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*via post and email*

Regulating Air Transport Consultation  
Aviation Regulatory & Consumer Policy  
Department for Transport  
1/25 Great Minster House  
76 Marsham Street  
London SW1P 4DR

Dear Sirs

## **PROPOSALS TO UPDATE THE REGULATORY FRAMEWORK FOR AVIATION**

In responding to the above consultation published on 10 December 2009, we first wish to comment on the 'Decision Document and Impact Assessment' ('the DD'), published on the same date, relating to your earlier consultation (9 March to 5 June 2009) which focused on the CAA's *economic* regulatory functions.

In considering the future environmental role of the CAA we do not believe that it is possible to entirely divorce the issues addressed by these two consultations and we therefore wish to return to some aspects of the DD where we have a number of questions to which we would be grateful to receive answers, even if this means treating the first part of this letter as a Freedom of Information request. We may wish to make further comment subject to the information yielded by the latter.

### **1. DECISION DOCUMENT AND IMPACT ASSESSMENT ('the DD')**

#### ***Supplementary duty in relation to the environment and local communities***

1.1 The DfT has decided to change the proposed supplementary environmental duty upon the regulator (as set out in your March 2009 proposals) from:

*'to have regard to the effect on the environment and on local communities of activities connected with the provision of airport services;*

to:

*'to have regard to the airport operator's legal obligations to comply with applicable environmental and planning law'.*

1.2 It is clear that this change is intended to ensure that the regulator will not be empowered to require airports to do anything more in relation to their environmental and community impacts than they are already legally obliged to do. Indeed, you explain in the DD (in and around para 3.38) that the revised wording is intended to alleviate the concerns expressed by a number of airlines and airports about the prospect of an extension of the CAA's regulatory remit to include a duty to have regard to the impacts of airports upon the environment and local communities.

1.3 This change to the supplementary environmental duty for economic regulation appears to overreact to the concerns of industry stakeholders and effectively removes the Secretary of State's original commitment. As we shall explain later with examples, your new proposal would result in the regulator paying less regard to environmental and community impacts than under the present arrangements. Moreover, your new proposal is so radically different from the original proposal consulted upon that we believe the DfT has a duty to re-consult before this can be regarded as settled policy.

**Risk of market distortion**

1.4 You seek to justify your decision to exempt the CAA's airport economic regulation functions from the proposed new general environmental duty upon the CAA (*'where possible and appropriate, to have regard for environmental factors and to seek environmental improvements'*) on the grounds that to do otherwise would risk distorting competition. This conclusion is predicated upon the assumption that economic regulation would only be able to influence Tier 1 airports. We do not understand why that needs to be the case.

1.5 In footnote 11 of the DD, you acknowledge:

*'One might argue that an alternative means of achieving an environmental objective is via the imposition of licence conditions; however similar distortions could arise as only airports with greater than 5 million passengers (currently 13 airports in the UK) will require an economic licence to operate.'*

1.6 The first point to make is that the above footnote appears to be an acknowledgement that Tier 2 as well as Tier 1 airports could be made subject to licence conditions, including an environmental condition. It is therefore misleading to say (DD, para 3.8) that only Heathrow, Gatwick and Stansted could be subject to the proposed new general environmental duty.

1.7 Secondly, the latest (2009) figures show only nine UK airports (rather than 13) with a throughput of 5 mppa or more (the proposed Tier 2 threshold). A glance at the 'league table' below suggests that a 3-year average should be used for the initial designation.

	<u>Airport</u>	<u>Pax (m)</u> <u>2009</u>	<u>3 year average</u> <u>(2007-09)</u>
1	Heathrow	65.9	66.9
2	Gatwick	32.4	33.9
3	Stansted	19.9	22.0
4	Manchester	18.6	20.5
5	Luton	9.1	9.7
6	Birmingham	9.1	9.3
7	Edinburgh	9.0	9.0
8	Glasgow	7.2	8.0
9	Bristol	5.6	5.9
10	Liverpool	4.9	5.2
11	East Midlands	4.7	5.2
12	Newcastle	4.6	5.1
13	Belfast Internat.	4.5	5.0
14	Aberdeen	3.0	3.2

1.8 The airport immediately below the top 13, i.e. Aberdeen, is a prime example of a local airport monopoly and the two airports after that are London City and Belfast City, both of which – being inner city airports – are subject to more stringent environmental conditions than other airports. It is therefore difficult to see how, in practical terms, any of the three largest airports falling below the Tier 2 threshold (if based on a 3-year average) could gain a competitive advantage over the top 13 if only Tier 1 and Tier 2 airports were to be subject to the new general environmental duty. It should also be noted that in 2009 the 13 largest airports accounted for 90% of total UK airport passengers, which is a reasonable proxy for their share of the environmental impacts.

1.9 Third (in relation to the risk of market distortion), there would be nothing to prevent the CAA being given the power to require an airport below the Tier 2 threshold to be subject to economic regulation in circumstances where it had reasonable grounds to believe that there would otherwise be a risk of distorting competition.

1.10 Fourth, the DfT already sits comfortably with a number of policies which could all just as easily be described as creating the risk of distorting competition, and we are not aware of any market impact assessments having been carried out in respect of these other policies, including:

- Night Flying Restrictions at Heathrow, Gatwick and Stansted;
- 1991 London Air Traffic Distribution Rules;
- 2003 Air Transport White Paper.

We do, however, note that a ‘Competition Assessment’ was carried out in respect of the 1986 Night Flying Restrictions at Heathrow, Gatwick and Stansted and identified no significant risk of the airports subject to the night flying restrictions losing traffic to Luton or any other UK airport.

1.11 Fifth, Section 5 of the Civil Aviation Act 1982 introduced a new environmental duty for the CAA, namely:

*‘(1) Subject to section 4 above [the CAA’s general duties], it shall be the duty of the CAA, in exercising any aerodrome licensing function in relation to any aerodrome to which this section applies, to have regard to the need to minimise so far as reasonably practicable —*

*(a) any adverse effects on the environment, and*

*(b) any disturbance to the public,*

*from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation.’*

However, clause (3) of Section 5 qualified the above by saying:

*‘This section applies to any aerodrome in the United Kingdom specified in an order made by the Secretary of State for the purposes of this section’*

and, in the 28 years since the 1982 Civil Aviation Act became law, the Secretary of State has never once used this power.

1.12 There is no reason in practice why the Secretary of State’s powers under Section 5 of the 1982 Act could not be applied to every UK airport or at least to Tier 1 and Tier 2 airports. Indeed, we put forward a similar proposal in our response to the original consultation in arguing for the following licensing condition for UK airports:

*‘So far as is reasonably practicable, to reduce and minimise the adverse impacts of activities connected with the provision of airport services upon the environment and local communities;’*

and proposed that the CAA should have an obligation to ensure compliance with this licensing condition, *including* in relation to its economic regulation functions. We would not view this as a duplication of other means of environmental regulation but, rather, as a means of ensuring consistency with the wider framework of environmental regulation – policy as well as legal.

1.13 Our final point in relation to your argument about the risk of market distortion is that you are now proposing to give the CAA concurrent competition powers for UK airports. This adds weight to the argument that the CAA's role in economic regulation should not be restricted to just three – or even 13 – UK airports. (For the avoidance of doubt, we are not suggesting that airport charges should be routinely regulated other than at Tier 1 airports.)

### ***Potential implications of your proposals***

1.14 We are profoundly concerned by your decision to dilute the environmental duty for the CAA's economic regulation functions (compared to your original proposals) coupled with your decision to exempt economic regulation from the general environmental duty, and we are providing three examples below to help illustrate why we are so concerned.

#### Example 1

Local homeowners around Heathrow whose properties are blighted by the threat of a third runway are currently being offered a 'Property Market Support Bond' by BAA, the intention of which is to mitigate the blight. Similar arrangements were introduced by BAA for homeowners in the vicinity of Stansted Airport in 2004 as a result of the threat of a second runway. In both cases, the arrangements were advocated by the 2003 Air Transport White Paper but they are nevertheless voluntary arrangements since BAA is under no legal or local planning obligation to provide such arrangements. Under the present economic regulatory arrangements, BAA is entitled to capitalise these costs and have them included in the regulatory asset base ('RAB') for the relevant airport. This enables BAA ultimately to recover the costs from airlines through the economic regulatory framework whereby the CAA allows BAA a market rate of return on the RAB.

If in future the CAA, in exercising its economic regulation functions, is required only *'to have regard to the airport operator's legal obligations to comply with applicable environmental and planning law'*, and if these functions are exempt from the general environmental duty, it will not be permissible for the CAA to allow this type of voluntary expenditure to be included in the RAB. Indeed we would expect at least one of the Stansted airlines to seek redress in the High Court if the CAA sought to include any environmental or community-related mitigation expenditure in the RAB (or in the airport's admissible operating costs) other than such expenditure which was strictly essential in order *'to comply with applicable environmental and planning law'*.

Note: We acknowledge that your proposal for the Secretary of State to issue *Guidance* to the CAA *'to help it interpret its environment objective'* could address issues such as the above (and the issues raised by our other two examples below), and that you are proposing to give the CAA a duty to have regard to such *Guidance*. However there is no assurance that this would be the case.

### Example 2

In submitting development plans for airport expansion, airport operators will generally include from the outset a range of proposed measures to mitigate the environment and community impacts. If planning consent is granted, some of these measures will be defined as formal planning conditions, but many will not be so defined, for example, those which are not considered contentious and/or are seen as an integral part of the proposed development and/or where there is not considered to be any significant risk of the developer not providing the promised mitigation.

Under the new arrangements any mitigation measures which were not formally defined as planning conditions and not required by law would be deemed to be voluntary and therefore inadmissible for the purposes of setting price caps. If (when) Tier 1 airports found that they could no longer rely upon the regulator to allow environmental and community-related mitigation expenditure in the RAB, this would deter them from doing anything other than the bare minimum required by law and to ensure compliance with planning conditions. Investment in areas such as providing more energy efficient buildings and encouraging more airport passengers to travel by rail would, in future, only make sense for the airport operator if wholly justified on commercial grounds, whereas at present the regulator has the flexibility to make a judgement as to the reasonableness of the expenditure when considering whether it is admissible for the purposes of the RAB and operating costs. This flexibility would be lost: the regulator would only be permitted to allow such costs where there was an absolute requirement for the expenditure arising from environmental or planning law.

### Example 3

In addition to planning conditions, the approval of a development is invariably accompanied by a 'Section 106 Agreement'<sup>1</sup> consisting of a number of additional obligations which the developer has voluntarily agreed with the planning authority. In the case of an airport development, many of these s.106 obligations will relate to reducing and minimising the impacts on the environment and local communities. S.106 agreements tend not to be written in robust legalistic language and often relate to process rather than substance, relying upon the airport operator's good faith to fulfil the spirit and not just the letter of the obligation. Many s.106 obligations can have significant cost implications for the airport operator.

Hitherto, the operators of designated airports (i.e. airports subject to price regulation by the CAA) have been able to recover the costs associated with honouring their s.106 obligations in spirit and not only to the letter. However, expressly excluding the CAA's economic regulation functions from its general environmental duty, and restricting the supplementary environmental duty upon the CAA, merely *'to have regard to the airport operator's legal obligations to comply with applicable environmental and planning law'*, would raise the likelihood of a legal challenge by an airline if the CAA sought to allow an airport operator to recover costs incurred associated with fulfilling s.106 obligations.

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<sup>1</sup> Under the Town and Country Planning Act 1990.

1.15 Until December 2009, the three price-regulated airports – Heathrow, Gatwick and Stansted – were in common ownership under BAA and jointly accounted for more than 90% of the airports market in the south east. Thus, as the Competition Commission noted, there was no real competitive pressure between these airports. With Gatwick now under separate ownership and a strong prospect that Stansted will also become separately owned in the near future, the market environment will be very different from that which has prevailed during the 23 years of economic regulation to date.

1.16 One of the features of the new market environment will be price competition and this will bring with it new pressures upon airports to reduce both their capital costs and operating costs. Avoiding unnecessary expenditure is likely to become standard practice and, if environmental and community-mitigation expenditure other than the bare legal minimum becomes the order of the day so far as economic regulation is concerned, there is a significant risk of creating ‘a race to the bottom’ between London’s three main airports – a lead which other UK airports may well decide to follow. This prospect is precisely the opposite of what the Secretary of State seemed to have in mind when he announced to Parliament in March 2009 that the CAA was to be given a new environmental role.

1.17 In the light of the above, we would be grateful for answers to the following questions:

**Question 1: How will the commitment given by the Secretary of State to the House of Commons on 9 March 2009, namely:**

***‘I intend to give the CAA an environmental duty with respect to its economic regulatory functions. This will ensure that, when operating as an economic regulator, the CAA will consider the environmental consequences of its decisions.’***

***be honoured if the extent of the environmental duty upon the economic regulator is simply ‘to have regard to the airport operator’s legal obligations to comply with applicable environmental and planning law’? Please provide a copy of the relevant briefing note(s) prepared by the Department’s officials for the Secretary of State in advance of his statement to the House of Commons on 9 March 2009.***

**Question 2: What assessment has been carried out on the impacts of excluding the CAA’s economic regulatory functions from the proposed general environmental duty for the CAA? If such an assessment has been carried out, please provide copies of the relevant Departmental papers.**

**Question 3: What consideration has been given to the option of an environmental licence condition along the lines of the wording used in s5 of the Civil Aviation Act 1982 or our proposed wording as at para 1.12 above? If consideration has been given to that option, please provide copies of the relevant Departmental papers.**

**Question 4: What assessment has been carried out on the impact of restricting the supplementary environmental duty upon the CAA’s regulatory functions merely ‘to have regard to the airport operator’s legal obligations to comply with applicable environmental and planning law’, as compared to the wording originally proposed? If a comparative assessment has been carried out, please provide copies of the relevant Departmental papers.**

**Question 5: What consideration has been given to the risks identified in our three examples above? If consideration has been given to those risks, please provide copies of the relevant Departmental papers.**

## **Environmental reporting**

1.18 In your original (March 2009) consultation you proposed an obligation upon airport operators to report on their environmental performance, explaining (at para 7.26) that:

*‘This would be available to the scrutiny of the CAA, environmental regulators and other interested stakeholders with the purpose of providing a basis for on-going engagement between the airport and the local communities that they serve.’*

and you provided further explanation in paras 8.33 to 8.35 of that consultation as follows:

*‘8.33. We are sympathetic to the Expert Panel’s proposal that all Tier 1 and Tier 2 airports should be subject to a licence condition requiring them to publish an annual report setting out their environmental performance, what the likely environmental consequences of their Master Plans are and what further steps they intend to make to mitigate environmental damage. These would be available for the scrutiny of the CAA, environmental regulators and other interested stakeholders. We are aware that a number of airports currently produce these reports as part of their overall corporate social responsibility strategy.*

*8.34. The purpose of this licence condition would be to improve transparency and accountability for an airport’s environmental actions and to provide a basis for on-going discussions with interested stakeholders and the local community. Gaining local support and building trust over time is essential if an airport is to further develop and promote the interests of its passengers.*

*8.35. We propose that these reports would initially be subject to a publication obligation. However, it would be open to the CAA to seek to impose additional obligations by means of a change in licence conditions if it believed that such a change was necessary to enable it to better fulfil its duties.’*

1.19 However, you now say in your December 2009 DD:

*‘...we are unable to reach an informed view as to whether the benefits of this proposal would outweigh the additional costs imposed on airport operators. In light of this, **we are not proposing that Tier 1 and Tier 2 airports should be required to publish an annual report on their environmental performance as part of the package of reforms to the framework for the economic regulation of airports.***

1.20 As for your justification for deciding to drop the requirement for airport operators to produce an annual environmental report, you state:

*‘We do not have any evidence on the scale of the benefits associated with such a requirement. As a result, we are unable to reach an informed view as to whether the benefits of this proposal would outweigh the additional costs imposed on airport operators.’*

1.21 We do not find this explanation convincing for the following reasons:

- (i) the DD states that only ‘a couple of individual airports’ out of the 13 airports who would have been subject to the requirement objected to the proposal (para 4.51);
- (ii) most of the 13 airports which would have been subject to the requirement already produce an annual environmental report and so the additional cost involved for the remainder to follow suit is likely to be significantly less than

- the £80,000 per annum estimated by the DfT in the March 2009 Impact Assessment<sup>2</sup>, especially if the reports were simply to be published on airport operators' websites rather than printed;
- (iii) bearing in mind the difficulty of quantifying, and the even greater difficulty of monetizing, the benefits of an annual environmental report, it is not clear to us what evidence you expected to receive to justify the cost of up to £80,000 per annum;
  - (iv) nor is it clear to us how this cost – which, at most, would be less than one twentieth of one penny per passenger – is considered significant enough to drop the requirement for an annual environmental report;
  - (v) it is difficult to see how the CAA would be able to fulfil the duty 'to have regard to the airport operator's legal obligations to comply with applicable environmental and planning law' unless it were able to examine a comprehensive set of airport environmental performance data on at least an annual basis. Therefore, even if there is no requirement upon airports to place an annual environmental report in the public domain, an alternative method of reporting comprehensive environmental performance data to the CAA will be necessary. The additional cost of making this information publicly available via airport websites would be far less than your estimate of £80,000 per annum.

***Question 6: What evidence would you require in order to carry out the type of cost benefit analysis that you would need before reinstating the requirement for airport operators to produce an annual environmental report?***

***Question 7: How did you arrive at the £80,000 estimate? Did this include printing costs? Is the figure net of potential savings for those airports which currently produce a printed annual environmental report? Please provide details.***

***Question 8: Please provide examples from elsewhere in Government of the type of cost benefit analysis that has been used to justify new reporting requirements in other business (or non-business) sectors?***

***Question 9: How do you envisage the CAA's economic regulation unit fulfilling its supplementary environmental duty in the absence of annual environmental reports from airports and how do you envisage there being public transparency over the CAA's exercise of this statutory duty?***

***Question 10: How will the commitments given by the Secretary of State to the House of Commons on 9 March 2009 be honoured if there is no requirement for airport operators to produce an annual environmental report? Namely:***

***'I propose that all thirteen airports with more than five million passengers per annum should be required to produce an annual report on the environmental impact of their operations, and their mitigation measures. This would happen alongside the publication of their annual report and accounts, and will give the airports and the communities which they serve important information'***

***Question 11: Did the Department carry out any preliminary impact assessments on the proposals announced by the Secretary of State to Parliament on 9 March 2009? If so, please provide copies of the relevant Departmental papers.***

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<sup>2</sup> Curiously, this is one of only two cost estimates in the entire 'Impact Assessment' for the regulatory reform of the CAA.

## **2. CONSULTATION ON PROPOSALS TO UPDATE THE REGULATORY FRAMEWORK FOR AVIATION**

2.1 We now turn to our response to your latest consultation on the reform of the regulatory framework for air transport, following your numbering and sequence of questions. We confine this response to questions arising from chapters 4, 7, 8 and 9.

***Q4.1 Do you think the three proposed general objectives (in respect to the consumer, safety and the environment) taken together cover the public interest in aviation? If you think other interests should be addressed, please set these out and explain why.***

2.2 We agree that it is appropriate for the CAA to be given three general objectives relating to the consumer, safety and the environment. Noting that safety must always be the paramount objective of the CAA, it should be left to the judgement of the CAA to strike the right balance between its other two general objectives. See also our comments on your proposed wording of the CAA's general environmental objective in response to Q7 below.

2.3 It will be important to see, in the new legislation, clear definitions of the terminology used. For example, the terms 'citizens', 'general public' and 'public interest' are used almost interchangeably in the consultation document ('CD') and the term 'aviation' needs to be defined so that it is clear that it includes the activities of airports as well as of aircraft. Part of our concern here stems from para 4.12 of the CD which states: "*Our starting point in defining new objectives for the CAA has been its role in safeguarding the public interest in aviation*". Your starting point does not appear to fully grasp the point that Pilling was making when he concluded that the 1982 Civil Aviation Act '*does not make clear that the CAA's responsibility is to safeguard the general public interest, which is broader than the aviation community*'.<sup>3</sup> We will want to be satisfied that the shortcoming that Pilling identified in the 1982 Act is remedied in any new legislation.

***Q4.2 Are there any economic issues not covered which you think should be reflected in the CAA's new objectives?***

2.4 The CAA should have a statutory duty to make freely available to the public, in a timely manner, all statistical information that it provides to the industry. Our request here stems from the CAA's practice of charging for passenger survey information other than for the high level annual Passenger Survey Report ('PSR') which is not made publicly available until nine months after the year end. However, passenger survey statistics are provided to the industry on a quarterly basis within six weeks of the end of each quarter and in far greater detail than in the annual PSR. Moreover, the level of detail included in the annual PSR has been reduced in recent years such that information which was previously freely available is no longer included, for example, the breakdown of passenger mode of travel to/from the airport. There is a legitimate public interest in passenger survey information as a basis for informed discussions between airports and interested stakeholders, including the local community, who may not have the financial resources to purchase the information.

2.5 The principle of making all statistical information that the CAA provides to the industry freely available to the public will become even more important when the CAA begins to collect data on the environmental performance of airports and airlines. Transparency could be severely curtailed if the CAA were permitted to charge other stakeholders and members of the public for environmental information.

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<sup>3</sup> Sir Joseph Pilling, Report of the Strategic Review of the CAA, 2008

**Q4.3 We think the CAA as a whole should have a duty to have regard to the principles of Better Regulation. In addition, for all its non-economic regulatory functions, we think CAA should have a duty to have regard to the Regulators' Compliance Code. This is consistent with the Government's Better Regulation agenda and will align the CAA's regulatory practice with that of other regulators. Do you agree with these proposals?**

2.6 Yes, subject to due weight being given to the equally important 'Better Regulation' principles of transparency and accountability, noting that the proposals set down in this consultation, compared to the proposals set down in your original (March 2009) consultation, indicate that these two principles are now viewed by the DfT as less important than the principles of proportionality and minimising the costs and other burdens upon industry.

**Q4.4 We propose to extend the duties under Part 4 of the Regulatory Enforcement and Sanctions Act 2008 (to review and remove any unnecessary burdens; and to produce an annual statement on this) to the CAA's air traffic services economic regulation functions. Do you agree with this proposal?**

2.7 We have no objections to this proposal.

**Q4.5 Do you agree that no further legislative changes are needed to ensure that the CAA is transparent about how it discharges its proposed new objectives? If you do not agree, please explain what more is needed.**

2.8 There should be a requirement for the CAA's Annual Report to include a report on the progress it has made with regard to securing environmental improvements within the industry, including a summary of progress by airport. See also our comments at 2.4, 2.5 and 2.6 above.

**Q7.1 For Option 1 – Do you agree that the CAA's general environment objective should require the CAA, where possible and appropriate, to have regard for environmental factors and seek environmental improvements? If you think there are environmental issues which would not be addressed by this proposal but should be, please set these out and explain why.**

2.9 Before responding to your specific questions, we note that

- para 7.1 of the CD refers to *'the benefits that the expansion in air travel has brought to people's lives and the economy of this country'*<sup>4</sup> but it gives much less weight to *'the environmental impacts'*, making no mention of the adverse impacts of air travel on the quality of life, health and education of those living near to airports or, indeed, on climate change.
- para 7.4 of the CD states that the adverse environmental impacts of aviation should be *'controlled and mitigated'* but the Government's stated policy is firstly *'to seek to reduce and minimise the impacts of airports on those who live nearby and on the natural environment'*<sup>5</sup> [our emphasis]. This policy objective obviously comes before the 'control and mitigation' stage (with the compensation option last of all) and the fact that it is set down in the Air Transport White Paper means that it was agreed by the Government as a whole, and yet it is not stated anywhere in the CD. This type of omission, or selective transposition of Government policy, contributes to our

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<sup>4</sup> CD, para 7.1

<sup>5</sup> *The Future of Air Transport* White Paper, 2003, para 2.18.

concerns about your proposal to make the CAA reliant upon DfT *Guidance* to help it interpret its environmental duties.

2.10 In response to your specific question, we believe that the CAA needs to have a statutory duty to pursue an environmental objective and not merely the statutory power to do so at its own discretion. However, your proposed wording of the general environmental objective is so vague and restrictive that it is unlikely to be capable of achieving your stated objective *'to make environmental considerations a 'mainstream issue' for the organisation [the CAA] and a strategic priority for its Board'*. (CD, para 1.24)

2.11 The phrase *'where possible and appropriate'* is open to almost any interpretation and thereby inconsistent with your stated intention to give the CAA a *'clear remit from which to identify and pursue environmental improvements'*. In addition, your proposal to exempt the economic regulation functions of the CAA from the general environmental objective would, if given effect, further undermine the CAA's ability to secure environmental improvements. Indeed, our three earlier examples indicate that your proposals may make matters worse than they are at present.

2.12 We propose the following alternative wording for the CAA's general environmental objective:

***'When discharging all of its regulatory functions, to secure environmental improvements in aviation consistent with the Government's National Policy Statement on Airports and other Government policies relating to the environmental impacts of aviation unless there are compelling reasons not to do so'***

***Q7.2 For Option 2 – Do you think that the CAA should have discretion in relation to its general environment objective and that this should be a second order issue for the CAA below its safety and consumer priorities? If so, please explain why.***

2.13 As stated in our response to Q7.1 above, the CAA should be given a statutory duty to pursue a general environmental objective and not merely the statutory power to do so.

2.14 Regarding the second part of your question (which seems to be inviting an affirmative response from industry stakeholders), we would welcome the environment being given the status of a second order issue, after safety, and not, as you are proposing to make it, a third order issue since you have already concluded that *'...the CAA's primary focus should be on promoting the interests of end users of airport services'* (CD, para 8.13).

***Q7.3 We would welcome stakeholders' views and evidence on the relative benefits and costs of the options as set out in the Impact Assessment.***

2.15 We refer to our comments at paras 1.18 to 1.21 above.

***Q7.4 We would also welcome stakeholders' views and evidence on which of these two options would be most appropriate for the CAA and why.***

2.16 Insofar as the general environmental duty is intended to be one of the three high-level, overarching duties for the CAA, it should be enshrined in legislation as a statutory duty and it would not be sufficient merely to give the CAA the power – but not the obligation – to pursue an environmental objective. A statutory duty would also provide a clearer remit for the CAA and, in the absence of a statutory duty to pursue an environmental objective, how could there be confidence that it would in fact be diligently pursued? If, for example, the CAA encountered budgetary difficulties such that it needed to prioritise its range of work, non-statutory activities would need to take second place to its statutory duties.

2.17 In view of the DfT's stated objective of making *'environmental considerations a 'mainstream issue' for the organisation [the CAA] and a strategic priority for its Board'*, we expect that the DfT would wish to see the establishment of an Environmental Regulatory Unit within the CAA to sit alongside its Economic, Airspace and Safety Regulatory Units, and Consumer Protection, so as to provide a structure conducive to achieving a balanced approach to its various statutory duties.

***Q7.5 Do you agree that the Government should give the CAA guidance to help it interpret its environment objective? If you do agree, please set out what you think this guidance should cover and why.***

2.18 No. The role of Government – or, rather, of Parliament – should be to provide the CAA with a clearly defined statutory framework setting down its high-level duties. It should then be for the CAA, as an independent public corporation, to exercise its own judgement as to how best to interpret these statutory duties and strike the right balance between any competing objectives. If any party felt that the right balance was not struck, the CAA would be answerable through the courts via the normal process of judicial review. Such arrangements provide for a more stable regulatory environment than arrangements where the CAA is subject to ongoing interference (or 'guidance') from the Secretary of State of the day. In addition, in response to Q7.1 above, we proposed a form of words for the CAA's general environmental duty which would require the pursuit of its environmental objective to be *'consistent with the National Policy Statement on Airports and other Government policies relating to the environmental impacts of aviation unless there are compelling reasons not to do so'*. It is difficult to see what additional guidance would be necessary if this wording were to be included in the statute. Moreover, the National Policy Statement on Airports will be subject to public consultation, Parliamentary scrutiny, Cabinet approval and judicial review; other Government policies are also subject to these safeguards with the exception of Parliamentary scrutiny which is unique to National Policy Statements. Departmental Guidance, however, is not subject to anything like the same level of safeguards.

***Q7.6 Do you agree that the Secretary of State should have new powers to direct the CAA in regard to its environment objective? If yes, do you agree that the proposals set out in 7.38 and 7.39 are the right ones? Please explain.***

2.19 No, for the same reasons as cited in our response to Q7.5 above.

***Q7.7 Do you agree that any new funding requirements arising from a new environment objective should be met through the CAA's existing charging schemes?***

2.20 We have no view on this except to say that if the costs of meeting the environmental objective are to be met by levies upon the aviation industry, it should be made clear in statute that the CAA's reliance upon industry funding must not be allowed to influence the exercise of its statutory responsibilities in relation to the environment, including in relation to the collection and public dissemination of environmental information. (See also our response to Q4.2 above.)

***Q8.1 Do you agree that the principles of the proposed environment objective (Option 1) should apply to the CAA's planning and management of airspace?***

2.21 It is not clear to us why the words 'the principles of' have been inserted above, nor is it clear to us why this question is being asked. If the CAA is to be given a general environmental objective with the intention of making 'environmental considerations a 'mainstream issue' for the organisation and a strategic priority for its Board', why would it not apply to the planning and management of airspace? We believe that it must, and we would hope that this would result in greater consideration being given to environmental impacts in relation to airspace planning and

management, noting that an opportunity was missed to include any environmental objectives in the shareholder objectives for NATS when it became a Public Private Partnership in 2001.

**Q8.2 Are there any areas where the interests of the “end user” and “intermediary users” would diverge in respect of airspace?**

2.22 No comment.

**Q8.3 What would be the costs and benefits of changing the existing regime for the planning and management of airspace to make it clear that the CAA should focus exclusively on the interests of “end users” where these interests diverged from those of “intermediary users”?**

2.23 No comment.

**Q8.4 Do you agree that the principles of the proposed environment objective (Option 1) should apply to the CAA’s economic regulation of air traffic services?**

2.24 We refer to our response to Q8.1 above. We refer also to para 8.15 of the CD which states that the Government is not seeking to re-consult on its current view that the CAA’s economic regulation functions should be exempt from the proposed general environmental duty. The reasons given for this proposed exemption do not stand up to scrutiny (see paras 1.4 to 1.14 above) and so we do not agree that the matter should be viewed as settled. Similarly, we do not agree that the wording of the proposed supplementary environmental duty for the CAA economic regulation functions should be viewed as settled. Ultimately, it will of course be Parliament which settles both of these points but it would obviously be preferable if contentious matters were resolved so far as possible before the draft legislation was tabled.

**Q8.5 Are there any areas where the interests of the “end user” and “intermediary users” would diverge in respect of the CAA’s economic regulation of air traffic services?**

2.25 No comment.

**Q8.6 What would be the costs and benefits of changing the existing regime for the regulation of air traffic services to make it clear that the CAA should focus exclusively on the interests of “end users” where their interests diverged from those of “intermediary users”?**

2.26 No comment.

**Q9.1 Do these proposals to give the CAA new information gathering and publishing powers achieve the right balance between supporting the public and avoiding unnecessary regulatory intervention? Please give reasons for your answer.**

2.27 We refer to our comments at paras 1.18 to 1.21 above. In short, we do not believe that the correct balance has been struck. In the information gathering powers that you propose for the CAA, we believe you have given undue weight to the Better Regulation principle of minimising burdens upon business and insufficient weight to the equally important Better Regulation principles of transparency and accountability. You propose to set a high hurdle for the CAA in relation to its ability to scrutinise the environmental performance of the industry by requiring it to consult on a case by case basis and produce a detailed impact assessment before it can introduce a requirement for ‘any new environmental information which significantly increases the information sought from industry’. We are concerned that this requirement may act as a significant obstacle for the CAA in relation to its effectiveness in fulfilling both its general environmental duty and its supplementary environmental duty for economic regulation.

### 3. CONCLUDING POINTS

3.1 We welcomed the conclusion of the Pilling report, in November 2008, that the CAA should have a general environmental duty, and we welcomed also the Secretary of State's statement to the House of Commons, in March 2009, endorsing Pilling's view on this and announcing his intention *'to give the CAA an environmental duty with respect to its economic regulatory functions'* and proposing *'that all thirteen airports with more than five million passengers per annum should be required to produce an annual report on the environmental impact of their operations, and their mitigation measures'*.

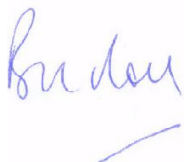
3.2 One of the main reasons for our welcoming these developments is that for far too long airport operators have themselves been largely responsible for monitoring and reporting upon the environmental impacts of their own operations and in effect acting as policeman, judge and jury. Even in relation to implementation of the European Noise Directive, airport operators were given the power of competent authority and entrusted to produce their own noise action plans. We understand that the UK is the only Member State within the EU which left this important environmental task to the airport operators themselves.

3.3 The result is that there is considerable mistrust amongst local communities in relation to the fairness, objectivity and transparency of the current 'in-house' arrangements for reporting upon aircraft noise, emissions and track-keeping, and for recording and handling complaints from members of the public regarding aircraft noise and other environmental impacts. The Secretary of State's announcements in March 2009 raised hopes that we would, at last, get some independent monitoring and scrutiny of the environmental performance of airports and an independent body seeking to bring about environmental improvements.

3.4 However, the proposals we are now being asked to consider represent a backward step in relation to the CAA's treatment of environmental and community-related mitigation expenditure by the UK's three largest airports (which account for more than half of all UK air travel). In a competitive environment we believe that your current proposals would, if enacted, create a significant risk of a 'race to the bottom' (i.e. to the legal minimum) so far as the UK's three main airports are concerned, and that there would be the likelihood of other UK airports following this lead. We are therefore unable to see how your proposals would deliver overall environmental benefits compared to the status quo.

We look forward to receiving your response(s) in relation to the questions set down in the first part of this letter and hope you find our responses to your consultation in the second part of this letter to be helpful.

Yours sincerely



Brian Ross  
for Stop Stansted Expansion