Dear David,

Thank you for participating in the Second Reading debate on the Air Traffic Management and Unmanned Aircraft Bill. I thoroughly enjoyed listening to your thoughtful contributions. At the end of the debate, I promised to follow up on many of your points, and I thought it would be useful to respond to the main themes that were raised.

Purpose of the Bill

The Bill intends to give government powers to direct those involved in airspace change to progress or co-operate in an airspace change proposal, to modernise the licensing framework for en-route air traffic control, and to introduce new police powers to tackle the misuse of unmanned aircraft.

I will now go on to the main themes of the debate, starting with Airspace Change.

Airspace Change Proposals (ACPs)

Airspace Change Proposals (ACPs) seek permission to alter how an area of airspace is used or controlled. Changes to the design of UK airspace are proposed by an airspace change sponsor, usually an airport or a provider of air navigation services (including air traffic control). The CAA requires the change sponsor to follow their airspace change process, this is known as CAP1616. CAP1616 is a wholly transparent seven-stage airspace change process, with the progress of every proposal being published on the CAA’s website.
If you would like more information on Airspace and the CAP1616 process, I am holding an All Peers briefing session in **Committee Room G** on **Tuesday 4th February 1500 – 1600**. Please let my office know if you would like to attend by emailing **Baroness.Vere_PUSS@dft.gov.uk**.

**Cost of Airspace Change Proposals**

The question about who would pay for airspace change was raised. The costs are met by industry. It is a long-standing policy that air passengers should fund the cost of their travel, including the costs of changes to airspace structure, rather than this being subsidised by the general taxpayer. Funding mechanisms exist to deliver this; however, the government does recognise that there may be occasions where a small airport requires financial assistance to carry out some aspects of an airspace change proposal.

**Proportionality**

Some Noble Lords raised the issue of proportionality in regard to the airspace change powers in the Bill. The powers could only be used in relation to ACPs that would assist in the delivery of the CAA’s airspace strategy. It is the government’s intention that, at least initially, the powers to direct in clauses 2 and 3 would only be used by the Secretary of State in relation to ACPs that have been identified within the airspace change masterplan, currently being developed by NERL through the Airspace Change Organisation Group (ACOG) with a view to incorporation of the masterplan into the CAA’s airspace strategy. The powers to direct in relation to ACPs in the Bill could be used if there is a failure by an airport to initiate an ACP identified as necessary in the masterplan, or if there is a failure to adhere to the proposed timeline for a necessary ACP that results in the overall masterplan delivery being at risk of delay.

The powers are only intended to be used as a last resort if airspace changes are not taken forward voluntarily or at the requisite pace. We expect the CAA’s oversight team to work with the airport operator (or other person involved in airspace change) before recommending that the Secretary of State uses the powers. Where technical issues arise, or something exceptional, unforeseeable and outside the airport’s control occurs, our preference would be for the CAA’s oversight team to assist in resolving any issues with delivery rather than for the powers to be used.

We do not intend for the powers to be used where delays are due to factors outside of the sponsor’s control. If a direction was given for other reasons and this led to an enforcement order and penalty being issued, the CAA would have to have regard to the requirement of proportionality when issuing a penalty, in accordance with its statutory duties, better regulation agenda and the Hampton/Macrory principles of better enforcement. The Bill also requires
the Secretary of State to consult with the airport operator (or other person involved in airspace change) before exercising the new direction-making powers in relation to ACPs.

Appeals

A directed person is able to appeal to the Competition Appeals Tribunal (CAT) against a decision to give or vary a direction, or against a penalty for contravention of an enforcement order or modification of an enforcement order. While the appeal is being considered by the CAT, the direction or variation (or the enforcement order or modification of this) is suspended ie an enforcement order and penalty for non-compliance cannot be issued until the CAT has considered the case and either the appeal is decided or withdrawn. If the directed person is not content with the CAT's decision, they can further appeal this to the Court of Appeal (or if in Scotland, the Court of Session).

There is no formal appeals process against a CAA decision relating to individual ACPs. CAP1616 is a fully transparent process in which consultation and engagement exercises are run throughout.

There is a Post Implementation Review (PIR) at stage 7 of the CAP1616 process. The PIR provides an opportunity to consider in detail how the airspace change has worked in practice. This review will include consideration of how it has impacted other airspace users as well as the environment. The PIR is not, however, a review of the original CAA decision.

It is worth noting however, that ACPs can be challenged through an application to the High Court for judicial review.

The CAT is considered to be an appropriate body to hear appeals relating to the new direction-making powers, as the CAT already hears appeals relating to aviation competition matters as provided for in the Civil Aviation Act 2012, and therefore has existing knowledge and expertise.

CAA Resourcing

The CAA covers the cost of its regulatory activity, including its decision-making responsibility for airspace change, through charges on the industry. These charges are set, following consultation with industry, on an annual basis. DfT has provided the CAA with additional suitable resource to set up and staff a new airspace modernisation Delivery Monitoring and Oversight team (DMO); progress the airspace classification review and reform project; develop internal process to enable administration of Government funds for electronic conspicuity equipage; and to progress Instrument Flight Procedure (IFP) approvals.
DfT has also provided additional administrative funding for CAA to help it establish the Global Navigation Satellite Systems (GNSS) facilitation team to support aerodromes in bringing forward ACPs for GNSS approaches without approach control and mitigate the backlog of such proposals that has developed.

**Reclassification of Airspace**

Some noble Lords raised the issue of reclassification of airspace. In October 2019, the Transport Secretary amended the Civil Aviation Authority (Air Navigation) Directions 2017 which gave the CAA additional roles in airspace classification, this review is part of the CAA’s response to those directions. The objective of the Airspace Classification Review is to create a long-term framework that facilitates better access to airspace.

The CAA have now launched their consultation and have run four stakeholder engagement exercises throughout January. The consultation will close in March 2020.

I will now move on to the themes raised during the debate in relation to the unmanned aircraft provisions in the Bill.

**Fixed Penalty Notices (FPNs)**

Many Lords raised the issue of Fixed Penalty Notices, and identified the need for the Bill to be clear when a minor offence becomes a serious offence. FPNs provide an alternative, immediate and proportionate deterrent for situations where a person breaks the law, possibly unintentionally, without serious consequences. Using FPNs will reduce the burden on the courts and police because a person who is issued one, and pays it within the required time frame, will not be subject to the court process and associated costs that are incurred when the usual penalty is used. It is also important to note that only offenders over the age of 18 will be able to be issued with an FPN.

**The differentiation between large and small offences**

It is the Government’s intention that FPNs will be available to use for minor offences only. The Department has developed a list of situations where issuing an FPN would not be appropriate; for example, where a person has endangered any other aircraft or where a person has caused harm, harassment, alarm or distress. These are reflected in the conditions for issuing an FPN, which are set out in paragraph 1 of Schedule 10 to the Bill. This will ensure that where a serious offence has been committed (i.e. where an aircraft has been endangered), an FPN would not be issued and prosecution through the courts would take place instead. The constable can make a judgement that, even where the conditions set out in the Bill are
fulfilled, the normal route of prosecution remains more appropriate in the circumstances.

Examples of the instances a fixed penalty notice would be given

Whilst the Bill provides the power to constables to issue FPNs for unmanned aircraft offences, future secondary legislation will prescribe which offences are fixed penalty offences. Taking into account the conditions for issuing an FPN that are set out in the Bill, it is likely that the offences that will be prescribed will include offences such as not grounding an unmanned aircraft at the request of a constable and not allowing a constable to inspect an unmanned aircraft. Existing offences in the Air Navigation Order 2016 are also being considered, such as flying too close to people, vessels, vehicles or structures.

Age restrictions

Unmanned aircraft are flown by a wide range of people, including minors. Age is not necessarily an indicator of competence and the Government does not want to restrict minors from piloting unmanned aircraft, particularly as early use of technology can build vital skills for later life, as well as introducing young people to careers in Science, Technology, Engineering and Mathematics (STEM) fields. Remote pilots of any age can therefore fly small unmanned aircraft (SUA), provided they have met the competency requirements under the Air Navigation Order 2016, either by passing the online test which is part of the CAA’s Drone and Model Aircraft Registration and Education Service (DMARES) if flying an aircraft from 250g up to 20kg, or by holding another form of competency recognised by the CAA.

However, as set out in the Government’s response to the consultation on Taking Flight: The Future of Drones in the UK, there are additional legal responsibilities involved in the role of the unmanned aircraft operator therefore the minimum age to be legally able to register with the CAA as an operator is 18. Neither the position on operators, nor the position on remote pilots is changed as a result of this Bill. If any changes were to be made, this would need to be done through amending the Air Navigation Order 2016, which sets out the current requirements.

Alcohol testing

Ensuring that all aircraft, whether manned or unmanned, are flown safely is a top priority for Government. It is already a requirement under article 94(2) of the Air Navigation Oder 2016 that the remote pilot of a small unmanned aircraft may only fly the aircraft if reasonably satisfied that the flight can safely be made. However, the Government does keep the Air Navigation Order 2016 under ongoing review. If the Government did consider it necessary to
make provision in legislation regarding alcohol testing for those flying unmanned aircraft, this would be done by amending the Air Navigation Order 2016 rather than through this Bill.

The Police Act 1997 Amendment

I know many noble Lords recognise that offences involving the misuse of unmanned aircraft can have potentially very serious consequences. However, in reality, some offences involving the use of unmanned aircraft have not resulted in a custodial sentence of 3 years or more (despite the offences in question having a statutory maximum sentence higher than 3 years). An example of this is where an individual conveying List A items (drugs, explosives, firearms and ammunition and any other offensive weapon) could receive a sentence of up to 10 years, but in practice has seen sentences under 3 years.

Other offences, such as those under the Prison Act 1952 which relate to the conveying of articles into prisons, have maximum sentences of less than 3 years. Some noble Lords acknowledge that as a result, unmanned aircraft may therefore be used to commit offences that would not constitute a serious crime under the existing definition in section 93(4) of the Police Act 1997 but which can nonetheless have serious consequences.

As such, the Government is ensuring that by adding this additional limb, public authorities are able to lawfully deploy technologies to counter the threat posed by unmanned aircraft where they are used to commit offences that would not constitute a serious crime under the existing definition, but could still have serious consequences.

When considering the proportionality of this amendment, significant consideration was given to the harm and disruption that could be caused by offences committed using unmanned aircraft, which did not constitute a "serious crime" as defined in section 93 of the Police Act 1997. It was agreed that this amendment is needed in order to enable public authorities to deploy technology to counter this threat. The Government do not consider that this in any way takes away from the serious consequences that the misuse of unmanned aircraft can have, but rather, seeks to counter that threat, taking account of reality around sentencing provisions.

Examples of offences that can be committed using unmanned aircraft that have a sentence of less than three years:

- Conveying of List B articles (alcohol, mobile telephones, cameras, sound recording devices) (Maximum penalty 12 months imprisonment)
Conveying of List C articles (tobacco, money, clothing, food, drink, letters, paper, books, tools, information technology equipment) (Maximum penalty is a fine)

• Throwing articles or substances into prisons (the offence does not apply where the article is a List A, B or C item, as it is already an offence) (Maximum penalty 6 months imprisonment)

• Transmitting or conveying information into prisons (maximum penalty 2 years imprisonment)

Police resourcing

Many noble Lords raised the issue of police resourcing. Government, primarily through the Home Office, are working closely with the Police to ensure they have access to the people, technology and powers needed to combat the threat of malicious drone use. Alongside the publication of the Counter Unmanned Aircraft Strategy in 2019, the Home Office provided new funding to the police to support this. The Unmanned Aircraft elements of this Bill are critical to providing the powers the Police need to protect the UK public and our critical national infrastructure. The development of new training and guidance to support police officers’ is already underway, and includes:

• Improved reporting and recording of drone offences
• Updates to the College of Policing guidance
• Specific guidance, in particular on implementing this Bill
• New tactical advisors (or subject matter experts) to support officers’ decision making across the UK.

The Police have provided regular input into the development of this Bill and provide operational advice on how it can most effectively be implemented.

Thank you once again for taking an interest in this Bill. I hope the above is helpful. I am copying this letter to all Lords who participated in the Second Reading debate, and I am placing a copy of this letter in the libraries of both Houses.

Yours,

Charlotte

BARONESS VERE OF NORBITON