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21 January 2022

Dear Denis,

Thank you for your contributions in the Grand Committee debate on the Air Traffic Management and Unmanned Aircraft Act 2021 (Airspace Change Directions) (Determination of Turnover for Penalties) Regulations 2022. I promised to write to you about the points you raised during the debate, regarding the formula for calculating turnover and why this was not included in the original Air Traffic Management and Unmanned Aircraft (ATMUA) Act.

### **Formula for calculating turnover**

You wished for me to clarify how the formula for calculating turnover was determined.

A person's turnover is determined with reference to the sum of all amounts received in the course of their business, as shown in their published accounts. If the person has not published accounts, the accounts *prepared by* that person will be used.

Turnover includes grants from public or local authorities, but excludes capital receipts and loans made by a third party. The annual turnover considered is for the most recent business year, ending on or before the last day of the period specified in the enforcement order for complying with the requirement, the contravention of which is subject to the penalty. Where there is no preceding business year, then turnover from the 12 month period ending on the compliance date in the enforcement order is used.

Only one year of turnover is used in the calculation of penalties; the use of the 12-month period is in line with the Civil Aviation Act 2012, and Part 2 of the Transport Act 2000, which both specify calculations based on the "last regulatory year". We are using the same period here to ensure consistency of regulation across the aviation and wider sectors.

The ATMUA Act sets out that a maximum penalty of 10% of annual turnover (fixed amount) and/or 0.1% of annual turnover (daily amount) can apply. This is generally a standard maximum penalty across all regulators, except the Financial Conduct Authority which can issue unlimited fines.

When considering what maximum rates of penalty should be set out in the legislation, Department for Transport (DfT) officials also looked at legislation and policy across the aviation sector, other Government Departments and at UK regulators, to ensure that any limit was consistent.

Within aviation, the Civil Aviation Act 2012 (economic regulation of airports) and Transport Act 2000 (regulation of NERL) set out the same 0.1% and 10% limits. On 8 December 2021 the CAA published their Enforcement Guidance and a Draft Statement of Policy on Penalties Document, which can be found [here](#). This document was required under paragraph 11 of Schedule 2 to the ATMUA Act and includes a draft framework for how the CAA will make decisions regarding the level and type of penalty that is considered appropriate and proportionate. The CAA are currently consulting with the public on the Statement of Policy on Penalties until 2 March 2022, the consultation can be found [here](#).

When looking outside of the CAA and DfT, officials considered other regulators and Government departments, and identified that there were precedents for a 10% limit for similar levels of breaches and penalties.

The Competition and Markets Authority (CMA) has the power to apply and enforce the Competition Act 1998 (CA98). These powers may be exercised concurrently with certain regulators, including the CAA.”. CA98 also sets out a maximum 10% limit.

Part 1 of ATMUA therefore uses the 0.1% and 10% rates to ensure consistency of regulation across the aviation sector, and to mitigate any possible disproportionality within aviation and other sectors when considering similar levels of breaches.

### **Why the formula was not originally included in the ATMUA Act**

As you may remember, the ATMUA Act itself conferred the power onto the Secretary of State to make regulations to setting out how a person’s turnover would be calculated, for the purposes determining the amount level of penalty. The approach taken in the ATMUA Act to the enforcement of the new direction powers accords with regulatory best practice and is broadly similar to the regime available to the CAA in relation to the regulation of operators of dominant airports under the Civil Aviation Act 2012. This approach is also taken in other primary legislation, see for example section 105(4) of the Health and Social Care Act 2012.

The power was required because the meaning of ‘turnover’ may need to be customised for different cases in which a person involved in airspace change is served with a penalty.

Turnover based penalties will help to ensure that the penalty imposed is proportionate and effective in relation to the body being sanctioned. In the event of a fixed penalty approach, a penalty may be ineffective or meaningless against, for example a large airport operator or an Air Navigation Service Provider (ANSP), while being overly disproportionate in relation to a much smaller airport operator or an ANSP.

Government considers that the threat of a financial penalty would act as an appropriate deterrent to non-compliance with a given direction, and therefore helps ensure that the airspace modernisation programme can be delivered. This enforcement regime is necessary to ensure that directions given using the new powers (if the powers do need to be used) could be enforced if necessary.

The Delegated Powers and Regulatory Reform Committee reported on the powers within the Act in January 2020, after the ATMUA Act had been introduced to Parliament, and were content.

It’s important to highlight that our intention is the Direction making powers in the ATMUA Act will be a last resort and will only be used where directions can be practicably carried out. Before any Direction is made, consultation will take place as required by the ATMUA Act and the CAA’s Airspace Modernisation Oversight team will seek to help sponsors in finding solutions where there are difficulties to overcome, before the need for a penalty arises.

I hope this information is helpful and I thank you again for taking an interest in this statutory instrument. I am copying this letter to all Noble Lords who participated in the Grand Committee debate and I will place a copy in the Library of the House.

*Yours,  
Charlotte*

**BARONESS VERE OF NORBITON**