

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT TRANSPORT ACT 2000 (AIR TRAFFIC
SERVICES LICENCE MODIFICATION APPEALS)
(PRESCRIBED AERODROMES) REGULATIONS 2022

Tuesday 11 January 2022

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The Committee consisted of the following Members:

Chair: †MRS MARIA MILLER

Beresford, Sir Paul (<i>Mole Valley</i>) (Con)	† Kane, Mike (<i>Wythenshawe and Sale East</i>) (Lab)
Betts, Mr Clive (<i>Sheffield South East</i>) (Lab)	† Kruger, Danny (<i>Devizes</i>) (Con)
† Bradley, Ben (<i>Mansfield</i>) (Con)	† Newlands, Gavin (<i>Paisley and Renfrewshire North</i>) (SNP)
† Bruce, Fiona (<i>Congleton</i>) (Con)	Ribeiro-Addy, Bell (<i>Streatham</i>) (Lab)
Cooper, Rosie (<i>West Lancashire</i>) (Lab)	† Solloway, Amanda (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Courts, Robert (<i>Parliamentary Under-Secretary of State for Transport</i>)	† Trott, Laura (<i>Sevenoaks</i>) (Con)
Davies, Geraint (<i>Swansea West</i>) (Lab/Co-op)	Huw Yardley, <i>Committee Clerk</i>
† Greenwood, Lilian (<i>Nottingham South</i>) (Lab)	
† Gullis, Jonathan (<i>Stoke-on-Trent North</i>) (Con)	
† Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con)	
† Hunt, Tom (<i>Ipswich</i>) (Con)	† attended the Committee

Second Delegated Legislation Committee

Tuesday 11 January 2022

[MRS MARIA MILLER *in the Chair*]

Draft Transport Act 2000 (Air Traffic Services Licence Modification Appeals) (Prescribed Aerodromes) Regulations 2022

The Chair: Before we begin, I remind Members that they should wear face coverings when not speaking and maintain social distancing as far as possible, in line with the current guidance. Please do not forget to have a lateral flow test at least twice a week, and *Hansard* colleagues would be grateful if speakers could forward their notes to hansardnotes@parliament.uk.

2.30 pm

The Parliamentary Under-Secretary of State for Transport (Robert Courts): I beg to move,

That the Committee has considered draft Transport Act 2000 (Air Traffic Services Licence Modification Appeals) (Prescribed Aerodromes) Regulations 2022.

It is a pleasure to serve under your chairmanship, Mrs Miller. The draft regulations are to be made under the powers conferred by the Transport Act 2000, and they set out which airports may appeal licence modification decisions made by the Civil Aviation Authority in respect of the en-route air traffic services licence granted under section 6 of the Transport Act 2000. They will ensure that aerodromes that are likely to be materially affected by any such amendment are able to appeal those decisions.

I will provide a bit of background to help the Committee understand. There are two types of air traffic management services in the UK. The first are terminal air traffic services, which should be thought of as the towers of the aerodromes at individual airports. They support arrivals and departures, and they typically deal with movements up to 7,000 feet. That is a competitive market, with the service tendered and procured by organisations or perhaps provided by the airport. Air traffic management services for planes outside those areas—for example, planes at cruising altitude or going to gateways—are delivered by a monopoly provider regulated under the en-route air traffic licence. That is NERL, which stands for NATS en route licence.

The Air Traffic Management and Unmanned Aircraft Act 2021, or ATMUA Act, which we took through in the last Session, updated the Transport Act 2000 to give the CAA a more effective power to modify the conditions of the air traffic services licence. That was done because, under the previous framework, the CAA could modify the conditions of the air traffic services licence only with consent from the licence holder or via a determination by the Competition and Markets Authority. In order to modernise the licensing framework, alongside the powers to modify the licence conditions, the ATMUA Act also introduced a new appeals process into the Transport Act 2000, to give appeal rights for the reasons of transparency and fairness. It gives three categories: the NERL licence holder; the owner or operator of an aircraft whose interests are materially affected by any

changes to the licence; and the owner or manager of a “prescribed aerodrome” whose interests are materially affected by the decision. It is that last category with which we are concerned in the context of this statutory instrument.

Should any of the parties wish to appeal the decision to modify a licence condition, they can appeal to the Competition and Markets Authority on the basis of one or more of the following grounds, which will be familiar to those who have worked in this sort of regulatory field before: an error of fact; the decision is wrong in law, or an error was made in the exercise of a discretion. Before we get to the stage where an appeal can be made, we need to prescribe the aerodromes in secondary legislation in order for the appeal to be operable, which is what we are looking to do today to give effect to the third appeal right.

I turn to what the SI includes. As I have said, the CAA is able to modify the conditions in a NERL licence. Those include largely operational matters, such as requirements that may have effect for safety and efficiency, or for conditions relating to charge controls, which is clearly very important in this context. It is the prices that NERL service users pay for the services provided. The CAA has to publish a notice in relation to the proposed modification, stating why it is proposing the modification, what the modification is and what its effects will be, and give a reasonable period for NERL and any other relevant stakeholders to make any representations. The Department for Transport consulted on the policy in 2017; stakeholders were broadly supportive of it, and at the time no aerodromes requested any additional appeal rights.

However, the licence conditions include control of charges for the London Approach Service. This is a different category. The Committee will remember that there are the tower air traffic control services—supporting planes up to an altitude of 7,000 feet—and there are the en-route services, which deal with travel corridors, fundamentally. However, there is a link period in between, as air traffic controllers hand over between the two. In London, because there are so many big airfields in such a small area, airports essentially club together to provide that linkage as a group. Those London airports are particularly important, and it is important that they have a say. That is what we are seeking to address.

The Government have decided that airport operators whose interests could be materially affected by the decision to modify that licence condition are likely to be airports receiving the London Approach Service from the licence holder, and that they ought to be able to appeal the decisions on the grounds of fairness. Although no aerodrome asked for this, we think it is right that there should be scope for an appeal for those airfields because of that service which they use.

Because it is important to understand what we are doing, I will recap. The London Approach Service consists of the control and sequencing of flights between the licence holders’ en-route service—including stacks, for example—and the tower services at London airports, which are provided by each individual airport. It is that linking area. Again, lower areas are served by the towers, individually procured by individual airports; NERL deals with the higher level, above 7,000 feet; and the link level in the middle is procured from NERL for those lower towers to tie it all together, because it is

congested airspace. I hope that that is clear and not confusing for the Committee. The airports are Heathrow, Gatwick, Stansted, Luton and London City, and the regulations are intended to allow those airports to appeal to a change made to NERL's licence were they to wish to do so.

The regulations have been drafted in such a way as to ensure that, should another aerodrome become part of that London Approach Service and buy into that group air-traffic control process, it too will be able to appeal modifications to licence conditions. That is what we are seeking to do today. The draft instrument applies to the whole of the UK, as aviation is reserved, but the aerodromes that it affects are, as I hope I have explained, only those in the London area. We are seeking to ensure that aerodromes that will likely be affected by a decision to modify licence conditions are able to appeal those decisions. The instrument aims to ensure that decisions made are fair, clear and transparent, and that the legislative framework operates in the way that the Transport Act 2000 intended. I hope that that is clear. I commend the regulations to the Committee.

2.38 pm

Mike Kane (Wythenshawe and Sale East) (Lab): It is pleasure to serve under your chairmanship, Mrs Miller. I thought that the Minister was gesticulating wildly, but it was only part of his explanation about planes over 7,000 feet—anyway, he caught my attention.

The CAA regulates the UK's aviation sector, its primary duty being to maintain a high standard of safety in the provision of air traffic services. That is of course something that we are keen to maintain. Additional responsibilities of the CAA are to further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them. It is also charged with promoting efficiency and economy, and those who hold licences must also take account of any guidance on environmental objectives given to them by the Secretary of State. The Transport Act 2000, at the start of its 384 pages, says:

“The Secretary of State must exercise his functions... to promote efficiency and economy on the part of licence holders”

and

“to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences.”

The circumstances of the past two years have seen the aviation sector decimated by the covid-19 pandemic, with many job losses and the industry burning through cash reserves every day as it waits for the skies to reopen, so it is crucial that the CAA plays a role in supporting the financial efficiency of licence holders.

In addition, the CAA is the economic regulator of NERL, as the Minister said. NERL is owned by NATS, which provides en-route air traffic services in the United Kingdom. Those services are governed by a licence granted to NERL and are thus responsible for monitoring and enforcing NERL's compliance with the conditions of the licence and with licence holder duties. As illustrated here, it plays a vital role in supporting our aviation industry.

Section 11 of the aforementioned Act enables the CAA to modify licence conditions, with a licence to provide air traffic services. The statutory instrument is being moved to ensure that owners or managers of the

relevant aerodromes can appeal against modifications to licence conditions made under the Act, as any other industry operators can do.

I have a couple of comments about the process undertaken to arrive at this SI. I note that there was no consultation undertaken, although guidance was sought from the CAA. It would be interesting for us to know whether the CAA needed any assurances during those discussions. Were any points raised of which we might need to be aware? Indeed, was there any particular reason for the lack of formal consultation? Continuing on the theme of consultation, I note that no equality impact assessment seems to have been undertaken. If there was one, could the Minister agree to share its findings?

I also note that a complete impact assessment has not been undertaken, with the explanation given that the cost to business was predicted to be less than £5 million per annum. What was that prediction based on? It is noted that, by permitting prescribed aerodromes to appeal decisions, a likely result could be a greater number of appeals being launched. I observe that during the consultation phase there were no aerodromes appealing modifications to licences. However, as we know, situations develop rapidly, so to what end has that possibility been investigated and considered?

I am happy to lend the Opposition's support to the instrument, and I look forward to the Minister's response to my questions.

2.42 pm

Gavin Newlands (Paisley and Renfrewshire North) (SNP): I am grateful to the Minister for setting out the terms of the SI and, indeed, for managing to make an eight-minute speech on something that is relatively minor and unlikely to draw opposition from the SNP Benches. It would not serve the Committee well for me to read the brief that I have been given for the debate. The only thing I would like to place on the record is my agreement with the Labour Opposition about the lack of consultation and an impact assessment, so I would be grateful for the Minister's explanation on that matter. With that being said, the SNP does not plan to oppose the motion.

2.43 pm

Robert Courts: I apologise to the hon. Gentleman for having taken some time. This is one of those matters that I thought was a little bit complicated and was perhaps worth explaining so that everybody understood what was being proposed.

I am grateful to the hon. Members for raising the matter of consultation and the impact assessment. On consultation, the way to understand this is that we consulted in 2017 on the overall policy, and that policy was in the run-up to the Air Traffic Management and Unmanned Aircraft Act 2021, which we took through last year. That is when the consultation took place. What we are concerned with today is the effect of the regulations in the SI, and they are very limited in scope because they are likely to confer an advantage on a party that will enable it to appeal. There may be ramifications, which I will turn to in a moment.

In terms of the lack of formal consultation to which the hon. Member for Wythenshawe and Sale East rightly referred, there was formal consultation, but that was when the policy was being put together, and was what

[Robert Courts]

we dealt with in the Act. We are now implementing the policy established in the Act by introducing the appeal right. It is not a new policy that needs consultation.

The same point would arise with the equality impact assessment. When we speak of “people” in this context, we refer to a legal personality, meaning a body rather than individuals. It would not be appropriate, therefore, to undertake that assessment in that case. If I have misunderstood the hon. Gentleman, I am happy to give way, but hopefully that answers his question.

With regards to costs, which is where there could be an implication, the Department’s judgment is that when looking at that £5 million level, given that there was no request for such an appeal in the consultation on the matter, which does not suggest a big groundswell of requirement to use it, we think it is right, fair and

proper that the appeal right is there for this limited group of airports, but that does not suggest such it is likely to be a large undertaking. That is the reason there has been no full impact assessment. It is not a big cost on industry or the public sector; it just confers a limited appeal right in a limited circumstance.

I hope that deals with the points the hon. Gentleman raised, and I am grateful to him for his contribution. This measure is designed to make sure that the airports are not unfairly disadvantaged once those licence modifications come in, which is a big power—indeed, an advantage—that comes from the ATMUA Act passed in the last session. I hope that the Committee will support the measure.

Question put and agreed to.

2.46 pm

Committee rose.