

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

AIR TRAFFIC MANAGEMENT AND UNMANNED AIRCRAFT BILL [*LORDS*]

First Sitting

Tuesday 9 February 2021

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Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
CLAUSES 1 TO 7 agreed to.
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SCHEDULE 8 agreed to, with an amendment.
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SCHEDULE 10 agreed to.
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SCHEDULE 11 agreed to.
CLAUSES 17 TO 21 agreed to.
CLAUSE 22 agreed to, with an amendment.
Bill, as amended, to be reported.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 13 February 2021

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The Committee consisted of the following Members:*Chairs:* SIOBHAIN McDONAGH, † SIR CHARLES WALKERAiken, Nickie (*Cities of London and Westminster*)
(Con)Clarke-Smith, Brendan (*Bassetlaw*) (Con)† Courts, Robert (*Parliamentary Under-Secretary of
State for Transport*)Edwards, Ruth (*Rushcliffe*) (Con)† Everitt, Ben (*Milton Keynes North*) (Con)† Fletcher, Colleen (*Coventry North East*) (Lab)Johnson, Gareth (*Dartford*) (Con)† Kane, Mike (*Wythenshawe and Sale East*) (Lab)Mohindra, Mr Gagan (*South West Hertfordshire*)
(Con)† Moore, Robbie (*Keighley*) (Con)Morden, Jessica (*Newport East*) (Lab)Newlands, Gavin (*Paisley and Renfrewshire North*)
(SNP)Russell, Dean (*Watford*) (Con)† Tarry, Sam (*Ilford South*) (Lab)Thompson, Owen (*Midlothian*) (SNP)† Throup, Maggie (*Lord Commissioner of Her
Majesty's Treasury*)Western, Matt (*Warwick and Leamington*) (Lab)Sarah Ioannou, Kevin Maddison, *Committee Clerks*† **attended the Committee**

Public Bill Committee

Tuesday 9 February 2021

[SIR CHARLES WALKER *in the Chair*]

Air Traffic Management and Unmanned Aircraft Bill [Lords]

9.25 am

The Chair: Before we begin, I have a few preliminary points to make. Please switch electronic devices to silent mode. Tea and coffee are not allowed during sittings. I remind hon. Members about the importance of social distancing. Spaces for Members are clearly marked—I think we have grasped that. Mr Speaker has asked Members to wear face coverings in Committee, except when they are speaking. I will not be wearing my face mask, because I will be interjecting and it would take time to put it on and off, but if you would do so, that would be great. The *Hansard* Reporters would be grateful if Members emailed any electronic copies of their speaking notes to hansardnotes@parliament.uk.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 9 February) meet—

- (a) at 2.00 pm on Tuesday 9 February;
- (b) at 11.30 am and 2.00 pm on Thursday 11 February;
- (c) at 9.25 am and 2.00 pm on Tuesday 23 February;

(2) the proceedings shall be taken in the following order: Clauses 1 to 7; Schedules 1 and 2; Clauses 8 and 9; Schedules 3 and 4; Clause 10; Schedules 5 and 6; Clause 11; Schedule 7; Clauses 12 and 13; Schedule 8; Clause 14; Schedule 9; Clause 15; Schedule 10; Clause 16; Schedule 11; Clauses 17 to 22; new Clauses; new Schedules; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 23 February.—(*Robert Courts.*)

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Robert Courts.*)

The Chair: Copies of written evidence that the Committee receives will be made available in the Committee Room. We will now begin the line-by-line consideration of the Bill. The selection list for today's sitting is available in the room, on the table. This shows how the selected amendments have been grouped for debate. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause or schedule that the amendment affects. We begin our proceedings with the Question that clause 1 stand part of the Bill, and I ask the Minister to get stuck in.

Clause 1

MEANING OF “AIRSPACE CHANGE PROPOSAL”

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Transport (Robert Courts): It is a great pleasure to serve under your chairmanship, Sir Charles. Clause 1 provides a

definition of “airspace change proposal”, which is referred to in clauses 2 and 3. An airspace change proposal is a proposal that

“relates to managed airspace or the flight procedures or air traffic control procedures used within it”

and which is submitted to the Civil Aviation Authority for approval. The powers in part 1 of the Bill will provide vital support for a modernisation of our airspace, helping to make journeys quicker, quieter and cleaner, and to maintain the UK's position as a world leader in aviation. Clause 1 is required in order to provide clarity on what is within the scope of the Secretary of State's powers to direct, which we will come to under later clauses in part 1. I therefore beg to move that this clause remain part of the Bill.

Mike Kane (Wythenshawe and Sale East) (Lab): I concur with the Minister: it is a pleasure to serve under your chairmanship, Sir Charles.

This country has a world-class aviation sector—the third largest on the planet. We want to protect that, grow it and make it better. We also want to facilitate the study of STEM subjects—science, technology, engineering and maths—for all our young people who want to go in for it. We will get past this pandemic and we will keep our eyes on the horizon, and I think that this legislation will help us to do that.

We are discussing airspace modernisation in the UK. Our airspace is an invisible part of our vital infrastructure. It was originally designed in the 1950s and '60s and therefore needs urgent modernisation. In fact, we now have an analogue system in a digital age. It needs to be upgraded. We support that ambition, and I know that the Minister is keen on that ambition as well.

In the other place, my noble Friend Lord Rosser pointed out that not only has airspace provision not been updated in this House since the '50s or '60s, but the provision for drone technology—my hon. Friend the Member for Ilford South will deal with that when we get there—has not been updated since the Aviation and Maritime Security Act 1990, and he pointed out that that is closer to Yuri Gagarin's first trip into space than it is to today. For the record, I point out that when Yuri Gagarin was the first cosmonaut, or the first human to enter the cosmos, on 12 April 1961, he came to the UK in July that year and landed at Manchester airport in my constituency. He was invited by the Amalgamated Union of Foundry Workers. He visited their offices in Moss Side after he landed in my constituency and then went on to a civic reception at Manchester Town Hall. Members can tell that I am a Mancunian to the core, so I wanted to get that on the record.

We currently have the covid crisis and there is limited air traffic, but we need to ensure that our airspace—our infrastructure in the sky—is fit for a post-pandemic world. By simplifying UK airspace, we make it more efficient, it will deliver more precise and more direct routes, prevent rising delays and reduce congestion, and, more importantly in this eco-friendly world, it will become more sustainable. The Airport Operators Association is concerned about the lack of definition in the enforcement power in the clause. Although the Government have presented this as necessary for the implementation of airspace modernisation, a current or future Secretary of State could use the power for other airspace-related purposes.

I therefore again raise my concern, as I did on the Floor of the House last week, about the scope of the powers attributed to the Secretary of State for Transport by the clause. I understand that the Minister has engaged with the AOA over its concerns. Despite his assurances about the duty to consult—there is a robust appeals process—I still have misgivings as to why the Bill should not simply have a specific definition of the powers. I therefore ask the Minister to consider this matter and perhaps explain to the Committee why that has been omitted.

Robert Courts: I am grateful to the hon. Gentleman for making those points. He is absolutely right to set this in an historic context, because this is an historic piece of legislation that updates an historic legacy airspace environment, and of course makes it fit for the new technology that we will discuss later. It will make a simpler, more efficient airspace.

Turning to the hon. Gentleman's specific points on enforcements powers, his concern is that a future Secretary of State might use them for other airspace-related purposes. Any Bill has to be a balance between enabling the flexibility of the Government to take the steps required. Airspace in particular, as we will discuss when we come to drone technology, is in the vanguard of technological change, so there has to be an element of flexibility built in. I refer the hon. Gentleman and the Committee to the safeguards that exist within the remainder of this part of the Bill. I will stray from this clause in so referring to them but, with your permission, Sir Charles, I will briefly deal with them, and we will come back to them later when we get to clause 7.

There are, for example, some requirements in advance of the safeguard ever being used. It is intended to be a last resort if the airspace change is not progressed voluntarily. That is the Government's initial intention. It is therefore to be limited, certainly at the outset. It is meant to be within the context of the CAA's airspace strategy. The CAA's oversight team is to work with airports before it recommends to the Secretary of State that the power is used. It is not intended to be used where there are factors outside the airspace sponsor's control. So my first point is that before we ever get to the stage of the Secretary of State using his powers, there are numerous steps that ought to be taken in advance.

The Secretary of State's reasons for so acting under clause 4 are expected to be in writing and are published, so there is democratic and press scrutiny of any such decision. We will come to clause 7 and enforcement and appeals in due course, but I will briefly refer to them now to address the point that the hon. Gentleman made. There are grounds for an appeal to the Competition Appeal Tribunals: an error of fact that the decision was wrong in law, or discretion was exercised, but an error was made in the context of that discretion being exercised. This is a balanced act. There is a considerable amount of consultation or engagement in advance, and various safeguards are built in, which are very much on a par with what we seek in other regulatory spheres. For those reasons, I submit that no further definition is required.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

The Chair: It may not have escaped colleagues' attention that there was a little crosswind as we started the Bill. Minister, you do not need to move anything. When I call it, you just stand up and make a speech. Does that make sense? You do not need to do any ancillary stuff around that. I will be more certain in my decision making.

Clause 2

DIRECTION TO PROGRESS AIRSPACE CHANGE PROPOSAL

Question proposed, That the clause stand part of the Bill.

Robert Courts: This clause gives the Secretary of State the power to direct a person involved in airspace change, following the consultation I referred to a moment ago, to prepare or submit an airspace change proposal to the CAA or take steps to obtain its approval following submission or to review its operation following implementation.

These powers will ensure that airspace change proposals that assist in delivery of the CAA's airspace strategy can be taken forward if a sponsor does not do so voluntarily. We intend the powers to be used, at least initially, to deliver changes identified in the airspace change masterplan, as the intention is for this to be incorporated into the CAA's airspace strategy. This will ensure that airspace modernisation can be achieved to deliver quicker, quieter and cleaner journeys.

Without this clause, the Secretary of State would not be able to ensure that airspace change proposals identified as being important in helping to deliver the CAA's airspace strategy are taken forward. That would mean that an airport could hold up other airports if their airspace change proposals were interdependent, as many are and would be. The full benefits of modernisation would therefore not be realised without those powers.

Mike Kane: This takes us to the crux of the Bill. Upgrading UK airspace is a complex process at the best of times and in normal times, but we do not have normal times. It has to be paid for and delivered by the industry. While we support that, national air traffic control is responsible for modernisation of the en route network. Airports modernise approach and departure routes in their local airspace, through a process set out by the Civil Aviation Authority publication CAP1616. As modernisation is complex, particularly in the south-east of England, where there are high levels of interdependence between airports sharing the same airspace, the industry is committed to working to a masterplan. We know that the process is managed through the Airspace Change Organising Group, with oversight from the CAA, the DFT and, therefore, the Minister.

The pandemic has caused some of this work to slow down, which is my concern. The Minister knows that I have pushed him on this publicly and privately. Airports in the UK are close to mothballing at the moment—I am not going to be critical. We have asked for an aviation-specific support package, and I know that the Government have given some packages to airports and airlines, but we know they are in big trouble. They are huge capital assets that are bleeding cash as we speak and getting no passengers through, which is their key revenue. They are now beginning to shut down their

[Mike Kane]

airspace change teams—if not today, then in the next few weeks, if the Government's package does not come through.

The Airspace Change Organising Group is still waiting for the funding promised last year by the Chancellor to continue its work. Without that, the modernisation of the UK's airspace, where we have the third biggest industry on the planet, world beating and world leading, will fail. The impact of covid on the industry's finances makes paying for the programme even more difficult. The Airport Operators Association has suggested that the Government should consider helping out with the costs, as airports lead the way for our UK economy out of the pandemic.

The Minister and I share the same enthusiasm for this, and we both agree that there is an urgent requirement for airspace to be modernised in order to achieve the environmental, noise and operational benefits. Therefore, I cannot see how the Bill will ensure that will happen. How can this clause ensure that Government direction will be followed when the sector simply does not have the means to pay for it currently? That is my main point for the Minister today.

Robert Courts: Clearly, the Government recognise the great challenge that the aviation sector faces at the moment. I will not rehearse the wide economic measures that the Government have undertaken in order to support all businesses—I know that the shadow Minister is aware of those and I would drift a long way from the purpose of the Bill if I did rehearse them. However, I will refer to the business rates relief that we introduced recently, and I will observe that, although covid is clearly having a substantial impact on the industry, aviation will recover in the long term. It will remain a central part of the UK—of its trade policy, its strategy and its place in the world. It is a successful—indeed, world-leading—industry, as the hon. Gentleman quite rightly referred to it, and I am confident that it will return to that place in due course.

It is a long-standing policy that those who benefit from an aviation policy—air passengers—ought to pay for it. It is therefore right that we continue that policy within the context of the Bill. However, in the event that there are some aspects in relation to which the Government might consider taking an alternative view when looking for the ability to fund airspace change, the ability to fund will need to be taken into account in deciding whether or not to give such a direction, because that is what we are dealing with here—whether the Secretary of State directs that an airport should bring an airspace change forward. The Secretary of State will continue to consider the ability to fund as a part of that process.

The Government recognise that there may be occasions when small airports require financial assistance to carry out some aspects of an airspace change proposal. We would expect the CAA's oversight team to work with the airport operator before recommending that the Secretary of State use those powers in the first place with regard to an airspace change proposal. If at that time the airport operator expressed concern that it did not have sufficient funding for it to proceed with a particular proposal, we would expect that oversight team to suggest alternative solutions.

There are a number of possible alternative solutions, and I will quickly refer to them: an alternative sponsor might pay for the changes; or there might be alternative funding support; or there may be, on a case-by-case basis, Government funding under section 34(1)(b) of the Civil Aviation Act 1982, if an ACP were to have an adverse financial impact. We are a long way away from that circumstance, as there are a number of steps that we could take in due course. In any event, the funding—the payment basis—would be taken into account before it is directed that those powers are exercised.

Mike Kane: I thank the Minister for that response. I think that we will have numerous conversations in the months ahead about the mechanisms, which he has quite rightly outlined, that he can use to bring forward the airspace modernisation programme. We must not fail on this programme, because it is vital for the industry, including for its confidence as we bounce back post pandemic, hopefully later this year. I will continue to hold the Minister's feet to the fire on this issue, if he does not mind—and I will do so even if he does mind.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

DIRECTION TO CO-OPERATE IN AIRSPACE CHANGE PROPOSAL

Question proposed, That the clause stand part of the Bill.

Robert Courts: This clause gives the Secretary of State a power to direct a person involved in airspace change to co-operate with another person involved in airspace change. This direction might be needed if, for example, the original sponsor was unable to progress an airspace change proposal, so that someone else agrees to progress it but requires assistance from the original sponsor in order to do so.

Without the clause, an ACP that was identified as being important in delivering the CAA's airspace strategy may not be taken forward if the original sponsor is unwilling, or unable, for any reason—such as those we have touched on already, or for other reasons—to take the ACP forward. The clause is therefore important to ensure that if an alternative sponsor were to become involved in progressing an ACP, the original sponsor can be compelled, if necessary, to co-operate in ways that the Secretary of State considers appropriate, such as providing information and documents to enable that ACP to progress.

Again, this measure is intended to ensure that airspace modernisation can be achieved quickly, in order to deliver the quicker, quieter and cleaner journeys that we would all like to see.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

DIRECTIONS UNDER SECTIONS 2 AND 3: SUPPLEMENTAL

Question proposed, That the clause stand part of the Bill.

9.45 am

Robert Courts: This clause requires that directions given by the Secretary of State under clauses 2 or 3 must be given in writing and published, and that notices of variation and revocation must also be published. It is essential that any such direction is made in writing, and that any variation or revocation of a direction is made through such a notice, so that the recipient is clear about what is expected from them.

That direction could specify what the person is expected to do, the dates of tasks they must complete, and requirements to keep the CAA informed of progress on these. A direction given under clause 3 can also specify information or documents to be provided by a person directed to co-operate in an ACP, and the date by when this must be done. Without the clause, what is expected of a directed person may not be clear, and this could risk the direction not being complied with and not being properly enforceable.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

DELEGATION OF FUNCTIONS TO CAA

Question proposed, That the clause stand part of the Bill.

Robert Courts: This clause gives the Secretary of State powers to delegate the Secretary of State's functions under clauses 2 to 4 to the CAA, with a notice of this in writing to be published by the CAA. It enables the Secretary of State's direction-making powers to be delegated to the CAA should this prove to be desirable in the future.

The CAA, as the national airspace regulator, has the expertise to take on this role if so required. Given that both the Secretary of State and the CAA have various roles in relation to airspace change, it is clear that appropriate internal governance structures would need to be put in place in both organisations to manage any possible conflict of interest risks, as required.

Without the clause, the Secretary of State would lack the flexibility to be able to delegate functions to the CAA, and would therefore need to amend this primary legislation should it prove desirable in the future to delegate such functions. Although such circumstances are not currently foreseen, a lack of flexibility could risk delivering the CAA's airspace strategy and the successful delivery of the airspace modernisation programme if circumstances arise in the future whereby the Secretary of State was no longer better placed to exercise those direction-making powers.

Mike Kane: As the Minister eloquently outlines, this will give the Secretary of State the power to delegate to the CAA. However, the Minister will be aware that the Airport Operators Association believes that there is a fundamental conflict of interest with this proposal, and I would like to explore that for a few minutes. The Government have sought to reassure Parliament and the industry that appropriate separation would be maintained with the CAA in the exercise of these functions. Although there may be a significant extent to which this is possible in theory, it fails to address the perception

challenge. In particular, the regulator is opened up to criticism for bias from parties which have agreed with the specific CAP1616 policies I referred to earlier being mandated. Some communities around airports already believe that the CAA is biased towards industry, and this would help neither that perception, nor the importance of rebuilding trust between the aviation sector industry, the regulators and communities.

When we debated the Bill on the Floor of the House last week, a number of colleagues on the Government Benches pointed out that communities often feel overlooked when it comes to airspace change and noise. I know this is of particular concern to a number of Conservative Members who raised it last week.

Could there be a conflict of interest where the Secretary of State can delegate power to enforce a programme to the CAA? Does the Minister think that? Does the Minister agree with the Airport Operators Association that the CAA is established to act as a neutral adjudicator of CAP1616 proposals? If the regulator is asked to enforce an ACP, is it being asked to mandate an application that it will have to make a judgment of suitability on? Is there a conflict of interest with the CAA being delegated enforcement powers when it is also responsible for making the judgment on suitability? It appears that it will act as both judge and jury, and I hope that the Minister will explore that conflict today.

Robert Courts: I am grateful to the hon. Gentleman for raising those points. There are a number of answers that I will give—perhaps three. First, there is the safeguard to which I referred to at the beginning of our debate, which is an overarching safeguard in any event against any decision that is made. Secondly, there is the CAP1616 process, which stands out with this Bill. It is a consultation process that started in 2018, so it is relatively recent. That will enable a great deal more consultation for local communities than in the past, and will help to manage such concerns.

With regards to the thrust of the hon. Gentleman's points on the internal potential for a conflict of interest, I accept that in delegatory responsibility terms there will be a need to ensure that such governance structures are in place. I stress that we do not plan to delegate these at present, but that is in order to build in flexibility for the Bill in future. Such internal governance structures would need to be put in place to manage any potential conflict to which, quite rightly, he alerts us.

The CAA has already created an internal governance structure that separates out its role in tracking airspace change proposals and advising on the use, powers and decisions on ACPs. For example, this includes different directors, with decision making kept separate up to board level. The CAA is able to create a new team to take on responsibilities related to directing an ACP, should this power be delegated to it by the Secretary of State. Those structures will need to be created; I am confident that they can be.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

PROVISION OF INFORMATION

Question proposed, That the clause stand part of the Bill.

Robert Courts: Clause 6 amends an existing information-gathering power that is contained in section 84 of the Civil Aviation Act 1982. This will enable the CAA to request any information that it considers that it needs from persons involved in airspace change, to assist the CAA in carrying out its function under part 1 of the Bill or for the purpose of giving any advice, assistance or information to the Secretary of State, in connection with the performance of the Secretary of State's functions under part 1.

Without the clause, the CAA could not be sure that all relevant information had been taken into consideration from bodies before advising that a direction should be given. This clause will minimise the risk of challenge from the body giving a direction, which could otherwise argue that not all relevant information had been considered. The clause is therefore needed to support part 1 and overall this will help to support the delivery of the airspace strategy, with the aims that we are all agreed upon today.

The Chair: Colleagues are content—excellent. [HON. MEMBERS: “Aye.”] That was said with such enthusiasm, colleagues.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clause 7

APPEALS AND ENFORCEMENT

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 1 be the First schedule to the Bill.

That schedule 2 be the Second schedule to the Bill.

Robert Courts: The purpose of clause 7 is to introduce schedule 1. It says:

“Schedule 1 makes provision for appeals against decisions to give or vary directions under sections 2 and 3...Schedule 2 makes provision for the CAA to enforce directions and connected appeals.” These are the provisions to which I referred at the beginning of our discussions.

The appeals set out in schedule 1 could also be brought against decisions given by the CAA, if the functions of the Secretary of State, under part 1, are delegated to it. The recipient of the direction can appeal to the Competition Appeal Tribunal. Schedule 1 sets out the process that must be followed and the grounds for the appeal. Without that schedule, the recipient of a direction could not appeal against the decision and that would not be fair, given that non-compliance with a direction could lead to a penalty fine.

Schedule 2 sets out the procedure for the CAA to issue contravention notices, enforcement orders, penalties for contravention of enforcement orders, which can be either a fixed amount, up to 10% of annual turnover, or 0.1% of daily turnover, and appeal rights for those. Without schedule 2, the CAA would not be able to enforce the direction to ensure that bodies that do not comply with it are penalised. The threat of a penalty fine clearly should act as a deterrent on non-compliance and incentivise the recipient of a direction to progress or to co-operate in an ACP, which will in turn help to deliver the CAA's airspace strategy.

The Chair: The question is that clause 7 stand part of the Bill. As many as are of that opinion, say ‘Aye’. [HON. MEMBERS: “Aye!”] As many as are of the contrary opinion say, ‘No’. The Ayes have it. We must have more enthusiasm, colleagues.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Schedules 1 and 2 agreed to.

Clause 8

PART 1: INTERPRETATION

Question proposed, That the clause stand part of the Bill.

Robert Courts: Clause 8 provides definitions of various terms used throughout part 1. Its function is to provide clarity and to aid interpretation of the powers in the Bill, so that they may be used effectively to direct airspace change proposals, as is standard in Acts of Parliament.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

LICENSED AIR TRAFFIC SERVICES: MODIFYING THE LICENCE AND RELATED APPEALS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 3 be the Third schedule to the Bill.

That schedule 4 be the Fourth schedule to the Bill.

Robert Courts: Clause 9 will give the CAA a more effective power to modify the conditions of the licence held by NATS En Route plc—known as NERL—to provide air traffic services in the United Kingdom. It makes provisions to replace the existing processes that were set out in the Transport Act 2000, and includes new appeal rights for the licence holder and certain other parties who are materially affected by the decision.

The licence holder provides air traffic services to ensure that aircraft carry passengers and freight safely and efficiently through our airspace. The CAA, as the industry regulator, is responsible for modifying conditions of the licence. However, the current process is not fit for purpose, because any modification requires agreement from the licence holder. If agreement cannot be reached the matter can be referred to the Competition and Markets Authority for a determination.

The clause will enable the CAA to make a modification without having to obtain such agreement, but while enabling the licence holder to appeal against the decision—to ensure, of course, that the CAA is accountable. That will give the CAA greater flexibility in modifying licence conditions, the better to serve consumers, airlines, passengers, cargo operators and airport operators.

The clause also confers on the Secretary of State the power to amend the terms of the licence that make provision for its duration and set out the procedure for doing so. For example, it will enable the Secretary of

State to extend the licence notice period from the current 10 years to 15 years. That will enable the licence holder to have access to more efficient financing.

Clause 9 also introduces schedules 3 and 4. Schedule 3 introduces a new process, by which the CMA may consider appeals against decisions by the CAA to modify conditions of the licence to provide air traffic services. The changes made by the Bill will enable the CAA to change a licence condition after appropriate consultation. The schedule will enable the licence holder, airlines, and certain airports that are materially affected by the CAA's decision to modify a licence condition, to appeal against the decision.

Those airports would need to be prescribed in secondary legislation. We intend appeal rights to be given to airports that receive a London approach service from the licence holder as a monopoly provider. At present, those are London Heathrow, London Gatwick, London City, Luton and Stansted.

The provisions also deal with the grounds on which an appeal may be allowed, the steps that the CMA may take when it determines an appeal, the time limits for determination of an appeal and publication of the appeal determination. The appeal rights are essential to ensure that the CAA is accountable for its decisions, and to safeguard the interest of the licence holder and others whose interests are materially affected by the CAA's decision making.

Schedule 4 makes detailed provision for the procedure by which the CMA receives, considers and determines appeals against decisions by the CAA to modify conditions in the licence to provide air traffic services. The new licensing framework will enable the CAA to modify a licence condition after appropriate consultation. This schedule will enable the licence holder, airlines and certain airports to appeal the CAA decision to modify licence conditions. It sets out in detail the procedure that applies to the appeal, culminating in it being determined by the CMA.

10 am

To that end, the schedule sets out the procedure governing the time by which an appeal may be brought; the requirement to obtain permission to appeal; the right of certain persons to intervene in an appeal; the time limit for the CAA to make representations; the right to apply to suspend the effect of the decision being appealed; the powers of the CMA on determining the appeal; the production of documents and the giving of oral and written evidence, including expert evidence; costs; and the publication of documents. That will ensure that the CAA is accountable for its decisions while giving it greater flexibility to modify licence conditions better to serve the consumers I referred to earlier and other materially affected parties.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Schedules 3 and 4 agreed to.

Clause 10

AIR TRAFFIC SERVICES LICENSED UNDER PART 1 OF THE
TRANSPORT ACT 2000: ENFORCEMENT

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 5 be the Fifth schedule to the Bill.

That schedule 6 be the Sixth schedule to the Bill.

Robert Courts: The clause will give the CAA the powers it needs to enforce breaches of the licence in the most effective and proportionate way.

As I said a moment ago, the licence allows the holder to provide air traffic services, enabling aircraft to carry passengers and freight safely and efficiently through our airspace. It is therefore important that the licensing regime reflects current best practice and continues to deliver the better outcomes for consumers to which I have referred.

The existing enforcement regime is not fit for purpose. It is unnecessarily bureaucratic and inflexible, and it lacks proportionality. The CAA, for example, is unable to take enforcement action in respect of past breaches that have ceased, and there is no penalty regime, which is available in other regulated sectors.

The new powers will enable the CAA to take a stepped approach to enforcement by giving it the flexibility to impose a less serious sanction at an earlier stage, escalating that if non-compliance persists. The new appeal rights for the licence holder will ensure that the CAA remains accountable for its enforcement decisions. Amending the CAA's duty to investigate complaints with the discretion to do so—replacing duty with discretion—will enable both the CAA and NERL to use their resources more effectively.

Schedule 5 gives the CAA the tools it needs to act in the most effective and proportionate way in response to contraventions by the licence holder of its licence conditions or statutory duties. Those tools will enable the CAA to give a contravention notice, an enforcement order or an urgent enforcement order—in accordance with the seriousness of the breach—backed up with the ability to impose financial penalties.

The schedule will enable the CAA to issue effective notices and ensure that the licence holder is treated fairly when the amount of penalty is determined, thus reducing the likelihood of challenge and allowing the provisions of the Bill to function as intended. The licence holder may appeal to the Competition Appeal Tribunal in respect of enforcement action taken against it. That important safeguard is to ensure that the CAA remains accountable.

Schedule 6 will give the CAA the further tools it needs to investigate breaches by the licence holder of the licence conditions or statutory duties, and to carry out enforcement action in the most effective and proportionate way. It will ensure that the CAA has all the powers it needs to decide whether to take enforcement action, or what enforcement action is appropriate.

To that end, the schedule will enable the CAA to serve notice on persons, requiring them to provide it with information. The CAA may do so in relation to information that it needs to investigate alleged breaches by the licence holder or to take enforcement action in respect of such breaches. It also makes provision to enable the CAA to enforce breaches of the requirement to provide it with information, whether the breach is by virtue of non-compliance, the giving of false information or the destruction, alteration or suppression of relevant documents.

[Robert Courts]

Finally, the schedule will make provision to govern how the CAA determines the amount of a penalty and the right of the person to go to the CAT under the framework. It is expected that the availability of the powers and the threat of enforcement for not complying with them will provide the licence holder with greater incentives to comply, bringing benefits to consumers, while of course the appeal to the CAT provides the essential safeguard.

Question put and agreed to.

*Clause 10 accordingly ordered to stand part of the Bill.
Schedules 5 and 6 agreed to.*

Clause 11

AIR TRAFFIC SERVICES: CONSEQUENTIAL AMENDMENTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 7 be the Seventh schedule to the Bill.

Robert Courts: Clause 11 introduces schedule 7, which contains amendments that are consequential on clauses 9 and 10. Schedule 7 sets out those consequential amendments to existing Acts to ensure alignment with the new legislative framework.

The Bill would introduce a new framework in the Transport Act 2000, governing the new licensing regime for the regulation of the provision of air traffic services. Without making the minor and consequential amendments detailed in schedule 7, we would not have a coherent new licensing regime.

With one exception, all the consequential and minor amendments are made pursuant to provisions in the Transport Act 2000. Most of the amendments will make provisions that amend that Act, to ensure that the nomenclature in it is aligned and compatible with the new legislative framework. A couple of the amendments introduce specific aspects of parallel modern licensing frameworks, for example, to ensure that regulations can make anti-avoidance provision, if a regulated entity attempts to avoid proper application of the provisions.

Schedule 7 would also amend a single provision in the Enterprise and Regulatory Reform Act 2013, to ensure that the Competition and Markets Authority can properly determine appeals against the CAA's licence modification decisions.

Question put and agreed to.

*Clause 11 accordingly ordered to stand part of the Bill.
Schedule 7 agreed to.*

Clause 12

AIRPORT SLOT ALLOCATION

Question proposed, That the clause stand part of the Bill.

Robert Courts: This is a slightly difficult aspect and, if I may, I will add one or two extra words. As it is slightly complicated, it is worth going through it slowly.

Council Regulation (EEC) No. 95/93 requires airlines with allocated slots at level 3 airports to use those slots at least 80% of the time in the preceding scheduling period, in order to retain that slot in the upcoming equivalent period. Prior to the covid-19 pandemic, that 80:20 rule of “use it or lose it” helped to encourage efficient use of scarce airport capacity. It also allowed a degree of flexibility for airlines and their operations. There are eight slot-constrained airports in the UK, to which the 80:20 rule applies: Birmingham, Bristol, Gatwick, Heathrow, London City, Luton, Manchester and Stansted.

Due to the unprecedented impact of covid-19, in March last year, the European Commission took the decision to waive the 80:20 rule. Airport co-ordinators were instructed under that waiver, when determining slot allocation for the upcoming summer season, to consider slots as having been operated, regardless of whether they were used. That covered the summer 2020 season and was subsequently extended to cover winter 2020-21.

The UK supported the European Commission's position. Without that alleviation, airlines may have incurred significant financial costs by operating flights at low-load factors needed to retain those slots. Alleviation has helped to protect future connectivity and airline finances, and reduced the risk of empty or near-empty ghost flights being run to retain the slots, which would have a financial impact on airlines as well as an environmental impact. We anticipate that the effects of covid-19 on the airline industry will regrettably continue for some time. Passenger demand is not predicted to return to 2019 levels until at least 2023.

After the EU transition period ended on 31 December, regulation 95/93 was retained in UK law. However, when it was retained, the power of the Commission to extend the period of alleviation from the 80:20 rule, which was transferred to the Secretary of State, was expressly limited to 2 April 2021. We expect disruption to air travel to continue for a number of years, so it is imperative that the UK has at its disposal the powers to provide alleviation, should the evidence suggest that that is warranted.

Returning to the 80:20 rule, while the covid-19 disruption continues, it might mean that some airlines will protect their commercial interest in retaining their slots by operating flights with empty or near-empty aircraft, despite the associated costs, both financial and environmental. Without this clause, the Government would be unable to provide flexibility on slot usage to deal with the ongoing impacts of the covid-19 pandemic at slot co-ordinated airports beyond the summer 2021 season. That flexibility will also provide certainty, to enable airlines to manage their slots efficiently.

This clause inserts a new article, 10aa, into retained Council regulation 95/93 of 18 January 1993 on common rules for the allocation of slots in UK airports. This would provide the Secretary of State with a power to provide air carriers with an alleviation of the requirement to operate slots allocated to them 80% of the time in order to retain those slots in the next equivalent scheduling period. This power would be exercisable until 24 August 2024—so it is time limited—and for scheduling periods up to and including winter 2024-25. To allow for flexibility, this clause also includes powers to modify the 80% requirement relating to slots usage, which will be an alternative to applying a full alleviation of the 80:20 rule

for a specified scheduling season. This recognises that there might be alternative ratios that could be applied to ensure the efficient use of slots, and then moving back to 80:20 as demand recovers. The Secretary of State will also be able to make certain other modifications to the slot usage rule: for example, setting a deadline for the return of slots not intended for operation, or providing that a waiver should not apply to slots of an airline that ceases operations at an airport.

This clause will also allow the Secretary of State to make certain other changes to the operation of the rules relating to the allocation of slots under regulation 95-93. For example, the Government could change co-ordination parameters to reflect partial closures of airports, adopt temporary rules for the most efficient allocation of unused slots to new entrants, or give the slot co-ordinator enforcement powers, such as where unused slots are not returned with sufficient time to enable them to be effectively re-allocated. Having the powers to vary the 80:20 ratio and modify the operation of the rule in this way will allow appropriate measures to support the sector's recovery as passenger demand for flights returns. Any such changes would be based on an assessment of the current situation, and would be supported by evidence based on the latest available data.

Mike Kane: The Minister was right to spend a little extra time focusing on this clause, because it will be extraordinarily important in the years to come, as the aviation sector tries to recover. It came into focus this year that one of our national carriers was not acting in the national interest, by using the pandemic to change the terms and conditions of tens of thousands of its workforce. National carriers should always act in the national interest. I am glad to see that some of that damage between the workforce and the management is currently being repaired.

However, it was this national carrier's grandfathered rights—particularly at Heathrow, and the way it wanted to retain its rights at Gatwick but move out its operation—that brought this issue into focus. Again, it did not seem fair or right to use what is almost a monopoly bias in what, in my opinion, is a very large closed shop when it comes to slots. If I remember rightly, in “Henry V”, when the Archbishop of Canterbury is trying to explain female hereditary rights in Salic law, Shakespeare says something that we could also say about airport slots: it is as clear as mud. I am afraid that is what airport slots are, which is why I think this will be dodgy territory—not party-politically dodgy territory in particular, but for the Secretary of State and the Minister over the next four or five years, whoever they are.

10.15 am

I want to probe the Minister on a couple of aspects of this clause. The end date of these powers is 24 August 2024. Can that be brought forward to an earlier date if we thought it necessary to do so? If the powers are extended and the Secretary of State pushed back the date, would that confer an unfair advantage to certain airlines with historic slot allocation? That might be especially important in the new, changed aviation sector, because we are not quite sure what it will look like in three to four years' time. Labour is therefore supportive of the extension of the waiver on airport slots. It currently gives important relief to struggling airlines and removes the chance of having ghost flights. As the

Minister says, it would be completely pointless to have planes in the air with no passengers in them, which also has an environmental impact.

Airlines are already suffering huge losses due to the pandemic, and the temporary power will continue to alleviate pressure. That is why we are relatively supportive of the measure. However, is the faraway end date of these powers, August 2024, necessary, or could the Bill be limited to end the temporary power sooner? My concern is that airlines with grandfathered rights to lucrative landing slots might gain an unfair advantage over new operators. Existing slot holders could hoard their best-performing slots unused, whereas new operators may be able to restart operations sooner, thus bringing more jobs back to the sector earlier, given that the pandemic has so severely impacted those working in airports, airlines and ground handling services.

Robert Courts: I am grateful to the hon. Gentleman for those points. I enjoyed his Shakespearean reference, and I understand it entirely. This is a rather tricky part of the Bill and it took a while for us all to get our heads around it, particularly where the statutory instruments fit in, earlier in the year. He raises a number of points, and it is important to distinguish between what we are dealing with here and the wider policy aspect.

The issue of which airline has which slot is dealt with by Airport Coordination Ltd, independently of Government. The hon. Gentleman refers to a carrier being perceived to have not acted in the national interest. The Government do not involve themselves in that; it is dealt with by ACL. The wider future policy aspect is another matter, which I will come to in due course. However, he refers to grandfather rights, which I will deal with at this stage.

Obviously, we recognise that we have the ability to change the policy now that we have left the European Union's transition period, and we will look at future slots policy in due course. Clearly, any further amendment of policy will require significant consultation and engagement with industry, and will require a good long look at what the ongoing policy will be. We are dealing here with the extraordinary times in which we live, in order to cope with the suppressed demand. There are slightly different imperatives between what we are dealing with today and what the hon. Gentleman is pressing me to look at. It is more a question of where and how we look at it. I suggest that it is not appropriate to look at that issue here.

The hon. Gentleman asks me if the date can be brought forward. The date is there because that is the date of the expected demand recovery that I referred to in my opening remarks. It means that, regrettably, we are not expecting demand to recover to 2019 levels until around 2023, or roughly that time. That means that the date in the Bill is what is required to enable that power to exist, should we require it. That date is in there because of the time taken to recover. I will add two points. First, any such decision has to be taken on the basis of data and market conditions at the time. I hope that is a reassuring factor for hon. Members. Secondly, this is a power and not an obligation. If the Secretary of State looked at that data and decided that the power was required, it would be open to him or her to exercise that power. The fact that the power is there does not mean that it has to be used. That is the reason it is there.

[Robert Courts]

As for conferring an unfair advantage, the power gives the opportunity for conditions to be attached. There is greater flexibility with regards to the wider policy perspective in the Bill than at present. We would have to go further into primary legislation after the usual process if we wanted to do anything further. I hope that gives the hon. Gentleman the reassurance that we have done what we can at this time and some reassurance as to the reason for the timescale.

Mike Kane: I am grateful to the Minister for his considered explanation. I hope that, in the cross-party nature of getting this right, he will commit to keeping an open mind about ensuring that new operators coming into the market will not be competitively disadvantaged by the clause. I want to work with him on that over the next few years to make sure that that is not the case and that we reactivate our aviation industry from this pandemic as soon as we possibly can.

Robert Courts: I welcome the hon. Gentleman's comment and the constructive nature of that engagement. I am committed to working with him to ensure that we get future aviation policy right.

The Chair: The question is that clause 8—[HON. MEMBERS: "Clause 12."] Am I on the wrong page? Clause 12? Good grief. There you go; I think that is early-stage senility on my behalf. I apologise.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

The Chair: We are going through the Bill very quickly. Do we want to crack on? Would you like to carry on, colleagues, because you are doing so well, or do you want to go and have a cup of tea and come back on Thursday? I am sure you do not want to come back on Thursday. Crack on? [HON. MEMBERS: "Crack on."] Mr Tarry is keen to crack on. We are at clause 13 now, are we not? I momentarily left the road and ended up in a ditch.

Clause 13

POWERS OF POLICE OFFICERS AND PRISON AUTHORITIES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Government amendment 2.

That schedule 8 be the Eighth schedule to the Bill.

Robert Courts: Clause 13 introduces schedule 8 to the Bill. This makes provision about general powers of police officers in relation to offences involving the use of unmanned aircraft and also amends sections 93 and 94 of the Police Act 1997. Without this clause, schedule 8 would not form part of the Bill.

Schedule 8 provides the police, the civil nuclear constabulary, and custodial institutions with the powers they need to protect the public from the unlawful use of unmanned aircraft. Schedule 8 contains powers for a police constable: first, the power to require a person to

ground an unmanned aircraft if they have reasonable grounds for believing that person to be controlling it and if they have reasonable grounds for suspecting that it has been, is or is likely to be, used in the commission of an offence; secondly, the power to stop and search persons or vehicles where the constable has reasonable grounds for suspecting they will find an unmanned aircraft, and that it is or has been involved in the commission of certain offences under the Air Navigation Order 2016 or a relevant prison offence, such as assisting a prisoner to escape or conveying illicit articles into or out of a prison; and also, the power to enter and search premises under warrant.

Schedule 8 also amends section 93 of the Police Act 1997 so that counter-unmanned aircraft technology, which involves interference with property or wireless telegraphy, can be authorised in relation to certain offences involving unmanned aircraft. The Police Act 1997 is also amended so that the CNC and specified officers and staff in custodial institutions such as prisons may authorise this technology in relation to certain offences involving unmanned aircraft. Such unlawful use of unmanned aircraft can pose safety and national security risks, particularly around critical national infrastructure and prisons. For example, serious and organised crime groups currently use unmanned aircraft to deliver contraband into prisons, which threatens safety, destabilises prisons and undermines the efforts of hard-working staff and prison officers in delivering effective rehabilitative regimes.

It is therefore essential that custodial institutions are able to disrupt the supply of contraband by criminal gangs using unmanned aircraft and to maintain the security and the safety of prisons and their staff. Similarly, civil nuclear sites, which include some of the UK's most sensitive assets, must be protected from unlawful unmanned aircraft use. The powers in the schedule enable the CNC to respond more effectively to unmanned aircraft incidents at civil nuclear sites. Stop-and-search powers and powers of entry and search under warrant are necessary for the police to be able to investigate offences effectively.

Take a scenario in which an unmanned aircraft is being flown in the flight restriction zone of a protected aerodrome. The police arriving at the scene suspect that they have identified the individual who was the remote pilot. The constable suspects the remote pilot has breached article 94A of the ANO 2016—the navigation order—by flying at or near the aerodrome without permission. However, the remote pilot has already ceased flying and put the unmanned aircraft in their car. Currently, the police have no powers to search the car for the unmanned aircraft, so no action can be taken. The powers in the Bill would permit the vehicle to be searched in such circumstances. Without the schedule, the ability of police, prison officers and the CNC to protect the public and our critical national infrastructure and prisons from the unlawful use of unmanned aircraft would be limited.

Briefly, Government amendment 2 to schedule 8 is a simple amendment to correct an omission in the Bill. Paragraph 5 of schedule 8 sets out the meaning of a "relevant unmanned aircraft offence". As currently drafted, the offences in the Air Navigation Order 2016 included in the definition are summary only offences. In relation to Scotland, the definition should also include offences in the ANO 2016, which are triable either way or on indictment. Such offences were included in the definition

of “relevant offences” in the Bill as introduced in the other place in January 2020. They were inadvertently omitted from the Government’s amendments tabled on Report in the other place, when the provisions setting out the definitions that apply in relation to the power to enter and search under warrant, and the supplementary power to retain evidence seized, were restructured.

If the amendment is not accepted, there would be no power for a justice of the peace, a summary sheriff or a sheriff in Scotland to issue to a constable a warrant to enter and search premises in relation to offences in the ANO that relate to unmanned aircraft and that can be tried under indictment. Nor would the supplementary power for a constable to retain items seized using powers in schedule 8 for forensic examination, investigation or as evidence at a trial apply in relation to such offences. The policy intention behind the Bill remains unchanged, and the amendment would not add to any offences or powers that were not already in the Bill as it was introduced in January 2020.

Mike Kane: The rapid deployment of drone technology offers great benefits for society, but as the Minister points out, it can also pose great threats. Clause 13, which deals with the powers of police officers and prison officers, is important. When the right hon. Member for Maidenhead (Mrs May) was Prime Minister in 2018, Gatwick was brought to a complete halt by the use of drones, and we did not have the powers to stop it. The Opposition are supportive of the clause. The Minister and I cover the Maritime and Coastguard Authority, and the potential of drones in search-and-rescue operations—particularly some of the technology that great British manufacturers such as Airbus are developing to help with rescue operations on land and at sea—in the years ahead is really exciting.

We support the additional powers. We agree with the British Airline Pilots Association and others that the powers are proportionate to the threat that unmanned aerial vehicles pose. There is a concern that the deterrents might not be a factor if the police are not sufficiently resourced for the powers, and I have some questions for the Minister. Do the police have the capability to bring down drones? We want to be tough on drones and tough on the causes of drones in the wrong places. Do the police have the resources to detect misuse and breaches of protected airspace? A final worry is whether this legislation will keep up to date with the rapidly changing use of unmanned vehicles in the UK.

10.30 am

Robert Courts: I am grateful to the hon. Gentleman for those points. I entirely agree that there are exciting possibilities in unmanned air vehicles. During the pandemic, we have seen trials of deliveries of essential supplies, for example, and we can look forward to seeing more of that sort of thing. He is right that this country has a good industrial base, so there are some real opportunities for the country as an industrial asset. In addition, the loiter capabilities of drones in particular give us great advantages in search and rescue and intelligence gathering. We have a number of assets to look forward to, but we must guard against their misuse.

The hon. Gentleman raised three points and I will try to allay his concerns. The first point is on the ability to bring down drones. There has been wide consultation with the police and their position is that they already

possess that power, although there is an operational question over how and whether it should be used, for fairly obvious reasons relating to kinetic effects. The police have been involved in every stage and the Bill has been brought forward with their co-operation. That power exists elsewhere; the question is not whether it needs to be in the Bill but whether it should be used, as that has other operational ramifications.

On resources, the police have been involved and consulted at all stages, as I said. I am confident that they have the resource needed. Regarding flexibility and rapidity, many of the substantive rules required in the future will take place under the air navigation orders, which are statutory instruments. The Bill enables changes to the regulatory and legal landscape as technology advances. The hon. Gentleman is right that this is a breathtakingly fast-evolving area of technology. While that presents opportunities, we must ensure that we do not need to bring forward legislation such as this regularly. This Bill, because of the way it is structured and the powers it gives, enables us to do that.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Schedule 8

UNMANNED AIRCRAFT: POWERS OF POLICE OFFICERS AND PRISON AUTHORITIES

Amendment made: 2, in schedule 8, page 68, line 29, at end insert—

“(iv) an offence under the law of Scotland which arises under any other provision of the ANO 2016 and relates to unmanned aircraft, except an offence which is triable only summarily;”—(*Robert Courts.*)

This amends the definition of “relevant unmanned aircraft offence” to catch Scottish offences under the Air Navigation Order 2016 relating to unmanned aircraft — except any triable only summarily. These offences were caught by Schedule 8 on introduction but were inadvertently omitted when Schedule 8 was amended in the Lords.

Schedule 8, as amended, agreed to.

Clause 14

POWERS OF POLICE OFFICERS RELATING TO ANO 2016

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 9 be the Ninth schedule to the Bill.

Robert Courts: Clause 14 introduces schedule 9, which makes provision about powers of police officers relating to requirements in the ANO of 2016. The powers in the schedule will enable the police to enforce more effectively requirements of the risk-based framework for unmanned aircraft operations, including in relation to the competency of remote pilots and registration of unmanned aircraft system operators.

It is important to be distinct about the two different concepts, as well as relevant consent and exemptions required for higher risk flights, including flights at or near protected aerodromes. This includes the power to require a remote pilot of an unmanned aircraft to provide evidence that they have met any applicable competency requirement in the ANO 2016 for their flight and information as to the identity of the unmanned

[Robert Courts]

aircraft system operator of the unmanned aircraft. It also includes the power to require a UAS operator to provide evidence of registration and information as to the identity of the remote pilot of the unmanned aircraft, and to provide evidence that they have the relevant consent where needed to be able to carry out a flight lawfully. A relevant consent includes an operation authorisation issued by the CAA, or a permission for a flight over or near a protected aerodrome. There is also a power to inspect an unmanned aircraft in order to establish whether the other powers I have just described are exercisable. If the remote pilot or the unmanned aircraft system operator does not have the documentation, information or evidence with them when the constable requests it, they must be able to provide it to the police station instead within seven days, or as soon as is reasonably practicable, similar to existing procedures for driving licences.

Schedule 9 makes it an offence to knowingly or recklessly provide false or misleading information when purporting to comply with a requirement that has been imposed on a person using one of the powers in the schedule. To be able to establish whether an offence under the ANO 2016 has been committed, the police need the powers conferred on them by the schedule. This in turn will enable them to deal more effectively with offences that have been committed, as well as deterring the commission of further offences. Without clause 14, schedule 9 and the powers it contains would not form part of the Bill, so the police would not be given the powers they need to effectively tackle the unlawful use of unmanned aircraft where this involves the breach of provisions of the Air Navigation Order 2016.

Question put and agreed to.

*Clause 14 accordingly ordered to stand part of the Bill.
Schedule 9 agreed to.*

Clause 15

FIXED PENALTIES FOR CERTAIN OFFENCES RELATING TO
UNMANNED AIRCRAFT

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 10 be the Tenth schedule to the Bill.

Robert Courts: Clause 15 introduces schedule 10 and is about provision for fixed penalties. Schedule 10 enables the police to issue a fixed penalty notice for a fixed penalty offence where they believe that the offender did not cause or intend to cause various types of harm or damage when committing the offence. It is important to note that if the preconditions for the exercise of this power are met, the constable has the option to issue a fixed penalty notice as opposed to pursuing a prosecution through the courts. They can only do so when an offender is aged 18 or over. The schedule also gives the Secretary of State powers to prescribe in regulations the offences in relation to which fixed penalty notices may be issued and the amounts of the fixed penalties.

Prescribing the offences and the amounts in regulations will enable this legislation to keep pace with an area of technology that is rapidly evolving, as the Government will be able to prescribe new offences involving unmanned aircraft as they are created. The schedule also sets out the definition of a fixed penalty notice, the information that must be included in it and the procedure for paying it. A person given a fixed penalty notice will have 21 days to pay it before they are convicted of the offence.

The schedule also sets out when registration documents in relation to a fixed penalty notice may be issued and the procedure for doing so in England, Wales, Scotland and Northern Ireland, as well as requirements as to the information a registration document must contain. Such documents are necessary when a fixed penalty notice is not paid within the 21-day timeframe and has not been appealed. These provisions provide an immediate and proportionate deterrent to committing certain offences, reducing the burden on the courts and police, because a person who is given a fixed penalty notice and pays it within the required timeframe will not be subject to the costs that are incurred when a person is prosecuted through the courts.

Question put and agreed to.

*Clause 15 accordingly ordered to stand part of the Bill.
Schedule 10 agreed to.*

Clause 16

AMENDMENT AND ENFORCEMENT REGULATIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

That schedule 11 be the Eleventh schedule to the Bill.

Robert Courts: The clause introduces schedule 11, which contains powers to ensure that any new offences related to unmanned aircraft, including those created via an air navigation order or in relation to particular EU-derived legislation on unmanned aircraft, can be enforced using the police powers in the Bill. The aim of the schedule is essentially to future-proof as much as possible the enforcement of legislative requirements relating to unmanned aircraft. It contains provisions that will enable the police powers in the Bill to be used to enforce new offences relating to unmanned aircraft in future.

Schedule 11 contains powers that allow for amendments to be made in subordinate legislation to schedule 8, clause 14 and schedule 9 once the Bill becomes an Act in the light of changes in relevant subordinate legislation. The definition of “relevant subordinate legislation” includes the Air Navigation Order 2016, the creation of a new air navigation order, regulations made by the Secretary of State under retained law and regulations made under the power in paragraph 3 of the schedule.

Those Henry VIII powers may be relied on for three specific purposes. First, the police powers can be amended so that they can be used to enforce new offences relating to unmanned aircraft created in future relevant subordinate legislation. Secondly, paragraph 1 provides for amendments

to be made to the Act to ensure the maintenance of the effect of the powers where they would otherwise cease to be effective because of provisions in relevant subordinate legislation. Thirdly, schedule 11 provides for a power to amend the Act in consequence of provisions made in any relevant subordinate legislation to confer a police power that corresponds to a power conferred by schedule 9.

Paragraph 3 provides for enforcement of particular EU-derived legislation. The schedule contains a power to create criminal offences and civil penalties so that the legislation's requirements can be properly enforced. Without schedule 11, it would not be possible to ensure that the enforcement of offences relating to the use of unmanned aircraft remained feasible, especially in the light of new and often rapid developments in unmanned aircraft technology and its possible misuse in future, with which the related legislation has to keep pace.

Sam Tarry (Ilford South) (Lab): It is an honour to serve under your chairmanship, Sir Charles. We seem to be whistling through the Bill faster than the snow is falling on the Thames.

I thank the Minister for his comments. The Opposition share many of the British Airline Pilots Association's concerns about the catastrophic collisions that could happen if drones were used maliciously or even incautiously and far too close to airports. We would therefore like reassurance from the Minister about restrictions on drone flights, for example, if the in-built safety features such as geo-fencing, lights or the transponder were returned or deliberately disabled. The Minister said that penalty notices applied to those aged 18 and over, but it is clear that sales of drones are often to people under 18. We know how ingenious many of our young people are in this day and age, when it is possible to plug a drone into a computer and reconfigure its parameters. Sometimes we need to think about how to ensure that we are not being outwitted by people who purchase and use those items.

I would also like reassurance about the distinct threat of unmanned aircraft pilots operating drones as swarms. That is a potentially dangerous development. The military not just in the US but in Israel have been testing that, and it would not be beyond the wit of civilians purchasing unmanned aircraft to do it. We need reassurance that the police are equipped with the technology to disable a single swarm of drones conducting a mission. We also need to satisfy the safety concerns about overseeing those multiple unmanned aircraft if they are performing different missions.

The Opposition are concerned about the Bill's failure to recognise wake turbulence. Again, the British Airline Pilots Association has raised that matter. Wake turbulence is stipulated in law in terms of the distance between aircraft, but unmanned aircraft are not currently covered. That could be a significant safety issue for the public if a drone crashed over a populated area due to an aircraft's wake turbulence. Those are some of the areas of concern on which we would like to hear reassurances from the Minister.

10.45 am

Robert Courts: I thank the hon. Gentleman for those excellent points. They show the complexity of the challenge we face as we adapt to welcoming this new technology while ensuring that it does not pose a danger to those

on the ground or in the air. For those reasons, we have constructed the Bill in the way that we have, so that it is able to adapt and flex to technology or operating practices that change in the future.

Many of the hon. Gentleman's points will be covered by some of the definitions of the way people operate drones in the Bill—for example, their operation as swarms, or in relation to wake turbulence. I suggest that is not something that needs granularity on the face of the Bill. It is a practice that could be tackled by the police when they operate under the powers conferred by the Bill. The police have been heavily involved in the drafting and preparation stages of the Bill, and we continue to work with operational partners, not just the police, but related agencies, such as the CAA. We have been keen to ensure that the Bill not only gives the flexibility required, but is realistic to implement once it becomes law. We will obviously continue to work closely with the CAA and police to make sure they are ready to respond to changes made to offences using the powers in schedule 1.

Police training and guidance relating to unmanned aircraft and powers in the Bill are a key part of the Government's counter-unmanned aircraft strategy, which continues in any event. Briefings and general guidance are provided to officers with more specialist advice available in the form of tactical advisers to ensure the most efficient and effective use of policing resource.

The hon. Gentleman also asked about the resources available to the police. Again, I pray in aid those aspects of the legislation, because we have worked closely with the police to provide them with the guidance to ensure they have the resources that they require. I think I have covered all the hon. Gentleman's points.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Schedule 11 agreed to.

Clause 17

DISCLOSURES OF INFORMATION

Question proposed, That the clause stand part of the Bill.

Robert Courts: This clause authorises a disclosure of information where it does not contravene data protection legislation or parts 1 to 7 or chapter 1 of part 9 of the Investigatory Powers Act 2016.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

PART 3: INTERPRETATION

Robert Courts: This is the interpretation part of this section of the Bill. The Bill provides that ANO 2016 means the Air Navigation Order 2016, which we have referred to throughout this Committee sitting. The Bill provides that subordinate legislation means any instrument made or to be made under an Act of Parliament on or after IP—implementation period—completion day under any retained direct EU legislation. The Bill also provides that unmanned aircraft means any aircraft operating or designed to operate autonomously or to be piloted

[Robert Courts]

remotely without a pilot on board. Drones and model aircraft are the most commonly used types of unmanned aircraft.

Sam Tarry: It is important to raise a concern and disappointment that the Bill is two years too late. For a moment, we ought to reflect on the incident at Gatwick in December 2018, which affected 140,000 passengers and in excess of 1,000 flights, costing the airline operators tens of millions of pounds. The pace of change of technology for unmanned aircraft and unmanned aircraft swarms has advanced rapidly, as I have already mentioned. The Bill must ensure that the Department for Transport and the Minister continue a dialogue with the police to identify threats as early as possible so that we are not in that situation again. More specifically, we need clarification from the Minister about how the Department and the Civil Aviation Authority plan to keep up with new anti-drone technology, to provide support and licences to private operators, perhaps at aerodromes—particularly ones near critical national infrastructure such as power stations—and then to police that technology.

Furthermore, we need to ensure that the Bill enables the DFT and the police to keep up to speed with the possible future development of broad, unmanned traffic management systems, so we need to be looking ahead. During the pandemic we have seen the ubiquitous use of Amazon. I have probably recycled more cardboard boxes from my wife's orders than I care to think of, but it is not beyond the realms of possibility that those boxes could, in the next 10 years, be delivered by drones. That is certainly something that private companies are thinking about, but will the provisions and scenarios laid down in the guidance around the Bill be able to keep pace with those developments? In fact, as a result of the rapid increase in the technology, Administrations around the world who are also looking at this issue have called for a focus on the use of drones—beyond just recreational and military use—by commercial operators.

Robert Courts: The hon. Gentleman's vision for the potential future of the industry is absolutely right. There are all sorts of endless possibilities. The hon. Member for Wythenshawe and Sale East and I have talked already about, for example, the maritime sphere and search and rescue possibilities. There are myriad others. He is absolutely right to focus on, for example, how it is not inconceivable that the day-to-day deliveries that we currently do by land might be done by air in future.

The sponsoring and promotion of that aspect of things probably lie outside the Bill. We would probably look at other areas of Government to ensure that we make the most of those technologies. What we are concerned with in this Bill is ensuring that there is a safe regulatory environment by laying out a framework with the flexibility to innovate for the future to ensure that the regulation stays up to date, which we do primarily through air navigation orders.

In terms of the DFT being well informed as to what is required, I refer back to the detailed and ongoing engagement we have with the Civil Aviation Authority, which is a world-leading regulator in this sphere, as it is in other spheres of aviation. We also work closely with the police, and I have referred to how the Bill has been

created in close consultation with the police to ensure that they have the powers they need. By continuing to engage closely with the CAA, the police and all manner of other bodies—we have referred to many others, such as BALPA—and listening to their views, we will stay on top of ensuring that we have the regulations we need so that the great vision we have discussed is realised in a safe manner. This Bill lays out the regulatory framework within which we can do that in the future.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

The Chair: Colleagues, with grit, determination and focus, we are in danger of finishing this Committee stage in its entirety by 11.25 am. As long as you are all happy to progress on that basis—there seems to be a degree of happiness in the room—we will continue.

Clause 19

REGULATIONS

Question proposed, That the clause stand part of the Bill.

Robert Courts: This clause sets out which powers in the Bill are subject to the affirmative resolution procedure and which are subject to the negative resolution procedure. Every effort has been made to limit the number and scope of the delegated powers in the Bill. Delegated powers have been included in the Bill only where it is not appropriate, practical or possible to make provision in the Bill itself.

In the Bill, where amendments to primary legislation relate to procedural matters, we propose that the negative resolution procedure would apply. For example, schedule 3 gives the Secretary of State powers to modify time limits for an appeal to be determined by the Competition and Markets Authority. If the time periods are no longer appropriate, or the CMA needs longer to consider an appeal, it is right that there is a mechanism to amend the timeframe.

However, it is right that some powers in the Bill that could have significant impacts should be subject to a higher level of parliamentary scrutiny and debate. For example, the power under paragraph 3 of schedule 11 makes regulations providing for the creation of criminal offences in relation to the requirements of particular EU-derived legislation on unmanned aircraft.

Some powers we propose in the Bill are made by the affirmative resolution procedure in the first instance and by the negative procedure for any amendments thereafter. For example, that would apply to paragraph 2 of schedule 10, on the power of the Secretary of State, by regulations, to prescribe offences as fixed penalty offences for the purposes of the Act. That is to give Parliament the opportunity to scrutinise the secondary legislation before it comes into force for the first time. Using the negative procedure thereafter is considered proportionate and in line with other existing legislation, and it allows the Government to respond flexibly to changing circumstances, such as changes to inflation.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

EXTENT

Question proposed, That the clause stand part of the Bill.

Robert Courts: This clause states that the Act will extend to England and Wales, Scotland, and Northern Ireland, except for clause 12—“Airport slot allocation”—which extends to England, Wales and Scotland only. Civil aviation, aviation and transport, including airspace, are reserved matters in respect of all three devolved Administrations. Aerodromes are a transferred matter in relation to Northern Ireland, which is taken to include airport slot allocation. As a result, and because there are no co-ordinated airports there, and there are not expected to be any designated there during the relevant period, clause 12 has not been extended to Northern Ireland.

The powers provided in part 3 of the Bill are necessary for police and other law enforcement agencies to enforce the lawful and responsible use of unmanned aircraft. However, the powers relate to the regulation of unmanned aircraft. The legislative consent process is triggered for Scotland and Northern Ireland in relation to schedule 8 of the Bill, which provides in part 2 for the authorisation of property interference and interference with wireless telegraphy when certain offences have been committed using an unmanned aircraft.

Schedule 8 also extends the range of public authorities that may authorise such interference to include the CNC and a member of senior management in custodial institutions. The provisions confer a function on Scottish Ministers and on the Department of Justice in Northern Ireland to designate certain officials in the Scottish Prison Service and in the Northern Ireland Prison Service and Youth Justice Agency as being capable of authorising counter-unmanned aircraft measures.

The Scottish Parliament and the Northern Ireland Assembly both passed legislative consent motions in June 2020. The legislative consent motion process does not apply to Senedd Cymru because excepted functions relating to prisons are reserved.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

COMMENCEMENT

Question proposed, That the clause stand part of the Bill.

Robert Courts: The clause sets out when each of the provisions in the Bill will come into force. Clause 7 and schedule 2, clause 13 and schedule 8, clause 14 and schedule 9, and clause 15 and schedule 10 will all come into force on the day on which the Bill is passed, only for the specific purpose of making secondary legislation.

Schedule 9 enables the police to require the production of information, documentation and evidence by UAS operators and remote pilots of unmanned aircraft. The measures require UAS operators to register their aircraft, remote pilots to have been issued their certificates of competency, and consent to have been obtained from the CAA for higher-risk flights.

Schedule 9 also enables the police to inspect an unmanned aircraft to assist in determining whether other powers conferred by the schedule are exercisable. It also gives the Secretary of State the power to prescribe other information, documentation or evidence that a UAS operator or a remote pilot must produce. This power comes into force on the day on which the Bill is passed. All other provisions in schedule 9, which are not

required for the purposes of making regulations, will come into force two months after the day the Bill is passed.

Clauses 12 and 16 to 22 will also come into force on the day the Bill is passed. All other clauses come into force on the date set out in the statutory instruments to be made once the Bill has passed. The commencement dates for statutory instruments can be different depending on the purpose of the statutory instrument. That provides flexibility for the coming into force date.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

SHORT TITLE

11 am

Amendment made: 1, in clause 22, page 13, line 30, leave out subsection (2).—(*Robert Courts.*)

This amendment removes the privilege amendment inserted by the Lords.

Question proposed, That the clause, as amended, stand part of the Bill.

Robert Courts: Clause 22 provides that the Act may be referred to by its short title, the Air Traffic Management and Unmanned Aircraft Act 2021, when it is cited in other legislation and documents.

The Chair: Gosh. We are cantering through this.

Clause 22, as amended, ordered to stand part of the Bill.

The Chair: Gosh. Well done, everybody. I thank the Committee, the Clerk of the Committee and the transcriber of the Committee’s speeches and proceedings.

Question proposed, That the Chair do report the Bill, as amended, to the House.

The Chair: Does anyone want to say anything nice about each other?

Robert Courts: I would like to thank the Clerks of the Committee and you, Sir Charles, for chairing and for dealing with the business in such an efficient and diligent manner this morning. I thank the hon. Member for Wythenshawe and Sale East—the Opposition spokesman—and the Opposition Whip for having facilitated the efficient but detailed consideration of the Bill. It is an exciting Bill and it is necessary, as we look to the future, for not just space management but drone operations, which we have discussed today. I am grateful to everyone for their constructive engagement in Committee. I look forward to that as we move forward to Report.

The Chair: Might I say that I think I heard the Minister make a point of order? That is what I was meant to hear. That was not entirely a point of order, Minister, but it was rather brilliantly put.

Mike Kane: On a point of order, Sir Charles. The American sociologist Margaret Mead said we should never doubt that a small group of committed people could change the world, because nothing else in history ever has done. Well done to all Members today; there was thorough scrutiny of the Bill.

[Mike Kane]

I thank my hon. Friend the Member for Ilford South and his staff for helping with the heavy lifting, and the Whips for keeping us safe. Today, democracy was seen to be done and to be in action, despite the pandemic. Sir Charles, thank you for your excellent chairing. To the Department for Transport civil servants and the Clerks of the House, my heartfelt thanks.

The Chair: Excellent. Does anyone else want to make any bogus points of order—encouraged by the Chair, might I add? In the absence of any more, the question is that I report the Bill, as amended, to the House.

Bill, as amended, accordingly to be reported.

11.3 am

Committee rose.

Written evidence reported to the House.

ATMB01 British Airline Pilots Association (BALPA)

