

Transport Act 2000 Section 70

Section 70 of the Transport Act

Section 70 of the Transport Act 2000 places the CAA under a general duty in relation to its air navigation functions to exercise those functions so as to maintain a high standard of safety in the provision of air traffic services. That duty is to have priority over the CAA's other duties in this area of work. Noting that priority, the CAA's duties in relation to air navigation is to exercise its functions in the manner it thinks best so that:

- it secures the most efficient use of airspace [see note 1] consistent with the safe operation of aircraft and the expeditious flow of air traffic. [see note 2]
 - it satisfies the requirements of operators and owners of all classes of aircraft
- it takes account of the interests of any person [see note 3] (other than an operator or owner) in relation to the use of any particular airspace or airspace generally
 - it takes account of any guidance on environmental objectives given to the CAA by the Secretary of State
- it facilitates the integrated operation of air traffic services provided by or on behalf of the armed forces and other air traffic services
 - it takes account of the interests of national security
 - it takes account of any international obligations of the UK notified to the CAA by the Secretary of State.

The CAA adopts the following approach when undertaking its regulatory assessment of airspace change proposals:

An airspace change proposal that satisfies all the factors in section 70(2) should be approved by the CAA. In making this decision, the CAA should give the duty to secure something higher weight than the duty to satisfy or facilitate. For example, we would give the duty to secure the most efficient use of airspace higher weight than the duty to satisfy owners and operators of aircraft. We assess that the term to take something into account reflects that some factors may or may not be applicable in a particular case (for example, national security) and the range of impact on a decision outcome could be significant. Thus its weight will depend heavily on the circumstances of the individual case, giving the CAA discretion to apply the appropriate expert judgement when balancing all factors. It should be noted that not all of the factors will be relevant in all cases.

Where a proposed change would satisfy some of the duties, but would not deliver others, the law refers to this situation as a conflict.

Where there is a conflict, Section 70(3) requires the CAA to apply the factors in the manner it thinks is reasonable having regard to them as a whole. The CAA has always done this, but there is no predetermined policy on how it weights the factors and balances them in a reasonable manner in the case of a conflict. There may be good reasons why the CAA may in some cases resolve "conflicts" other than in accordance with the relevant weight indicated by the statutory language, and we consider that the wording in Section 70(3) gives the CAA wide discretion. Consequently, there is a greater need to give clear reasons and evidence for deviating from relative weights set out in the statutory wording. Examples of cases where the CAA is likely to resolve a conflict other than in accordance with the relative weighting in section 70(2) are:

- interdependencies – such as where the CAA might approve/decide in favour of an airspace change that reduces the efficient use of airspace or does not meet requirements of owners and operators in order to meet an international obligation under the UK/Ireland Functional Airspace Block
- magnitude of the impact – such as when the impact on a higher weight factor is small, whereas the impact on a lower weight factor is large
- complexity of the airspace – such as when an airspace structure modified through the consultation process in an attempt to meet different user requirements may render it safe, but almost unusable by operators or owners of aircraft or unworkable by air traffic control
- airspace not at full capacity – such as when it is deemed that securing the efficient use of airspace is less important and it could be appropriate to increase the weight of other objectives.

Air Navigation Guidance 2017

Section 70(2) of the Transport Act 2000 requires the CAA to take account of any guidance on environmental objectives given to it by the Secretary of State when carrying out its air navigation functions. These functions are set out in the Secretary of State's Air Navigation Directions 2017, made under sections 66(1) and 68 of the Transport Act 2000. Such Air Navigation Guidance was last issued in October 2017. Its full title is Air Navigation Guidance 2017: Guidance to the CAA on its environmental objectives when carrying out its air navigation functions, and to the CAA and wider industry on airspace and noise management.

The Air Navigation Guidance and Air Navigation Directions issued in October 2017 followed a consultation by the Department for Transport about airspace and noise policy. The Air Navigation Guidance, in addition to being statutory guidance to the CAA on environmental objectives in respect of its air navigation functions, also gives more information on the Secretary of State's role in the airspace change process. In accordance with the Air Navigation Directions 2017, in some cases the Secretary of State rather than the CAA may make decisions on proposals to make permanent changes to airspace design. The Air Navigation Guidance is not just aimed at the CAA. The Government also expects that it will be taken into consideration by the aviation industry. The Air Navigation Guidance also acknowledges the important role which local communities have in the airspace change process.

Notes

12. The CAA uses the following overall definition of "the most efficient use of airspace": The most aircraft movements through a given volume of airspace over a period of time in order to make the best use of the limited resource of UK airspace from a whole system perspective.
13. The CAA uses the following definition of "expeditious flow": The shortest amount of time that an aircraft spends from gate to gate, from the perspective of an individual aircraft, rather than the wider air traffic system.
14. The CAA considers the words 'any person (other than an operator or owner of an aircraft)' to include airport operators, air navigation service providers, members of the public on the ground, owners of cargo being transported by air, and anyone else potentially affected by an airspace change proposal.