity requested or can accommodate the passengers already booked, and is available from the same airport and within two hours of the time requested. However, an exception to this is made for UK MOD charters where only the payload is taken into consideration. Price is not taken into account. If he is satisfied that there is no suitable alternative capacity, and the application is in order, the Secretary of State will grant permission for the extra-bilateral flight or flights, subject to receipt of the necessary documents in para 4.6 above.

4.16 Objections on grounds other than the availability of a suitable aircraft will not normally be accepted, but the Secretary of State, in deciding whether to grant permission, will consider any comments which UK and EU carriers established in the UK wish to make (for example that they have been refused permission to operate similar extra-bilateral services by the authorities of the foreign registered carrier's home country), or concerns about the validity of information provided by the applicant.

Cargo Charter

4.17 The Secretary of State will normally uphold an objection provided that the aircraft offered can provide the required capacity and accommodate any special needs required by the charterer, is available at the time and from the airport specified by the charterer, and is offered at a price which is equal to or lower than that quoted by the foreign operator.

4.18 Objections on grounds other than the availability of a suitable aircraft will not normally be accepted, but the Secretary of State, in deciding whether to grant permission, will consider any comments which UK and EU carriers established in the UK wish to make (for example that they have been refused permission to operate similar extra-bilateral services by the authorities of the foreign registered carrier's home country), or concerns about the validity of information provided by the applicant.

Exceptions

4.19 There are exceptions to the application of the 'Objection Process' including:

- Emergency flights by air ambulance or for humanitarian needs.
- EU carriers established in the UK.
- Carriers to whom a contract has been awarded after a public tender to which all UK and Community carriers established in the UK have had a fair and equal opportunity to apply¹¹. However the exception does not apply where such a contract has been awarded to a broker, who has subsequently sub-contracted to a non-Community carrier.

4.20 The lack of transparency in the sub-contracting by brokers to carriers prompted the DfT to require carriers awarded work through a broker to go through the 'Objection Process'. DfT considered that the exception applied to contracts awarded by public procurement should not apply where the authority had awarded the contract to a broker because UK carriers did not have a fair opportunity to compete for the work when subsequently sub-contracted by the broker.

Statistics

Permit Applications							
	Extra Bi-lateral Passenger Flights	Extra Bi-lateral Cargo Flights	Extra Bi-lateral Corporate Flights	Objections Received	Objections Upheld	Objections Overruled	Objections Withdrawn
2009*	40	137	58	0	0	0	0
2010	537	793	588	10	3	2	5
2011	664	640	720	9	3	3	3
2012	455	593	819	25	8	12	5

¹¹ Flights to which Directive 2004/18/EC applies, relating to the co-ordination of procedures for the award of public service contracts.

*The DfT created a new Permit Database in October 2009. The table reflects permits issued from 24 October 2009.

4.21 The above table sets out the number of objections the Department has received in recent years. As may be seen this represents a very small proportion of the overall number of permits processed each year. However due to the complex and contentious nature of the Objection Process, it represents a large (and disproportionate) amount of work for the DfT.

The problems with the Objection Process

4.22 The DfT has been applying the current Objection Process for nearly two decades. During this time the DfT's wider policy has evolved from full protection of UK airlines to encouraging a more open competitive market for extra-bilateral services, driving greater choice, value for money and other benefits to both customers and passengers. The DfT believes that the original aim of the Objection Process to protect UK carriers can no longer be justified and is not consistent with the UK's policy of encouraging a competitive aviation market. The DfT therefore believes that it is appropriate to review the continued application of the Objection Process.

4.23 The DfT believes that customers' (charterers') interests are best served if airlines are free to compete for extra-bilateral services and the UK's international aviation market is as competitive as possible. Of most concern is that a customer with a reduced choice of carriers from among those not subject to the Objection Process is likely to face higher prices.

4.24 Moreover the Objection Process leads to Government intervention after operators and customers have concluded agreements. This intervention often results in delay and inconvenience for the operator and the customer. They face uncertainty as to whether an objection will be made. If an objection is made and upheld, the customer may have to seek an alternative carrier, who may only be able to provide a sub-optimal service (for example, the alternative aircraft may be larger than needed with higher operating costs). Both operator and customer will have incurred costs in concluding an agreement which may not be fulfilled.

4.25 The Objection Process also leads to Government intervention after contracts have been agreed between a public authority and a

broker subject to a public procurement process. This results in similar inconvenience to the public authority and the broker after incurring time and costs in carrying out the procurement for public services.

- 4.26 The Objection Process is frequently applied to brokers because public authorities are increasingly turning to brokers, rather than going directly to airlines, to provide and manage their airlift (passenger and cargo) requirements. This is often the most convenient solution for customers as the responsibility for organising the flights is transferred to the broker.
- 4.27 In most cases, brokers compete for business in competition with airlines. The advantage for the customer is that a broker has number of relationships with different airlines. As a result brokers can provide competitive solutions for customers, as they will source the best price from a range of airlines at their disposal.
- 4.28 The DfT considers that the application of the Objection Process to brokers notwithstanding that they have participated in a public procurement can no longer be justified. The costs of sub-contracting by brokers to operators are known and taken into account by the public authority in its procurement. Operators, including UK operators, will have had the opportunity to compete with the brokers for the extra-bilateral flights in the original procurement.
- 4.29 In any event, the policy fails to fulfil the original objective to protect UK carriers: upholding an objection from a UK carrier does not necessarily result in the customer awarding the contract to the objecting operator. Upholding an objection will usually force the customer to reconsider their options, which might include starting the whole selection process again, to ensure they receive the service that delivers best value for money.

Example 1

- 4.30 A customer in the US goes to a broker to charter a business jet and crew to fly him/her from New Jersey to Cardiff, pick up an additional passenger and then fly on to Edinburgh. Assuming the preferred solution is with an operator of an American registered aircraft; the operator is required to go through the Objection Process and seek objections from UK carriers and Community carriers established in the UK for the Cardiff to Edinburgh leg. (In respect of the flight

between the US and UK, the operator will be exercising rights agreed under the EU-US Air Transport Agreement.)

4.31 This example is typical of a number of business aviation applications that are required to go through the Objection Process. In our experience the customer does not want to be inconvenienced by having to charter a separate aircraft to fly between two points in the UK and would prefer to find alternative travel solution than give the work to the objecting carrier, who in their mind has caused them unacceptable inconvenience and additional costs. This also affects the relationship between operators and brokers who often rely on each other for future work. The objecting UK operator does not benefit and is not awarded the work in any event. In addition the outcome often results in a loss of business and potential revenue to the UK, as the customer will find other solutions for their travel leads, such as the consideration of re-routing to alternative European airports.

Example 2

4.32 A public authority has openly procured a contract to meet their specific requirement to carry both passengers and cargo on a twice weekly service from the UK to Cape Verde over a 3 month period. This has been done in accordance with Directive 2004/18/EC relating to the co-ordination of procedures for the award of public service contracts. A broker has been awarded the contract on the basis that the work will be subcontracted to their nominated operator/operators. If this operator is from outside the EU, the operator is required to go through the Objection Process because the contract was awarded to a broker who subsequently subcontracted to that carrier.

4.33 This example is typical of many applications that are subject to the Objections Process. In this instance, the customer has run a public procurement in accordance with Directive 2004/18/EC. However, because the contract was awarded to a broker rather than direct to an airline, the operator does not benefit from the exemption normally applied to operators who have been awarded contracts following a public procurement, and is forced to go through the Objections Process. This type of application often results in an objection from a UK carrier who can meet the requirement and has aircraft available. This will normally result in the DfT upholding the objection.

4.34 However, having awarded the contract to the broker by public procurement, the public authority cannot simply award the contract directly to a UK carrier, but will have to start the public procurement process again. This places the DfT in a very difficult position as the DfT will be perceived to be intervening following the award of a contract by public procurement, thereby causing inconvenience and increasing costs.

4.35 As with *example 1*, nobody wins. The public authority (customer) ultimately loses out and is inconvenienced, which can jeopardise important deadlines for the delivery of public services. The broker and original carrier lose out because they are not given the work and the objecting UK carrier gains no benefit because they are not awarded the contract, because the customer is often required to follow public procurement rules.

Conclusion

4.36 In summary the Objections Process is not consistent with the UK's policy of encouraging a competitive aviation market. Moreover the DfT believes the current Objection Process is failing on many levels. Of most concern is that the customer has a reduced choice in the market, and therefore is likely to be faced with higher prices as a result of fewer competing carriers to choose from who are not subject to the Objection Process. Clearly this raises the question of whether customers are getting the best value for money. Furthermore, the policy has resulted in direct Government intervention in the aviation market, resulting in inconvenience and extra costs for operators and customers and adding unnecessary complexity to the permit application process.

4.37 The Government believes that the removal of the Objection Process would address the problems outlined above to the advantage of customers, operators and brokers. The Government is keen to understand the views of industry on this proposal.

The Proposals - Introduction

5.1 There are two separate elements of our proposals, which are described in this chapter. These are:

- removal of the Objection Procedure
- transfer of the administration of Article 223 and 225 permits to the CAA

Removal of the Objection Process

5.2 The Government believes that the current Objection Process constitutes interference by Government in the competitive aviation market and impacts adversely on the consumer as explained above in paragraphs 4.22 to 4.31.

5.3 The Government is proposing to remove the Objection Process with a view to:

- reducing intervention by Government in this area of the aviation market;
- increasing consumer choice through increased competition.
- simplifying and clarifying the permit process.

5.4 We welcome views and evidence on our proposals to remove the current Objection Process.

Transfer of Permits Administration to CAA

5.5 The Government believes that the administration of the Article 223 and 225 permits should be carried out by the CAA, within their powers. The CAA will recover its administrative costs in exercising this function from applicants. The overall policy objectives are to:

- exploit synergies and efficiencies from the CAA embedding this function within its existing functions including those relating to safety;

- remove price distortions associated with this aviation function being funded by the taxpayer rather than industry. Transferring the cost of the administration of permits from the taxpayer to the applicant should help ensure prices consumers pay better reflect the costs of aviation; and
- reduce the size of Government, reduce costs to the taxpayer and help tackle the fiscal deficit.

5.6 We welcome views and evidence on our proposal to transfer the administration of permits to the CAA.

5.7 A decision on whether to transfer the permits process to the CAA will only be taken once the responses to this consultation are received and given consideration. However, in discussion with the CAA they have indicated that if the permits process is transferred to them, they would be interested to receive participants' views on potential ways that the administration of the permits process could be made more efficient and streamlined for the benefit of end users (see question 8 below). Whilst question 8 does not form part of the formal consultation questions on the removal of the objection procedure, we consider that it is favourable to collect participants' views on potential streamlining at an early stage, in order that, should the function be transferred to the CAA, participants' comments can be taken into early account in designing the transferred procedure.

Overseas Territories and Crown Dependencies

5.8 In line with the Government's policy to localise decision making, we are working with the Overseas Territories and Crown Dependencies to enable them to grant permit applications for flights into and out of their territory. The DfT believes that the Overseas Territories and Crown Dependencies are best placed to make decisions on issues of connectivity and services for the benefit of local consumers and economy. This is a matter between Her Majesty's Government and the Overseas Territories and Crown Dependencies, and will not form part of the consultation.

The Proposals- Detail

REMOVAL OF THE OBJECTION PROCESS

- 6.1 This part of the Consultation Paper seeks views on proposals to remove the Objection Process.
- 6.2 The Government wishes to consider whether the current Objection Process remains appropriate. This Consultation Paper therefore seeks views on proposals to end the application of the Objection Process.

Proposals

Do Nothing

- 6.3 The do nothing option would mean that DfT would continue to apply the existing Objection Process and consider objections received from UK and Community carriers established in the UK to the grant of Article 223 permits to passenger and cargo charter operators who are not exercising rights agreed under a bilateral agreement, in line with existing policy. This is the option against which all other options are assessed.

Option 1 – removal of the Objection Process

Summary

- 6.4 In this option we would cease to apply the Objection Process to applications for Article 223 permits.
- 6.5 Other requirements of the existing procedure for Article 223 applications in respect of extra-bilateral flights would remain. This includes the imposition of the discretionary limit on the number of extra-bilateral non-scheduled passenger charter flights a foreign registered carrier may perform in an IATA season (as described in paragraph 3.4(b) above). This is applied where the charter operates on the same route as scheduled services, to ensure that

the charter carrier does not exercise greater traffic rights than those granted in respect of scheduled flights under the relevant ASA.

6.6 This option would meet in full the objectives in paragraph 5.3 above.

6.7 This is our preferred option.

Benefits

6.8 The aim of removing the Objection Process is to increase customer and consumer choice and better value. We believe that the Objection Process currently works against customers' interests and by upholding an objection the DfT is limiting customer choice to UK suppliers. There is some evidence to suggest that this restriction on supply is potentially a barrier to customers achieving best value. Promoting competition in this way between UK and foreign operators is intended to drive down prices for customers.

6.9 Moreover the removal of the Objection Process would eliminate the inconvenience to operators and customers caused by Government intervention following conclusion of their agreements. These include customers who are public authorities who have concluded agreements with brokers through public procurement. It would thereby remove the delay and uncertainty for operators and customers as to whether an objection will be made or upheld

6.10 Initial input from airlines, brokers and end customers indicate that the following type of costs and, where provided, indications of the value, that will be avoided by ending the Objection Process. It should be noted that most cost information is not specific or attributed, because it is commercially sensitive.

Description of potential cost benefits

Group Affected by Objection Process	Description of cost	Indicative scale of cost (where available)
Foreign Airline Operators	Cost of copying each permit applications to UK/EEA operators	Currently unknown.
	Nugatory tendering costs following upheld objection	Currently unknown
	Loss of contract when	Contracts can be worth several

	objection is upheld	£million
Brokers	Abortive staff tendering costs when objection is upheld	£100 - £500
	Loss of profit when objection is upheld	Between 1%-5% of the contract value. Contracts can be worth several £million.
Customers	Cost of re-tendering or seeking alternative supplier	Currently unknown
	Additional cost associated with alternative supplier when objection against preferred supplier is upheld	Between £15 - £2 million depending on size of contract.
	Cost or loss of business due to time delays e.g. not being able to ship or receive cargo in time, or deliver passengers, because of delays imposed by the Objections process.	Currently unknown

6.11 The DfT believes that a reduction in the costs identified above may lead to a better deal for customers chartering aircraft to meet their business and personal requirements, whether they are an organisation or an individual.

6.12 The cost benefit are not set out in firm monetary value at this stage, but we would welcome the submission of any quantified evidence on the costs described above or any others that you think would be reduced by ending the Objection Process to help inform our final assessment of impacts.

Costs

6.13 Historical data shows that in 2012 the DfT issued a total of 2490 permits, comprising 451 Seasonal Permits, 1867 Extra-Bilateral Permits) and 172 Aerial Work Permits. In this period the Department received 25 objections from UK airlines to foreign airlines seeking to operate Extra- Bilateral flights to or from the UK. Of these objections the Department upheld 8, overruled 12 and 5 were withdrawn (see table in paragraph 4.20). Whilst the number objections received in 2012 was slightly higher than

previous years, only a handful of objections are upheld each year, therefore we consider that the cost impact of removing the objection procedure is not likely to be significant.

Risks

6.14 This would be a clear and transparent policy change with no identified risks.

Questions

6.15 We would welcome comments and evidence about the impact of the 'Objection Process' on your business, and what the likely impact of each of the proposals to reform the policy are likely to be.

Q1. What are the cost and other impacts of the Objection Process on your business?

Q2. What benefits, if any, do you derive from the Objection Process?

Q3. Please explain, with evidence, the likely costs, benefits and other impacts of the proposed removal of the Objection Process on your business.

Q4. Which of the options, including do nothing, do you prefer? And why?

TRANSFER OF PERMITS ADMINISTRATION

7.1 This part of the Consultation Paper seeks views on proposals to transfer the administration of Article 223 and Article 225 permits to the CAA.

Proposals

Summary

7.2 The Government proposes to transfer the administration of the Article 223 and Article 225 permits to the CAA, to exercise within its powers.

7.3 It is a condition of the transfer to the CAA that:

- a. the process should further support the development of a competitive airline sector in the interests of UK passengers and the CAA's objectives under section 4 of the Civil Aviation Act 1982 (this would mean that removal of the Objection Process is a prerequisite for the transfer to be able to take place);
- b. the CAA are able to develop a streamlined process which reduces the overall resource burden; and
- c. the CAA can recover its administrative costs

7.4 The CAA is the UK specialist safety regulator, yet it currently has no part in exercising these permit functions. The transfer would embed the safety aspects of the permits system into the CAA's wider safety oversight function.

7.5 The Secretary of State would retain a power to exercise the Article 223 permit issuing function where necessary. For example, he might wish to withhold a permit for reasons connected to the ASA

or wider foreign policy issues with the carrier's home country. However, it is anticipated that he would only exercise the function in respect of a small number of applications.

- 7.6 As with Article 223 permits, the grant of Article 225 permits is subject to the DfT being satisfied, by means of a document check to ensure that operators have the right paperwork and are compliant with international and domestic requirements. The Government proposes to transfer the entire Article 225 permit function to the CAA without retaining a power for the Secretary of State to exercise the function.

Benefits

- 7.7 The CAA's Strategic Plan objective for aviation safety is to enhance aviation safety performance by pursuing targeted and continuous improvements in systems, culture, processes and capability. We believe that the permit functions fit well with the CAA's safety regulation functions as the permit process provides the UK with the first opportunity to check a foreign operator's compliance with international standards before entering the UK. We consider that the CAA, with its long established safety expertise, is better placed to exploit the synergies with its wider functions on aviation safety. For example, the Secretary of State delegates to the CAA the carrying out of the Safety Assessment of Foreign Aircraft (SAFA) ramp inspections on foreign aircraft where he suspects non-compliance with international standards¹² (about 1000 a year). In addition, the CAA would be able to adapt the permit safety requirements to account for future safety developments, including SAFA and the European Commission proposals for Community legislation regarding safety standards of third country operators flying in Europe (Part TCO).
- 7.8 Transfer of the permits administration to the CAA will enable it to develop a way of improving and simplifying the process in the context of its existing functions under the Civil Aviation Act 1982, to the benefit of both customers and operators. It would present an opportunity for the CAA to review the process for carrying out the necessary checks in order to ensure that it is consistent with existing and future legislation, making efficient use of its resources and to remove unnecessary administrative burdens for the industry.

¹² Civil Aviation (Safety of third country aircraft) Regulations 2006

- 7.9 Transferring the administration of permits to the CAA will help reduce DfT's costs, therefore benefiting the taxpayer. In 2011, the annual total cost for DfT in administering permit applications received (2490 in 2012) was about £120,000 (This equates to an average of approximately £48 per permit application). In the Government's view, these costs should be met by the applicants for the permits, rather than the taxpayer. The transfer of the administration of permits therefore fits with wider Government aviation policy that the aviation industry, rather than taxpayer, should meet the costs of regulation and oversight.
- 7.10 However, it should be noted that, should a decision be made to retain the Objection Process following consultation on the issue as outlined above, then it will not be possible to transfer the function to the CAA, as this would fail to meet the CAA's objectives under section 4 of the Civil Aviation Act 1982.
- 7.11 In these circumstances, the DfT would continue to administer permit applications, including the Objection Process.

Costs

- 7.12 The CAA meets the costs of exercising certain functions through charges made under section 11 of the Civil Aviation Act 1982. The CAA has indicated that, if the administration of permits was transferred to them, they would expect to develop a scheme of charges to recover the costs of administering applications for permits. The CAA has indicated that this figure is likely to be between £200k - £250k per annum.
- 7.13 In the case of Article 223 permits, the charges would be incurred by operators of foreign registered aircraft subject to the requirement for a permit. It is reasonable to expect that the costs of charges incurred by such carriers would be passed on to their customers. Whilst some UK carriers do occasionally lease foreign registered aircraft, this should be an exception rather than the norm, and therefore there should be a limited impact on UK carriers. There may be an indirect impact for UK passengers buying tickets on foreign carriers and on some UK businesses, such as tour operators, shippers etc, buying travel involving carriers subject to the permit requirement.

7.14 We believe that it is appropriate that foreign applicants for permits should bear the administrative costs of processing permits, rather than UK taxpayers.

Impact on UK Businesses

7.15 In 2012 the DfT issued 172 Article 225 permits, of which 143 were issued to UK businesses that make use of foreign registered aircraft for aerial work (at a cost of approximately £48 per application to the taxpayer). Based on the CAA's indicative costs for administering the scheme, transferring the function to the CAA may result in costs per permit application of between £81 and £100.

7.16 The costs illustrated in paragraph 7.15 are an indication only as it is too early for the CAA to have formulated a precise scheme of charges imposed per permit application because this would depend upon the process adopted by the CAA in carrying out the function. In the event that the permits process is transferred to them, the CAA have indicated that they will undertake a separate consultation on their proposed charges, although the charges imposed will be on a cost recovery basis.

Risks of transferring the administration of permits to the CAA.

7.17 As discussed above, the CAA has indicated that they would seek to recover the costs of providing the permit function through user charges. There is a risk that this might encourage other countries to do the same and start charging airlines the administrative costs of permit applications. Our understanding is that some countries already do this, and it is not possible to quantify this risk, and there is no mitigation. However, it is an acceptable risk, as it accords with the 'user pays' principle, and would help tackle the distortions described in para 5.5 on a global basis.

Questions

7.18 We would welcome comments and evidence about the impacts of proposal to transfer the permit administration to the CAA on your business, and what the likely impacts are likely to be.

Q9. Do you agree that the administration of permits to foreign registered aircraft should be transferred to the CAA? If not, please explain your reasoning.

Q10. What impacts, either positive or negative, would there be for your business or organisation as a result of a transfer? Any cost impacts should be quantified with evidence.

CAA Development Proposals for a More Efficient Article 223 and 225 Permit Process

- 8.1 In addition to the to the DfT's two main questions, the CAA would additionally like to your views on their proposals for introducing efficiencies to current permit process.

Making the best use of resources: reviewing the process

- 8.2 If a decision is made to transfer the permits procedure to the CAA, this presents an opportunity for a root and branch review of the permitting process, where possible making efficiency gains and removing unnecessary administrative burdens for the benefits of operators and customers. This would include making the process less resource-intensive, but drawing on CAA expertise in areas such as safety and insurance, to achieve the necessary assurances with regards safety oversight and compliance with traffic rights.
- 8.3 The CAA are currently thinking about what the revised process might look like, if the function were to be transferred to them. We would therefore like to take the opportunity presented by this consultation to seek views on some of the changes the CAA are considering. Consultees should not assume that the changes will necessarily be adopted should the transfer take place, but including responses now in this consultation will allow the opportunity to help shape the CAA's thinking on a revised process. The DfT will be holding a Consultation Event on 5th June 2013 where we anticipate the CAA will give more details on their proposals. The DfT will be approaching interested stakeholders about this event on a bilateral basis. We welcome your participation in this event and for your comments on the CAA's proposals for a revised process.

8.4 In preparation for this event we would welcome your consideration of the following questions:

Q5. The current application is made in variety of formats to a dedicated DfT email account. Would you prefer to see more automation in the application process, including the ability to complete the application via a dedicated online portal?

Q6 As described above, a transfer to the CAA would result in the CAA recovering its administrative costs. If this were the case, would you prefer to make payments via a dedicated secure portal online?

Q7. With regard to safety assessment, what are your thoughts on introducing an approach based on operators self-declaring their compliance with UK/EU requirements?

Q8. The CAA is currently exploring a more effective and efficient process by which it could issue and grant permits, without affecting the policy on traffic rights. We would welcome your views on the following potential methods:

- i. introducing a form of general permission, for example, where all flights by operators from a particular country would be given blanket permits, providing to do so would not create issues in respect of traffic rights;
- ii. granting permission for an unspecified series of charter flights for a seasonal period, subject to a cap on the number of flights where these might be undermining traffic rights as explained in paragraph 3.4;
- iii. introducing general permissions on extra-bilateral services outside the EU for EU carriers already exercising rights to operate within the Community without the need for a permit (see paragraph 3.3).

Consultation questions

Q1. What are the cost and other impacts of the current Objection Process on your business?

Q2. What benefits do you derive from the current Objection Process?

Q3. Please explain, with evidence, the likely costs, benefits and other impacts of the proposed removal of the Objection Process on your business.

Q4. Which of the options in relation to the Objection Process, including do nothing, do you prefer? And why?

Q5. The current application is made in variety of formats to a dedicated DfT email account. Would you prefer to see more automation in the application process, including the ability to complete the application via a dedicated portal online?

Q6. As described above, a transfer to the CAA would result in the CAA recovering its administrative costs. If this were the case would you prefer to make payments via a dedicated secure portal online?

Q7. With regard safety assessment, would you consider a more balanced approach based on operators self-declaring their compliance with UK/EU requirements?

Q8. The CAA is currently exploring a more effective and efficient process by which it could issue and grant permits, without affecting the policy on traffic rights. We would welcome your views on the following potential methods:

- iv. introducing a form of general permission, for example where all flights by operators from a particular country would be given blanket permits, providing to do so would not create issues in respect of traffic rights;

- v. granting permission for an unspecified series of charter flights for a seasonal period, subject to a cap on the number of flights where these might be undermining traffic rights as explained in para 3.4;
- vi. introducing general permissions on extra-bilateral services outside the EU for EU carriers already exercising rights to operate within the Community without the need for a permit (see para 3.3).

Q9 Do you agree that the administration of permits to foreign registered aircraft should be transferred to the CAA? If not, please explain your reasoning.

Q10 What impacts, either positive or negative, would there be for your business or organisation as a result of a transfer of the permits process to the CAA?

What will happen next?

A summary of responses, including the next steps, will be published within three months of the consultation closing. Paper copies will be available on request.

Question and answer brief

Below is a list of frequently asked questions about these proposals.

1. Where can I get further information about the current permit system?

Further information on the permit system, including current procedures and guidance can be found on the DfT's website at [Aviation permits - Department for Transport](#).

Further information on the removal of Objections Process can be found on the DfT's website at [Extra-bilateral flight application procedures - Publications - Department for Transport](#).

2. Where can I get further information about the CAA's current schemes of charges?

Information on the CAA's current schemes of charges can be found on the CAA's website at [List of Official Record Series 5 - Scheme of Charges | Publications | About the CAA](#).

If you still have questions after you have read this section please contact:

Jeremy Ketley
International Aviation, Safety & Environment
Department for Transport
Zone 1/22
Great Minster House
33 Horseferry Road
London SW1P 4DR

Fax: 00 44 (0) 207 944 2194
Email: Jeremy.ketley@dft.gsi.gov.uk

Annex A Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available on the Better Regulation Executive website at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

Consultation Co-ordinator

*Department for Transport
Zone 1/14 Great Minster House
London SW1P 4DR*

Email consultation@dft.gsi.gov.uk