



House of Commons
Transport Committee

Flight time limitations: Government Response to the Committee's First Report of Session 2012–13

**Fifth Special Report of Session 2012–
13**

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The Transport Committee

The Transport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Transport and its Associate Public Bodies.

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/transcom>. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Mark Egan (Clerk), Jessica Montgomery (Second Clerk), David G Davies (Senior Committee Specialist), Tony Catinella (Senior Committee Assistant), Adrian Hitchins (Committee Assistant), Stewart McIlvenna (Committee Support Assistant) and Hannah Pearce (Media Officer).

Contacts

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Fourth Special Report

On 13 August 2012 we received a response from the Government to the Transport Committee's First Report of 2012–13, Flight time limitations¹, which we publish with this Special Report

Government Response

Introduction

This paper sets out the Government response to the Committee's Inquiry Report into Flight Time Limitations, published on 30 May 2010.

The Government welcomes the Committee's interest in this subject.

This response incorporates contributions provided by the Civil Aviation Authority (CAA). In each case the Committee's recommendation is reproduced followed by the Government's response.

General

The Government believes that the current draft of the European Aviation Safety Agency's (EASA) proposals will not lead to a diminution of safety in the UK. The proposals are more conservative than current EU rules which were introduced in 2008 and will result in a significant improvement in safety across the EU as a whole.

The proposals are also more restrictive in some areas than the rules set by the US Federal Aviation Administration and as a package provide a similar level of safety. It is also worth noting that some other Member States believe that the proposals are too restrictive in some areas.

Managing fatigue

Recommendation 1. The Government should seek further information on the operator responsibilities proposed by EASA. Additional oversight by the CAA of scheduling practices is welcome, but this new role requires clarification. We recommend that the CAA sets out its strategy for enforcement and how it will ensure that operators comply with the responsibility not to construct fatiguing rotas.

The Government welcomes the new operator responsibility requirements contained in the EASA proposals. We believe that this additional responsibility will ensure that airline operators take steps actively to manage and reduce fatigue, rather than simply relying upon remaining within the established limits. It will also significantly enhance the regulatory tools available to the CAA, enabling it to address issues such as inappropriate rostering which, while within the limits, could lead to fatigue. These proposals are in line with wider

requirements for safety management systems in the civil aviation industry introduced by the International Civil Aviation Organisation.

The Government agrees that a clear enforcement strategy is an essential element of any regulator's oversight responsibilities. The EU is in the process of adopting legislation which will establish implementing rules covering the enforcement capabilities and responsibilities of national aviation authorities responsible for ensuring aircraft operators' compliance with all safety critical regulations. This includes the competency to evaluate an operator's Safety Management System to ensure that all hazards to the operation have been identified and assessed. The CAA recognises the importance of ensuring that the operator responsibilities element of the proposals is specifically incorporated into its oversight of an operator's Safety Management System and will train its staff accordingly. The CAA also recognises the impact that fatigue can have on all aviation personnel and has therefore included the management of fatigue as a Key Capability area within the CAA's Safety Plan.

The CAA has recognised that it will need to develop clear guidance on the specific responsibilities in relation to the management of fatigue as this is a new requirement introduced by the implementing rules. The guidance will include details of what an operator will need to do to meet the requirements of the "Operator Responsibilities", and what a crew member will need to do to meet the "Crew Member Responsibilities". Training and guidance will also be developed for the CAA's inspecting staff with regard to the specific fatigue hazards and their management in order to meet the requirements.

The CAA established a multi-stakeholder advisory group at the end of 2011 to assist them in the development of guidance material (GM) for the requirements. EASA also recognise that further GM will be required but has given priority to the development of the Implementing Rules. The CAA will continue to work with EASA on this to ensure that comprehensive guidance material is established. Once the proposals have been finalised, the CAA will also be holding seminars on the introduction of the new regulations, the implementation process and the operator and individual's responsibilities.

Recommendation 2. We recommend that the Government follows up the CAA's concerns about the frequency with which the maximum flight duty period can be exceeded during a scheduled seasonal period. The Government should seek to restrict this limit during EU discussions on this matter.

It is worth the Committee noting that currently the UK has no limit in relation to the maximum flight duty periods that can be exceeded during a scheduled seasonal period. Routine oversight by the CAA has been effective in analysing trends and addressing any excessive use of discretion, either within an airline or on a route specific basis. The CAA has already produced guidance on the use of discretion and will also be looking to re-enforce this message with revised guidance to operators.

However, the Government believes the proposals which will introduce a limit on the percentage of flights where discretion can be used to extend flight duty periods (FDPs) could help increase safety, and acknowledges the desirability of a stricter limit than that proposed. We will raise this issue during EU discussions on this matter. The Government is confident that this can be controlled by the CAA as operators are required to ensure that schedules are realistically planned so that flights are completed within the allowable FDP.

In addition, regardless of any finally agreed limit, the CAA will require operators to demonstrate active management of the programmed FDP to ensure compliance with their responsibilities.

Flight time limitations

Recommendation 3. We recommend that the CAA publish the number of incidents involving fatigue in its annual report so that trends can be tracked. We also call on the CAA to investigate potential under-reporting of pilot fatigue so that we and the travelling public can gain assurance that the scale of the problem is properly recognised and is being effectively dealt with.

The Government is clear that the primary purpose of occurrence and incident reporting is the prevention of future incidents and accidents. The Government is very strongly committed to improving transparency of reporting between operators and regulators. In considering whether to disseminate that information more widely, the CAA will need to ensure that this does not jeopardise the free and open reporting of information from crew members and operators to regulators. It will also need to consider how useful that data would be in informing decisions by the wider public in the absence of technical knowledge and expertise needed to interpret it. The CAA will review what information can be published without compromising the integrity of the reporting systems, and how best it can be presented to ensure it is intelligible to the public and, will not, out of context, risk misleading them. The CAA already publishes reports based on the analysis of incidents which fall within the mandatory occurrence reporting requirements. As required by law the source of all data in such publications is not identified.

The Government accepts the recommendation to investigate the potential under-reporting of pilot fatigue and notes that this is already under consideration by the CAA. Open reporting of all safety occurrences is fundamental to safety management and is considered to be a cornerstone of the success of any safety management system. Encouraging the open reporting of fatigue related incidents will be vigorously pursued by the CAA to improve the quality of data available for analysis.

Recommendation 4. The CAA has previously expressed reservations about the proposed flight duty period at night. The scientific advice given to EASA has been clear in recommending that an 11 hour flight duty period at night is too long and should be limited to 10 hours. In our view this advice should be adhered to. We recommend that the Government press EASA for a lower limit for flight duty periods at night in accordance with the scientific evidence on this matter.

The EASA proposals in this area are more protective than the current UK requirements as the limit commences earlier in the evening and provides extended recovery time for crew who operate schedules which disrupt their circadian rhythms. The rationale for this aspect of the proposals is based on the combination of scientific modelling and opinion and operational experience. The specific provisions for 11 hour night FDPs are broadly consistent with current UK provisions which permit a standard planning limit of 10 hours 15 minutes for two sectors and 11 hours 15 minutes when using an operator extension. For these reasons the Government is not planning to seek further changes to the night time flight duty period limit proposed by EASA.

Scientific research involving QinetiQ and the CAA also shows that some extension to the UK's current standard planning limits would be possible without compromising safety. The CAA is working with an operator who has been trialling 11 hour FDP limits for single sector operations with two pilots over a period of years. While this research has yet to be completed, the interim results suggest strongly that these duties can be safely achieved and have been presented by the operator at two international conferences.

We recognise the fatigue that can be caused by overnight duties, especially if the impact of surrounding duties is not properly considered. Therefore, we believe that these duties would benefit from additional specific fatigue management requirements beyond those specified in the operator's responsibilities. This view is in line with scientific opinion and CAA research which show that long duties overnight can be safely achieved where they are well managed. We have therefore proposed additional requirements on the management of long overnight FDPs in relation to the duties and rest periods that surround them. We understand that EASA has accepted these amendments and that additional requirements will be included in the final draft of the implementing rules.

Recommendation 5. We recommend that the reporting period for incidences of commander's discretion should not be extended beyond that currently set by the CAA in order to increase the likelihood and accuracy of such reports.

The Government agrees with the Committee that fourteen days is a reasonable timeframe for reporting the extension of flight duty periods to the aviation authorities. This should not create a burden on industry as the majority of current discretion reporting is through the voyage report that is completed on the day of the flight. The CAA has raised this issue in its response to the Comment Response Document. The length of the reporting period will not affect the likelihood of completion or the accuracy of the reports, as this is a mandatory requirement. However prompt reporting is important in relation to the accurate identification of trends and any issues surrounding those trends. The review of discretion reporting is part of any routine regulatory oversight and the CAA will be able to use this to identify any failure to accurately report the use of commander's discretion and take appropriate action.

Recommendation 6. We recommend that the CAA collate the information provided on the use of commander's discretion, make this publicly available and monitor that this power is used only in exceptional circumstances.

The EASA proposals in this area are an improvement on the UK's current requirements as they require operators to change flight duty periods that regularly exceed the planning limits. The CAA will continue to work with operators to analyse and address any adverse trends in the use of discretion. The CAA's view is that this, combined with the application of all the elements within the operator's responsibilities, will have a significant impact in limiting the use of discretion arising from any unrealistic scheduling and, in turn, on fatigue management within an airline.

Under both the current UK requirements and the EASA proposals Commander's discretion can only be used after the Commander has assessed that it is safe to continue the flight. The use of discretion has to be reported to the operator, who has to review the information and identify any trends. Reviews of the reports and any trends form part of

the CAA's routine oversight of an operator. Where issues are identified these are addressed directly with the operator.

The Government's overriding concern in safety reporting systems is in the preventing of future accidents and incidents. The use of Commander's discretion is not a safety issue but a standard element of the operator's Flight Time Limitation Scheme. Understanding the reasons for the use of discretion is essential and this relies on an open reporting system. Commanders need confidence that they can report the use of discretion without fear of the possibility of punitive action from their employers. Consequently, the EASA proposals require that operators' systems for reporting discretion must be free of any disciplinary or punitive element to ensure free and open reporting. The Government does not believe the publication of a single figure on discretion usage or even an operator's average discretion usage would provide any safety benefit. Nor would such information be sufficient to provide an understanding of what was happening within an operator or the industry in the UK as a whole. The Government believes this information would be of limited use without interpretation and contextualisation by the CAA.

There are a number of areas within the aviation safety regulations, outside of flight time limitations, where discretion or extensions are permitted under managed circumstances whilst still maintaining high levels of safety. The CAA does not currently publish this data but manages it through regulation and oversight.

The CAA will review what information can be published without compromising the integrity of the reporting systems, and how best it can be presented to ensure it is intelligible to the public and, will not, out of context, risk misleading them. As stated in paragraph 14, the CAA already publishes reports based on the analysis of incidents which fall within the mandatory occurrence reporting requirements. As required by law the source of all data in such publications is not identified.

Recommendation 7. Schedules featuring frequent consecutive early starts could prove particularly fatiguing. In order to gain greater understanding of how these should be managed, we recommend that the CAA commissions further research in this area. In the meantime, the Government should press for EASA to include frequent early starts as a factor requiring a fatigue risk management strategy.

The proposed new requirements on operator responsibilities will require that FDPs which fall into the early duty definition are actively monitored and managed. The CAA will include this in the guidance that is currently being developed with regard to the operator's responsibilities.

The CAA reviews data on the effects of frequent early starts on crew as part of its ongoing monitoring of UK airlines. While the Government supports further formal research into fatigue within the aviation industry it believes that this should be commissioned by EASA in order to provide a wider pan-European perspective. EASA has already stated that it is reviewing a number of areas of possible research in this field. The CAA intends to continue to play a key role in supporting EASA's work.

Recommendation 8. We recommend that any overall duty period which reaches the maximum limit possible under the regulations should be reported to the CAA. The CAA should keep records of such incidents and take action against any operators that

schedule duties in this way. The Government should press EASA to amend its proposals to give national aviation authorities the power to monitor the length of flight duties and to ensure that any duties of this length are indeed exceptional, with a view to reducing the maximum flight duty period in line with scientific advice.

All flights that reach the maximum limit permitted under the proposals will need to be reported to national aviation authorities as they would involve the use of Commander's discretion.

New EU implementing rules governing the oversight of operators which will come into force later this year will give national aviation authorities both the power and the responsibility to monitor all aspects of the application and performance of any flight time limitation. The Government believes that these rules will fully address the Committee's concern on the issue of oversight.

The Government shares the Committee's concerns about the length of the duty that is theoretically possible. The CAA has proposed amendments to EASA to manage more effectively this element of the implementing rules. We understand that EASA will review this area, taking into account the CAA's proposals. We expect that EASA will include another limitation in the final draft of the implementing rules which will limit the combination of standby and flight duty periods to a maximum of 16 hours.

Use of evidence

Recommendation 9. Given the terms of reference for the work involved in revising flight time limitations, we would have expected scientific advice to have had a more prominent role in the rule-making process. The addition of the three independent scientific reports was encouraging but the lack of further engagement with those scientists is hard to understand. The Government should seek to ensure that scientists have a more central role in further work by EASA as it finalises its flight time limitations proposals and if it considers revisions to these proposals in future. The Government should encourage EASA to cultivate an ongoing relationship with experts in this field to keep up to date with developments in the science of fatigue and fatigue management.

The Government agrees that EASA rule-making should be informed by the best available evidence. Scientific information is one element of the development of these regulations and over fifty scientific reports were reviewed during the rulemaking task, as well as the direct input from the three scientific reports. Due consideration also needs to be given to the full range of other evidence available, including that arising from operational experience, in order to deliver a balanced and robust regulatory regime.

The CAA has proposed to EASA that it maintains an advisory group on the application and development of the regulations. We expect that this group would be able to call upon relevant experts, including scientists, to discuss developments in fatigue and fatigue management. As part of this, the CAA will also encourage EASA to take advice from ICAO and National Aviation Authorities with regard to the development of fatigue management regulations and operational oversight techniques.

Conclusion

Recommendation 10. We recommend that the Government keep us informed of developments during negotiations and of how our concerns are being addressed during future discussions on EASA's proposals in Europe.

The Government would be happy to keep the Committee informed of developments during negotiations on the Commission Regulation adopting the implementing rules on flight time limitations. In the light of the extensive consultation that EASA has undertaken on the proposals it is likely that such negotiations will be completed relatively soon after the Commission publishes its legislative proposal.