

**CIVIL AVIATION BILL
MEMORANDUM FROM THE SCOTTISH EXECUTIVE**

Motion

1. The motion to be put to Parliament is:

Civil Aviation Bill: “That the Parliament agrees that the provisions in the Civil Aviation Bill, so far as they confer functions on the Scottish Ministers, should be considered by the UK Parliament.”

Bill Summary

2. The Civil Aviation Bill was introduced to the UK Parliament on 9 June 2005. Full explanatory notes for the Bill have been prepared by the Department for Transport and are available on the website of UK Parliament at:

www.publications.parliament.uk/pa/cm200506/cmbills/012/en/06012x--.htm

3. The Bill is predominantly concerned with matters outwith the legislative competence of the Scottish Parliament. (It takes forward a number of commitments contained in the White Paper, *The Future of Air Transport*, which was published by the UK Government in December 2003, including measures to deal with aircraft noise, explicit powers for charges to be linked to local emissions from aircraft, and the replenishment of the Air Travel Trust Fund. It also relaxes various constraints on local authority airport companies, enables the Civil Aviation Authority to finance the operation of the Aviation Health Unit from the charges it levies on the aviation industry, and revokes the role of the Secretary of State as the appeal body in cases dealing with aviation route license cases.) However, the Bill make adjustments to the range of functions previously conferred on the Scottish Ministers, rather than the Secretary of State. By convention and notwithstanding their limited and relatively technical nature, such provision in legislation at Westminster is subject to the consent of the Scottish Parliament. The purpose of this memorandum is to provide information specifically about those adjustments.

Relevant Provisions: Background, Purpose & Effect

4. While the regulation of aviation including safety and security (at airports) is reserved to Westminster, the Scottish Ministers already have a limited role with regard to aviation in Scotland. The most visible aspect of that role is in relation to the planning and development of airports. Other devolved responsibilities include the issue of noise at airports and byelaws which govern traffic management and safety within airports.

5. In the context of the current Bill, it is of particular relevance that the functions established by sections 38 and 78 of the Civil Aviation Act 1982 have been executively devolved to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions

to the Scottish Ministers etc.) Order 1999¹. The Bill will extend the scope of those functions and it seems appropriate that the extensions should be conferred on the Scottish Ministers as the existing functions have been.

6. Clause 11 of the Bill would amend the 1999 Order for this purpose.

7. As regards section 38 of the Civil Aviation Act 1982, this currently provides for fixing by reference to noise factors of the charges for using licensed aerodromes. Clause 1 of the Bill would amend this section to:

- extend provisions of section 38 to encompass emissions coming from aircraft and their effect on local air quality and to give Ministers an extended power to direct specified aerodrome authorities to fix their charges by reference to emissions (as well as noise). It is envisaged that the power of direction - which has to date not been used by Ministers - would be used only in extremis. By virtue of the amendments made by clause 11, in relation to Scotland the extended power would be conferred on the Scottish Ministers rather than the Secretary of State.

8. As regards section 78 of the Civil Aviation Act 1982, this currently provides for the regulation of noise and vibration from aircraft where an aerodrome is so designated by virtue of section 80 of the Act (though currently no aerodromes in Scotland are so designated). Clauses 2 and 3 of the Bill would amend this section to:

- enable Ministers to impose restrictions that would limit cumulative amounts of noise at designated airports by means of noise quotas or a limiting noise contour area and without specifying a maximum number of aircraft movements;
- enable Ministers to direct an aerodrome operator that take offs and/or landings must take place on a particular runway;
- enable Ministers to direct a designated airport to make (or amend or revoke) a penalty scheme to apply in respect of any breach by an aircraft operator of requirements imposed by Ministers under section 78.

By virtue of the amendments made by clause 11, in relation to Scotland these extended powers would be conferred on the Scottish Ministers rather than the Secretary of State.

9. In addition to the amendments to the existing provisions in sections 38 and 78 of the 1982 Act, clause 4 of the Bill introduces a new discretionary power for aerodrome operators (excluding those designated for the purposes of section 78 of the Act) to establish and enforce noise control schemes. Through clause 4, new section 38B(2)(a) of the 1982 Act would provide that there would also be a discretionary power for Ministers to authorise, at the request of an airport operator, the extension of the area in which a noise control scheme may be operated. By virtue of the amendments made by clause 11, in relation to Scotland this new power would be conferred on the Scottish Ministers rather than the Secretary of State.

10. In each of the three instances mentioned above, it would be possible for the functions to be conferred on the Scottish Ministers by the alternative mechanism of a further order made under section 63 of the Scotland Act 1998. However, that approach would be inferior in the current circumstances, in that it would involve some period, between the enactment of

¹ Statutory instrument 1999 No. 1750, made under powers conferred by section 63 of the Scotland Act 1998.
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the primary legislation and the passage of the order, during which the extensions to the existing functions and the new function would rest with the Secretary of State rather than the Scottish Ministers. Likewise, if neither of these two options were pursued (i.e. neither provision in the Bill, nor provision in an order under section 63 of the Scotland Act) this unsatisfactory state of affairs would endure. The practical disadvantages of such a situation are that the extensions to the existing functions, including in Scotland, would rest with the Secretary of State; while the existing functions would rest with the Scottish Ministers.

Financial, Resourcing & Regulatory Implications

11. The explanatory notes to the Bill make clear that its effects on public expenditure are expected to be de minimis and it is not expected to increase public service manpower. It is not anticipated that the Bill will result in any significant effects on Scottish Executive expenditure or manpower. The Regulatory Impact Assessment associated with the Bill concludes that it will introduce a package of useful measures designed to improve environmental protection from civil aviation and improve consumer protection, without disproportionate regulatory impact.

Conclusion

12. A key aim of the Bill is to make a series of improvements which will allow progress in delivering a more sustainable aviation sector. This is consistent with the Partnership Agreement's commitment to protect the environment and improve safety. The Executive believes, therefore, that it would make sense for Westminster to legislate to ensure that the scope of those issues which are executively devolved, are similarly extended to the Scottish Ministers.

SCOTTISH EXECUTIVE

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