

# The Civil Aviation Authority's policy for carrying out its information duties under the Civil Aviation Act 2012

**CAP 1143**

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# The Civil Aviation Authority's policy for carrying out its information duties under the Civil Aviation Act 2012

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## Part one – our approach

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### About this document

#### What is this document?

1. The Civil Aviation Authority (CAA) is required to publish this statement of policy under section 92 of the Civil Aviation Act 2012. It explains how we will carry out the duties placed on us by the Act to provide, where appropriate, information:
  - to users of civil air transport services about services and facilities available in the market; and
  - about the environmental effects of civil aviation, including on human health and safety, and measures taken to mitigate those effects.
2. Our statement of policy explains how we will ensure that, in carrying out our information duties, we will have regard to the principle that the benefits of our actions should outweigh any adverse effects. Our approach is strongly informed by the Better Regulation agenda, including the Principles of Good Regulation developed by the Better Regulation Task Force, the Hampton Review principles and the Accountability for Regulator Impact principles recently published by the Department for Business, Innovation and Skills. Our statement of policy will guide our work in this important area of regulatory policy and ensure that our stakeholders, who have been consulted in its development, are able to hold us to account effectively.

#### Who is this document for?

3. This document is relevant to all businesses involved either directly or indirectly in the provision of air transport services from civil airports in the UK. This is because the Act gives us powers to make information about such businesses' operations publicly available. Businesses that are likely to be interested in this document include:

- providers of air transport services (i.e. airlines);
  - civil airports in the UK (i.e. airport operators) and businesses that provide services at those airports (e.g. baggage handlers, assistance providers);
  - businesses providing services and facilities elsewhere in the UK that are used, or are likely to be used in connection with air transport services to or from a civil airport in the UK (e.g. travel agents, flight comparison websites); and
  - trade bodies representing the businesses listed above.
4. This document is also relevant to those who will benefit from the information we make available, including:
- household and business consumers of air transport services in the UK;
  - consumer bodies, including those representing passengers with reduced mobility and other disabilities;
  - citizens and communities affected by the environmental effects of civil aviation in the UK;
  - environmental campaign and advocacy organisations with an interest in the environmental effects of civil aviation;
  - local authorities in areas with, or close to, civil aviation infrastructure; and
  - other bodies involved with the regulation of the civil aviation industry, including Trading Standards Services, government departments such as the Department for Transport and Defra and government agencies such as the Environment Agency and Natural England.
5. The geographical scope of our duties is the provision of information about air transport services and facilities provided to or from civil airports in the UK, and information about the environmental effects of civil aviation in the UK. This means that our powers to require the provision of information apply not only to UK-based businesses, but also to foreign businesses operating in the UK.

### **When will this document be reviewed?**

6. Under section 92 of the Act, we may revise this statement of policy if necessary. The Act also states that we must take such steps as we

consider practicable to keep under review information, guidance and other advice that is published under this section by us or by other persons. If we revise our statement of policy we must publish the revised statement. Prior to publishing the revised statement, we must consult appropriately with our stakeholders.

7. In addition to ensuring that the principles set out in this document guide our approach to making information available, we will also commit to reviewing our statement of policy within three years of its publication. We will also review the impacts of all information we have made available within three years of it being made available. This does not preclude us undertaking a review of either our statement of policy or individual information requirements sooner if we have evidence suggesting that the information we have provided is causing adverse effects.

## Our duties to provide information

### What the statute says

8. This statement of policy covers the following key provisions in the Act:
  - Under section 83, we must publish, or arrange for others to publish, such information and advice as we feel is appropriate to assist users of air transport services<sup>1</sup> to compare:
    - air transport services provided to or from a civil airport in the UK;
    - services and facilities provided at a civil airport in the UK; and
    - services and facilities provided elsewhere in the UK and used, or likely to be used, in connection with the use of air transport services provided to or from a civil airport.
  - Under section 84, we must publish, or arrange for others to publish, such information as we feel is appropriate relating to:
    - the environmental effects of civil aviation in the UK;
    - how human health and safety is, or may be, affected by such effects; and
    - measures taken, or proposed to be taken, with a view to reducing, controlling or mitigating the adverse environmental effects of civil aviation in the UK.

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<sup>1</sup> Passengers and those with a right in property carried by air.



- Under sections 83 and 84, we may publish guidance and advice with a view to:
  - improving the standard of services and facilities for users of air transport services in the UK; or
  - mitigating adverse environmental effects of civil aviation in the UK.
- Under section 85, we may specify the form and manner of publication by others and may conduct or fund related research.
- Under sections 86 and 87, we may impose penalties on, or conduct civil proceedings against, those who fail to comply with notices requiring publication of information, or who provide false or misleading information.

### **Interpreting the statute**

9. Parliament's decision to place on the CAA the duties set out above reflects a view that regulatory interventions can lead to more efficient outcomes for consumers, and for those in society affected by the environmental effects of aviation, than simply 'leaving it to the market'.
10. This decision is not a vote of no-confidence in the market. Rather, the implication is that, left to its own devices, the market:
  - may be distorted because consumers have less information than the businesses that provide them with products and services; and
  - is unlikely to ensure that society is not adversely affected by the environmental impact of aviation.
11. It should be emphasised that aviation is not unusual in having these characteristics. In fact, information is frequently under-produced in competitive markets. For example, where a business considers that disclosing information about an aspect of its performance where it compares poorly to its rivals will decrease consumer demand for its product, the market fails to provide the necessary incentives for it to do so.<sup>2</sup> But better performing businesses may not voluntarily disclose relevant information if they fear being adversely judged by consumers

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<sup>2</sup> This is due to the non-rival and non-exclusive nature of information that is freely available to consumers at the pre-purchase stage. Essentially, businesses may be discouraged from providing such information because they cannot recover the costs of collecting and publishing the information from consumers who, as a result of having the information, choose not to buy a product that they would have otherwise bought.

(and/or the public) if they provide information when their competitors do not, or if consumers (and/or the public) cannot easily verify the truthfulness of their statements.

12. Our new duties should therefore be considered part of a realistic commitment to make markets work well. That is to say: markets as they arise in practice – i.e. populated by real-life businesses and individuals, where limited information is seen as the default position, rather than as a ‘market failure’.
13. Our duties require us to make information available on aspects of products, services and performance of the civil aviation industry in the UK, whether or not we regulate them in other ways. The main constraint on using the powers underpinning the duties is that we must consider whether making information available would be appropriate. That is to say, doing so would address problems faced by consumers or by those affected by the environmental effects of civil aviation.
14. As such, the effect of sections 83 to 93 should be understood as making information collection and dissemination a CAA regulatory function. Dissemination is understood as a duty to publish or arrange for publication of appropriate information, with the option to publish guidance and advice in addition. The Act provides us with the necessary powers to carry out these functions.

### **Taking a risk-based approach**

15. The purpose of regulation is to ensure that markets deliver beneficial outcomes in the public interest. This overarching purpose is reflected in the CAA’s strategic objectives, of which improving choice and value for consumers and improving the environmental performance of the aviation industry are of greatest relevance to our information work. By ensuring that we effectively manage the risks to these outcomes we will fulfil our strategic objectives.
16. A key task for us is therefore to identify the risks that could result in these outcomes not being achieved, and decide how to respond. Responses may involve one or more of the following actions:
  - tolerating the risk;
  - treating the risk in an appropriate way to constrain the risk to an acceptable level;
  - transferring the risk;

- terminating the activity giving rise to the risk.<sup>3</sup>
  - Information provision helps with the management of risks by empowering consumers and the public to take action themselves to ensure that they get the outcomes they want from the aviation sector:
17. Providing information to consumers helps them manage risks through their purchasing behaviour. The more informed consumers are, the more empowered they are to put pressure on businesses by choosing the products and services that best meet their needs at the price they are willing to pay.
  18. Similarly, citizens with access to a sound, shared information base about the environmental risks<sup>4</sup> presented by civil aviation operations in the UK, including their impact on human health and safety, and the measures being taken to help reduce, control or mitigate those risks are empowered to participate more effectively in public debate about the issues that affect them.
  19. Empowerment through information provision can therefore be seen as an alternative to more direct forms of regulatory intervention that seek to treat risks 'at source', for example by modifying or correcting a product, practice or process that could be preventing a beneficial outcome for consumers, or for society at large. The advantages of informational forms of regulation compared to more direct forms are set out in more detail below.

## Improving the way we regulate

### For consumers

20. We consider that providing information to consumers as a way of treating risks offers several advantages compared to more intrusive approaches, such as restricting the range of products, standardising pricing structures to facilitate comparison or introducing minimum

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3 HM Treasury, 2004. *The Orange Book: Management of Risk - Principles and Concepts*. Available at: <http://bit.ly/1ajzuch>.

4 Examples of environmental risks include: emissions from aircraft engines that contribute to climate change; noise from aircraft at take-off and landing causes irritation and nuisance to local residents and, in some cases, health effects; emissions such as nitrogen dioxide (NO<sub>2</sub>) and particulate matter oxides from aircraft and air side vehicles can cause short term and long term health problems as well as damaging plants and animals; and airport operations, such as de-icing of aircraft, can cause harmful substances to run-off in to watercourses or leach in to ground water.

standards. In a recent joint report the Better Regulation Executive and the then National Consumer Council<sup>5</sup> set out how information provision:

- allows the market to function without introducing unnecessary artificial constraints that could lead to inefficiencies and higher prices;
- enables a range of products to be offered to consumers allowing them to choose the level of risk or safety that they wish to have;
- can be specifically targeted at certain products and, in some cases, at certain groups; and
- has marginal costs (i.e. the costs of providing additional information) that are low compared to other forms of regulatory intervention (subject to changes being implemented to the systems required to deliver the information and appropriate monitoring).

### For the environment

21. A key focus of environmental regulation is economic activities or transactions that can have an effect on those that are not directly involved. These adverse effects are known as 'externalities'; if they are not properly accounted for by those involved, the outcome can sometimes be socially harmful.
22. Environmental externalities often require regulatory intervention (i.e. action by governments or regulators) to ensure that they are fully factored into normal market-led decision-making by those responsible. Types of intervention can include seeking to put a market price on those externalities (for example, through the use of noise charges at airports or mandatory participation in emissions trading schemes) or regulations restricting activities with particularly damaging externalities (e.g. night-time flights) or restricting the levels of pollutants allowed to be emitted (e.g. air and water quality limits).
23. However, as an alternative, providing information about environmental effects under section 84 of the Act can provide opportunities for affected parties to negotiate socially efficient solutions without the need for further regulation.<sup>6</sup> As such, by providing information we can facilitate more transparent, productive and mutually beneficial public debate and help ensure that regulation is effective and proportionate.

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<sup>5</sup> Now Consumer Futures.

<sup>6</sup> See Coase, R.H., 1960. 'The Problem of Social Cost', *Journal of Law and Economics*, Vol. 3 (Oct., 1960), pp. 1-44. Available at: <http://bit.ly/GZ2JEZ>

24. Environmental externalities could also be addressed without the need for more intrusive regulation under section 83 of the Act by equipping concerned consumers with information that allows them to take environmental impacts into account when making purchasing decisions.

### **Measuring success**

25. Better informed and more empowered consumers and citizens are the direct or 'first round' effects of information provision. We anticipate that creating more informed and empowered consumers and citizens will lead to beneficial indirect, or 'second round', outcomes. These include greater choice, lower prices and better quality products and services for consumers, and improved environmental performance benefitting wider society.
26. However, it may take time for these changes to come about, as businesses adapt to changes in demand. Moreover, it may be the case that they do not come about at all. For example:
- Consumers that are better informed about the reliability of different airlines may respond not by switching to more reliable airlines, but by making contingency plans to mitigate the consequences of their flight being delayed or cancelled. Alternatively, consumers may decide that the price of greater reliability is too high, for example if information reveals that flying with a more reliable airline means flying from an airport further from their home.
  - Citizens concerned about the environmental effects of aviation, such as noise or pollution, may decide that, when presented with better information about those impacts, the 'problem' is not as significant as they had originally thought. On the other hand, if citizens do choose to pursue an issue through democratic and social processes, such as the planning system and wider public policy debate, then it is important to recognise that the decisions that are ultimately made about an issue will depend on a range of factors, some of which are beyond the CAA's sphere of influence.
27. These hypothetical examples show that, even if information provision does not result in significant positive wider impacts, informing and empowering consumers and citizens is itself a beneficial activity because it enables freedom of choice. Conversely, if consumers and citizens are unable to access and act upon information about the things they care about then their ability to make free choices will be impeded.

28. Additionally, the more confidence that consumers can be given through information that the purchases they make will meet their expectations, the more likely they will be to shop around for offers from a wide range of providers, thereby stimulating competition, innovation and economic growth. With more information in the public domain, businesses will also be able to improve their products and services as a result of being able to benchmark their performance more effectively against their competitors.
29. Likewise, an aviation sector that is open and transparent about the impact of its activities on the environment and human health is more likely to gain the ongoing approval and broad social acceptance among local communities and other stakeholders that are essential for its sustainable future growth.
30. As such, our key criteria for measuring success are not second round effects, as these can only be influenced rather than brought about directly by information provision, but enabling better informed and more empowered consumers and citizens.
31. Where we wish to influence directly the way the market functions and the outcomes it provides, we would be more likely to issue guidance directly to the industry under section 83(2) or 84(2). This could entail the provision of best practice guidance to industry, for example on flight procedures or airport energy efficiency, and through commissioning technical reports which support the development of this guidance.

### **Deciding whether there is a problem**

32. We will only intervene in the market to provide information if:
  - we have identified and evidenced a clear case of detriment (or risk of detriment) to consumers with regard to their ability to compare services and facilities provided by the UK aviation sector; or
  - we have identified and evidenced a clear case of detriment (or risk of detriment) to citizens with regard to the environmental effects of civil aviation in the UK; and
  - based on a proportionate analysis of benefits and adverse effects, we determine that information provision is a more appropriate response to the problem than the other regulatory responses available to us, including doing nothing.

### Identifying and analysing detriment

33. Detriment, or harm, occurs when consumers and citizens do not get the outcomes they desire from a market. We use a wide range of intelligence to monitor the market for the purpose of detecting consumer detriment, including:
- feedback from consumers, consumer organisations, firms or other stakeholders (in the form of complaints, dialogue, satisfaction surveys etc);
  - research carried out by consumer and other government authorities, consumer organisations, or other stakeholders;
  - reports, research, and related information available from regulated businesses and other businesses; and
  - media reports and social media.
34. As aviation is a global business, we believe that, in addition to domestic sources, intelligence from outside the UK could, in many instances, be relevant and helpful in monitoring the UK market.
35. We will also use a range of sources to identify where there is a risk that the environmental effects of aviation are causing problems and whether information is the best means of addressing them. Examples of such sources include:
- feedback from organisations on the environmental impacts of aviation;
  - research on the impact of aviation on the general public; including both related environmental and health issues
  - government policies on tackling the environmental effects of aviation at the international, domestic and local level;
  - research on the actions taken or planned to be taken by stakeholders to mitigate the environmental impacts of their activities.
36. If these 'high level' forms of market monitoring reveal detriment, or the risk of detriment materialising, we will seek to undertake more detailed analysis. This includes understanding the nature and extent of detriment and, most importantly, its likely cause. This will allow us to understand how significant the detriment is and what type of action may be warranted.

37. While the techniques used to carry out this analysis will depend on the issue in question, we would expect to make use of more in-depth consumer research methods. These could include surveys targeted at specific issues, focus groups, depth interviews and deliberative research. Depending on whether the necessary data are available, we may also be able to construct models that allow us to quantify and/or monetise the detriment being experienced.
38. Ultimately we must be able to come to a position where we can define the nature of detriment in a precise manner and clearly identify the market(s) affected. Only then will we be able to examine whether there is reasonable scope for designing a remedy. In order to do this we will consider a range of factors, including the scale, depth, distribution, duration and type of detriment, as well as the consequences of inaction.

### **Deciding whether information provision is the most appropriate response**

39. The steps set out in the previous section, describing how we identify and analyse detriment, are not specific to our information provision work. It is essential that our regulatory activities are not guided by the tools available to us, but by evidence of problems that present a risk to consumers and citizens of not getting the outcomes they desire from the market.
40. Once we understand the nature and extent of a problem, we will therefore consider all of the tools available to us and determine which represents the best response to that particular problem. We will always consider the least intrusive regulatory mechanisms as the first alternatives to taking no action at all on the basis that these offer the greatest flexibility and respect for the operation of free markets and freedom of choice.
41. Other than doing nothing, information provision is one of the least intrusive measures available to us. Our assumption will be that there may be a need for regulated information provision if information:
  - is not publicly available and therefore cannot be accessed at all by consumers or citizens; or
  - is publicly available but largely inaccessible because those who wish to use it are unable to easily understand it and/or incorporate it into the choices they make.



42. However, information is not an unequivocal benefit. Evidence from the increasingly influential behavioural economics sphere suggests that individuals do not always respond to information in the 'rational' ways predicted by standard economic theory. As such, too much information can be as much of a problem as too little information and can result in unintended or negative effects on behaviour. Furthermore, while all consumers will have limits to their ability to use the information to them, some will be more able to assess it than others. It is therefore essential that we consider potential consumer behavioural biases not only when assessing existing information provision but also in the development of new information requirements.
43. Ofcom has proposed a framework to help regulators better understand the many different reasons why information may be inadequate (Table 1).<sup>7</sup> In many cases, information is available but may not be serving its purpose. For example, consumers or citizens may not be aware of it, or understand how to use it. We have adopted this framework to help us assess such cases. However, the framework is also likely to be useful in cases where information that could help mitigate an identified detriment is not available and we are considering how it could be made available.

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<sup>7</sup> Ofcom, 2013. *A Review of Consumer Information Remedies: Research Document*. Available at: <http://bit.ly/1h0veQ6>.

**Table 1: How inadequate information causes detriment**

<b>Awareness</b>	<ul style="list-style-type: none"> <li>▪ What is the level of awareness that information exists that could help mitigate the detriment?</li> <li>▪ What level of spontaneous awareness is there of the information provider?</li> </ul>
<b>Accessible</b>	<ul style="list-style-type: none"> <li>▪ Is the information easy to access, find and use? Is it clearly identifiable?</li> <li>▪ Is the information provided in an appropriate way for those who would benefit from having access to it (e.g. online-only information could exclude a significant minority of the population)?</li> </ul>
<b>Trustworthy</b>	<ul style="list-style-type: none"> <li>▪ Is the source of information trustworthy and totally impartial?</li> <li>▪ Has the information been endorsed by multiple stakeholders?</li> </ul>
<b>Accurate</b>	<ul style="list-style-type: none"> <li>▪ Is the information true to a sufficient level of resolution, and can it be checked for correctness?</li> <li>▪ Is the information up-to-date and pertains to consumers' current situation?</li> </ul>
<b>Comparable</b>	<ul style="list-style-type: none"> <li>▪ Is the information presented in such a way by different providers to allow for easy and sensible comparisons?</li> </ul>
<b>Clear and understandable</b>	<ul style="list-style-type: none"> <li>▪ Is the information expressed in units, concepts, or terminology that is unambiguous and easy to understand?</li> <li>▪ Is the level of technical competence required to understand the information appropriate for the target audience?</li> <li>▪ Does the way that the information is presented act as a barrier to usability?</li> </ul>
<b>Timely</b>	<ul style="list-style-type: none"> <li>▪ Is the information readily available at the point of making decisions (this is not necessarily the same thing as 'point of sale')?</li> </ul>

## Options for providing information

44. This section sets out the options available to us for the provision of information. In the next section we explain how we will consider the impact of possible interventions on consumers, citizens and businesses.

### Information types

45. We will not be able to require businesses to publish information that they could not be compelled to provide in evidence in civil proceedings before the court. Nor will we be able to require businesses to publish commercially confidential information, (e.g. market position, pricing strategies, financial health etc.) as this could harm competition; nor information about individuals that is protected by data protection regulations.
46. Information within the scope of our publication powers is likely to either be generic (i.e. about the sector in general) or branded (i.e. associated with a particular business in the market). Generic information is most likely to cover ongoing issues relating to risks that consumers and other groups need to be informed about. Branded information, on the other hand, is likely to fall into three categories:
- prices;
  - features of products or services; and
  - performance (e.g. operational or environmental).
47. Generic or branded information could be made available in structured or unstructured forms. Structured forms of information include comparative performance metrics or text providing advice and guidance to consumers. Unstructured forms of information include raw data, which could be made available for third parties (e.g. developers of apps and other software) to make use of.
48. We are supportive of the Government's Open Data agenda and our default position will be to make data available that we hold and which is relevant to sections 83 and 84, unless we think that doing so could result in significant adverse effects. We may also choose to take approaches to information provision that combine publishing structured,

comparable information but also releasing the underlying data.<sup>8</sup>

Wherever we make data available, we will ensure that it is:

- accessible (ideally via the internet) at no more than the cost of reproduction, without limitations based on user identity or intent;
- in a digital, machine-readable format for interoperability with other data; and
- where possible, free of restriction on use or redistribution in its licensing conditions.<sup>9</sup>

49. A further distinction is between 'real-time' and historical performance information. We do not believe our duties give us scope to require the publication of real-time performance information under section 83, as this is unlikely to be useful in helping consumers make comparisons for the benefit of future purchasing decisions. However, we consider that it could be appropriate to publish real-time information about the environmental effects of civil aviation as affected parties may have a legitimate interest in how they are being affected at the current time, as well as how they have been affected in the past or might be affected in the future.

### Information channels

50. The channel through which information is distributed is a key consideration in designing any remedy to an information gap. We will therefore give full consideration to the advantages and disadvantages of all available channels relative to their ability to help us deliver our desired outcome. These include digital (e.g. websites, apps, widgets and other online tools) and non-digital channels provided by:
- businesses that provide products and services directly to consumers, such as airlines and airports;

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8 Separately from our duties under sections 83-84 of the Civil Aviation Act 2012, the CAA has since 1968 undertaken a series of public/private funded passenger surveys to obtain information about air travellers and the determinants of the travel market. The surveys have included questions on journey purpose, final and intermediate surface origins/destinations, means of transport to and from airports, route flown, country of residence and income. The information is typically used in assessing the type of market served by airports and consequently for forecasting air transport demand and for planning airport facilities. We publish a summary of the results of each survey in a compact report. These reports, which contain tables and charts showing top level figures for each airport surveyed, can be accessed free of charge from our website. More detailed datasets can be obtained for a fee.

9 Open Data Service Design Manual. Available at: <http://bit.ly/1fvryl3>

- intermediaries involved in selling and marketing flights, holidays and air freight services (e.g. aggregators, online travel agents);
  - organisations involved in the provision of general and special-interest consumer advice and guidance (e.g. government-funded and independent consumer organisations, disability rights groups, the media);
  - organisations involved in the provision of environmental information (e.g. government department and agencies, local authorities, NGOs and campaign groups); and
  - the CAA itself (or organisations working on behalf of the CAA).
51. Where we require that information is provided through a certain channel (rather than encouraging the provision of information through, for example, publishing guidance or making raw data available for reuse), we will seek to do this at the lowest possible cost by using existing channels and – given the relatively high proportion of UK businesses and households online – digital mediums. However, there may be cases where new information channels will need to be developed and/or the target audience is not well suited to information delivered digitally.

### **Assessing the impacts of information provision**

52. Where we determine that information provision is an appropriate response to an identified market problem, we have developed a process to help us consider the benefits and adverse effects of the different ways that information could be provided.
53. We will use this process to provide us with an understanding of the positive and negative impacts of a regulatory proposal. These include impacts that are non-monetary, qualitative and intangible in nature, as well as those that are capable of being evaluated in monetary terms. As well as the benefits and costs accruing to businesses, consumers, those affected by the environmental effects of civil aviation and society in general, we will also consider the impacts associated with developing, implementing and enforcing our policies, including our ability to enforce regulations against businesses based outside the UK.
54. We will give careful consideration to the costs faced by businesses of providing information, as required by the Government's Accountability for Regulator Impact (ARI) scheme. These costs include the costs of changing or establishing collection systems and publication channels

and will be taken into account in any assessment of the impacts of proposals we make.

55. As aviation is a global industry it is also important for us to consider whether businesses face similar information provision requirements in other states to those we have proposed for the UK. This could help us to design UK requirements in ways that build on existing compliance activities, thereby minimising regulatory burdens. We will make best efforts to understand requirements in other states but will also rely on our stakeholders to make us aware of these requirements when we consult with them.
56. We may take the size of businesses into account when deciding who regulatory requirements should apply to. Where we believe that compliance could place a disproportionate burden on smaller businesses and therefore be detrimental to competition, we may choose to apply a de minimis threshold, below which compliance would be at the discretion of the individual business. Rather than specifying a de minimis threshold within our general policy on information provision, we believe it is more appropriate to consider the burden on businesses of different sizes in the context of each individual proposal we make.

### **How we will assess impacts**

57. In developing our approach, we have referred to the guidance issued by BIS in its Impact Assessment Toolkit. We will aim to carry out quantitative analysis up to Level 4 (see Table 2 for details of the different levels of analysis proposed by BIS). This means that, where it is possible and proportionate to do so, we will seek to monetise the effect of our proposals. However, in the earlier stages of policy development analysis is likely to be at a lower, less sophisticated level.<sup>10</sup>

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<sup>10</sup> In earlier stages of proposal development, we will probably carry out analysis at lower levels, e.g. Levels 1 and 2 (describe who will be affected and how).

**Table 2: Levels of analysis for impact assessments**

<b>Level 1</b>	Description of who will be affected by the proposals. The main groups affected will be businesses, citizens and consumers.
<b>Level 2</b>	Full description of the impacts (i.e. positive or negative impacts on any group and order of magnitude (e.g. low, medium, high)).
<b>Level 3</b>	Quantify the effect (e.g. number of consumers likely to use the information, number of hours required to make changes in order to comply).
<b>Level 4</b>	Put a value on the scale of impacts by monetising the effect. It may be the case that the costs but not benefits can be monetised. The use of indicators may help further qualify non-monetised costs and benefits.
<b>Level 5</b>	Monetise fully all costs and benefits.

58. We believe that monetising direct costs to businesses of information provision requirements is likely to be relatively straightforward and we will follow the ARI guidance to obtain an understanding of these costs. However, reliably quantifying the degree of benefit generated – particularly benefits that are indirect (i.e. which result from the use of information by consumers and/or the public) – is likely to be more challenging. In some cases it may be that the benefit is impossible to measure accurately (e.g. because appropriate units do not exist). If we are unable to quantify a benefit then it will not be possible to monetise it.

### **Taking a proportionate approach**

59. We will take a proportionate approach to determining the depth and scale of the impact assessment process for each information provision proposal. This will be determined on the basis of the likely consequences of the policy under consideration.
60. As an example of how proportionality could be applied in practice, consider a proposal to develop a 'new form' of information in the market (e.g. a standardised metric to help consumers compare offers) compared to a proposal to enhance existing information (e.g. on businesses' websites). The former would be likely to require more detailed assessment because it will only be beneficial if consumers understand the information as intended. Therefore, in coming to a decision whether such a form of information provision will be beneficial or not, further research may be needed to ensure that the metric does

communicate the desired message and does not misinform consumers, potentially distorting choices and leading to inefficient outcomes.

## Stakeholder engagement

61. It is essential that our stakeholders have genuine opportunities to influence and challenge the way we develop our policies to address identified market problems. This principle applies to all of the CAA's work, not just our duties to provide information, and is a key tenet of Better Regulation, which requires that:
  - effective consultation must take place before decisions are taken, to ensure that stakeholders' views and expertise are taken into account; and
  - stakeholders have sufficient time and information to respond to consultation documents.
62. In line with the Cabinet Office's guidance on effective consultation<sup>11</sup>, our approach will be proportionate and targeted, so that the type and scale of engagement is justified by the potential impacts of the proposal.
63. We are likely to consult in a more formal and structured way (i.e. involving written consultation and assessments of impacts) if any of the factors listed below apply to a proposal:
  - implementing the proposed change results in direct<sup>12</sup> compliance costs to businesses (known as administrative burdens);
  - implementing the proposed change places significant demands on CAA resources;
  - there is significant uncertainty about how the behaviour of consumers and/or the public will be affected by the proposed change.
64. In all circumstances other than those set out in paragraph 63, we intend to engage with stakeholders in less formal and less structured ways.
65. The approaches we take to informal stakeholder engagement will depend on the nature of the change we have proposed, but are likely to include bilateral meetings, roundtables and workshops. We may

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11 Cabinet Office, 2013. *Consultation Principles*. Available at: <http://bit.ly/1m5BOVd>

12 Direct impacts are defined in the *Better Regulation Framework Manual* as: "An impact that can be identified as resulting directly from the implementation or removal/simplification of [a] measure [...] Subsequent effects that occur as a result of the direct impacts, including behaviour change, are indirect." (<http://bit.ly/1fvrW9g>)



also choose to supplement formal consultation with more informal stakeholder engagement mechanisms.

## **What stakeholders should expect when we consult formally**

### **Developing a proposal**

66. When we consult formally on a proposal to provide information under section 83 or 84 of the Act we will always provide stakeholders with, in written form:
- evidence about the nature of the problem, including who is affected and how, and why the problem is caused or partially caused by incomplete or asymmetric information;
  - the consequences of doing nothing about the problem(s);
  - our desired outcome(s) from taking action; and
  - a description of the options to address the problem.
67. As a minimum, in the course of developing a proposal, stakeholders should expect us to carry out Level 1 and Level 2-type analysis (see Table 2, above) of the impacts of that proposal. This will entail a description of:
- who will be affected by the proposal (e.g. consumers, citizens, businesses); and
  - what we believe the likely positive and negative impacts will be, in order of magnitude (e.g. low, medium, high).
68. If the proposed change is likely to result in direct impacts<sup>13</sup> on businesses then we will also publish and consult on draft Business Engagement Assessments (BEAs) for those options, setting out our estimate of the impacts of each option on businesses. This will ensure we meet our obligations under ARI.
69. If the necessary data are readily available, we will seek to also quantify (Level 3) and monetise (Level 4) the effects of our proposed change. However, it may not be proportionate to conduct further research and analysis, particularly where low-risk or low-impact interventions are proposed. As set out in paragraph 58, we do not believe that we will be able to monetise all costs and benefits (Level 5) of information provision.

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13 See footnote 12.

70. Stakeholders should expect to receive clear and timely updates on the development of our proposals, including the reasons for accepting or rejecting representations from stakeholders.

### Making a decision

71. We will issue a final decision document that announces how we intend to proceed. It will be based on our final analysis of the costs and adverse effects of our preferred option. We will explain how and why our final decision has been reached and show where and how consultation feedback has been taken into account).

### Implementing a requirement

72. Where we place a regulatory requirement on businesses to make information available, we will set out the requirement in a formal notice which will be sent to all businesses subject to the regulation and published on our website.
73. In line with the principles of Better Regulation, we will ensure that:
- the requirement is clear and simple, accompanied with guidance in plain language, and issued at least 12 weeks before it is due to take effect;
  - those subject to the requirement are made aware of their obligations, with law and best practice clearly distinguished; and
  - those subject to the requirement are given the time and support to comply, including supplying them with examples of methods of compliance.

### Reviewing the impacts of our actions

74. Compliance with regulations governing information provision will not guarantee that the desired outcomes are delivered. We are committed to regularly reviewing and evaluating all of our interventions (including those that are developed through more informal forms of consultation) to ensure they have achieved their desired outcomes, that they are working as well as they can (and better than alternatives), and that there is an opportunity to modify them if they are not.
75. As with predicting the impact of information provision interventions, there are also difficulties involved with reviewing them. These include:

- establishing appropriate baselines (e.g. satisfaction measures may depend heavily on consumer expectations, which are particularly susceptible to recent experience or news headlines); and
  - isolating the impact of information from other factors and incentives in the market that could influence performance, particularly where consumers' purchasing decisions are relatively infrequent and the dissemination of information therefore takes time.
76. In line with our approach to stakeholder engagement and assessing the impacts of information provision, we will review our interventions in a proportionate way. As such, while there are a range of measures that could be used to assess the effectiveness of information provision, our choice of evaluative measures will depend on the nature of the intervention.
77. Examples of the measures we may use to assess the impact of our interventions include:
- tracking the overall experience (including, but not limited to, satisfaction) of intended beneficiaries of information provision with regard to the product, service or environmental issue that the information relates to;
  - carrying out specific research to assess whether intended beneficiaries of information provision:
    - are aware of the information we have made available;
    - have understood and/or used the information;
    - have changed their behaviour as a result of the information;
    - using proxy measures, such as:
      - complaints regarding the area that information provision relates to;
      - social media analysis to examine what, if anything, consumers and other groups are saying about the areas in question; and
      - website traffic data to assess whether new information is being accessed.
78. Carrying out a review may also involve consultation with our stakeholders and include consideration of the following questions, as set out in the BIS Impact Assessment Toolkit.
- To what extent has the policy achieved its objectives?

- To what extent have the success criteria been met?
- To what extent have there been unintended consequences?
- What are the costs and benefits, in hindsight and going forward?
- Is regulatory intervention still required? Or has the market changed as a result of the policy?
- Hence, what scope is there for simplification, improvement or deregulation?
- Do compliance levels indicate that the enforcement mechanism chosen is appropriate?

## Part two – enforcement

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79. The CAA's aim in implementing the publication functions granted by the Civil Aviation Act 2012 is to develop consensus with our stakeholders on the nature and types of information to be made available in an accessible and appropriate fashion. The CAA would hope to proceed without the need to use the power to demand information in section 89 of the Act.
80. In October 2012, the CAA published its first Regulatory Enforcement Policy<sup>14</sup>, applying to all of the CAA's regulatory activities. This was produced to provide our regulated community, aviation consumers and the wider public with a clearer view of the CAA's role in seeking to resolve a breach, or a suspected or potential breach, of civil aviation rules. The Policy has been developed to protect aviation consumers, passengers and the public and is designed to encourage compliance with the rules and act as a deterrent.
81. The Regulatory Enforcement Policy is supported by sector specific guidance notes. The guidance note on our Consumer Enforcement<sup>15</sup> work is available on the CAA's website.

### Penalties statement

82. Section 92(1) of the Civil Aviation Act 2012 ("the Act") states that the CAA must prepare and publish a Statement of Policy with respect to carrying out its functions under sections 83 and 84 of the Act, and with respect to "imposing penalties under sections 86 and 87, and determining the amount of such penalties". By virtue of section 92(4), when imposing such a penalty or determining its amount, CAA must have regard to this Statement of Policy.
83. This penalties statement refers to the CAA's power under section 86 of the Act to impose a penalty to enforce compliance with an information notice under section 85; and its power under section 87 to impose a penalty for the provision of false or misleading information, or the alteration, suppression or destruction of a document required to be produced under section 85. These penalties relate both to information

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Civil Aviation Authority, 2012(a)

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Civil Aviation Authority, 2012(b)

for the benefit of users of air transport services under section 83 and environmental information under section 84.

84. A penalty under section 86 must be such amount as the CAA determines to be appropriate and proportionate to the failure in respect of which it is imposed. It may consist of either or both of a fixed amount, which must not exceed £50,000, or a daily amount, which must not exceed £5,000. The period during which daily amount accumulate must be such period as the CAA considers appropriate.
85. A penalty under section 87 must be such amount as the CAA determines to be appropriate and proportionate to the action in respect of which it is imposed. There is no maximum level of penalty under this section.
86. Any sums received by the CAA by way of a penalty under sections 86 or 87 must be paid into the Consolidated Fund operated by the Treasury.
87. The Act lays out procedural requirements to be followed by the CAA, both before and after imposing a penalty (sections 88 and 89). These include giving the person a notice under section 88 that the CAA proposes to publish a penalty, specifying the proposed amount of the penalty and the CAA's reasons for imposing it.
88. The notice must be published and sent to relevant airport operators and providers of air transport services, or their representatives. The CAA must allow at least 21 days for consultation and must consider any representations made within that period. As soon as practicable after imposing a penalty, the CAA must notify the person under section 89, specifying the same information as in the first notice and setting a reasonable period in which the penalty must be paid.
89. Under section 86(1)(b), it is open to the CAA, in the event of non-compliance with an information notice, either to impose a penalty, or to enforce the duty to comply with the notice by means of an injunction, or both.
90. The person receiving a penalty may appeal to the Competition Appeals Tribunal under section 90.

### **Is a penalty appropriate?**

91. The CAA's primary enforcement objective is to protect consumers and the public by encouraging compliance with the rules, both by the aviation community generally and in individual cases, and to deter non-

compliance. We will be guided by the five principles of better regulation: proportionality, targeting, consistency, transparency and accountability; and the six penalty principles set out in the Macrory report “Regulatory Justice: Making Sanctions Effective”

92. In considering these six principles, the CAA’s primary objective in issuing a penalty is to change the future behaviour of the person so that they are better able to comply with all their obligations, and to deter non-compliance in general, rather than to punish retrospectively. The CAA also aims to incentivise others to comply with their own obligations under the Act or under a licence. The CAA will also aim to eliminate any financial gain or benefit that the person may have made from the failure to comply and to restore any harm caused. The CAA will therefore normally impose a penalty if it considers that the penalty would achieve these objectives. In doing so, the CAA will take a proportionate approach to the particular offender and the particular issue.
93. In deciding whether a penalty is appropriate, we will take full account of the particular facts and circumstances of the breach, including any representations made to us in response to the penalty notice which we are required to give to the person concerned, and publish, about a proposed penalty under the section 88 procedure. That notice must give the CAA’s reasons for imposing the penalty and its proposed amount.
94. Where there is an additional and alternative enforcement mechanism available to the CAA by way of civil proceedings<sup>16</sup> to ensure compliance with enforcement orders, the CAA’s approach will normally be that which best achieves the goals set out above. Given the primacy we give to deterrence, the CAA is likely to favour the imposition of penalties over seeking injunctive relief. However, the CAA would be likely to consider civil proceedings in cases where it considered that deterrence may not be the most effective way to further its the objectives of sections 83 and 84.
95. For failures to comply with the requirements of an information notice under section 85 of the Act, the CAA must take into account any reasonable excuses. The CAA considers such reasonable excuses would include circumstances outside of the person’s control such as a loss of IT or reliance on third parties. However, the CAA would expect

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16 Under section 86(1)(b) of the Act, the CAA may enforce enforcement orders in civil proceedings for an injunction or any other appropriate remedy or relief, or in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988.

the person to inform it as soon as possible of any difficulties identified before the deadline for submission of the information.

96. In determining whether a penalty is required for providing false information or destroying documents etc, the CAA must, in accordance with section 87, show that the person has knowingly or recklessly provided false or misleading information or has intentionally altered, suppressed or destroyed documents.

### **Determining the amount of the penalty – proportionality**

97. The amount of the penalty must be such as the CAA determines to be appropriate and proportionate to the failure in respect of which it is imposed. When determining the amount of a penalty, CAA will also consider whether any adjustments are appropriate to reflect mitigating or aggravating factors in the particular case.
98. In line with the Macrory principles, a penalty should be proportionate to the seriousness of the breach, and this will be CAA's usual starting point in considering the general level of the penalty. In considering this, we will look at the benefits and opportunities foregone by, or harm caused to, consumers and the wider public from the absence of, or delay in, provision of the requisite information sought by CAA under sections 83 and 84. The general level of penalty will also be influenced by any gain (financial or otherwise) made by the person in breach and the duration of the breach.
99. The intended benefit of section 83 is for the CAA to assist consumer choice through the publication of comparative information and advice about air transport services and facilities. It is also to enable the CAA to facilitate, through guidance and advice, improved standards of such services and facilities for consumers. The latter is more directly focussed on industry providers, but for the benefit of consumers.
100. The intended benefit of section 84 is for the CAA to assist the general public through the publication of information and advice on the environmental effects of aviation, its health and safety impacts, and measures to address its adverse impacts. It is also to enable the CAA to facilitate, through guidance and advice, the reduction or mitigation of adverse impacts. Again while the latter is more directly focussed on industry actions, the outcomes sought are for the public benefit.
101. Proportionality also requires consideration of the culpability of the offender, including whether the offender has acted negligently,



recklessly, knowingly or intentionally. While one or more of these elements will almost invariably manifest themselves in the non-provision of information, all but negligence form a specific and required element of offences relating to the provision of false information or destruction of documents.

102. An indication of the degree of seriousness for each of the criteria above is set out in Table 3. These are examples and it may not be appropriate to consider every criterion in each case. Where the relevant criteria fall into two or more levels of seriousness, the CAA will exercise discretion to decide which overall level should apply. This decision will be based on the harm done (including potential harm and duration of harm), the gain or potential gain the person had made from the non-compliance and the culpability of the person.

**Table 3: Levels of seriousness of infringements**

<b>Level of seriousness</b>	<b>Indications of the level of seriousness for each criterion.</b>
<b>Minor</b>	<p>There was little or no harm (or potential harm) to consumers and/or the public or the CAA's ability to fulfil its publication duties under sections 83 and 84 of the Civil Aviation Act 2012.</p> <p>There was little or no culpability on the part of the person; or the infringement was clearly accidental and could not be mitigated by the person.</p> <p>The person did not gain from the infringement.</p>
<b>Moderately serious</b>	<p>There was some harm or potential harm to consumers and/or the public or it delayed the CAA's ability to fulfil its publication duties under sections 83 and 84 of the Civil Aviation Act 2012.</p> <p>There is evidence that there was some culpability on the part of the person; or the infringement was not wholly accidental, or the person made inadequate efforts to mitigate.</p> <p>The person made a small gain (either financially or otherwise) from the infringement.</p>

<b>Serious</b>	<p>There was a significant harm or potential harm to some consumers and/or members of the public or it significantly delayed or hindered the CAA's ability to fulfil its publication duties under sections 83 and 84 of the Civil Aviation Act 2012.</p> <p>There was some culpability on the part of the person in that the person to some extent negligently, intentionally, knowingly or recklessly failed to comply with their obligations; or the infringement was not accidental, or little or no effort was made to mitigate the infringement.</p> <p>The person made a significant gain (either financially or otherwise) from the infringement.</p>
<b>Very serious</b>	<p>There was a significant amount of harm or potential harm to a large number of consumers and/or members of the public or it prevented the CAA from fulfilling its publication duties under sections 83 and 84 of the Civil Aviation Act 2012.</p> <p>The person was wholly culpable, negligently, intentionally, knowingly or recklessly failing to comply with their obligations.</p> <p>The person made a large gain (either financially or otherwise) from the infringement.</p>

103. Where false or misleading information is provided (pursuant to a formal notice), a penalty may be imposed where it is shown that the person knew, or was reckless as to whether, the information was false or misleading. Where a document has been altered, suppressed or destroyed, a penalty may be imposed if an intention to do so can be shown. The seriousness of such offences is apparent from the fact that unlike non-provision of information, there is no limit on the penalty that may be imposed for these offences. As such, it is unlikely that a breach attracting a penalty imposed under section 87 would be considered minor or moderately serious.

### **Determining the amount of the penalty – mitigating and aggravating factors**

104. The CAA will adjust the general penalty level up or down to take account of relevant mitigating and aggravating factors, according to the specific facts and circumstances of the case. We will apply an overall adjustment reflecting the net effect of such factors. The following factors may be considered, as appropriate, in this regard:

- the speed with which steps have been taken to rectify the breach, including whether these were initiated by the person in breach or in response to CAA's actions (prompt and voluntary action would attract a reduction in the overall amount; forced and slow action, or lack of action altogether would lead to an increase);
  - any steps which have been taken to minimise the risk of the breach recurring such as new processes put in place or training needs addressed. Lack of such actions could be an aggravating factor that could lead to an increase in the overall penalty ;
  - the extent of involvement of directors or senior management in the action or inaction which caused the breach or their lack of appropriate involvement in action to remedy the breach;
  - repeated or continuing infringement of their obligations;
  - the existence and effectiveness or otherwise of proactive preventative measures and internal mechanisms to ensure compliance
  - evidence that the breach was genuinely accidental or inadvertent; and
  - the level of co-operation with any investigation carried out, including, but not limited to, speed of responses, availability, openness and willingness of staff (including senior managers) to engage.
105. In addition, the CAA will take into account any restorative actions, including financial compensation, which have been or will be taken to mitigate the consequences of the non-compliance. Such restorative action should be identified, at the latest, in representations to a notice published by the CAA under section 88 stating the CAA proposes to impose a penalty. However, the sooner commitments of such actions are made to the CAA, the more significant the reduction in the overall penalty is likely to be.
106. Other mitigating or aggravating factors may arise depending on the specific facts and circumstances of the case.
107. Where the facts about a mitigating or aggravating factor are unclear or disputed, the CAA may take account of the strength of the evidence in deciding what weight to place on a factor.
108. The net effect of these factors may be significant, capable in the most favourable circumstances of reducing the penalty to zero, or in the worst cases, to increase it.

**Determining the form of the penalty – fixed and/or daily amounts**

109. A penalty for non-compliance with an information notice may be either a fixed amount (up to £50,000), a daily amount (up to £5,000) for a specified period, or both. The daily amounts may cumulatively exceed the fixed penalty amount of £50,000. A penalty for providing false information (or other offences of dishonesty in section 87) will be a fixed amount, but with no maximum level specified.
110. The specified period during which daily amounts accumulate must be such as the CAA considers appropriate. However it must begin after the day on which the CAA gives notice under section 89 stating that it has imposed a penalty, and must end before the day on which the person provides the information or documents specified in the original notice under section 85.
111. The CAA is likely to impose both a fixed amount and a daily amount for non-compliance with an information notice, based on the factors set out above. The appropriate balance between the two will depend on the specific facts and circumstances of the case. The penalty for providing false information (or other offences of dishonesty) will reflect what is appropriate and proportionate, mindful of the inherent seriousness of such offences and the absence of a specified penalty level.
112. It is open to the CAA to propose to vary the amount of the penalty (and implicitly the balance between any fixed and daily amounts), subject to further notice requirements, enabling the penalty to be more targeted to the particular breach should emerging circumstances suggest that this is necessary.