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Dear Ms Hodding

### **CIVIL AVIATION ACT 2006 - IMPLEMENTATION OF NEW POWERS**

The Department for Transport is currently conducting a review as to the extent to which airports have identified a need to implement any of the new powers they were given on noise and emission controls provided by the Civil Aviation Act 2006 which came into force in March 2007. The Act, among other things, strengthened and clarified powers to control aircraft noise and emissions, in line with commitments in the 2003 White Paper *The Future of Air Transport*. In particular airport operators have been given statutory powers to introduce noise control schemes and fine aircraft that breach noise controls. The Act also provided powers for all licensed airports to introduce charges that reflect the pollution generated by each aircraft type. (A brief summary of the main provisions is attached as an annex to this letter).

In *The Future of Air Transport Progress Report* published in December 2006, the Department recommended that airport consultative committees should monitor how well airports implement the new powers in the Civil Aviation Act 2006. The Progress Report also noted that the Government was continuing to work hard to deliver its aim – set out in the 2003 White Paper - that the number of people in the UK significantly affected by aircraft noise should be limited and, where possible, reduced. The White Paper acknowledged that this was a challenging objective.

Given that the Act has been in force for a year, we are proposing to review implementation of the powers so far. We are therefore contacting airport consultative committees - in respect of those airports designated under section 35<sup>1</sup> of the Civil Aviation Act 1982 - to seek their views on how airports have used these powers to date. We appreciate that circumstances vary from airport to airport both in size and type of usage. Accordingly noise control and mitigation measures introduced by one airport may not be appropriate for another. Local circumstances are the key factor.

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<sup>1</sup> Airports/Aerodromes to which section 35 of the Act applies have a responsibility to provide adequate facilities for consultation.

During the passage of the Bill the Government emphasised that where existing arrangements were working satisfactorily the expectation would be that such arrangements would carry on but that the enabling provisions were designed to help those airports which may be looking to refresh or enhance arrangements in the future. Although the Government recognised that noise control arrangements were frequently incorporated into planning conditions/agreements or as part of an airport's conditions of use it had given a commitment to clarify and enhance airports powers in statute. The Department had been aware of one major airport for example which was awaiting statutory powers before imposing discretionary financial penalties for aircraft deviating from noise preferential routes. We would therefore welcome your views in respect of your airport both in respect of noise and charging. Given the cyclical nature of consultative committee meetings, it would be helpful to have responses by the end of June.

I trust that this is all reasonably clear but should you have any questions please do not hesitate to contact me on the above number or one of my colleagues Roy Strapp (020 7944 4856) or Jerry Harrison (020 7944 3953). We will do our best to answer any questions that you may have. I am copying this letter to the airport operator.

Yours sincerely,

*Frank Evans*

Frank Evans

## **Civil Aviation Act 2006: Environmental Provisions**

### **1.1 Section 1: Aerodrome charges**

Section 1 replaces section 38 of the CA Act 1982 with a new section on aerodrome charges. Section 38 applies to licensed aerodromes. These are aerodromes licensed by the Civil Aviation Authority under an Air Navigation Order for the landing and take-off of aircraft which can be used for the public transport of passengers, or for giving instruction in flying to a person, or for conducting a flying test.

The new section 38(1) empowers an authority owning or managing a licensed aerodrome to fix its charges by reference to:

- the noise caused by an aircraft or the inconvenience resulting from that noise;
- the amount or nature of emissions produced by an aircraft or the atmospheric pollution resulting from those emissions;
- the effect of an aircraft on noise or atmospheric pollution in the vicinity of the aerodrome; or
- any failure of an aircraft operator to comply with noise or emission limits.

The new section 38(2) sets out the purposes for which such charges can be made, namely:

- to encourage the use of quieter aircraft and reduce inconvenience from aircraft noise;
- to encourage the use of aircraft which produce lower emissions;
- to control noise and atmospheric pollution in the vicinity of aerodromes; and
- to promote compliance with noise and emission limits.

The new section 38(4) empowers the Secretary of State to direct specified aerodrome authorities to fix their charges using the powers in subsections (1) and (2) of the new section 38. In determining whether to make use of this power, and if so how, the Secretary of State will be required by new section 38(5) to have regard (amongst other things) to the interests of people who live in the area of the aerodrome.

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

This section amends section 78 of the CA Act 1982. Section 78 enables the Secretary of State to take steps to limit or mitigate the effect of noise and vibration connected with the taking off or landing of aircraft at designated aerodromes (currently Heathrow, Gatwick and Stansted).

*Subsection (2)* inserts a new subsection (6A) after section 78(6) of the CA Act 1982, to augment the powers of the Secretary of State to give to the manager of a designated aerodrome such directions as the Secretary of State considers appropriate for the purpose of avoiding, limiting or mitigating the effect of noise and vibration connected with aircraft landing or taking off. The manager is placed under a duty to comply with any such directions. New section 78(6A) will allow directions under subsection (6) to be given for the purposes of avoiding, limiting or mitigating the effect of noise and vibration either generally or in any particular area, for example arising from use of a particular runway.

Section 78(8) empowers the Secretary of State to require the manager of a designated airport to install, operate and maintain noise measuring equipment and to provide noise measurement reports as specified by him. The manager is placed under a duty to comply with any such requirements.

Where an airport manager fails to perform any of the requirements set down in an order under subsection (8), section 78(9)(a) empowers the Secretary of State to take such steps as he considers appropriate to remedy that failure, including the provision, operation and maintenance of equipment. The Secretary of State may recover any expenses he has incurred in so doing: section 78(9)(b). Where the airport manager has failed to provide reports to the Secretary of State, he is guilty of an offence: section 78(9)(i) and (ii).

*Subsection (3)* amends section 78(9) to provide that the maximum fine laid down in subsection (9)(i) is increased to level 5 on the standard scale (currently £5,000) and the daily fine in subsection (9)(ii) is not to exceed 10% of level 5.

## 1.3 Section 3: Penalty schemes

This section inserts into the CA Act new sections 78A and 78B.

Section 78 of the CA Act does not explicitly provide for aerodromes to impose financial penalties on aircraft operators for breaches of noise requirements set under section 78. The effect of new section 78A is to confer on the manager of a designated aerodrome a power to levy financial penalties on an aircraft operator in respect of any breach by that aircraft operator of noise abatement requirements imposed by the Secretary of State under section 78.

New section 78A(8) requires the aerodrome manager to make payments, equal to the amount of penalties received, for the benefit of persons who live in the area in which the aerodrome is situated.

New section 78B(1) to (4) enables the Secretary of State to direct an aerodrome manager to make, amend or revoke a penalty scheme and sets out the duty to consult before doing so.

New section 78B(5) makes it an offence to fail to comply with a direction given under section 78B(1) with a provision for a daily fine if failure continues after any conviction.

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

This section inserts into the CA Act 1982 new sections 38A, 38B and 38C.

Although the CA Act 1982 contains a number of provisions relating to environmental issues, those provisions do not include any explicit statutory provision for aerodrome operators to implement noise control schemes.

New section 38A(1) to (5) provides operators of non-designated aerodromes with powers to regulate noise and vibration from aircraft similar to those conferred on the Secretary of State by section 78 of the CA Act 1982 (as amended by *section 2* of this Act).

New section 38A(8) excludes any aerodrome already designated under section 78 of the CA Act 1982 because in that situation the noise control regime would be set by the Secretary of State rather than the aerodrome operator.

New section 38A(10) provides that the use of the powers contained in the new sections 38A, 38B and 38C does not prejudice the use of any other power at the aerodrome operator's disposal to control aircraft noise.

New section 38B makes supplementary provision for noise control schemes.

New section 38B(2) defines the maximum area within which the aerodrome operator's powers to control aircraft noise apply. There is also provision for the Secretary of State to define (by order) this maximum area, in respect of individual aerodromes.

New section 38B(5) provides for consultation by the Secretary of State before making an order under subsection (2).

New section 38C provides aerodrome operators with the power to impose penalties where the noise control scheme it is permitted to establish is not complied with.

New section 38C(2) and (3) provide for a financial penalty to be imposed on an aircraft operator if he breaches the requirements of a noise control scheme.

New section 38C(4) and (5) ensures that the scheme will provide for aircraft operators to be able to make representations to the aerodrome operator as regards the imposition of penalties and for the aerodrome operator to take such representations into account.

New section 38C(6) requires the aerodrome authority to make payments, equal to the amount of penalties received, for the benefit of persons who live in the area in which the aerodrome is situated.

## 1.5 Section 12: Scotland

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