4 February 2020

My Lords,

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 4 February 1500 – 1600. Please let my office know if you would like to attend by emailing Baroness.Vere_PUSS@dtf.gov.uk.
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penalty for non-compliance cannot be issued until the CAT has considered the case and either the appeal is decided or withdrawn.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 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.
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 Order 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.
• 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