

AIR TRAFFIC MANAGEMENT AND UNMANNED AIRCRAFT BILL

Memorandum concerning the delegated powers in the Bill for the Delegated Powers and Regulatory Reform Committee

A. Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Air Traffic Management and Unmanned Aircraft Bill (“the Bill”). The Bill was introduced in the House of Lords on 9 January 2020. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case the nature of the power, why it has been taken and the reason for the procedure selected.
2. The Bill contains 28 delegated powers, nine of which are Henry VIII powers.¹
3. For the purposes of this memorandum, the description of each power appears in the order in which it is contained in the Bill. Schedules are addressed at the same time as the clauses which give effect to them, and some delegated powers are grouped together for ease of understanding.
4. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

B. Overview of the Bill

5. The Bill contains 21 clauses and 11 Schedules, and is divided into four parts.

Part 1 - Airspace change proposals

6. This part contains measures which will:
 - confer powers on the Secretary of State, delegable to the Civil Aviation Authority (“CAA”), to direct a person: (i) to prepare and submit an airspace change proposal (“ACP”), and / or (ii) to co-operate with another person that has agreed to take forward the ACP; and
 - give the CAA enforcement powers, subject to rights of appeal to the Competition Appeal Tribunal.

Part 2 - Air traffic services

7. This Part comprises three proposals which would modernise the licensing framework in the Transport Act 2000 (“the 2000 Act”) for national en route civilian air traffic control (currently undertaken by NATS (En Route) PLC (“NERL”), a wholly owned subsidiary of NATS Holdings Limited) by:

¹ The Henry VIII powers in relation to the NATS provisions are: new section 19D(8) of the Transport Act 2000 (inserted by paragraph 1 of Schedule 3 to the Bill); paragraph 25 of new Schedule A1 (inserted by Schedule 4 to the Bill); paragraph 14(7) of new Schedule B1 (inserted by Schedule 5 to the Bill); paragraph 2(9) of new Schedule C1 (inserted by Schedule 6 to the Bill); and paragraph 9 of Schedule 7 to the Bill. The Henry VIII powers in relation to the unmanned aircraft provisions can be found at: paragraph 5(11) of Schedule 8 (amending section 93 of the Police Act 1997), paragraph 6 of Schedule 10, paragraph 1 of Schedule 11, and paragraph 4 of Schedule 11.

- amending the licence modification process to allow the CAA to make changes to the licence conditions after appropriate consultation, subject to an appeal to the Competition and Markets Authority;
- giving the CAA access to a wider range of enforcement powers, subject to appeal to the Competition Appeal Tribunal; and
- giving the Secretary of State power to modify the licence termination notice period, for example, to enable the licence holder (NERL) to have available to it better financing.

Part 3 – Unmanned aircraft

8. This Part creates new police powers relating to unmanned aircraft:

- the power to require an unmanned aircraft to be grounded;
- powers for a constable to require the production of documentation or evidence relating to requirements in the Air Navigation Order 2016 (“ANO 2016”) which include registration and competency requirements which came into force on 30 November 2019, and in relation to permissions required for certain flights to take place; and
- the power to issue fixed penalty notices (“FPNs”) in respect of fixed penalty offences.

9. Additionally, it contains powers for the police to:

- stop and search persons or vehicles for unmanned aircraft and associated articles in specific circumstances. This stop and search power relates to certain offences in the ANO 2016, the Prison Act 1952 and the Prison Act (Northern Ireland) 1953 as well as offences under common law in Scotland and offences under the Prisons (Scotland) Act 1989; and
- enter and search premises with a warrant, and seize an unmanned aircraft or an associated article, which has been involved in the commission of a “relevant offence”. The term “relevant offence” is defined in paragraph 7 of Schedule 8 and includes offences under the Bill, summary offences under the ANO 2016, and also offences under the Prison Act 1952, the Prison Act (Northern Ireland) 1953, and offences under common law in Scotland and under the Prisons (Scotland) Act 1989.

10. The Bill also amends the Police Act 1997 to provide for authorisations under section 93 of that Act where it is believed that property or wireless telegraphy interference will be necessary to prevent the unlawful use of unmanned aircraft, such interference being the consequence of the use of counter-unmanned aircraft technology. This amendment permits authorisations in relation to the use of an unmanned aircraft in the commission of a “relevant offence”. The meaning of “relevant offence” is set out in the new subsection (4A) of section 93 of the Police Act 1997 and includes offences under the Prison Act 1952, the Prison Act (Northern Ireland) 1953 as well as offences under common law in Scotland and under the Prisons (Scotland) Act 1989. The term also includes the offence of endangering safety at aerodromes under section 1(2) of the Aviation and Maritime Security Act 1990, as well as offences under articles 94A, 239(4), 240 and 241 of the ANO 2016.

Part 4 - General

11. This part contains general provisions relating to regulations, extent, commencement and the short title.

Overview of Bill content

12. The Bill contains the following clauses and Schedules:

- Clause 1 – Meaning of “airspace change proposal”
- Clause 2 – Direction to progress airspace change proposal
- Clause 3 – Direction to co-operate in airspace change proposal
- Clause 4 – Directions under sections 2 and 3: supplemental
- Clause 5 – Delegation of functions to CAA
- Clause 6 – Provision of information
- Clause 7 and Schedules 1 and 2 – Enforcement and appeals
- Clause 8 – Part 1: Interpretation
- Clause 9 and Schedules 3 and 4 – Licensed air traffic services: modifying the licence and related appeals
- Clause 10 and Schedules 5 and 6 – Air traffic services licensed under Part 1 of the Transport Act 2000: enforcement
- Clause 11 and Schedule 7 – Air Traffic Services: consequential amendments
- Clause 12 and Schedule 8 – General police powers and prison powers relating to unmanned aircraft
- Clause 13 and Schedule 9 – Police powers relating to requirements in the ANO 2016
- Clause 14 and Schedule 10 – Fixed penalties for certain offences relating to unmanned aircraft
- Clause 15 and Schedule 11 – Amendment and enforcement of regulations
- Clause 16 – Disclosures of information
- Clause 17 – Interpretation
- Clause 18 – Regulations
- Clause 19 – Extent

- Clause 20 – Commencement
- Clause 21 – Short title

C. Delegated Powers created by the Air Traffic Management and Unmanned Aircraft Bill

C1. Part 1 - Airspace change proposals

Clause 2 - Direction to progress airspace change proposal

Clause 3 - Direction to co-operate in airspace change proposal

Clause 4 - Directions under clauses 2 and 3: supplemental

Powers conferred on: Secretary of State

Powers exercised by: Directions

Parliamentary Procedure: None

Context and purpose

13. The clause 2 power would enable the Secretary of State to direct any of the following to progress an airspace change proposal (“ACP”), which must assist in the delivery of the CAA’s airspace strategy (as defined in clause 8(1)): an air navigation service provider (“ANSP”); an airport operator; or another person with functions relating to air navigation (i.e. those involved with airspace change). Before exercising the power, the Secretary of State must consult with the person who it is proposed to direct.
14. The clause 3 power would enable the Secretary of State to direct a person involved in airspace change to co-operate with another person involved in airspace change, so as to assist that person in preparing, submitting, obtaining CAA approval, or reviewing the operation of an ACP that has been implemented. This could involve, for example, providing information or documentation that is needed in order to support the development of the ACP. Before exercising the power, the Secretary of State must consult with the person who it is proposed to direct and with the person who it is proposed would take forward the ACP.
15. Clause 4 would require a variation or revocation of a direction given under clause 2 or 3 to be given in writing to the person to whom the direction was given. It would also require a direction, or any variation or revocation of a direction, to be published. Clause 8(4) requires publication to be in whatever form and manner the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected.
16. Under clause 5, the Secretary of State would have power to delegate the functions of the Secretary of State under clauses 2 to 4 to the CAA by giving a notice to the CAA, which the CAA must publish. Clause 5(4) contains similar provision enabling the Secretary of State to revoke such a notice.

Justification for taking the powers

17. Airspace is an important part of national infrastructure, and its safety and efficiency is vital to the running of the UK’s economy. The design of the UK’s airspace was established over 50 years ago and has not kept pace with increased flight volumes. This has resulted in passengers facing flight delays and longer journeys as airspace becomes more congested.

18. The problems mainly affect the South of the UK; they are most acute in the South East of England, where multiple changes are needed across different airports to increase the efficient use of UK airspace.
19. Such airspace changes could also bring about environmental benefits in terms of noise reduction and improved air quality. Increasing airspace efficiency will involve a shift from ground (i.e. radar) based navigation to satellite based navigation (which is referred to as “performance based navigation” / “PBN”), along with complex, interrelated airspace changes to enable a greater volume of flights to take place in a given airspace.
20. Amongst other things, PBN will: enable more efficient flights to take place by reducing separation distances required between aircraft; reduce stacking (which is the circling of aircraft above airports while awaiting landing); allow steeper angles for arrival and departure (resulting in reduced environmental impacts); and create the opportunities for multiple flight path options to provide a respite from noise to communities living below.
21. A major programme of airspace change is currently underway, as part of the CAA’s airspace strategy, to modernise UK airspace. The proposed new direction-making powers are needed to support this. Currently, neither the Government nor the CAA have powers to mandate that an ACP is taken forward, for example in the event that one person involved in making airspace changes decides not to participate in the programme on a voluntary basis. This means that one person required to take forward an interdependent ACP could hold up another or several others, therefore delaying delivery of the programme. In addition, there are no effective levers to ensure the delivery of other airspace modernisation outcomes, such as those related to safety, capacity, management of noise impacts, air quality, fuel efficiency, improving access to airspace for all users (including where controlled airspace is no longer justified), military access, or to introduce new technology.
22. The clause 2 and 3 powers, together with the enforcement provisions contained in Schedule 2, are needed in order to ensure that ACPs that are essential to delivery of the CAA’s airspace strategy can be mandated if necessary.
23. Directions would be given under clause 2 if the body originally responsible for progressing an ACP failed to: prepare an ACP (or take steps towards the preparation of an ACP), submit an ACP, take steps to obtain approval to an ACP submitted to the CAA or review the operation of an ACP that had been implemented and approved.
24. In the absence of the proposed new powers and related enforcement provisions, there would be no way to guarantee that desirable airspace change is taken forward, and no enforcement actions available to the Government or the CAA to incentivise compliance. Furthermore, experience shows that the risk of airport operators pulling out part way through an airspace change programme, or curtailing their proposals such that the overall programme has to be scaled back, is high. For example, a programme involving the five main London airports was scaled back significantly in 2014/15 after airport operators curtailed their proposals.
25. While legislation is needed to ensure delivery of essential airspace changes, the Government is also seeking to do everything possible to encourage voluntary co-operation with the CAA’s airspace strategy (for example, setting up a new governance structure jointly with the CAA to oversee the delivery of the different initiatives in the CAA’s Airspace Modernisation Strategy).

Justification for the procedure

26. Making a direction using the clause 2 and / or 3 powers would be an executive (rather than a legislative) function, and so should not involve making a statutory instrument or be subject to Parliamentary procedure. Furthermore, directions without any requirement for Parliamentary scrutiny are considered appropriate, as directions given using the new powers would concern technical and administrative matters within the responsibility and expertise of the Secretary of State (with advice from the CAA) or of the CAA (if the functions are delegated to it). The content of the CAA's airspace strategy would be consulted on in advance of being finalised, and provision is made in Schedule 1 for a statutory appeal procedure to be available to: a) the recipient of a direction, and b) the recipient of a penalty for non-compliance with a direction. By way of comparison, direction-making powers contained in the 2000 Act, such as the power in section 66 of that Act (relating to directions given by the Secretary of State to the CAA imposing duties and/or conferring powers with regard to air navigation), are not subject to Parliamentary procedure.

Clause 5 - Delegation of functions to CAA

Power conferred on: Secretary of State
Power exercised by: By notice in writing
Parliamentary Procedure: None

Context and purpose

27. The Secretary of State would have power to delegate the Secretary of State's functions under clauses 2 to 4 to the CAA by giving a notice in writing.

Justification for taking this power

28. This power is needed so that the Secretary of State could delegate the role of exercising the clause 2, 3 and 4 powers to the CAA if this proves desirable in future, for example if it came about that the CAA was better placed to carry out the functions.
29. Given that both the Secretary of State and the CAA have roles in making ACP decisions, appropriate internal governance structures would be put in place in both organisations as needed, in order to manage any possible conflict of interest risks.
30. In carrying out any functions delegated to it under this power, the CAA would be required to have regard to any international obligation of the UK of which the Secretary of State notifies it (see clause 5(2)).

Justification for the procedure

31. A delegation by the Secretary of State to the CAA of the clause 2, 3 and 4 powers would be done in the form of a general delegation. Clause 5(5) requires such a delegation to be published by the CAA, in the interests of openness and transparency.
32. As it would be an executive (rather than a legislative) function, there is no need for the delegation to involve making a statutory instrument or to be subject to Parliamentary procedure.

33. The Secretary of State's power to delegate the functions of the Secretary of State under clauses 2 to 4 to the CAA is included in order to future-proof the legislation, for example if it came about over time that the CAA was better placed than the Secretary of State to carry out these functions. There are no plans to delegate these functions at present, but in future it may be appropriate to do so.

Schedule 2, paragraph 11 - statement of policy on penalties

Power conferred on: *The CAA*
Power exercised by: *Publishing a statement of policy*
Parliamentary Procedure: *Not applicable*

Context and purpose

34. Paragraph 4 of Part 1 of Schedule 2 to the Bill would confer on the CAA powers to impose civil penalties on the recipient of an enforcement order under paragraph 2 of Part 1 of Schedule 2, in respect of which the person who received the enforcement order would have a right of appeal to the Competition Appeal Tribunal.
35. Paragraph 11 of Part 1 of Schedule 2 to the Bill would require the CAA to publish a statement of its policy with respect to imposing penalties under Schedule 2 and determining their amount.
36. When preparing or revising such a statement, the CAA must consult any persons that it considers appropriate.

Justification for taking this power

37. The Department considers that it is appropriate for the body responsible for the enforcement of the direction-making powers contained in clauses 2 and 3 (i.e. the CAA) to also set out in a separate statement of policy how penalties are imposed and their amount determined.
38. The Department considers that this power is necessary so that recipient of a penalty is clear as to how the CAA will determine whether a penalty is appropriate, the criteria that the CAA will use to determine the amount of the penalty, and how any aggravating or mitigating factors are considered.

Justification for the procedure

39. The power in paragraph 11 of Part 1 of Schedule 2 to publish a statement of policy is not subject to Parliamentary procedure. The Department considers this is appropriate because the CAA, as independent regulator, has a discretion to set appropriate penalties within the limit provided for in paragraph 7 of Part 1 of Schedule 2; and the requirement to consult contained in paragraph 11(4) of Part 1 of Schedule 2 would help to ensure that views of stakeholders are taken into account by the CAA when it prepares a statement of its policy on penalties.
40. Furthermore, this approach is consistent with existing provision contained within Part 1 of the Civil Aviation Act 2012, which relates to the economic regulation of airports.

Schedule 2, paragraph 12 - Turnover

<i>Powers conferred on:</i>	<i>Secretary of State</i>
<i>Powers exercised by:</i>	<i>Regulations</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative</i>

Context and purpose

41. Paragraph 12(1) of Part 1 of Schedule 2 to the Bill would confer a power on the Secretary of State to make regulations to prescribe how turnover would be calculated for the purposes of paragraph 7 (maximum fixed amount) and paragraph 8(1) (maximum daily amount) of Part 1 of Schedule 2. The regulations would be subject to affirmative Parliamentary procedure. A similar approach was taken to conferring a power on the Secretary of State to make regulations to prescribe how turnover is to be calculated in the Health and Social Care Act 2012 (see sections 105(4)² and 304(5)(e) of that Act).

Justification for taking this power

42. The power in paragraph 12(1) of Part 1 of Schedule 2, which would enable the Secretary of State to make regulations to determine a person's turnover, is required because the meaning of "turnover" may need to be customised for different cases.
43. For example, if in future a body were to be set up to progress airspace change proposals which relied on Government funding, turnover for that body may need to be calculated in a different way from how it would be calculated in other cases, in order to impose effective sanctions on that body if it fails to comply with a direction given using the new direction-making powers.
44. Turnover based penalties would help to ensure that the penalty imposed would be proportionate and effective in relation to the body being sanctioned. In the event of a fixed penalty approach, a particular fixed penalty may be ineffective or meaningless against for example a large airport operator or ANSP, while being overly draconian in relation to a much smaller airport operator or ANSP.

Justification for the procedure

45. The Department recognises that the power in paragraph 12(1) of Part 1 of Schedule 2 will enable the Secretary of State to prescribe the way in turnover is calculated which may in turn be reflected in the amount of any financial penalties imposed on recipients of a Direction. The Department considers that the higher level of Parliamentary oversight of the exercise of this power provided by the affirmative resolution procedure is the appropriate level of scrutiny. This is achieved by the provision in clause 18(3)(a) of the Bill.

² For example, the National Health Service (Licensing and Pricing) Regulations 2013 (S.I. 2013/2214) were made under the power in section 105(4) of the Health and Social Care Act 2012.

C2. Part 2 - Air Traffic Services

Clause 9(1) - Modification of a prescribed term (new section 11(3)(b))

Power conferred on: Secretary of State
Power exercised by: Regulations
Parliamentary Procedure: Affirmative resolution

Context and purpose

46. Part 1 of the 2000 Act contains the framework in accordance with which a person may be licensed to provide air traffic services within “managed areas”.³ The licence when granted contains provisions which are either terms or conditions.
47. A term of a licence (which would be defined as a provision of a licence which is not a licence condition⁴) relates to matters such as the duration of the licence and the area in respect of which the licence authorises the provision of air traffic services. A condition relates to operational matters, such as the licence holder’s safety and efficiency.
48. There is currently a single licence holder (NATS (En Route) PLC – a company wholly owned by NATS Holdings Limited in which the Government has a minority shareholding).
49. The CAA oversees the regulation of the licence and by virtue of new section 11 of the 2000 Act may modify a licence condition (subject to the procedural constraints set out in new sections 11A and 11B). New section 11 would also enable the Secretary of State to modify:
 - (a) a licence term which relates to its duration; and
 - (b) a term prescribed in regulations made by the Secretary of State.

Justification for taking this power

50. The Department considers that the Secretary of State’s new power to modify a licence term is currently only required in relation to provision governing the duration of the licence. Licence duration is a core provision and has a bearing on matters such as the efficiency and economy of arrangements made by the licence holder and its ability to finance the licensable activities.
51. The Secretary of State is required by section 1 of the 2000 Act to exercise his functions in a manner best calculated to promote such matters. The new power to modify a licence term relating to duration would therefore ensure that the Secretary of State continues to be in a position to comply with this statutory duty.
52. It may, however, be necessary in the future for the Secretary of State to be capable of modifying other categories of licence term. For example, a licence term prescribes the area in respect of which the licence holder provides air traffic services. In the future,

³ i.e. the UK, and any area outside the UK in respect of which the UK has undertaken under international arrangements to provide air traffic services (see s. 40(3) of the 2000 Act).

⁴ Section 40 of the 2000 Act contains definitions; paragraph 8 of Schedule 7 to the Bill would amend section 40.

the prescribed area may need to be changed. The Department, therefore, considers that it is necessary to take a power to specify in regulations another category of licence term as a term capable of being modified by the Secretary of State.

Justification for the procedure

53. The Department recognises that this power would extend the scope of the Secretary of State's power to intervene in a central provision of a licence and considers that the higher level of Parliamentary oversight of the exercise of this power provided by the affirmative procedure is the appropriate level of scrutiny. This would be achieved by the provision in paragraph 10 of Schedule 7 of this Bill (which would amend section 103(5) and (6) of the 2000 Act). Furthermore, the power to make these regulations would only be exercised following consultation with the CAA (see paragraph 10(4) of Schedule 7 of this Bill, which would amend section 103(9) of the 2000 Act).
54. The Department would add that the power conferred on the Secretary of State to modify any licence term, whether relating to duration or a matter brought within scope by these regulations, would itself be subject to the consultation procedure set out in new section 11A.

Schedule 3, paragraph 1 - Power to prescribe aerodromes for the purposes of appeal rights (new section 19A(3))

Power conferred on: Secretary of State
Power exercised by: Regulations
Parliamentary Procedure: Affirmative resolution

Context and purpose

55. Schedule 3 would make provision for appeals against modification of licence conditions by the CAA under new section 11(1) of the 2000 Act. Schedule 3 would insert new sections 19A to 19F into the 2000 Act which make provision for such appeals. The appeal may be brought by a licence holder and certain other persons.
56. The appeals would be determined by the Competition and Markets Authority ("the CMA"). New section 19A(2) would specify the persons which may bring an appeal; these persons include (at subsection (2)(c)) an owner or manager of a "prescribed aerodrome" whose interests are materially affected by the decision. New section 19A(3) would confer power on the Secretary of State to make regulations which specify an aerodrome as a "prescribed aerodrome".

Justification for taking this power

57. The Department had intended that the aerodromes which it intends to benefit from the new appeal rights are identified by means of a definition in new section 19A(3). It transpired, however, that no provision could achieve the twin aims of sufficiently identifying the existing aerodromes which are intended to benefit from the new appeal rights and be capable of conferring these rights on other aerodromes in the future.
58. Different definitions were considered but none achieved the certainty required to ensure the exclusion of aerodromes which were not intended to benefit. Moreover,

the Department recognised that it may be in future necessary to add or remove aerodromes from the category of aerodrome intended to benefit.

59. On this basis, prescribing them in secondary (rather than primary) legislation avoids the need to amend primary legislation for this purpose in the future. The Department, therefore, considers that a power to specify an aerodrome as a “prescribed aerodrome” is necessary to achieve this required degree of certainty and flexibility.

Justification for the procedure

60. The Department recognises that this power will enable the Secretary of State to confer substantive rights on the owners or managers of aerodromes which are specified as “prescribed aerodromes” and considers that the higher level of Parliamentary oversight of the exercise of this power provided by the affirmative resolution procedure is the appropriate level of scrutiny. This is achieved by the provision in paragraph 10 of Schedule 7 of this Bill (which amends section 103(5) and (6) of the 2000 Act).

Schedule 3, paragraph 1 - Power to modify the limits for determination of appeals (new section 19D(8))

Power conferred on: Secretary of State
Power exercised by: Regulations
Parliamentary Procedure: Negative resolution

Context and purpose

61. New section 19D of the 2000 Act would prescribe the time limits within which the CMA must determine an appeal under new section 19A of the 2000 Act (see above), which the CMA may extend in certain circumstances. New section 19D(8) would confer power on the Secretary of State to make regulations which modify the periods of time specified in new section 19D.

Justification for taking this power

62. The Department considers that the existing time limits prescribed in new section 19D provide a fair balance between the need for the CMA to have reasonable time to determine an appeal and the need for reasonable expedition.
63. It also considers that this power should be available if it becomes apparent that the prescribed time limits require revision due to being inappropriate or sub-optimal in the light of experience. This should facilitate the better working of the legislation in respect of largely procedural matters.

Justification for the procedure

64. This power relates to procedural matters and, while the Department recognises that Parliamentary scrutiny is necessary for the regulations, the Department considers that the negative resolution procedure affords the appropriate level of scrutiny.

Schedule 4 - New Schedule A1 to the 2000 Act, paragraph 23 - Power of the CMA to make appeal rules

Power conferred on: *The CMA Board*
Power exercised by: *Making and publishing appeal rules*
Parliamentary Procedure: *Not applicable*

Context and purpose

65. Clause 9(4) inserts Schedule A1 (which is set out in Schedule 4 to the Bill) into the 2000 Act. Schedule A1 would make provision for appeals to the CMA under section 19A against a decision by the CAA to modify a licence condition.
66. Paragraph 23 of Schedule A1 would enable the CMA Board to make rules regulating the conduct and disposal of appeals. These rules may include provision supplementing the provisions of Schedule A1 in relation to any application, notice, hearing or requirement for which this Schedule provides. Paragraph 23(3) sets the type of matters which may be the subject of such rules.

Justification for taking this power

67. The Department considers that this power is necessary so that the body responsible for determining appeals (i.e. the CMA) is able to provide parties to an appeal clear instruction on the procedural requirements, in the event that the existing provisions within Schedule A1 require supplementing. This in turn will facilitate the overall management of the appeals process.

Justification for the procedure

68. This power is based on equivalent provision contained in paragraph 31 of Schedule 2 to the Civil Aviation Act 2012, which relates to appeals against conditions of new licences, or modification of licence conditions, with regard to the economic regulation of airports.
69. Before making any rules under this paragraph, the CMA Board must consult any person that it considers appropriate, and then publish those rules once made (paragraphs 23(5) and (6)).

Schedule 4 - New Schedule A1 to the 2000 Act, paragraph 25 - Power to modify any period of time specified in Schedule A1

Power conferred on: *Secretary of State*
Power exercised by: *Regulations*
Parliamentary Procedure: *Negative resolution*

Context and purpose

70. Clause 9(4) would insert new Schedule A1 into the 2000 Act which makes provision for the procedure governing appeals against modifications of licence conditions under new section 11(1) of the 2000 Act. The provision includes time limits applying to a number of different stages in the appeal process (e.g. applying for permission to appeal at the outset, applying for permission to intervene in an ongoing appeal, payment of an adverse costs order). Paragraph 25 of Schedule A1 would confer power on the Secretary of State to make regulations which modify these time limits.

Justification for taking this power

71. The Department considers that the existing time limits prescribed in Schedule A1 are sufficient in order to facilitate the appeals process with reasonable expedition. It also considers that this power should be available if it becomes apparent that the prescribed time limits require revision due to being inappropriate or sub-optimal in the light of experience. This should facilitate the better working of the legislation in respect of largely procedural matters.

Justification for the procedure

72. This power relates to procedural matters and, while the Department recognises that Parliamentary scrutiny is necessary for the regulations, the Department considers that the negative resolution procedure affords the appropriate level of scrutiny.

Schedule 5 - New Schedule B1 to the 2000 Act, paragraphs 14(7) and 14(8) - Regulations relating to the definition and calculation of qualifying turnover

Power conferred on: Secretary of State
Power exercised by: Regulations
Parliamentary Procedure: Affirmative resolution

Context and purpose

73. Clause 10(2) would insert new section 20, and clause 10(6)(a) and Schedule 5 would insert new Schedule B1 into the 2000 Act. New Schedule B1 would make provision for the enforcement of the duties on a licence holder under Part 1 of the 2000 Act. These duties arise either under section 8 of that Act or the licence conditions. In broad terms, the enforcement framework enables the CAA to serve notices in respect of the contravention or enforcement of a duty and to impose financial penalties for the breach of a duty or enforcement measure.

74. In relation to these penalties, paragraph 14 of Schedule B1 makes provision for the amount of a fixed rate penalty. This is subject to a cap linked to the licence holder's "qualifying turnover" from its provision of air traffic services for the "qualifying period", which is to be taken as the qualifying turnover for that period as reported in accounts which the licence holder is required to prepare by a licence condition. Qualifying turnover and qualifying period are defined in paragraph 14(2) and (3) respectively. Paragraph 14(7) and (8) would confer power on the Secretary of State to make regulations which amend or otherwise modify the definition of qualifying turnover and make provision about how this is to be calculated.

Justification for taking this power

75. The Department considers that this power is necessary to ensure that the definition and calculation of qualifying turnover can be amended in the event that regulatory accounts themselves (and the definition of qualifying turnover set out in them) should in future no longer be used.

76. The licence holder is subject to price control and currently prepares regulatory accounts in a manner determined by the CAA, but it is conceivable that the CAA may in the future not make use of regulatory accounts in this way.

Justification for the procedure

77. The Department recognises that this power will enable the Secretary of State to amend the basis on which financial penalties may be imposed on a licence holder and considers that the higher level of Parliamentary oversight of the exercise of this power provided by the affirmative resolution procedure is the appropriate level of scrutiny. This is achieved by the provision in paragraph 10 of Schedule 7 to this Bill (which amends section 103(5) and (6) of the 2000 Act).

Schedule 6 - New Schedule C1 to the 2000 Act, paragraph 2(9) – Power to amend the maximum penalty which can be imposed for failing to comply with an information notice

Power conferred on: Secretary of State
Power exercised by: Regulations
Parliamentary Procedure: Affirmative resolution

Context and purpose

78. Clause 10(4) would insert new section 25, and 10(6)(b) and Schedule 6 would insert new Schedule C1 into the 2000 Act. Paragraph 1 of new Schedule C1 would enable the CAA to give notice to a person requiring that person to provide the CAA with information for the purpose of exercising certain functions. Paragraph 2 would enable the CAA to take enforcement steps if a person fails without reasonable excuse to comply with the notice. This includes the imposition of a financial penalty of a fixed sum or daily amount, which in either case must be appropriate and proportionate to the failure in respect of which a penalty is imposed. The maximum penalty payable in respect of a fixed amount and a daily amount are specified in paragraph 2(4) and (5) respectively. Paragraph 2(9) would confer on the Secretary of State a power to make regulations to replace the amount for the time being specified in sub-paragraph (4) or (5).

Justification for taking this power

79. The Department considers that this power is necessary to ensure that the prescribed maximum amounts can be adjusted over time to reflect changes in monetary value thereby ensuring that the amount of penalty remains a dissuasive and proportionate means for ensuring compliance.

Justification for the procedure

80. The Department recognises that this power will enable the Secretary of State to amend the basis on which the amount of financial penalties imposed on a licence holder may be determined and considers the higher level of Parliamentary oversight of the exercise of this power provided by the affirmative resolution procedure is the appropriate level of scrutiny. This is achieved by the provision in paragraph 10 of Schedule 7 of this Bill (which amends section 103(5) and (6) of the 2000 Act).

Clause 10(5) – New section 25C of the 2000 Act (Statement of policy on penalties)

Power conferred on: The CAA
Power exercised by: Publishing a statement of policy

Parliamentary Procedure: Not applicable

Context and purpose

81. New provisions to be inserted into the 2000 Act would confer on the CAA powers to impose civil penalties on the licence holder, in respect of which the licence holder will have a right of appeal to the Competition Appeal Tribunal.
82. Clause 10(5) would insert new section 25C which requires the CAA to prepare and publish a statement of its policy with respect to imposing penalties under Chapter I of the 2000 Act, and determining their amount.
83. When preparing or revising such a statement, the CAA must consult any persons that it considers appropriate.

Justification for taking this power

84. The Department considers that this power is necessary so that licence holders are clear on how the CAA will determine whether a penalty is appropriate, the criteria the CAA will use to determine the amount of the penalty, and how any aggravating or mitigating factors are considered.

Justification for the procedure

85. The Department considers that it is appropriate for the body responsible for the enforcement of these powers (i.e. the CAA) to also set out in a separate statement of policy how penalties are imposed and their amount determined.
86. This approach is consistent with existing provision contained within Part 1 of the Civil Aviation Act 2012, which relates to the economic regulation of airports.

Schedule 7, paragraph 9 (new section 40A(3) of the 2000 Act) - Power to make provision about when one person is connected with another

Power conferred on: Secretary of State
Power exercised by: Regulations
Parliamentary Procedure: Affirmative resolution

Context and purpose

87. Clause 11 and Schedule 7 would make amendments that are consequential on clauses 9 and 10. Paragraphs 1 to 11 of Schedule 7 make a number of such amendments to the 2000 Act. Paragraph 9 inserts new section 40A into that Act to make provision for “connected persons” for the purpose of Chapter 1 of Part 1 of the 2000 Act. It is relevant to new section 19A of, and paragraphs 2 and 16 of new Schedule A1 to, that Act. It is presently defined by reference to the Companies Act 2006 using the definition of “group undertaking” set out in section 1161 of that Act in order to cover any arrangements an operator may have within a company group. Subsection (3) of this new section 40A would confer power on the Secretary of State to make regulations to make provision about when one person is connected with another for the purposes of

Chapter 1 of Part 1 of the 2000 Act, including by amending or modifying subsection (1) or (2).

Justification for taking this power

88. The Department considers that these powers are needed to allow the definition to be amended in light of any anti-avoidance measures that may be used to circumvent the proper application of the relevant provision.

Justification for the procedure

89. The Department recognises that this power will enable the Secretary of State to in effect amend certain steps in the procedure in accordance with which a licence holder may exercise appeal rights and considers therefore that the higher level of Parliamentary oversight of the exercise of this power provided by the affirmative resolution procedure is the appropriate level of scrutiny. This is achieved by the provision in paragraph 10 of Schedule 7 to this Bill (which amends section 103(5) and (6) of the 2000 Act).

C3. Part 3 - Unmanned aircraft

90. Throughout this memorandum, the term “unmanned aircraft” is used. The Bill provides that “unmanned aircraft” means any aircraft operating or designed to operate autonomously or to be piloted remotely without a pilot on board. Drones and model aircraft are the most commonly used types of unmanned aircraft. This memorandum also uses the term “small unmanned aircraft” (“SUA”) where it is relevant. This is a term defined in the Air Navigation Order 2016⁵ (“ANO 2016”) as “any unmanned aircraft, other than a balloon or a kite, having a mass of not more than 20kg without its fuel but including any articles or equipment installed in or attached to the aircraft at the commencement of its flight.”⁶

91. The market for new types of unmanned aircraft such as drones is still emerging, but is rapidly expanding. For example, the contribution of drones to the UK economy is expected to continue to grow; PwC predicts the drones market in the UK will be worth £42 billion to the UK by 2030.⁷ However, while the sector has grown in recent years, there has also been an increased number of instances of misuse of unmanned aircraft, and a greater number of reports of incidents relating to their close and unsafe proximity to other aircraft.⁸ The Bill is intended to help tackle the misuse of unmanned aircraft, by providing greater enforcement capability to the police, thereby also acting as a deterrent.

92. The measures provided for in the Bill will help to build public confidence in unmanned aircraft technology. This will encourage positive, innovative use of unmanned aircraft in the UK, which will keep the UK on a path to remain a global leader in development and use of unmanned aircraft technology.

93. In addition to the specific justifications for each delegated power set out below, the general context around the Bill is one of an unmanned aircraft sector which is still

⁵ S.I. 2016/765

⁶ See Schedule 1 ANO 2016

⁷ <https://www.pwc.co.uk/dronesreport>

⁸ <https://www.airproxboard.org.uk/Reports-and-analysis/Statistics/Airprox-involving-UAS-Drones/>

emerging and developing rapidly. The capabilities of unmanned aircraft have changed significantly over recent years and unmanned aircraft are now able to fly for longer, further and use a variety of features, such as cameras, to much greater effect. The delegated powers in the Bill are necessary as the regulatory framework must continue to evolve to ensure that this technology is used in a safe way, to tackle the misuse of unmanned aircraft, and to investigate offences effectively.

94. The delegated powers in the Bill provide for the following matters to be dealt with by subordinate legislation:

- a) Paragraph 5(11) of Schedule 8: power (inserted into section 93 of the Police Act 1997) to add or remove an offence from the definition of “relevant offence” which the Bill also inserts into section 93 of that Act (in relation to which, if an unmanned aircraft is used in commission of the offence, the power in section 93 to authorise property and wireless telegraphy interference applies).
- b) Schedule 9: Powers to specify additional descriptions of information, documentation or evidence which a constable can require a remote pilot of an SUA⁹ or an SUA operator¹⁰ to produce for the purposes of paragraphs 2(1)(c), 3(1)(c), 5(2)(b) or 6(2)(b) of that Schedule (which relate to the competency of the remote pilot, registration of the SUA operator and permission and exemptions for certain flights).
- c) In relation to FPNs:
 - i. Paragraph 2(1) of Schedule 10: power to prescribe offences as “fixed penalty offences” for the purposes of the Bill;
 - ii. Paragraph 5(1) of Schedule 10: power to prescribe the amount of the fixed penalty for each fixed penalty offence;
 - iii. Paragraph 6 of Schedule 10: power to make supplementary provision about (a) the form of, and information to be included in, FPNs; (b) the consequences of providing false information in relation to FPNs, including provision creating criminal offences; and (c) the procedure after an FPN is given, including provision about appeals.
- d) Paragraph 1 of Schedule 11: power to make Air Navigation Orders (“ANOs”) under section 60 of the Civil Aviation Act 1982 (“CAA 1982”) includes power to make amendments in consequence of an Air Navigation Order (“ANO”) for a relevant purpose. This power permits amendments of Schedule 8 so far as it relates to offences under an ANO including the meaning of “relevant ANO offence” or “relevant offence”, or to section 13 and Schedule 9.
- e) Paragraph 3 of Schedule 11: power to make regulations so as to create criminal offences or civil penalties for the purpose of securing compliance with any relevant legislation, which is defined as the UK Delegated Regulation and the UK Implementing Regulation.
- f) Paragraph 4 of Schedule 11: power to amend the Bill once it is an Act. The power enables amendments to be made to Schedule 8 in relation to offences, or to section

⁹ The “remote pilot” in relation to a small unmanned aircraft is defined in article 94G(a) ANO 2016.

¹⁰ The “SUA operator” in *relation* to a small unmanned aircraft is defined in article 94G(b) ANO 2016.

13 and Schedule 9, in consequence of regulations made under the power conferred by paragraph 3 of Schedule 11.

- g) Subsections (3) and (5) of clause 20: power to set the date for the coming into force of provisions of the Bill not otherwise brought into force by clause 20, and to make transitional, transitory or saving provision in connection with the coming into force of the Bill.
95. The powers mentioned in paragraphs (a), (c)(iii), (d) and (f) are powers to amend primary legislation.
96. Every effort has been made to limit the number and scope of the delegated powers in this Bill; delegated powers have only been included in the Bill where, for the reasons set out further below, it is not appropriate or practical to make provision in the Bill itself. None of the delegated powers can be used to add new types of police powers to the Bill.
97. The Department has considered carefully which procedure is appropriate for each delegated power, and the reasons for choosing particular procedures are set out below, as part of the explanation of each delegated power.
98. Where the Department considers it appropriate for subordinate legislation made under the delegated powers in the Bill to be subject to the affirmative resolution procedure, this is explained below; in some instances this is required for every exercise of the power, but in other cases only for the first exercise of the power.

Schedule 8, paragraph 5(11) (which amends section 93 of the Police Act 1997) - regulations to amend the list of relevant offences in new subsection (4A) of section 93 of the Police Act 1997

Power conferred on: Secretary of State
Power exercised by: Regulations made by statutory instrument
Parliamentary procedure: Affirmative resolution procedure

99. Paragraph 5(11) inserts a power (new subsection (4B)) into section 93 of the Police Act 1997. This enables the Secretary of State to add or remove an offence from the definition of “relevant offence” set out in new subsection (4A) (also inserted by the Bill) in relation to which authorisation for property interference or interference with wireless telegraphy may be given for the purpose of preventing or detecting the use of unmanned aircraft in the commission of a “relevant offence”.

Justification for taking this power

100. The offences which are “relevant offences” set out in new subsection (4A) of section 93 of the Police Act 1997 include certain offences under the Prison Act 1952, offences under the Prison Act (Northern Ireland) 1953, offences under common law in Scotland and the Prisons (Scotland) Act 1989, and offences under the ANO 2016 and the Aviation and Maritime Security Act 1990. A power for the Secretary of State to amend subsection (4A) by regulations is necessary to ensure that the list of “relevant offences” remains up to date if the evolution of technology results in unmanned aircraft being used in new or different types of offence. In order for the law to remain sufficiently agile in providing for offences in relation to the power to authorise interference with property or wireless telegraphy, once the Bill has gained Royal Assent it is necessary to be able to make regulations for these offences in secondary legislation as required

– otherwise it could be necessary to regularly introduce new primary legislation each time an offence is created, which could not be passed quickly enough through Parliament to mitigate an emerging threat.

Justification for the procedure

101. The power to interfere with property or wireless telegraphy is a significant power which entails the possibility of interferences with, for example, people’s property rights. Ordinarily it applies where, under section 93(2)(a) of the Police Act 1997, the authorising officer believes that it is necessary for the purpose of preventing or detecting serious crime. The Department therefore considers the affirmative resolution procedure to be the most appropriate procedure for the regulations to amend new subsection (4A) of section 93. This is because it is necessary to ensure that any expansion of the power to interfere with property and wireless telegraphy, by means of adding to the definition of “relevant offences” offences involving the use of unmanned aircraft which may be countered by counter–unmanned aircraft technology, receives an appropriate level of parliamentary scrutiny. New subsection (4C) of section 93 therefore provides that regulations to amend subsection (4A) are subject to the affirmative resolution procedure.

Schedule 9, paragraphs 2(1)(c) and 3(1)(c) - a constable may require a person who the constable has reasonable grounds for believing is the remote pilot (paragraph 2(1)(c)), or the SUA operator (paragraph 3(1)(c)) to provide any other information, documentation or evidence that is of a description specified by the Secretary of State

Power conferred on: Secretary of State
Power exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative resolution procedure

Context and purpose

102. Paragraphs 2 and 3 of Schedule 9 to the Bill provide for police powers to require the production of evidence by SUA operators and remote pilots of SUA in relation to requirements in the ANO 2016. These include requirements for SUA operators to register their aircraft and for remote pilots to have been issued with an acknowledgement of competency which are set out in articles 94D and 94F of the ANO 2016. The requirements in articles 94D and 94F do not apply to flights by SUA with a mass of less than 250g. Paragraph 2(1)(c) gives the Secretary of State the power to prescribe other information, documentation or evidence that a remote pilot must produce, and paragraph 3(1)(c) gives the Secretary of State the power to prescribe other information, documentation or evidence that an SUA operator must produce.

Justification for taking this power

103. The policy around registration and competency testing is likely to continue to evolve as SUA technology develops. In the future it could include, for example, specific requirements in relation to remote pilot competency and registration of SUA operators in relation to certain types of SUA or alternative arrangements for those undertaking training in the use of SUA. This might mean that the types of evidence or documentation available may evolve, which is why a power is needed for the Secretary of State to specify other information, documentation or evidence which a constable can require the SUA operator or remote pilot of an SUA to provide.

104. Using secondary legislation ensures that any new types of documentation or evidence which an SUA operator or remote pilot of an SUA could provide as the policy on registration and competency testing evolves can quickly be specified. Further types of evidence may also become available which would make it easier for a constable to establish that an SUA operator or remote pilot has met the requirements in relation to registration and competency which are currently contained in the ANO 2016.
105. This provision would enable the Secretary of State to specify such types of evidence as being among those types which may assist a constable in establishing that an SUA operator or remote pilot has met the requirements in the ANO 2016 in relation to registration and competency.
106. Similar provisions are contained in a number of other Acts of Parliament, for example section 1105(2)(d) of the Companies Act 2006 which contains a power for the Secretary of State to specify in regulations further documents which may be drawn up and delivered to a registrar in a language other than English, but must be accompanied by a certified translation into English.

Justification for the procedure

107. Regulations made under the powers in paragraphs 2 and 3 of Schedule 9 are subject to the negative resolution procedure. As the powers given to a constable under paragraphs 2 and 3 of Schedule 9 relate only to the types of documentation a constable can request from an SUA operator or remote pilot, rather than the requirements to register an SUA or hold an acknowledgement of competency themselves, the Department considers the negative resolution procedure to be appropriate. This is consistent with the procedure used for other similar powers, for example the power in section 1105(2)(d) of the Companies Act 2006, referred to above.

Schedule 9, paragraphs 5(2)(b) and 6(2)(b) - A constable may require the remote pilot or SUA operator to provide any other information, documentation or evidence that is of a description specified by the Secretary of State in relation to permissions for certain flights and exemptions for certain flights

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Negative resolution procedure</i>

Context and purpose

108. Restrictions on flying SUA within certain areas and above a certain height are set out in the ANO 2016. For instance, article 94 sets out that a remote pilot must maintain direct, unaided visual contact with the SUA sufficient to monitor its flight path. Article 94A sets out that an SUA operator or remote pilot may not permit an SUA to be flown, or fly it, above 400ft, or within the flight restriction zone of a protected aerodrome, without permission. Article 95 sets out that an SUA operator or remote pilot must not cause or permit a small unmanned surveillance aircraft to be flown within 50m of a person, vehicle or structure; or within 150m of any congested area or crowd of greater than 1,000 persons without permission. Article 239 sets out that the Secretary of State may prohibit, restrict or impose conditions on flights by aircraft (to apply generally or to any class of aircraft).
109. Paragraphs 5 and 6 of Schedule 9 provide a constable with the power to require evidence, information or documentation from an SUA operator or a remote pilot of an

SUA relating to a permission to fly or an exemption under article 266 from the restrictions set out in the ANO 2016.

110. Paragraph 5(2)(b) sets out a power for the Secretary of State to specify other information, documentation or evidence that a constable may require a remote pilot or an SUA operator to produce in relation to permission for a particular flight.

111. Paragraph 6(2)(b) sets out a power for the Secretary of State to specify other information, documentation or evidence that a constable may require a remote pilot of an SUA or an SUA operator to produce, in relation to an exemption relevant to a particular flight.

Justification for taking this power

112. To ensure that SUA operators or remote pilots of SUA who have sought permission or are covered by an exemption for the flight they are undertaking are able to demonstrate this to a constable when asked, it may be appropriate for the Secretary of State to specify the format of information, documentation or evidence which a constable can request, particularly if the use of SUA becomes more popular and the technology evolves, and new means of evidencing permissions or exemptions become more widely used.

113. Using regulations to specify these means of evidencing permissions or exemptions ensures the powers in paragraphs 5 and 6 remain aligned with current practices in terms of the types of documentation, information and evidence remote pilots and SUA operators can be expected to have access to, enabling them to easily comply with a constable's request. Further types of evidence may also become available which would make it easier for a constable to establish whether an SUA operator or remote pilot has any permissions or exemptions which would mean they had met the requirements for certain flights under the ANO 2016.

Justification for the procedure

114. As any use of the powers in paragraphs 5 and 6 of Schedule 9 relate only to the types of documentation a constable can request from an SUA operator or remote pilot (rather than any changes to the areas within which, or the conditions under which SUA can be flown), the Department therefore considers the negative resolution procedure to be appropriate.

Schedule 10, paragraph 2(1) – power to prescribe offences as fixed penalty offences.

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative resolution procedure the first time the power is used, thereafter negative resolution procedure</i>

Context and purpose

115. Paragraph 2(1) of Schedule 10 gives the Secretary of State the power to prescribe fixed penalty offences in relation to which an FPN can be given. Paragraph 2(2) limits the offences which can be prescribed; only an offence under the Bill or an offence relating to unmanned aircraft under subordinate legislation which is triable summarily or triable either way can be prescribed.

116. Paragraph 2(2)(b) is necessary to ensure that an offence relating to unmanned aircraft under the ANO 2016 (now and as amended in the future), any successor to the ANO 2016, or any other subordinate legislation relating to unmanned aircraft may be prescribed as a fixed penalty offence. The Department considers that the option to issue an FPN should only be available for less serious offences. This is why only an offence which is triable summarily or triable either way can be prescribed as a fixed penalty offence.

Justification for taking this power

117. The offences under the Bill which the Department considers it could be appropriate to prescribe as fixed penalty offences are:

- (a) Failure by the remote pilot of the SUA to produce an acknowledgement of competency or proof of competency when required to do so by a constable, which is an offence under paragraph 2 of Schedule 9;
- (b) Failure by the SUA operator to produce registration documentation or proof of registration when required to do so by a constable, which is an offence under paragraph 3 of Schedule 9;
- (c) Failure by a person to allow an inspection of the SUA when required to do so by a constable, which is an offence under paragraph 4 of Schedule 9;
- (d) Failure by the SUA operator or remote pilot of the SUA to produce specified documentation or evidence of permission for a flight for which permission is needed under the ANO 2016 when required by a constable, which is an offence under paragraph 5 of Schedule 9; and
- (e) Failure by the SUA operator or remote pilot of the SUA to produce evidence of an exemption to certain requirements under article 266 the ANO 2016¹¹, which is an offence under paragraph 6 of Schedule 9.

118. It could also be appropriate to specify other offences under the ANO 2016 as fixed penalty offences. For example, the Department may decide that an FPN could be an effective means of tackling unintentional contraventions of certain prohibitions under article 95 of the ANO 2016 such as flying a small unmanned surveillance aircraft¹² within 50m of a person, vehicle or structure or within 150m of a densely populated area. As unmanned aircraft technology is still evolving rapidly, there could also be future amendments to the ANO 2016 or its successors, or other subordinate legislation, which could include offences that the Department wishes to prescribe as fixed penalty offences. Similarly, the Department may consider in the future that an offence should no longer be prescribed as a fixed penalty offence. Requiring primary legislation to prescribe an offence as a fixed penalty offence could mean that the police are not able to tackle misuse of unmanned aircraft in the most effective and proportionate way. The Department has therefore chosen to prescribe which offences will be fixed penalty offences in secondary legislation.

¹¹ Article 266 ANO 2016 provides that the CAA may exempt from any of the provisions of this Order (other than articles 179, 230, 247, 250, 251, 255, and 267) or any regulations made under this Order, any aircraft or persons or classes of aircraft or persons, subject to such conditions as it deems appropriate.

¹² Article 95(5) ANO 2016 provides that in this article, "a small unmanned surveillance aircraft" means a small unmanned aircraft which is equipped to undertake any form of surveillance or data acquisition.

Justification for the procedure

119. The Department recognises that there will be significant interest in the types of offences prescribed as fixed penalty offences under paragraph 2(1) of Schedule 10. The first time the power to make regulations in paragraph 2(1) is exercised, the affirmative resolution procedure must be used. This ensures that there is an opportunity for Parliament to debate and scrutinise the first regulations made under paragraph 2(1). The Department envisages that the first regulations made under paragraph 2(1) of Schedule 10 will contain a list setting out a number of offences which will each be prescribed as a fixed penalty offence and that subsequent regulations would primarily be used to add small numbers of similar offences to the list. The negative resolution procedure is appropriate for those subsequent regulations.

120. This approach to subsequent regulations is consistent with similar powers in existing primary legislation. For example, section 51(3) of the Road Traffic Offenders Act 1988 (“RTOA 1988”) enables the Secretary of State by order to provide for offences to become or cease to become fixed penalty offences. Orders made under this provision are subject to the negative resolution procedure (see section 88(3)). For the reasons given above, the affirmative resolution procedure will be used the first time the power to make regulations under paragraph 2(1) is exercised. This will ensure that Parliament has an appropriate level of scrutiny the first time the power is exercised. Use of the negative resolution procedure on subsequent occasions will enable additional fixed penalty offences to be prescribed (and cease to be prescribed) in a timely manner, so that Parliamentary time is not taken up unnecessarily with relatively small changes.

Schedule 10, paragraph 5 - Amount of fixed penalty to be prescribed by regulations

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative resolution procedure the first time the power is used, thereafter negative resolution procedure</i>

Context and purpose

121. Paragraph 5(1) of Schedule 10 makes provision for the penalty for a fixed penalty offence, as prescribed under paragraph 2(1) of that Schedule, to be prescribed by the Secretary of State by regulations.

Justification for taking this power

122. As set out previously, the Secretary of State will prescribe which offences are fixed penalty offences by regulations. As the offences subject to FPNs will themselves be prescribed through regulations, it is preferable for the amount of the relevant penalty also to be set in regulations.

123. As well as requiring a power to set the initial penalty for a fixed penalty offence, flexibility is required to be able to adjust the amount of a penalty in the future, for example in proportion to inflation and cost of living, as well as to ensure that fixed penalties remain an effective and proportionate means of tackling the misuse of unmanned aircraft. Different penalties may be appropriate for different offences, so this power also provides greater flexibility to tailor the penalty to the offence.

124. To ensure that the amount of the fixed penalty does not exceed a reasonable level, the power for the Secretary of State to prescribe the penalty for a fixed penalty offence

is limited by paragraph 5(2) of Schedule 10. This sets out that any fixed penalty may not exceed half of the amount of the fine to which a person would be liable on summary conviction, or where there is no such maximum amount, for example if the fine on summary conviction is unlimited, the amount of the fixed penalty is limited to the equivalent of level 4 on the standard scale for summary offences, which is currently £2,500.

125. The Department has looked to other Acts of Parliament which contain similar powers to ensure that the power in paragraph 5(1) of Schedule 10 is broadly consistent with existing precedents. For example, section 53(1)(a) of the RTOA 1988 allows the Secretary of State to set, by order, the penalty for a fixed penalty offence. As a result of section 53(1)(b) of that Act, the fixed penalty for an offence is the lesser of (i) such amount as prescribed and (ii) one half of the maximum amount of the fine to which a person would be liable on summary conviction or an amount corresponding to level 4 on the standard scale where there is no such maximum fine. The limitation which paragraph 5(2) of Schedule 10 of the Bill provides to the power to prescribe the amount of a fixed penalty in paragraph 5(1) achieves a similar result to section 53(1)(b) of the RTOA 1988 in terms of the maximum amount of a fixed penalty. Although section 53(1) does not require secondary legislation to be made in order for a fixed penalty to apply, section 51(3) provides for the Secretary of State to provide for offences to become fixed penalty offences.

Justification for the procedure

126. The first time this power is exercised, the affirmative resolution procedure will be used. This ensures that there is an appropriate level of parliamentary scrutiny as the first use of this power will set a precedent in terms of the level of penalty the Department considers appropriate for each fixed penalty offence. The second and subsequent uses of the power to prescribe fixed penalty offences under paragraph 2(1) of Schedule 10 will be subject to the negative resolution procedure. It would be disproportionate to require the second and subsequent use of the power in paragraph 5(1) of Schedule 10 to be debated in Parliament, when the offence itself would be prescribed as a fixed penalty offence using the negative resolution procedure under paragraph 2(1) of Schedule 10. The subsequent use of the negative resolution procedure is broadly consistent with section 53(1)(a) of the RTOA 1988 as, by virtue of section 88 of that Act, an order made under section 53 is subject to the negative resolution procedure.

Schedule 10, paragraph 6 - Supplementary provision about (a) the form of and the information included in the fixed penalty notice, (b) consequences of providing false information, and (c) procedure following a fixed penalty notice.

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative resolution procedure when regulations contain provision amending or repealing provision contained in an Act of Parliament, otherwise negative resolution procedure.</i>

Context and purpose

127. Paragraph 6 of Schedule 10 allows for supplementary provision to be made with respect to FPNs. By virtue of paragraph 6(2), the powers set out in this paragraph may be used to amend or repeal provisions in an Act of Parliament.

128. Paragraph 6(1)(a) of Schedule 10: The information required to be included in an FPN is set out in paragraph 3(2) of Schedule 10. This includes the name and address of the person to be paid and the amount of the fixed penalty. Paragraph 6(1)(a) allows provision to be made in regulations about the form of, and information to be included in, FPNs.
129. Paragraph 6(1)(b) of Schedule 10: This paragraph allows the Secretary of State to make provision in regulations about the consequences of providing false statements about fixed penalty notices. This includes the possibility of creating criminal offences in relation to false statements.
130. Paragraph 6(1)(c) of Schedule 10: This provision gives the Secretary of State the power to make provision in regulations about the procedure after an FPN is given. This includes the possibility of making provision about appeals.

Justification for taking this power

131. The flexibility that secondary legislation provides is required in relation to the matters set out in paragraph 6(1)(a) of Schedule 10 to ensure that any requirements additional to those set out in paragraph 3(2) of that Schedule relating to the information that must be contained in an FPN can be provided for in secondary legislation. The power in paragraph 6(1)(a) could also be used, for instance, where an Act of Parliament makes general provision in relation to the form and information to be included in FPNs, which is not appropriate in the context of fixed penalty offences under the Bill. In such an instance, the power could be used to provide that such requirements should not apply to FPNs issued under the Bill. Powers to make provision for further information in relation to FPNs are also contained in other Acts of Parliament; for example, section 84(1)(a) of the RTOA 1988 enables the Secretary of State to make provision as to any information or further information to be provided in a fixed penalty notice under section 52(1) of that Act.
132. The power in paragraph 6(1)(b) is needed to ensure that provision can be made for the consequences of providing false statements in connection with FPNs. There are precedents in other Acts of Parliament for offences to be created through regulations, such as in section 54 of the Space Industry Act 2018 which enables regulations under that Act to create offences in addition to those contained in the Act itself.
133. The flexibility of secondary legislation in relation to paragraph 6(1)(c) ensures that any procedure which applies after an FPN in relation to unmanned aircraft offences has been given can be aligned with any future changes to wider policy on criminal justice and the use of FPNs. Any regulations made under paragraph 6(1)(c) would contain primarily technical and procedural detail, and the Department does not consider it necessary to include this level of detail in the Bill itself.

Justification for the procedure

134. The Department considers that the affirmative resolution procedure should be used for any regulations made under paragraph 6 of Schedule 10 which enable the Secretary of State to amend or repeal provision contained in an Act of Parliament – this procedure is established in Paragraph 3(d) of Clause 18 on Regulations. The affirmative procedure will allow Parliament to fully scrutinise any regulations to be made under these powers. This level of scrutiny is particularly necessary because the regulations may create criminal offences and make provision about the process around appeals, and there is therefore the potential for significant impact to the public, police and judicial system. Where Regulations made under Paragraph 6 of Schedule 10 do

not amend or repeal a provision contained in an Act of Parliament, the negative resolution procedure will apply.

Schedule 11, paragraph 1 - Amendments in consequence of an Air Navigation Order

Power conferred on: Her Majesty
Power exercised by: Order in Council
Parliamentary Procedure: Affirmative resolution procedure where the Air Navigation Order is making provision under paragraph 1(2)(b). Negative resolution procedure where the Air Navigation Order is making provision under paragraph 1(2)(a).

Context and purpose

135. ANOs are made under powers in section 60 CAA 1982, the most recent version currently in force being the ANO 2016 (as amended). The ANO 2016 is frequently updated to take account of changes to requirements at international level, improvements in technology and the safety and security threat landscape. To ensure that the powers in the Bill can be used in relation to new or amended provisions in the ANO 2016 or future ANOs made under section 60 CAA 1982, paragraph 1 of Schedule 11 contains a power to make amendments to Schedule 8 or section 13 and Schedule 9 of the Bill for a “relevant purpose” in consequence of an ANO.

136. The power to make amendments to Schedule 8 in an ANO is limited to how Schedule 8 relates to offences under an ANO, specifically permitting amendments to the definitions of “relevant ANO offence” and “relevant offence”.

137. “Relevant purpose” is defined in paragraph 1(2) of Schedule 11, and includes where an amendment is made to maintain the effect of a provision in the Bill which would otherwise no longer be effective, or where an amendment is made to extend a provision in the Bill to apply to an offence relating to unmanned aircraft under an ANO to which that provision does not already apply.

Justification for taking this power

138. As changes to ANOs are frequent, and often need to be made quickly to ensure that aircraft are used in a safe and secure way, it is appropriate that ANOs can be used to make consequential changes to the Bill. In relation to unmanned aircraft, there have been two recent updates to the ANO 2016: one in 2018¹³ which introduced registration and competency requirements in respect of flying SUA, a requirement to seek permission from the CAA to fly all SUA above 400ft as well as a flight restriction zone around protected aerodromes, and one in early 2019¹⁴ which extended the flight restriction zone around protected aerodromes.

139. In relation to the purpose set out in paragraph 1(2)(a), the power is necessary to ensure that any structural changes to the ANO 2016, for instance the renumbering of provisions in the ANO 2016, do not result in provision in Schedule 8 and section 13, Schedule 9 of the Bill becoming ineffective. This is essential to ensure that references to articles of the ANO 2016 in the Bill, for example those for a constable to require evidence or documentation in relation to competency testing and registration, can be amended to reflect such changes in the ANO 2016. Similarly, the power is required to ensure that provisions in Schedule 8 and section 13, Schedule 9 do not become

¹³ The Air Navigation (Amendment) Order 2018, S.I. 2018/623

¹⁴ The Air Navigation (Amendment) Order 2019, S.I. 2019/261

ineffective as a result of an entirely new ANO which reproduces provisions in the ANO 2016.

140. The second purpose is set out in paragraph 1(2)(b), which applies to a situation in which consequential amendments to the Bill are necessary to extend the powers in the Bill to further offences in the ANO 2016 (including any new offences added to the ANO or new offences in a new ANO). This ensures that, where it is necessary to enforce provisions in the ANO 2016, or any new ANO, the ANO itself can be used to extend the application of the relevant powers in the Bill to such an offence, ensuring that provisions in any ANO are enforceable from the moment they enter into force.

Justification for the procedure

141. ANOs are made by Her Majesty in Council. An ANO making consequential changes to the Bill will be subject to the affirmative resolution procedure if made for the purpose in paragraph 1(2)(b) in Schedule 11 of this Bill. This is appropriate to ensure that an ANO which extends provisions in Schedule 8 and section 13, Schedule 9 of the Bill to a further offence in the ANO 2016, or an offence in a new ANO, receives an appropriate level of parliamentary scrutiny. Consequential changes in relation to the purpose set out in paragraph 1(2)(a) can be made using the negative resolution procedure as amendments made for this purpose will only be maintaining the effect of the Bill. This approach is in accordance with the Parliamentary procedure applicable to ANOs, which is set out in the table in Part 2 of Schedule 13 of the CAA 1982.

Schedule 11, paragraph 3 - Regulations providing for criminal offences or civil penalties

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative resolution procedure in the case of 3(1)(a), negative resolution procedure in the case of 3(1)(b)</i>

Context and purpose

142. There are two EU Regulations relating to unmanned aircraft which came into force in July 2019. The Delegated Regulation (concerning product and manufacturing standards) became applicable on 1 July 2019 and is now subject to a three-year implementation period. The Implementing Regulation (concerning operational requirements for unmanned aircraft) will become applicable on 1 July 2020, and will be retained in domestic law when the UK leaves the EU with a deal before that date. The power conferred on the Secretary of State by paragraph 3(1) of Schedule 11 provides the power to make regulations for the creation of (a) criminal offences or (b) civil penalties regarding breaches of the requirements of the Delegated Regulation and the Implementing Regulation. Paragraph 3 also establishes specific limits for this power, including preventing the imposition of a civil penalty in excess of the amount of a fine at level 4 on the standard scale, and makes provision for appeals in the case of the imposition of civil penalties.

Justification for taking this power

143. The power at paragraph 3 of Schedule 11 is necessary in order for the Delegated Regulation and Implementing Regulation to operate effectively in the UK after EU Exit. This requires the ability to make criminal offences and civil penalties regarding breaches of these regulations. As it will be necessary to create both criminal offences and civil penalties, the single power contained in paragraph 3 is the most efficient

vehicle, as an Air Navigation Order could not be used to create civil penalties. Moreover, paragraph 3 limits the power conferred on the Secretary of State by prohibiting the creation of offences triable only on indictment, and by imposing limits on the terms of imprisonment and the amount of the fines that can be imposed.

Justification for the procedure

144. The Department considers that the affirmative resolution procedure should be used for any regulations made under paragraph 3(1)(a) of Schedule 11. This will allow Parliament to fully scrutinise any regulations to be made under these powers which can be used to make criminal offences. As these regulations could have a significant impact to the public, police and judicial system, greater parliamentary scrutiny is necessary.

145. For the creation of civil penalties in paragraph 3(1)(b), the Department considers the negative resolution procedure should be used, because the amount of the civil penalties that can be created is already limited by the Bill, and the Bill sets out the requirement for a comprehensive appeals process in relation to civil penalties in Schedule 11 at paragraphs 3(5) to 3(7).

Schedule 11, paragraph 4 – Amendments in consequence of regulations under paragraph 3

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative resolution procedure when regulations are made for the purpose set out in paragraph 4(2)(b), negative resolution procedure when regulations are made for the purpose set out in paragraph 4(2)(a).</i>

Context and purpose

146. Paragraph 4 of Schedule 11 enables the Secretary of State to amend the Bill once it has Royal Assent and is an Act, such that it is possible to reference criminal offences and civil penalties made by regulations under paragraph 3 of Schedule 11, and the requirements to which they apply, throughout Schedules 8 and 9, and section 13, of the Bill. Any such amendments would also ensure that the requirements and their related criminal offences or civil penalties can be enforced in UK law. Paragraph 4 of Schedule 11 therefore operates in a similar manner to the power at paragraph 1 of Schedule 11 (which expands the kind of provision that may be made by an Air Navigation Order in consequence of an Air Navigation Order making provision with regard to offences and penalties).

Justification for taking this power

147. This power is necessary in order to enable the offences and penalties created by regulations made under the power conferred by paragraph 3 of Schedule 11 to be enforced using the police powers created by section 13 of, and Schedules 8 and 9 to, the Bill. This will ensure that any offences and penalties relating to the product requirements of the Delegated Regulation and the operational requirements of the Implementing Regulation (including, for example, the requirement for unmanned aircraft operators to obtain operational authorisations and to obey restrictions applying to specified geographical zones) can be properly enforced in domestic law. This enables the use of certain powers, such as the stop and search powers and the powers to authorise the use of counter-unmanned aircraft technology in Schedule 8, or the

power to inspect an unmanned aircraft in Schedule 9, to enforce the product and operational standards that UK unmanned aircraft operators and remote pilots, and the unmanned aircraft industry, will be required to follow under the terms of the Implementing and Delegated Acts.

Justification for the procedure

148. The Department considers the affirmative resolution procedure to be appropriate for Regulations which make consequential changes to the Bill for the purpose in paragraph 4(2)(b) of Schedule 11. This procedure is established by paragraph 3(f) of clause 18 on Regulations. The affirmative procedure is necessary to ensure that Regulations which extend provisions in Schedule 8, section 12, and Schedule 9 to the Bill to a new criminal offence receive an appropriate level of Parliamentary scrutiny due to the potential impact on the public, police, and judicial system. In the case of consequential changes to the Bill for the purpose set out in paragraph 4(2)(a), the Department considers the negative resolution procedure to be the most appropriate method. This is because amendments made for this purpose will only be maintaining the effect of the Bill.

C4. Part 4: General

Clause 20, subsections (3) and (5) – regulations to appoint the day on which this Bill comes into force (subject to subsections 1 and 2), and regulations to make transitional, transitory or saving provision in connection with the coming into force of a provision of the Bill

Power conferred on: Secretary of State
Power exercised by: Regulations made by statutory instrument
Parliamentary Procedure: None

Context and purpose

149. Clause 20 makes provision for the coming into force of the Bill. The clause makes specific provision for the coming into force of certain provisions of the Bill. However, regulations are required for Schedule 8 and Schedule 10 (for purposes other than making regulations) to come into force.

Justification for taking this power

150. For provisions in Schedules 8 and 10 of the Bill to be effective, it is necessary to exercise some of the delegated powers provided for in the Bill, such as the power in paragraph 5(11) of Schedule 8 for the Secretary of State to amend new subsection (4A) of the Police Act 1997 to add or remove offences, and paragraph 2(1) of Schedule 10 for the Secretary of State to prescribe offences as fixed penalty offences for the purposes of the Bill. As the exact dates by which these powers will have been exercised is not yet known, it is necessary to provide for the coming to force of Schedules 8 and 10 (other than for the purpose of making regulations) by regulations using the power in subsection (3) of clause 20. The power in subsection (5) of clause 20 ensures that transitional, transitory or saving provision can be made in connection with the coming into force of a provision of the Bill.

Justification for the procedure

151. As any regulations under the powers in subsections (3) and (5) of clause 20 are limited to making provision in connection with the coming into force of the Bill, the Department does not consider a Parliamentary procedure to be required.