

Improving the Delivery of Aviation Permits for Foreign Registered Aircraft - Summary of Consultation Responses and the Government's Decision

The purpose of this Consultation was to invite views on two related proposals:

- to remove the objections process, which allows UK and Community carriers established in the UK to object to the grant of a permission under Article 223 of the Air Navigation Order 2009 in respect of a non-scheduled flight by a foreign registered aircraft (the 'Objections Process'); and
- to transfer from the Secretary of State to the Civil Aviation Authority the administration of permissions 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.

The consultation also sought views on behalf of the CAA on potential ways of making the permissions process more efficient in the event of the transfer of its administration to the CAA. Analysis of comments received is a matter for the CAA and is not included in this Summary of Responses and Government's Decision.

These proposals were put forward as part of a wider Government policy to reduce staff costs in central Departments, improve

delivery of public services, reduce bureaucracy, cut red tape and transfer front line functions to front line organisations. The consultation elicited 15 responses in total, comprising 7 UK airlines, 1 charter broker, 2 foreign airlines, 4 airline representative organisations and a central Government Department.

This Document is in four parts:

- Part 1 summarises responses to the proposal to remove the Objections Process and the Government's response
- Part 2 summarises responses to the proposal to transfer administration of foreign airline permissions to the CAA and the Government response
- Part 3 sets out the Government's decision and next steps
- Part 4 summarises responses to the consultation questions.

A list of respondents is at the end.

Part 1

Summary and Government Response – Removal of the Objections Process

The original intention of the Objections Process was to protect UK charter carriers from losing business to cheap foreign operators from outside the EU. However, it has always sat uneasily within the wider UK policy of promoting fair market competition in aviation in order to drive the best outcomes for end consumers in terms of choice and value. We consulted on removing the Objections Process to enable the foreign airline permission system to better fit with our approach of encouraging open market competition, to reduce the administrative burden of this scheme and remove the uncertainties, delay and inconvenience which the objection process introduces for those seeking to procure aviation services.

We received a number of responses from the airline industry including seven from UK airlines and two from foreign airlines.

The majority of UK airlines who responded to the consultation said they would like to see the Objections Process remain. The key reasons being:

- The current Objections Process provides a level playing field with foreign airlines whose countries operate similar procedures;
- Ending the Objections Process may cost them business;

- Ending the Objections Process risks opening up the UK to an increase in services by foreign aircraft operators without providing reciprocal access to overseas markets.

The Government does not consider that ending the Objections Process will lead to the flooding of the UK market by foreign carriers. Some markets are already liberalised with no limit on the number of flights that can be operated. In less liberal markets, the Department for Transport will set out a country-by-country limit on the number of individual extra-bilateral flights or permissions the CAA can administer each IATA traffic season. When that limit is reached, the CAA will flag this up and the Department for Transport will decide what action is appropriate.

The Government also considers that maintaining the Objections Process in the UK will simply serve to entrench the current protective and restrictive practices both in the UK and internationally to the detriment of end consumers.

Nevertheless, the Government does recognise UK airlines' concerns that in some cases removal of the Objections Process may allow foreign airlines access to the UK market without the reciprocity in the international community which some UK airlines regard as a key objective.

We consider these concerns can be addressed by better enabling UK airlines to make representations to the Department for Transport (DfT) where they feel they are not getting reciprocal market access or have concerns about unfair competition. The Department will then be in a more credible position to address these through their bilateral negotiations with other countries. Furthermore, the Secretary of State will retain the power to withhold or refuse the grant of foreign airline permissions to operators from such countries for the purposes of leverage.

The Government is therefore ending the current policy of allowing UK airlines to object to the granting of individual permissions. This will remove Government interference in the agreement of contracts between private parties and the resultant uncertainties, delay and inconvenience which that intervention introduces.

Working in partnership with the CAA, the Government will put in place improved processes to provide UK airlines with greater visibility of foreign airlines operating in the UK market and thereby

strengthen the ability of Government to deliver improved fair market access and competition for the UK's airlines through bilateral negotiations with other countries. This will be achieved through:

- **Transparency:** Publication by the CAA of information on all permission applications received and granted. This will provide transparency to the process for the first time. It will enable industry and the DfT to bring pressure for reciprocal market access and provide a platform to promote the benefits of further liberalisation.
- **Reporting:** The DfT will set out a country-by-country limit of the number of individual flights or permissions the CAA can administer. When that limit is reached, the CAA will flag this up and the DfT would decide what action was appropriate. This would prevent abuse of the privilege of operating in the UK market, and provide greater leverage in negotiations to obtain reciprocal access for UK airlines.
- **Policy Statement:** The DfT will agree with the CAA a public policy statement setting out the basis on which foreign airline permission applications will be considered.

This revised structure will help strike a balance between improving competition in the UK aviation market to deliver better outcomes to UK consumers whilst giving UK airlines greater visibility of the market. It will strengthen the DfT's ability to work with UK airlines to tackle unfair practices with other Governments, if necessary, by withholding foreign airline permissions in particular cases where considered justified. Shifting the focus from objecting to individual permissions to considering all permissions from particular airlines or countries will strengthen the UK's negotiating hand when pressing for the discontinuation of similar objection processes in other countries to achieve more liberalised markets.

Overall, we believe that the new approach will help create a more competitive aviation market leading to greater connectivity, more choice and lower prices for UK consumers.

Part 2

Summary and Government Response – transfer of the administration of permits to the CAA

The Government consulted on proposals to transfer the administration of foreign aircraft permissions to the CAA to deliver the following benefits:

- Embed the operational and safety related aspects of permissions within the CAA's wider oversight functions; and
- Reduce costs to the taxpayer.

Four respondents to our consultation supported the principle of transferring the administration to the CAA without caveat. Four other respondents (all UK airlines) also said that they saw merit in the CAA doing the work. Overall, however, they did not support the proposed transfer of the administration of foreign aircraft permissions to the CAA if it also meant the removal of the Objections Process (as to which see above).

As mentioned in our consultation, the CAA intends to charge foreign airlines a fee for the administration involved in issuing permission. The two foreign registered carriers who responded to the consultation were concerned about the direct costs they would face and wanted further clarity and dialogue with the CAA. The Government notes that, in preparation for taking on the work from 6 April 2014, the CAA is consulting on a proposed charge of £75 per permission, irrespective of the number of flights within a single

application, which should, to a large extent, address these respondents' desire for clarity on costs.

Some UK carriers raised concern that if the CAA started charging for the administrative costs of issuing permissions, other countries might follow suit and therefore there would be indirect impact on their respective businesses. However, there are several countries that already levy a similar charge, generally higher than that proposed by the CAA, and if other countries were to follow suit then they could not single the UK out but would have to apply charges across all airlines. As discussed in the consultation paper, the Government believes that such charging is consistent with the user pays principle and that the costs of aviation should be borne by the aviation industry, and ultimately end consumers, rather than by taxpayers.

Two respondents raised concern about separating the administration of permissions from the negotiation of Air Services Agreements.

Overall, the Government believes that it is appropriate for the CAA to embed the administration of permissions within its existing safety and insurance functions and will amend the Air Navigation Order to give the CAA powers to grant Article 223 permissions and Article 225 (aerial work) permissions from 6 April 2014. However, the Secretary of State will be retaining overall policy for foreign airline permissions and will agree criteria for when the CAA may issue Article 223 permissions and retain powers to decide, amend or revoke permissions where necessary.

Whilst UK airlines would no longer be able to object to an individual application, they would be able to track all applications made and make representations to the DfT where, for example, they identify abuse of a relevant Air Services Agreement or where there is lack of reciprocal market access. The DfT will then be able to address such issues through bilateral discussions with the country concerned. This approach will enable the CAA to introduce a new streamlined online process and enhance oversight of foreign registered aircraft operating into and out of the UK. At the same time, we believe it will strengthen our intelligence and negotiating position.

Part 3

The Government's Decision and Next Steps

Taking into account the benefits of CAA taking on the administration of permissions, and the alternatives to the current Objections Process that we are planning to implement to support UK carriers and tackle barriers to fair and open competition, the Government has decided to proceed with the proposals to end the Objections Process and transfer the administration of foreign airline permissions to the CAA. The Government will work towards making the necessary amendments to the Air Navigation Order to give the CAA powers to decide Article 223 permissions and Article 225 (aerial work) permissions from 6 April 2014. The Government will end the Objections Process with effect from 1 March 2014.

Part 4

Summary of responses to Consultation Questions

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

Six respondents stated that the current process had little or no cost impact on their business. Lodging an objection generates some management time, but this was not considered significant.

Two respondents submitted that the current process creates uncertainty, delay and inconvenience, and frustrates contracts that have been concluded between the operator and client and limits choice. This can mean delays to or cancellation of operational flights.

One respondent provided an example where the difference in price between a UK carrier (which that respondent was obliged to contract with as a result of the Objections Process) and foreign registered carrier who had originally offered the service was £161,000.

Q2. What benefits do you derive from the current objection process?

UK operators said they benefited from the current process in the following ways:

- It provides a level playing field with their overseas competitors by providing the same level of protection which foreign registered carriers enjoy in their own territories. One respondent thought that

the UK's Objections Process helps to provide a level playing field and encourages other countries to cease uncompetitive practices.

- Another respondent said that 1/3rd of objections were upheld, which in the absence of the Objections Process, would represent lost business for UK carriers.
- Provides visibility of actual and planned operations in the UK by foreign carriers and confirmation that commercial charges are being made. It enables UK carriers and authorities to monitor and control access to the UK market by foreign operators, particularly where reciprocal equal access is not provided. Also, one airline argues that it provides a safety net against possible dumping of spare capacity on the UK market.

Some respondents thought that the Objection Process could be improved by minimising scope to abuse the system. For example, where foreign carriers put their permission applications in late, UK carriers are often unable to offer an alternative service and therefore cannot make use of the Objections Process.

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

Benefits

No UK carrier thought they would benefit from proposals to remove the Objections Process.

Two representative bodies were supportive of working toward an "open skies" policy on a worldwide basis because the nature of their members' business is short-notice, unplanned and changeable requirements. It was considered that multilateral removal of the Objections Process would have great benefits to its members.

Costs and other impacts

One UK carrier gave an estimate that without the Objections Process in 2012 they may have lost £4m in business

UK carriers and representative organisations also raised a number of potential impacts and risks.

Ending the Objections Process in the UK without reaching agreement on similar arrangements elsewhere would not create a level playing field and will put UK carriers at a disadvantage.

Some feared that without appropriate checks and balances the UK ending the Objections Process would affect the viability of UK carriers to operate in the UK and do nothing to enforce reciprocity of opportunity overseas for UK airlines.

There was also concern expressed that removal of the Objections Process may open the floodgates to overseas airlines. The consensus amongst members of one representative Association was that the reason there have been few objections lodged in the past, is that it is known that the UK has an objections procedure and foreign airlines often do not bother to seek to operate in the UK. If there is no Objections Process or similar protection in the UK, it could open the floodgates to foreign operators.

Another representative organisation said it was concerned about how the market might develop in the UK after a unilateral removal of the Objections Process but did not state how the market might develop.

Another representative organisation was concerned that the removal of the Objections Process will remove transparency from the process and that industry should retain the right to raise concerns to the DfT and or CAA.

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

Two respondents supported the removal of the Objections Process.

One argued that removing the Objections Process will enable it to achieve best value from its procurements. It will also enable it to provide short notice air transport to meet unforeseen but essential tasks.

Another argued that removal of the Objections Process was consistent with the UK's policy of encouraging a competitive aviation market.

One representative organisation said that it supported removal of the Objections Process subject to safeguards being put in place for its UK members.

One UK airline said it could support the removal of the Objections Process if other protections were put in place. For example, airlines from other countries should not be able to take advantage of the UK's liberal policies while UK carriers are excluded from their markets or are unable to compete fairly because of state aids. The respondent suggested publishing all permissions applied for and granted to foreign airlines so that UK airlines can identify those that give concern. They said that this should be supported by a policy of ensuring that grant of permissions is in line with enhancing competition, including ensuring a level playing field. This should include retention of provisions to allow refusal of permissions if UK carriers have been refused permission to operate similar services in that foreign carrier's country.

Two other representative organisations support the removal of the Objections Process, but only as part of a multilateral agreement.

Six UK carriers and a charter broker strongly preferred "do nothing" as an option because they thought removal of the Objections Process would cost UK carriers business, provide an advantage to foreign operators, risk a significant expansion of foreign operations in the UK market and make it harder for the UK to negotiate liberal Air Services Agreements.

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

Four respondents supported the principle of transferring the administration function to the CAA.

In addition, four UK airlines said that they saw merit in the CAA doing the work, but opposed the proposed transfer of the administration of foreign aircraft permissions to the CAA if it meant the removal of the Objections Process.

One foreign airline said that it could not support the proposed transfer without more detail on the CAA's process and charges for administration costs. They also had concerns about loss of contact with an account manager, automation of the process and paying fees by credit card.

A couple of UK airlines did not support transfer to the CAA because the CAA proposed to charge applicants a fee to cover the administrative costs which may encourage other countries to start charging for permissions. They argued that UK operators may therefore face increased costs overall as result of the transfer. A fear was also expressed that, if an overseas operator was refused permission because they have not paid the fee, UK airlines may face retaliatory action, risking delays and cancellations to their operations.

A couple of respondents were also concerned about the separation of the administration of permission applications from negotiation of traffic rights. One said that it could lead to foreign operators being granted permissions whilst UK airlines have their permissions refused or delayed. One representative organisation said its UK Members were satisfied overall with the current arrangements, and thought that the DfT can ensure that carriers applying for permissions comply with their Air Service Agreements.

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

Benefits

Four respondents thought there would be safety and operational benefits of the CAA taking on the administration of the foreign airline permissions function.

Costs

One foreign airline was concerned that the CAA planned to recover its administration costs through charges, which were forecast to be £200-£250,000 per annum, compared to the DfT's current costs of £120k per annum. They also thought the estimated £100 charge per permission would provide an unfair advantage to UK competitors. They estimate that this may lead to additional costs of £1,500 a year. Another foreign airline said it wanted dialogue on the level of charges the CAA proposed to set.

One representative organisation argued that only ongoing CAA costs of administering permission applications through a highly efficient service could potentially be agreed by its members.

Four UK carriers thought that they may face an overall increase in operating costs if other countries follow the CAA's planned approach and start charging to cover their administration costs.

LIST OF RESPONDEES

Air Charter

Atlantic Airlines

Baltic Air Charter Association (BACA)

Board of Airline Representatives in the UK (BAR UK)

British Airways

**British Business and General Aviation Association
(BBGA)**

El Al Israel Airlines

European Business Aviation Association (EBAA)

Global Supply Systems

Ministry of Defence Commercial

Monarch Airlines

Qantas

Thomas Cook

Thomson Airways

Titan Airways