



8 Merus Court  
Meridian Business Park  
Leicester  
LE19 1RJ

T: 0116 289 2956  
W: [www.gliding.co.uk](http://www.gliding.co.uk)

By email  
10<sup>th</sup> April 2019

## **BGA RESPONSE TO THE AVIATION STRATEGY 2050 ANNEX A: LEGISLATION TO ENFORCE THE DEVELOPMENT OF AIRSPACE CHANGE PROPOSALS**

The BGA is aligned with the GA Alliance in our response to this consultation.

### **Existing powers that will be used to require NERL to develop a masterplan**

Q1. Should the government legislate for powers to direct individual ACPs identified as necessary in a masterplan to be taken forward?

CAA has said that it does not have powers or mechanism to make airspace change of its own. We understand that no-one in government does (except in emergencies).

In the forthcoming situation where, under its responsibility for airspace strategy, it is intending to implement a major remodelling of UK airspace, it appears to be a necessity for government or CAA to have a reliable mechanism for initiating and ensuring the progress of airspace changes, as far as such controlled airspace is clearly part of UK national shared and common-use infrastructure.

**With or without the Airspace Modernisation program, it is necessary to change the model under which control and supervision of airspace is allocated or delegated,** from;

- one of effectively a grant in perpetuity to a successful ACP applicant.

to

- one of fixed term licence to a qualifying entity (which may be the ACP applicant), with a periodic review mechanism under which both the licence holder and the continuing need for the airspace boundaries and classifications are reviewed. In default, the licence would cease.

The government should legislate for powers to achieve both the above, but this needs to be done in a way which leaves a clear, real, and effective separation between the power to direct and the responsibility to assess and control in the CAP1616 process. **In use of power to direct, there is a strong risk of compromise of the CAP1616 process.**

The question refers to “powers to direct individual ACPs”, but ACPS are intangible, and are not capable of being directed. A clearer definition of what or who the proposed powers will permit to be directed is needed before it is possible to comment fully on this.

It would not be acceptable for CAA to have power to direct an organisation to submit an ACP except where that organisation was in a position of supporting the common airspace infrastructure under an existing licence agreement and the “direction” comprised a reasonable adjustment to licence conditions such as the initiation of work for which there was already provision in the licence.

**This question needs to be considered alongside the lack of any strategy or plan for lower airspace (ie below 8000’).** Lower airspace is currently developed based entirely on ad-hoc airspace change proposals which are not required to consider the wider airspace situation. This results in well-documented inefficiency, unnecessary risk, limited access to airspace by most GA airspace users, and anti-competitive practices.

There are significant areas of controlled airspace that have been allocated to sponsors but are not used efficiently. Examples include the Glasgow CTR where a large proportion of that controlled airspace exists to serve a now defunct runway. There is no incentive for Glasgow to go through an expensive ACP process to remove controlled airspace that isn’t used. Similarly, Doncaster airport was allocated a large area of lower controlled airspace that ten years later the CAA identified should be reduced in size. However, there is no legislative requirement or incentive for Doncaster airport to remove the controlled airspace. **It is clear that new powers, and/or a change to fixed term licencing as described above, are needed to ensure change of inefficient areas of controlled airspace.**

We note the provisions of Section 70 of the Transport Act. Putting in place legislative powers to direct airspace could facilitate improved compliance with the Act. If the masterplan and resulting airspace developments are to be equitable and not a directed continuation of the battle between commercial airports and their interests over and above the interests of other airspace users, **the masterplan must include a lower airspace strategy.**

### Proposed legislative powers

Q2. What are your views on the above two proposals?
---

#### Option a.

As in our answer to Q1, it appears to be a necessity for the Secretary of State or CAA to have power to initiate airspace change in the masterplan of the airspace modernisation program. Where and to what extent these powers would be applied depends on the contents of the masterplan, particularly in respect of the scope of each ACP identified and the extent of the technical framework within which its solution is to sit.

**It must be among the objectives of the masterplan to;**

- scope the ACPs and the relationships between them so that as many of the potential causes for delay are excluded as possible. This means resolving those causes within the masterplan
- define the relationships between ACPs and the common standards and guidance for implementation of controlled airspace, routings, etc in a way which encourages consistency and discourages divergence from the objectives of the modernisation strategy.

These two subjects should be covered in the forthcoming strategy and consultation mentioned in the question. **The aim should be to deal with the complexity and conflict in the masterplan process, and to remove as many of the ACPs as possible from the critical path to delivery of the UK national shared and common-use infrastructure.**

This infrastructure includes upper and mid- airspace, but does not include every part of lower airspace, nor every route between lower and upper airspace.

Option “a” refers to a new masterplan of ACPs and notes that further detail on the masterplan and what NERL will be expected to deliver will be set out in the CAA’s Airspace Modernisation Strategy. To date, the CAA’s Airspace Modernisation Strategy does not include a lower airspace strategy. The masterplan must include and align with a lower airspace strategy.

#### Option b.

Accepting for the purpose of this paragraph, that NERL are to drive forward ACPs required by the masterplan, and if also they are to be considered the backstop provider for airspace design work (which must be in question considering the local community consultation considerations), then as above it seems necessary for the government to be able to command the transfer of ACPs from other sponsors to them.

However, the requirement should be laid on the provider of the masterplan (whoever that may be), to scope and define the standards and guidelines for the ACPs so as to minimise the risk of delay caused by conflict between ACPs and maximise convergence with Airspace Modernisation objectives, particularly those which will help to avoid conflict with local community or other non-CAT stakeholders. **The standards and guidelines should include, in particular, a design standard for lower airspace (often referred to as Lower Airspace Strategy).**

If NERL (or other 3<sup>rd</sup> party provider) are both the provider of the masterplan and the backstop provider for ACP preparation, they have a **clear conflict of interest** which will potentially distract them from the requirement to scope the ACPs and define standards as referred to in the previous paragraph. For this reason it is not acceptable for NERL to be both without some independent oversight.

Similarly, CAA (as “owner”) are both the architect of the masterplan and approver, in CAP1616, of the resulting ACPs, so CAA also has a **clear conflict of interest** which compromises the independence and balance of the CAP1616 decisions.

Furthermore, NERL, being largely owned by CAT interests, **cannot be relied upon in any part of this process to achieve proper balance between the interests of all stakeholders.**

**A separate and independent oversight and assurance body is needed which, ideally, should report into DfT and should also own the standards and guidelines mentioned above.**

Q3. Do you agree that option a) should be the lead option?
--

The meaning of the question is not clear. It seems that there is not an order of preference but a conditional sequence of potential actions.

1. Airports just pick up the ACPs which relate to them and start work, presumably co-ordinated by the ACOG
2. If an airport does not progress a key ACP (i.e. one which is part of the UK national shared and common-use infrastructure), the government propose to use power (a) to direct someone to do it.
3. If an ACP sponsor (whether a volunteer or someone directed under power (a)) is faltering, then government proposes to make a direction under power (b).

## Scope of powers

Q4. What are your views on the scope for the use of the powers?

As above, the main scope item is UK national shared and common-use infrastructure. All the other points are necessary considerations of the CAP1616 process, and therefore implicitly required of anyone preparing an ACP, regardless of what triggered them to do so. If there are policies that it is considered might be excluded from an ACP which is initiated or redirected by the proposed powers, then this would require a change to CAP1616 which should be formally specified and consulted on before implementation.

The scope of the work carried out to develop the consultation on legislation to enforce the development of airspace change proposals included 'efficiency'. Efficiency in airspace terms is defined as the number of movements per volume of airspace. **The scope of the powers needs to include removing inefficient controlled airspace or controlled airspace that is no longer required for the purpose for which it was allocated.**

**The powers should also include licencing of controlled airspace.** Controlled airspace should be licenced to the controlling authority through a process regulated by the CAA. Periodic reviews by the CAA based on efficiency, safety and ongoing alignment with airspace strategy should result in a direction to change the airspace, unchanged continued operation, or cessation of the licence.

## Triggers for use of the powers

Q5. What are your views on the use of the triggers for using the legislative powers?

Clearly there will need to be triggers.

1. Trigger 1 makes sense, subject to the definition of "critical".
2. Trigger 2 is not defined clearly, and it may be difficult to because it is important that fair consideration be given to the level of control that the sponsor has over the reasons for falling behind schedule, which can probably not be articulated in advance.
3. It is also important to define who has the power to activate powers: This should be an independent entity, probably reporting to DfT, and probably the same entity which is responsible for the standards and guidelines as mentioned under Q2b.

## Sanctions and penalty regime

Q6. What are your views on the proposed sanctions and penalties regime?

A key point here is that an entity which has not volunteered to sponsor an ACP might have chosen not to because it considered it not to be commercially justifiable, or not financially affordable to them, or that the risks (of sanctions) were too high. If they were subsequently directed under Power (a) then it would be unreasonable to impose financial penalties – the risk of which would have been part of the calculation in deciding not to volunteer.

The considerations to apply may differ between e.g. a major national infrastructure airport and a lesser airport which happens to be thought the obvious candidate to be sponsoring an ACP containing some UK national shared and common-use infrastructure. However, the ACP scoping and standards and guidelines of the masterplan should, as mentioned in Q2b, prevent the latter being exposed to this.

To fully answer this question, we would need to understand associated liabilities. For example, airport A is sanctioned for a slow ACP resulting in their lawyers suing a consulted stakeholder for delay costs caused by challenging the ACP. **The legislation needs to protect consultees from liability.**

### Appeal rights

Q7. What are your views on the grounds for appeals?

No comment other than there needs to be an appeals process.

### Funding

Q8. What are your views on the best approach to funding an airspace change where a small airport may need financial support to do so?

The ACP scoping and standards and guidelines of the masterplan should, as mentioned in Q2b, prevent small airports being the subject of directions under Power (a) or (b) because they will not become responsible for critical ACPs. Their decisions whether or not to Sponsor ACPs which relate to their own airport and its access to UK national shared common infrastructure is a business decision for them and not subject to a funding debate under these powers.

### Additional comments

#### Modernisation Standards Facilitating a Lower Airspace Strategy

Airspace modernisation design is based on satellite navigation, continuous (and steeper) climb & descent, and other advances, to achieve reduced controller intervention and much improved airspace efficiency. However, it may be necessary to continue current policies and procedures, designed for lower performance aircraft and radar control/vectoring, in parallel for a transitional period. This will lead to gross inefficiency and associated controlled airspace volumes that are significantly greater than will be required when modernised policies and procedures are used exclusively

The masterplan must set standards and define milestones which encourage the rapid deployment and uptake of modernised operating procedures, and program in the removal of controlled airspace which is predicated on current policies and procedures.

An important part of the airspace modernisation framework and architecture should be a set of agreed standards and preferred approaches for the design of airspace and PBN routes within each ACP. These should identify a toolbox of approaches, selected as part of, or in parallel with, the development of the framework and architecture, from the potentially wide variety available so that ...

- controlled airspace is efficient
- controlled airspace is limited in volume to the minimum necessary
- there is consistency between the different ACPs (it is acknowledged that there will be differences, due to their different circumstances, but many aspects should be the same),
- approaches are adopted which support the objectives of the modernisation programme to the largest extent possible.,

- there is limited scope for sponsors to include in their ACPs changes which are directed at other purposes and which may conflict with the interest of other local stakeholders or of the modernisation programme

The standards should address such issues as modernised separation standards, flexible use of airspace, e-conspicuity, etc and would become the “Design Standard” for Airspace Modernisation. The design standard would be an important and necessary reference for CAA in the assessment processes in CAP1616. **The design standard would cover (but is not limited to) what is referred to elsewhere as a Lower Airspace Strategy.**

#### Compensating Loss of Utility through unavoidable airspace restrictions

Where airspace restrictions are unavoidable and established through the CAP1616 process, it is necessary to compensate those negatively impacted in terms of utilisation of the airspace. By way of examples;

- A Transponder Mandatory Zone requirement should result in the beneficiary of that airspace funding equipage for those who would otherwise be excluded from the TMZ.
- Where an air sport club become commercially non-viable due to imposition of controlled airspace in the immediate vicinity of and limiting its operation, the beneficiary of the changed airspace should be required to financially compensate the club, including but not limited to relocation.



Pete Stratten  
Chief Executive Officer  
BGA