

AIR TRAFFIC MANAGEMENT AND UNMANNED AIRCRAFT BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17).

- These Explanatory Notes have been prepared by the Department for Transport, with input from other relevant Departments, including the Home Office, the Ministry of Justice, and the Department for Business, Energy and Industrial Strategy, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes should be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	4
Policy and Legal background (Parts 1 to 3)	4
Part 1: Airspace change proposals.....	4
Policy Background.....	4
Legal Background.....	5
Part 2: Air traffic services.....	5
Policy Background.....	5
Legal Background.....	7
Part 3: Unmanned aircraft.....	7
Grounding an unmanned aircraft.....	9
Policy Background.....	9
Legal Background.....	9
Stop and search.....	9
Policy Background.....	9
Legal Background.....	10
Entering and searching premises under warrant.....	10
Policy Background.....	10
Legal Background.....	11
Use of counter-unmanned aircraft technology.....	11
Policy Background.....	11
Legal Background.....	12
Powers relating to requirements in the ANO 2016.....	12
Policy Background.....	12
Legal Background.....	13
Fixed Penalty Notices.....	13
Policy Background.....	13
Legal Background.....	13
Territorial extent and application	14
Commentary on provisions of Bill	15
Structure of the Bill.....	15
Part 1: Airspace change proposals.....	15
Part 2: Air traffic services.....	17
Part 3: Unmanned aircraft.....	20
Part 4: General.....	33

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

Financial implications of the Bill.....	34
Compatibility with the European Convention on Human Rights.....	34
Related documents.....	34
Annex A – Territorial extent and application in the United Kingdom	36

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

Overview of the Bill

- 1 The Air Traffic Management and Unmanned Aircraft Bill [HL] is divided into four parts. Parts 1 and 2 of the Bill, “Airspace change proposals” and “Air traffic services”, make provision about airspace change proposals (ACPs) and the licensing regime for air traffic services under Part 1 of the Transport Act 2000 (the 2000 Act). Part 3 of the Bill, “Unmanned aircraft”, makes provision to tackle the misuse of unmanned aircraft (“UA”). The measures contained in Part 3 of the Bill will provide greater enforcement capability to the police and act as a deterrent to those who would commit offences related to UA. Part 4 of the Bill, “General”, makes general provision in respect of the Bill as a whole.

Policy and Legal background (Parts 1 to 3)

Part 1: Airspace change proposals

Policy Background

- 2 Airspace is the volume of space above ground level, extending as far as aircraft can fly. Airspace has to be managed so it can be used safely and efficiently. The UK’s airspace structure is set out in the UK’s Aeronautical Information Publication,¹ with there being five classes of airspace: A, C, D and E (which are controlled airspace, requiring clearance to enter) and G (which is uncontrolled airspace). Airspace changes can include proposals, for example, to amend airport flightpaths, to change the classification of particular airspace or to alter high-level flightpaths.
- 3 A programme of airspace modernisation is underway to redesign the UK’s flightpaths to deliver quicker, quieter and cleaner journeys, and more capacity, for the benefit of those who use and are affected by UK airspace. It is being delivered by the aviation industry, with support from the independent regulator, the Civil Aviation Authority (the CAA), and from the Government, which is providing leadership and oversight of governance for the programme.
- 4 There are particular challenges in the highly congested airspace of the south of the UK, where there is a high level of interdependence between airports sharing the same airspace. Due to the complex nature of this airspace, we expect airports in the region to bring forward coordinated airspace change consultations in the coming years. Indeed, many airports have already begun their airspace change proposals, ahead of public consultations on flightpath options, likely in 2021 or 2022.
- 5 However, neither the Government nor the CAA currently have powers to guarantee that airspace change is taken forward, should an airport decide that it does not wish to participate in the airspace modernisation programme on a voluntary basis. This means that one airport could hold up another or several others, thereby delaying the programme. In addition, there are no effective levers to ensure the delivery of other airspace modernisation outcomes, such as those related to safety, capacity, management of noise impacts, air quality, fuel efficiency, improving access to airspace for all users (including where controlled airspace is no longer justified), military access, or to introduce new technology.
- 6 In December 2018 the Government launched a consultation entitled ‘*Aviation 2050 – the future of UK Aviation*’. Annex A to the consultation was entitled “Legislation to enforce the

¹ The AIP is available at http://www.nats-uk.ead-it.com/aip/current/amend28/EG_Amdt_A_2019_11_en.pdf Members of the public may also obtain it in printed form (or DVD) by writing to Aeronautical Information Service (AIS), NATS Swanwick, Room 3115, Sopwith Way, Southampton, Hants, SO31 7AY.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

development of airspace change proposals”, and the Government response to this aspect of the consultation is due to be published soon. The response will confirm the Government’s intention to bring forward legislation regarding airspace change proposals.

- 7 Part 1 of the Bill therefore provides new powers for the Secretary of State (delegable to the CAA) to direct airports and other entities with functions relating to air navigation to progress ACPs, which will be linked to the CAA’s Airspace Modernisation Strategy.

Legal Background

- 8 The 2000 Act includes provision on air traffic services (Part 1, Chapter 1) and air navigation (Part 1, Chapter 3). Of relevance to Part 1 of the Bill: under section 66(1) of the 2000 Act (air navigation: directions), the Secretary of State has a power to give directions to the CAA regarding air navigation. This was most recently done in the form of the Civil Aviation Authority (Air Navigation) Directions 2017,² direction 3(e) of which requires the CAA to prepare and maintain a strategy and plan for the use of UK managed airspace (hereafter referred to as “the CAA’s airspace strategy”, as defined in clause 7(1)). Part 1 of the Bill contains provisions which would enable the Secretary of State (or the CAA, if the function is delegated to it) to give directions to bring about airspace change, where this is needed for delivering the CAA’s airspace strategy.

Part 2: Air traffic services

Policy Background

- 9 En route air traffic services are currently provided in the United Kingdom by NATS (En Route) plc (“NERL”), a wholly owned subsidiary of NATS Holdings Limited (“NATS”) by virtue of a licence granted to it by the Secretary of State under Part 1 of the 2000 Act. The 2000 Act confers on the CAA, as the UK’s specialist aviation regulator, the role of economic regulator of NERL.
- 10 The CAA is responsible for monitoring and enforcing NERL’s compliance with the conditions of the licence and with its duties under section 8 of the 2000 Act. It also has powers to modify conditions of the licence, subject to its duties under section 2 of the 2000 Act. Its primary duty, one shared with the Secretary of State, is to maintain a high standard of safety in the provision of air traffic services. The CAA also has a number of duties secondary to this main duty (of which the first three are shared by the Secretary of State):
 - To further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them;
 - To promote efficiency and economy on the part of licence-holders;
 - To secure that licence-holders will not find it unduly difficult to finance activities authorised by their licences;
 - To take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State; and

² The Civil Aviation Authority (Air Navigation) Directions 2017 can be found here: <https://www.gov.uk/government/publications/uk-air-navigation-guidance-2017>

- To take account of any guidance on environmental objectives given to the CAA by the Secretary of State

In addition, both the CAA and the Secretary of State are under a duty to exercise their functions in such a way as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions.

- 11 There have been two serious system failures that have prompted reviews of the regulatory framework for NERL, including the enforcement and penalty regime. The first incident, a Voice Communications Systems (VCS) failure on 7 December 2013, which had a particularly disruptive effect on passengers, prompted a wide-ranging CAA review into the NERL licence and regulatory framework. Following a second system failure on 12 December 2014, the CAA and NATS established an independent enquiry into the cause of the failure.
- 12 For both failures, the CAA was satisfied that there were no safety issues associated with NATS's handling of the incident and there was no evidence that NATS was in breach of the service obligations in its licence. The independent enquiry into the 2014 system failure however made a number of recommendations to update and modernise the licensing framework.³
- 13 Part 2 of the Bill updates the regulatory framework governing the provision of air traffic services by repealing and replacing provision covering licence modification and enforcement in Part 1 of the 2000 Act. The new provision is modelled on the framework in Part 1 of the Civil Aviation Act 2012 relating to the licensing of airports, and contains a more comprehensive suite of regulatory and enforcement tools. The new framework would, amongst other things, enable the Secretary of State to modify a term of a licence as well as strengthen the CAA's powers to modify a licence condition. There is a new procedure for modifying a licence condition (including new appeal rights conferred on the licence holder and certain other persons), and provision for enforcement in respect of the breach of a condition or statutory duty (including power to impose financial penalties).
- 14 On September 2016, the Government published a consultation document '*Modernising the licensing framework for air traffic services*', which is available at: <https://www.gov.uk/government/consultations/modernising-the-licensing-framework-for-air-traffic-services>.⁴ The consultation related to proposals for:
 - amending the licence modification process to enable the CAA to make changes to the licence after consultation and conferring a right of appeal to affected parties;
 - conferring a wider range of enforcement tools on the CAA, and enabling the licence holder to appeal decisions to an appropriate body;
 - updating the Secretary of State's powers to be able to amend certain licence provisions, in particular the period the licence continues in force.

³ NATS Independent Enquiry (2015) NATS System Failure 12 December 2014 – Final Report <http://www.nats.aero/wp-content/uploads/2015/05/Independent-Enquiry-Final-Report-2.0.pdf>

⁴The Government response to this consultation can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/590630/modernising-licensing-framework-air-traffic-services-government-consultation-response.pdf

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

Legal Background

- 15 Part 2 of the Bill will repeal and replace part of Chapter 1 of Part 1 of the 2000 Act, so as to update the regulatory framework which governs the licensing of air traffic services. Further relevant legal background is explained (where relevant) in the policy background section of these Notes.

Part 3: Unmanned aircraft

- 16 This section provides an overview of the background to the policies relating to unmanned aircraft being taken forward in the Bill.
- 17 Throughout these Explanatory Notes, the term “UA” is used as an abbreviation for “unmanned aircraft”. The Bill provides that “unmanned aircraft” means any aircraft operating or designed to operate autonomously or to be piloted remotely without a pilot on board. Drones and model aircraft are the most commonly used types of UA. These Explanatory Notes also use the term “small unmanned aircraft” (“SUA”) where it is relevant. This is a term defined in the Air Navigation Order 2016⁵ (“ANO 2016”) as “any unmanned aircraft, other than a balloon or a kite, having a mass of not more than 20kg without its fuel but including any articles or equipment installed in or attached to the aircraft at the commencement of its flight.” The term “small unmanned surveillance aircraft” (“SUSA”), defined in the ANO 2016 as “a small unmanned aircraft which is equipped to undertake any form of surveillance or data acquisition”, is also used where relevant.
- 18 The Government’s intention is for UA to be used to increase productivity and efficiency. UA are used to great effect across a range of industries and sectors. Our emergency and search and rescue services use them to help keep people safe, and they reduce risks to people working in hazardous sectors such as the oil and gas industry. They are used across many other global industries, the public sector and charities to drive more efficient ways of working, to monitor environmental change, to deliver medicines, and to assist infrastructure inspections and construction.
- 19 However, the misuse of UA is increasing, which poses safety and security concerns. In particular, the number of incidents of UA coming within unsafe proximity to manned aircraft has increased from six incidents in 2014 to 126 in 2018. Moreover, the significant disruption to operations at London Gatwick Airport in December 2018 was a stark example of the large economic and operational impacts UA can have when used with malicious intent.
- 20 To tackle this growing misuse of UA, the Bill makes provision for the following:
 - a. New powers for constables to allow them to better enforce UA provisions in ANO 2016 and certain offences in the Prison Act 1952, the Prison Act (Northern Ireland) 1953, the Prisons (Scotland) Act 1989 and common law offences in Scotland. This includes powers to ground unmanned aircraft, powers to stop and search in specific circumstances, powers to enter and search premises under warrant, and powers to issue Fixed Penalty Notices (“FPNs”) in certain situations.
 - b. Amendment of the Police Act 1997 to enable the use of counter-UA technologies to prevent the use of UA to commit certain ANO 2016 offences, certain Prison Act 1952 offences, certain Prison Act (Northern Ireland) 1953 offences, certain offences at common law in Scotland, certain Prisons (Scotland) Act 1989 offences and an offence in the Aviation and Maritime Security Act 1990.

⁵ The Air Navigation Order 2016, S.I. 2016/765

- 21 The Government has previously laid the foundations of a regulatory framework for UA. This Bill will build upon and help enforce this existing legislation. Rules relating to UA that are already in place include, but are not limited to, the following:

In the ANO 2016:

- a. An SUA must not be flown above 400ft or within the flight restriction zone of a protected aerodrome without permission.
- b. Remote pilots of SUA must not fly their SUA beyond visual line of sight without permission.
- c. It is an offence to recklessly or negligently endanger an aircraft, and doing so can lead to a five-year prison sentence or an unlimited fine.
- d. SUSA are not permitted to fly within 50m of persons, buildings or vehicles or over or within 150m of densely populated areas or organised open-air assemblies of more than 1,000 people.
- e. From 30 November 2019, operators of SUA with a mass of 250g up to and including 20kg will be required to register with the CAA before flying their SUA. Similarly, remote pilots of SUA of the same mass must not fly an SUA without fulfilling the relevant competency requirements.

In the Aviation and Maritime Security Act 1990:

- a. It is an offence to intentionally use a device (which can include a UA) to commit an act of violence which causes or is likely to cause death or serious personal injury, and endangers or is likely to endanger the safe operation of an international aerodrome or persons at the aerodrome. If a person is found guilty this can result in up to life imprisonment.
- b. It is an offence to intentionally use a UA to disrupt services at an international aerodrome, in such a way as to endanger or be likely to endanger safe operation of the aerodrome or persons at the aerodrome, and this offence can attract a sentence of life imprisonment.

- 22 Two public consultations have informed the contents of the Bill, *“Taking Flight: The Future of Drones in the UK”*, which ran between 26 July 2018 and 17 September 2018, and *“Stop and search: extending police powers to cover offences relating to unmanned aircraft (drones), laser pointers and corrosive substances”*, which ran between 9 September 2018 and 22 October 2018. The Government Responses to these consultations are available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771673/future-of-drones-in-uk-consultation-response-web.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780367/ss_consultation_gov_response.pdf.

- 23 Relevant legislation referenced includes the following:

- a. Prison Act 1952;
- b. Prison Act (Northern Ireland) 1953;
- c. Magistrates’ Courts Act 1980;
- d. Magistrates’ Courts (Northern Ireland) Order 1981;
- e. Civil Aviation Act 1982;
- f. Police and Criminal Evidence Act 1984;
- g. Prisons (Scotland) Act 1989;
- h. Aviation and Maritime Security Act 1990;

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

- i. Criminal Justice Act 1991;
- j. Criminal Justice and Public Order Act 1994;
- k. Criminal Procedure (Scotland) Act 1995;
- l. Police Act 1997;
- m. Regulation of Investigatory Powers Act 2000;
- n. Criminal Justice Act 2003;
- o. Energy Act 2004;
- p. Constitutional Reform and Governance Act 2010;
- q. Criminal Justice and Courts Act 2015;
- r. Justice Act (Northern Ireland) 2015;
- s. Air Navigation Order 2016;
- t. Criminal Justice (Scotland) Act 2016;
- u. Investigatory Powers Act 2016;
- v. Justice Act (Northern Ireland) 2016; and
- w. Data Protection Act 2018.

Grounding an unmanned aircraft

Policy Background

- 24 The Government considers it necessary for a constable to be able to require a person to ground a UA where there is reasonable belief that an offence is being or is likely to be committed, as a means of providing immediate enforcement. This proposal was addressed in the consultation "*Taking Flight: The Future of Drones in the UK*". Most responses to this part of the consultation showed strong support for this new power, as many of those who responded felt it would improve enforcement and act as a more significant deterrent to anyone thinking of using an unmanned aircraft illegally.

Legal Background

- 25 There is no existing power which permits a constable to require a person to ground a UA in the circumstances provided for in the Bill.

Stop and search

Policy Background

- 26 Between 9 September and 22 October 2018, the Home Office ran the public consultation, '*Stop and search: extending police powers to cover offences relating to unmanned aircraft (drones), laser pointers and corrosive substances*'. The consultation included questions on UA on behalf of the Department for Transport, to inform the content of this Bill. Responses to the consultation were broadly unsupportive of proposals relating to UA. Many respondents felt that the intrusive nature of stop and search powers would be disproportionate to what they perceived as a lack of threat.
- 27 The consultation was conducted prior to events at Gatwick Airport in December 2018. In light of those events, the Home Office response to the consultation, published on 20 February 2019, included, alongside proposals for stop and search powers to support the new offence of possessing a corrosive substance in a public place, a commitment to develop a stop and search power for offences relating to flying a UA in the flight restriction zone of a protected aerodrome (ANO 2016 article 94A). The consultation response also set out the Government's intention to keep the further expansion of stop and search powers in relation to other UA offences under review.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

- 28 The provisions in the Bill provide the police with the power to stop and search any person or vehicle (or anything in or on a vehicle). This power applies where the constable has reasonable grounds for suspecting that they will find a UA, and/or any article associated with a UA, which is or has been involved in the commission of certain offences in the ANO 2016, or the Prison Act 1952 or equivalent legislation in Scotland and Northern Ireland. This power also applies where the constable has reasonable grounds for suspecting that they will find an article which is or has been involved in the commission of a relevant prison offence where the use of a UA is or has been involved in the commission of that offence. In this context, misuse includes, but is not limited to, flying an SUA within the flight restriction zone of a protected aerodrome, or above 400ft, without the relevant permission, as specified in the ANO 2016. Moreover, misuse also includes using UA to commit prison-related offences, such as facilitating an escape or conveying prohibited items such as drugs, weapons, mobile phones or tools into a prison.

Legal Background

- 29 Schedule 8, paragraph 2(2) provides stop and search powers where a UA is being flown, or has been flown, in contravention of the following offences under the ANO 2016:
- a. Article 94A, which provides that an SUA operator or remote pilot must not fly or permit a SUA to be flown more than 400ft above the surface, or within the flight restriction zone of a protected aerodrome, without the required permission.
 - b. Article 95, which provides that an SUA operator or remote pilot must not fly an SUA over or within 150m of a congested area, over or within 150m of an organised open-air assembly of more than 1,000 people, within 150m of a vessel, vehicle or structure not under the control of the operator or remote pilot, or within 50m of any uninvolved person (30m during take-off and landing), except with permission.
 - c. Article 239(4), which provides that it is an offence to contravene or fail to comply with regulations made under article 239, under which the Secretary of State may make regulations prohibiting or restricting flying of all aircraft, including SUA.
 - d. Article 240, which provides that a person must not recklessly or negligently act in a manner likely to endanger an aircraft, or any person in an aircraft.
- 30 The stop and search power applies to certain offences under the Prison Act 1952. Section 39 of the Prison Act 1952 makes it a criminal offence to assist a prisoner to escape. This can include by bringing, throwing or conveying anything into a prison with the intention to facilitate the escape of a prisoner. Such actions could be carried out using UA. The stop and search power will also apply to sections 40B, 40C and 40CB of the Prison Act 1952, which make it a criminal offence for someone to bring, throw or convey prohibited items into a prison, as well as to throw any article into a prison, where they do not have authorisation. Again, such actions could be carried out using UA. The stop and search power will also apply to the equivalent provisions in the Prison Act (Northern Ireland) 1953, the Prisons (Scotland) Act 1989 and equivalent common law offences in Scotland.
- 31 Where relevant, the provisions in the Police and Criminal Evidence Act 1984 (“PACE 1984”) apply to the seizure and retention of property.

Entering and searching premises under warrant

Policy Background

- 32 UA offences in the ANO 2016 are largely summary only offences, and therefore existing entry and search powers which exist for indictable offences cannot be used. In the consultation

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

“Taking Flight: The Future of Drones in the UK”, this power was discussed as a means to address this gap so that the police are able to adequately investigate UA-related offences. Putting in place a warrant process means the police cannot misuse this power and ensures it is safeguarded, by involving the independent judgement of a justice of the peace in England and Wales, a justice of the peace, a summary sheriff or a sheriff in Scotland or a lay magistrate in Northern Ireland, necessitating the police to justify their case for a warrant to them.

Legal Background

- 33 Most UA offences in the ANO 2016 are summary only offences; hence, as stated above, existing entry and search powers for indictable offences would not apply to these offences. The new stop and search powers in this Bill fill this gap by extending stop and search powers to relevant offences in relation to UA. The Bill sets out in Schedule 8 at paragraph 7(a)(b) and (c) the definition of a “relevant offence” to which this power applies.

Use of counter-unmanned aircraft technology

Policy Background

- 34 Counter-UA technologies exist and can be used to disrupt illegal UA use. The legal issues regarding their use depend on the way in which they exert their effect. Some of these systems interfere with or disrupt the electronic signals between the UA and its controller, which, if done without lawful authority, may amount to a criminal offence under the Wireless Telegraphy Act 2006. The use of kinetic counter-UA measures such as net guns and tactical firearms, whose effect is to physically disrupt the UA, could amount to unlawful property interference.
- 35 Section 93 of the Police Act 1997 provides for a limited number of named public authorities to authorise property interference or interference with wireless telegraphy that would otherwise be unlawful where it is believed to be necessary for preventing or detecting serious crime and where the action is proportionate to what it seeks to achieve. Section 93(4) of the Police Act 1997 defines serious crime in a number of ways, including by reference to offences for which a person “could reasonably be expected to be sentenced to imprisonment for a term of three years or more”, or where the conduct involves violence, results in substantial financial gain, or is conducted by a large number of people in pursuit of a common purpose. Various offences involving UA, whilst having statutory maximum sentences higher than three years, have not involved sentences of that term. Other offences, such as some of the offences under the prisons legislation which relate to conveying articles into prisons, attract maximum sentences of less than 3 years. Therefore, UA may be used to commit offences that would not constitute a serious crime under the definition in section 93(4) since it would not be reasonable to expect a sentence of 3 years or more.
- 36 The Bill provides, through an amendment of section 93 of the Police Act 1997, for the authorisation of property interference and interference with wireless telegraphy when certain offences have been committed using a UA. In addition, the Bill extends the range of public authorities who can authorise interference with property and/or wireless telegraphy in order to prevent or detect offences committed using a UA. This is in recognition of the fact that those organisations are best placed to assess whether it would be necessary and proportionate to use counter-UA technology in relation to the relevant area.
- 37 The Bill therefore amends section 93 of the Police Act 1997 to permit the Civil Nuclear Constabulary (CNC) to apply for authorisations under Part III of the Police Act 1997 in

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

relation to counter-UA activity. Currently the CNC are not listed on the relevant schedule of the Police Act 1997 and so are not able to self-authorise the use of counter-UA technology. The amendment gives the CNC the same powers available to all other police forces to respond to a UA incident and thereby enhances the protection of civil nuclear licensed sites.

- 38 The Bill further amends section 93 of the Police Act 1997 to make provision for prison authorisations. In respect of prisons the “authorising officer” may be a member of senior management for prisons in England and Wales who is designated for this purpose by the Secretary of State. There are also equivalent changes in relation to Scottish and Northern Irish custodial institutions.

Legal Background

- 39 Schedule 8, paragraph 5 of the Bill amends section 93 of the Police Act 1997 to insert a limb alongside the serious crime definition under which property interference and wireless telegraphy interference authorisations can be obtained by the named public authorities to cover the unlawful use of a UA in relation to certain offences in the ANO 2016, Aviation and Maritime Security Act 1990, Prison Act 1952 and equivalent prisons legislation in Scotland and Northern Ireland – the definition of a “relevant offence” in this case is set out in paragraph 5(11). The effect of this amendment of section 93 will be to expand the range of circumstances in which technology designed to counter UA can be used to prevent such aircraft being used to commit offences. Paragraph 5 of Schedule 8 also adds both the CNC, and members of senior management for prisons in England and Wales (and equivalent civil servants in Scotland and Northern Ireland) exercising their duties in relation to the relevant institution in the case of a prison authorisation, to the list of public authorities who can apply for authorisation to cover the unlawful use of a UA in these circumstances.
- 40 Schedule 8, paragraph 6 of the Bill amends section 94 of the Police Act 1997 to enable a deputy or assistant chief constable in the CNC to authorise the use of counter-UA technology in the absence of the Chief Constable of the CNC, and to enable a member of senior management for prisons in England and Wales (and equivalent civil servants in Scotland and Northern Ireland) to authorise the use of counter-UA technology in the absence of the usual authorising official in the case of a prison authorisation.

Powers relating to requirements in the ANO 2016

Policy Background

- 41 On 30 November 2019, SUA operator registration and remote pilot competency requirements for SUA with a mass of 250g up to and including 20kg will become mandatory. These requirements were legislated for in a 2018 amendment to the ANO 2016⁶. These measures aim to improve the education and accountability of UA users as part of the wider framework to promote and enforce safe and secure UA use. The powers in the Bill for constables to request proof of SUA operator registration or remote pilot competency will assist enforcement of these requirements. The powers will also help constables enforce other ANO 2016 requirements by giving them the power to require production of evidence of any exemptions or permissions in relation to the ANO 2016 that apply to a particular flight.

⁶ The Air Navigation (Amendment) Order 2018, S.I. 2018/623

Legal Background

- 42 Schedule 9 of the Bill refers to requirements under the ANO 2016 and creates police powers in relation to those requirements. The articles of the ANO 2016 to which this Schedule relates are:
- a. Article 94D- Certain SUA: requirement for registration as SUA operator
 - b. Article 94F- Certain SUA: requirement for acknowledgment of competency
 - c. Article 94(5)- SUA: commercial operations
 - d. Article 94A- SUA: permissions for certain flights
 - e. Article 95- Small unmanned surveillance aircraft
 - f. Article 266- Exemption from Order

Fixed Penalty Notices

Policy Background

- 43 Fixed Penalty Notices (“FPNs”) provide an alternative means of enforcement in relation to offences. The use of FPNs reduces the burden on the courts and police, because a person who is issued an FPN 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. FPNs were proposed in the consultation, *“Taking Flight: The Future of Drones in the UK”* and received strong support from respondents for their introduction for minor UA offences.
- 44 Whilst the Bill provides the power to constables to issue FPNs for UA offences, future secondary legislation will designate which offences are appropriate for an FPN. It is the Government’s intention that FPNs will be available to use for minor offences only, for example, where a person had unknowingly flown within 50m of a building, but not caused any harm. The Department for Transport has developed a list of situations where issuing an FPN would not be appropriate e.g. where a person has endangered any other aircraft. These are reflected in the conditions for issuing an FPN, which have been incorporated into paragraph 1 of Schedule 10 to the Bill. This will ensure that where a serious offence has been committed, an FPN would not be issued and prosecution through the courts would take place instead.

Legal Background

- 45 Payment of an FPN is not an admission of guilt and payment of an FPN allows a person to avoid prosecution in relation to the offence.
- 46 Schedule 10 refers to the Magistrates’ Courts Act 1980 and provides in paragraph 9(15) that section 85 of that Act, which gives the power to remit a fine in whole or in part, applies to a sum registered in a magistrates’ court by virtue of paragraph 9. Section 85 of the Magistrates’ Courts Act 1980 provides that where a fine has been imposed on conviction of an offender by a magistrates’ court, the court may at any time remit the whole or any part of the fine. This may only be done when the court thinks this is just having regard to a change of circumstances which has occurred in certain circumstances set out at section 85(1).

Territorial extent and application

47 The provisions in this Bill extend to England and Wales, Scotland and Northern Ireland. Civil aviation (including airspace) is reserved under Schedule 3 to the Northern Ireland Act 1998, Schedule 5 to the Scotland Act 1998, and Schedule 7A to the Government of Wales Act 2006; therefore, the legislative consent motion process is not engaged in relation to the Bill's airspace or air traffic services provisions. The police powers the Bill introduces to tackle the unlawful use of UA are ancillary to the overall UA regulation strategy, which, as part of civil aviation, is reserved. However, the legislative consent motion process is triggered in relation to Scotland and Northern Ireland as provisions in paragraphs 5 (in relation to Scotland) and 6 (in relation to Scotland and Northern Ireland) of Schedule 8 of the Bill alter the executive functions of Scottish Ministers and the Northern Ireland Department of Justice. This is because these paragraphs require certain prison staff to be designated by Scottish Ministers or the Northern Ireland Department of Justice for the purposes of authorising interference with property and wireless telegraphy in relation to UA near custodial institutions. The legislative consent motion process does not apply in relation to the Welsh Assembly because executive functions relating to prisons are reserved.

Commentary on provisions of Bill

Structure of the Bill

48 The Air Traffic Management and Unmanned Aircraft Bill [HL] comprises twenty clauses and 11 Schedules. In Part 1 of the Bill, clause 6 introduces Schedules 1 and 2. In Part 2 of the Bill, clause 8 directly relates to and is expanded upon in Schedules 3 and 4. Clause 9 directly relates to and is expanded upon in Schedules 5 and 6. Clause 10 introduces Schedule 7. In Part 3 of the Bill, clauses 11, 12, 13 and 14 introduce Schedules 8, 9, 10 and 11 respectively. The following information is ordered to provide commentary on each clause and Schedule listed above. This is followed by commentary on the remaining clauses 15 and 16 of Part 3 of the Bill, which concern disclosures of information and interpretation for this Part. Finally, these notes provide commentary on Part 4 of the Bill, which comprises clauses 17-20, all of which make general provision addressing all Parts of the Bill.

Part 1: Airspace change proposals

Clause 1: Meaning of “airspace change proposal”

49 Clause 1 defines an “airspace change proposal” as a proposal that (a) relates to managed airspace or the flight procedures or air traffic control procedures used within it, and (b) is of a type that the CAA is required to develop procedures for dealing with by directions given (from time to time) under section 66 of the 2000 Act (air navigation directions given by the Secretary of State to the CAA).

Clause 2: Direction to progress airspace change proposal

50 Clause 2 enables the Secretary of State to give a direction to a person involved in airspace change, once they have been consulted, requiring them to prepare an ACP, to submit an airspace change proposal to the CAA, to take steps to obtain the CAA’s approval to a proposal submitted to it, and/or to review the operation of an airspace change proposal once this has been implemented following CAA approval. A direction could be given to an airport operator, air navigation service provider, or any person with functions related to air navigation. A direction given may require the person to do specified things by specified dates and require the person to keep the CAA informed at specified intervals of the progress being made towards the direction being taken forward.

51 A direction would only be able to be given by the Secretary of State if the Secretary of State considers that to do so would assist in the delivery of the CAA’s airspace strategy, which is prepared and maintained by the CAA (under directions given to the CAA under section 66 of the 2000 Act). Under the current Directions, (namely the Civil Aviation Authority (Air Navigation Directions) 2017, as amended in 2018), the CAA is required to “prepare and maintain a co-ordinated strategy and plan for the use of UK airspace for air navigation up to 2040, including for the modernisation of the use of such airspace” (see Direction 3(e) of those Directions).

Clause 3: Direction to co-operate in airspace change proposal

52 Clause 3 enables the Secretary of State to give a direction to a person involved in airspace change, requiring that person to co-operate with another person involved in airspace change, in order to assist that other person: to prepare an ACP or to take steps in preparation of such a proposal, to submit an airspace change proposal to the CAA, to obtain approval of an airspace change proposal submitted to the CAA, and/or review the implementation of an airspace change proposal following approval by the CAA. Before giving such a direction, the Secretary

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

of State is required to consult both the person to whom the direction is to be given and the person with whom co-operation may be directed.

- 53 As with a direction under clause 2, a direction would only be able to be given if the Secretary of State considers that it will assist in the delivery of the CAA's airspace strategy (see paragraph 49 above).
- 54 The co-operation required could involve providing information verbally or providing relevant documents, or co-operating in any other ways the Secretary of State considers appropriate. A direction could specify the dates that the person co-operating needs to complete the tasks by, as outlined in the direction. A direction could not require a person to provide information or documents that the person could not be compelled to provide in evidence in civil proceedings before the High Court or, in Scotland, the Court of Session.

Clause 4: Directions under sections 2 and 3: supplemental

- 55 Clause 4 specifies that a direction under section 2 or 3 must be given in writing and published by the Secretary of State, and also that the Secretary of State may vary or revoke a direction by giving notice. The direction must not conflict with requirements of a direction given under section 38 (directions in the interest of national security etc) or 93 (control in time of hostilities etc) of the 2000 Act, or with direction relating to aviation security.

Clause 5: Delegation of functions to CAA

- 56 Clause 5 enables the Secretary of State to delegate the functions of the Secretary of State in clauses 2 to 4 to the CAA. In the event of exercising these functions, the CAA must have regard to any international obligation of the United Kingdom notified to the CAA by the Secretary of State. The Secretary of State may revoke a delegation by giving notice to the CAA. The CAA is required to publish a notice given to it under this section.

Clause 6: Enforcement and appeals

- 57 Clause 6 introduces Schedules 1 and 2 to make provision for appeals against decisions to give directions under sections 2 and 3 (Schedule 1) and provisions for the CAA to enforce directions and for connected appeals (Schedule 2).

Schedule 1: Appeals against decisions to give or vary directions

- 58 Schedule 1 makes provision for appeals against decisions to give or vary a direction given by the Secretary of State under clause 2 or 3 (appeals could also be made against decisions to give or vary a direction from the CAA, where the CAA has been delegated those functions by the Secretary of State). This includes provision for the person given a direction to appeal to the Competition Appeal Tribunal. An appeal may be permitted if the listed grounds of appeal are met, and further appeals on a point of law can be brought to the Court of Appeal in England, Wales and Northern Ireland or to the Court of Session in Scotland.

Schedule 2: Enforcement of directions and connected appeals

- 59 This Schedule makes provision governing enforcement by the CAA of a direction given by the Secretary of State. It provides for contravention orders and enforcement orders, penalties for contravention of enforcement orders, and appeal rights in respect of contravention orders, enforcement orders and penalties.
- 60 Paragraph 1 of Schedule 2 enables the CAA to give a contravention notice to a person if it has reasonable grounds for believing that the person has contravened a direction requirement.
- 61 Where the CAA has considered any representations and determined that the person has contravened the direction requirement, it would then be able to make an enforcement order

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

requiring the person to take specified steps to remedy the consequences of the contravention (paragraph 2).

- 62 If the person then contravenes a requirement in the enforcement order, the CAA would then be able to impose a penalty on the person (paragraph 4). Paragraphs 6 to 8 make provision as to the amount of a penalty, which may be either or both a fixed amount (not exceeding 10% of the person's turnover) or a daily amount (not exceeding 0.1% of the person's turnover).
- 63 Paragraph 11 requires the CAA to prepare and publish a statement of its policy with respect to imposing penalties under Schedule 2, and determining their amount. When preparing or revising such a statement, the CAA must consult any persons that it considers appropriate. Paragraph 12 of Schedule 2 confers a power on the Secretary of State to make regulations to prescribe how turnover would be calculated for the purposes of variable monetary penalties (this is also relevant to paragraphs 7 and 8(1) of Schedule 2).

Clause 7: Part 1: Interpretation

- 64 Clause 7 provides for interpretation of Part 1 of the Bill, including definitions of an "air navigation service provider", "airport operator" and "airspace change proposal".

Part 2: Air traffic services

Clause 8: Licensed air traffic services: modifying the licence and related appeals

- 65 Clause 8 substitutes section 11 of the 2000 Act with new sections 11 to 11B. At present, licence modifications can only be made by agreement between the CAA and the licence holder, or following a reference to, and investigation by, the Competition and Markets Authority ("CMA") (sections 11 to 18 of the 2000 Act). New section 11 (modification of a licence) would enable the CAA to modify a licence by modifying a licence condition and the Secretary of State to modify terms relating to the duration of a licence, and other terms prescribed by regulations, subject to the applicable procedural constraints set out in new sections 11A and 11B. The licence when granted contains provisions which are either conditions or terms (each would be defined in new section 40(6) and (6A) of the 2000 Act respectively). A term relates to matters such as the duration of a licence and the area in respect of which the licence authorises the provision of air traffic services, whereas a condition relates to operational matters, such as the licence holder's obligations on safety and efficiency.
- 66 New section 11A (modification of a licence: procedure) would set out the licence modification procedure and the steps that the CAA and Secretary of State must follow when modifying a licence, including provision for which persons must be consulted about a proposed modification, giving reasons for a proposed modification and for a decision to make, or not make, the proposed modification and the timeline governing this process.
- 67 New section 11B (restrictions on power to modify licence condition) prohibits the CAA from making a modification if the Secretary of State directs it not to do so.
- 68 Subsection (2) of clause 8 also repeals sections 12 to 18 of the 2000 Act, which provide for a reference to the CMA, and an investigation by it, to consider whether certain matters relating to the provision of air traffic services by the licence holder operate against the public interest and, if so, whether the effects could be remedied or prevented by a change to the licence conditions. This process would be used under the current regime where the CAA and the licence holder cannot agree a licence modification.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

- 69 Clause 8 also makes provision for appeals against modifications of licence conditions, which is included in Schedule 3 and the related appeals procedure, which would be inserted into the 2000 Act by Schedule 4.

Schedule 3: Modification of licence conditions under section 11 of the Transport Act 2000: Appeals

- 70 This Schedule inserts new sections 19A to 19F into the 2000 Act.
- 71 These new sections makes provision for appeals in respect of a decision by the CAA to modify a licence condition; this includes provision for which persons may appeal and for appeals to be made to the CMA (new section 19A), the grounds on which an appeal may be allowed (new section 19B), what occurs on the determination of an appeal (new section 19C), the time limits within which such appeals must be determined (new section 19D), and requirements governing the publication of the determination of the appeal (new section 19E). The appeal may be brought by a licence holder and certain other persons (e.g. airline and airport operators which are materially affected by the decision) and with the permission of the CMA which (if the appeal is allowed) must do one or more of the following, namely quash the decision appealed against, remit the matter to the CAA for reconsideration and decision, or substitute its own decision for that of the CAA.
- 72 New section 19F applies new Schedule A1 (making further provision in respect of appeals under section 19A) to the 2000 Act, and requires the CMA in exercising its appeal functions to have regard to the matters in respect of which duties are imposed on the CAA by section 2 of the 2000 Act.

Schedule 4: New Schedule A1 to the Transport Act 2000

- 73 This Schedule inserts new Schedule A1 into the 2000 Act. This Schedule makes provision for the procedure governing appeals in respect of decisions by the CAA to modify a licence condition. This includes provision relating to:
- the time limits for bringing an appeal;
 - the requirement to obtain permission to appeal;
 - the right of certain persons to intervene in an appeal;
 - the right to apply to suspend the effect of the decision being appealed pending the determination of the appeal;
 - the powers of the CMA on determining the appeal;
 - the production of documents and giving oral and written evidence (including the commissioning of expert advice);
 - costs; and
 - the publication of the determination.
- 74 Paragraphs 23 and 25 of this Schedule respectively confer power on the CMA to make rules governing the conduct and disposal of appeals and the Secretary of State to make regulations which modify time limits prescribed in the Schedule.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

Clause 9: Air traffic services licensed under Part 1 of the Transport Act 2000:

Enforcement

75 This clause amends Chapter 1 of Part 1 of the 2000 Act. It substitutes section 20 with a new section 20 which would apply a new Schedule B1 (enforcement and related appeals) to the 2000 Act, repeals sections 21 to 24 of the 2000 Act (enforcement), substitutes a new section 25, and inserts new sections 25A to 25C. These new sections apply a new Schedule C1 to the 2000 Act (information power), make provision for the imposition and recovery of penalties, and require the CAA to publish a statement of policy with respect to imposing penalties under Chapter 1 and determining their amount.

Schedule 5: New Schedule B1 to the Transport Act 2000

76 This Schedule sets out new Schedule B1, which is inserted into the 2000 Act by clause 9(6). Schedule B1 makes provision governing the CAA's powers to enforce breaches of the licence holder's duties under section 8 of the 2000 Act or a licence condition, and the licence holder's appeal rights in respect of orders and penalties made or imposed by the CAA. This includes provision relating to:

- contravention notices;
- enforcement and urgent enforcement orders;
- the availability of a civil cause of action to persons adversely affected by a failure of the licence holder to comply with an enforcement or urgent enforcement order;
- the imposition of financial penalties (which may consist of either or both of a fixed amount or a daily amount) and determination of their amounts;
- the right of appeal to the Competition Appeal Tribunal in respect of orders or penalties; and
- the grounds for determining an appeal.

77 Paragraph 14 of this Schedule confers power on the Secretary of State to make regulations which amend the basis on which a fixed penalty is to be calculated.

Schedule 6: New Schedule C1 to the Transport Act 2000

78 Schedule 6 inserts new Schedule C1 into the 2000 Act. Schedule C1 would make provision which enables the CAA to give notice to a person requiring that person to provide the CAA with information for the purpose of exercising certain functions. It contains related provision which enables the CAA:

- to take enforcement steps if a person fails without reasonable excuse to comply with the notice (including the imposition of a financial penalty); and
- to impose penalties in respect of the provision of false information or the intentional altering, suppressing or destroying of documents that a person is required to produce.

79 Part 3 to Schedule C1 contains provisions for appeals against penalties to the Competition Appeal Tribunal.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

- 80 Paragraph 2(9) of new Schedule C1 confers on the Secretary of State a power to make regulations to amend the maximum amounts of fixed and daily penalties (set out in paragraphs 2(4) and (5)) for failure to comply with an information notice.

Clause 10 and Schedule 7: Air traffic services: consequential amendments

- 81 Clause 10 gives effect to amendments in Schedule 7 which are consequential on clauses 8 and 9.

Schedule 7: Air traffic services: consequential amendments

- 82 This Schedule makes a number of minor and consequential amendments to Part 1 of the 2000 Act (e.g. to insert new definitions or amend existing ones) and one provision in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- 83 Paragraph 9 inserts new section 40A into the 2000 Act to make provision for “connected persons” for the purpose of Chapter 1 of Part 1 of that Act. New section 40A(3) confers power on the Secretary of State to make regulations to make provision about when one person is connected with another for the purposes of that Chapter.

Part 3: Unmanned aircraft

Clause 11: General police powers and prison powers relating to unmanned aircraft

- 84 Clause 11 introduces Schedule 8 which gives constables and those with responsibilities in respect of custodial institutions certain powers relating to UA.

Schedule 8: General police powers and prison powers relating to unmanned aircraft

Power of constable to require an unmanned aircraft to be grounded

- 85 Paragraphs 1(1) and 1(2) give a constable the power to require a person controlling a UA to ground the UA in certain circumstances. This power will allow a constable to stop a person from continuing to use a UA to commit an offence, and to begin the process of investigation of an offence. If the offence has not yet been committed, the power may be used by a constable to prevent the offence from taking place.
- 86 Paragraphs 1(3) and 1(4) provide for an offence of failing to comply with a requirement imposed by a constable to ground an unmanned aircraft under this paragraph, and sets out the penalty for that offence. Paragraph 1(3) specifies that, in order for an offence to be committed, the person must be in control of the UA and lack a reasonable excuse for failing to comply with the requirement. This may mean that in a situation where the UA technology was hacked or malfunctioned, for example, the person would not be guilty of an offence.

Power of constable to stop and search persons or vehicles

- 87 Paragraph 2 gives a constable the power to stop and search for UA, associated articles or (in relation to the prison-related offences) articles involved in the commission of relevant offences. Associated articles could include items such as the UA controller. Articles involved in the commission of the prison-related offences include, for example, the contraband mobile phones, drugs or tools being smuggled into a prison. This power may be used to stop and search persons, vehicles, or anything which is in or on a vehicle, in any place where the constable has lawful access and where they reasonably suspect that a relevant offence is being committed or has been committed.
- 88 Paragraph 2(1) allows the power to be exercised only in a place to which the constable lawfully has access.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

- 89 Paragraph 2(2) limits the circumstances in which a search may take place by requiring that one of either Condition A, B, or C must be satisfied, and by allowing a constable to search a person, a vehicle, or anything in or on a vehicle.
- 90 Paragraph 2(3) sets out the requirements for satisfaction of Condition A. These requirements relate to the commission of any relevant ANO offence in relation to article 94A ANO 2016 (permissions for certain flights by SUA) or article 240 ANO 2016 (endangering the safety of an aircraft), or in relation to relevant prison offences.
- 91 Paragraph 2(4) sets out the requirements for satisfaction of Condition B. These requirements relate to the commission of an offence under article 95 ANO 2016 (SUSA) or 239(4) ANO 2016 (offences relating to regulations made under article 239, the power of the Secretary of State to prohibit or restrict flying). This Condition also requires that the commission of the offence is or was related to certain listed harmful purposes. These further conditions are attached to articles 95 and 239, because the scenarios in which these articles could be breached are very broad and not all breaches warrant a stop and search power.
- 92 Paragraph 2(5) sets out the requirements for satisfaction of Condition C. These requirements relate to articles which have been involved with the commission of relevant prison offences involving a UA.
- 93 Paragraph 2(6) gives a constable the power to seize items discovered in the course of a search under this paragraph in certain circumstances.
- 94 Paragraph 2(7) defines terms used in this paragraph. The relevant Prison Act 1952 offences are sections 39, 40B, 40C and 40CB which relate to assisting a prisoner to escape, the conveyance of items into or out of a prison and the throwing of items into a prison. The Bill also provides that the meaning of “relevant prison offence” includes equivalent prison offences in the Prison Act (Northern Ireland) 1953, section 41 or 41ZA of the Prisons (Scotland) Act 1989 and offences at Scottish common law.

Power to enter and search premises under warrant

- 95 Paragraph 3(1) gives a justice of the peace the power to issue a warrant authorising a constable to enter and search premises and seize a UA and associated articles under this Schedule. This power provides entry, search and seizure powers for offences which are not covered by existing Police and Criminal Evidence Act 1984 entry, search and seizure powers or other existing powers in Scotland and Northern Ireland. The power facilitates investigation of relevant offences relating to a UA.
- 96 Paragraph 3(2) limits this power so that it may only be used in relation to a UA, and associated articles involved in a “relevant offence”, the definition of which is set out in paragraph 7(a), (b) and (c) of Schedule 8.
- 97 Paragraph 3(3) restricts the power of a constable to search for an associated article only to the extent required to find a UA or associated article. This provision ensures that this search power is not used beyond the scope for which it was intended.
- 98 Paragraphs 3(4) and 3(5) provide that provisions in England and Wales and Northern Ireland legislation apply to warrants issued under this paragraph. These referenced provisions relate to the proper execution of search warrants, and safeguarding measures.
- 99 Paragraph 3(6) sets out practical considerations and requirements for the execution of search warrants in Scotland.
- 100 Paragraphs 3(7) and 3(8) are self-explanatory.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

Supplementary Powers

- 101 Paragraph 4(1) of Schedule 8 gives the constable the power to use reasonable force when necessary, when exercising a power conferred in this Schedule.
- 102 Paragraphs 4(2), 4(3) and 4(4) make applicable to this Schedule of the Bill the existing rules for retention of seized items in England and Wales, Northern Ireland and Scotland, respectively.
- 103 Paragraph 4(5), which applies in relation to Scotland, sets out the time for which anything seized under this Schedule may be retained. The retention period will depend on the relevant circumstances but will be for as long as necessary. Retention might be necessary for use as evidence at a trial or for forensic examination as part of an investigation.
- 104 Paragraph 4(6), which applies in relation to Scotland, provides that an item may not be retained if it would be sufficient, for the purposes mentioned in paragraph 4(5), to take a photograph or copy instead.
- 105 Paragraph 4(7) clarifies that the powers in this Schedule are in addition to any other powers conferred on the police through other legislation. They are not intended to replace any already existing police powers or take precedence over any future powers that might be conferred on the police.

Authorisations to interfere with property etc.

- 106 Paragraph 5 amends section 93 of the Police Act 1997 to include a new criterion under which authorisation can be given by a public authority listed in that section to interfere with property and wireless telegraphy (such interferences potentially being the consequence of the use of certain counter-UA technologies). The effect is that such authorisations may be given where the person giving the authorisation believes that it is necessary for the action specified to be taken for preventing or detecting the use of a UA in the commission of a relevant offence, and that the taking of the action is proportionate to what the action seeks to achieve.
- 107 Paragraph 5(2) amends section 93(2)(a) of the Police Act 1997. This amendment enables interference with property and wireless telegraphy where the authorising officer believes it is necessary for the prevention or detection of “the use of an unmanned aircraft in the commission of a relevant offence”.
- 108 Paragraph 5(3) inserts into the Police Act 1997 a new subsection (2AB) of section 93, which enables the Chief Constable of the CNC to authorise interference with property and wireless telegraphy, where the Chief Constable believes such interference is necessary and proportionate for the purpose of preventing or detecting the use of an unmanned aircraft in the commission of a relevant offence.
- 109 Paragraph 5(4) inserts into the Police Act 1997 a new subsection (2AC) of section 93. New subsection (2AC) states that an “England and Wales prison authorisation” can only be made for the purpose of preventing or detecting the use of a specified unmanned aircraft in the commission of relevant offence.
- 110 Paragraph 5(5) inserts into the Police Act 1997 a new section (2AD) of section 93. New subsection (2AD) states that a “Northern Ireland prison authorisation” can only be made for the purpose of preventing or detecting the use of a specified unmanned aircraft in the commission of relevant offence.
- 111 Paragraph 5(6) inserts into the Police Act 1997 a new section (2AE) of section 93. New section (2AE) states that a “Scottish penal institution authorisation” can only be made for the purpose

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

of preventing or detecting the use of a specified unmanned aircraft in the commission of a relevant offence.

- 112 Paragraph 5(7) inserts paragraph (ab) under subsection (3) of section 93 of the Police Act 1997 to enable the application to authorise to be made by a member of the CNC, together with subsection 5(e), which is inserted into section 93 of the Police Act 1997 by Paragraph 5(12) of this Schedule to define the “authorising officer” as the Chief Constable of the CNC.
- 113 Paragraph 5(8) inserts into the Police Act 1997 a new paragraph (db) to subsection (3) of section 93. This lists in the case of an England and Wales prison authorisation who may make an application under section 93.
- 114 Paragraph 5(9) inserts into the Police Act 1997 a new paragraph (dc) to subsection (3) of section 93. This lists in the case of a Northern Ireland prison authorisation who may make an application under section 93.
- 115 Paragraph 5(10) inserts into the Police Act 1997 a new paragraph (dd) to subsection (3) of section 93. This lists in the case of a Scottish penal institution authorisation who may make an application under section 93.
- 116 Paragraph 5(11) inserts into the Police Act 1997 a new subsection (4A) of section 93, which lists the relevant offences which comprise certain offences in the Prison Act 1952, the Prison Act (Northern Ireland) 1953, equivalent common law offences in Scotland, the Prisons (Scotland) Act 1989 the Aviation and Maritime Security Act 1990, and the ANO 2016. Paragraph 5(11) also inserts into the Police Act 1997 new subsection (4B), which allows the Secretary of State to amend the list of relevant offences in subsection (4A) by means of regulations subject to the affirmative procedure, as stated in new subsection (4C) which is inserted into section 93 by paragraph 5(11).
- 117 Paragraph 5(12) inserts new paragraph 5(e) into section 93 of the Police Act 1997 to define the “authorising officer” as the Chief Constable of the CNC.
- 118 Paragraph 5(13) inserts into the Police Act 1997 a new paragraph (hb) to subsection (5) of section 93. This allows a member of senior management for prisons in England and Wales designated by the Secretary of State in respect of the relevant England and Wales institution to be an authorising officer for the purposes of section 93.
- 119 Paragraph 5(14) inserts into the Police Act 1997 a new paragraph (hc) to subsection (5) of section 93. This allows a member of senior management for prisons in Northern Ireland whose duties are exercisable in respect of the relevant Northern Ireland institution to be an authorising officer for the purposes of section 93.
- 120 Paragraph 5(15) inserts into the Police Act 1997 a new paragraph (hd) to subsection (5) of section 93. This allows a member of senior management for penal institutions in Scotland designated by the Scottish Ministers in respect of the relevant Scottish penal institution to be an authorising officer for the purposes of section 93.
- 121 Paragraph 5(16) inserts a provision (cbza) under subsection (6) of section 93 of the Police Act 1997 to define the “relevant area” to which this authorisation applies as any place where (under section 56 of the Energy Act 2004) the members of the CNC have the powers and privileges of a constable.
- 122 Paragraph 5(17) inserts into the Police Act 1997 a new paragraph (cbb) to subsection (6) of section 93. This describes the area to which an England and Wales prison authorisation may apply.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

- 123 Paragraph 5(18) inserts into the Police Act 1997 a new paragraph (cbc) to subsection (6) of section 93. This describes the area to which a Northern Ireland prison authorisation may apply.
- 124 Paragraph 5(19) inserts into the Police Act 1997 a new paragraph (cbd) to subsection (6) of section 93. This describes the area to which a Scottish penal institution authorisation may apply.
- 125 Paragraph 5(20) inserts a new subsection (8) of section 93. This sets out definitions of an “England and Wales prison authorisation”, a “contracted out institution” in England and Wales, a “contracted out Scottish penal institution”, a “member of senior custodial staff for a juvenile justice centre”, a “member of senior management for penal institutions in Scotland”, a “member of senior management for prisons in England and Wales”, a “member of senior management for prisons in Northern Ireland”, a “Northern Ireland prison authorisation”, a “Northern Ireland prison officer”, a “penal institution”, a “prison” in relation to Northern Ireland, a “prisoner” in relation to a penal institution in Scotland, a “relevant England and Wales institution”, a “relevant Northern Ireland institution”, a “relevant Scottish institution”, a “Scottish penal institution authorisation”, a “Scottish prison officer”, and an “unmanned aircraft”.

Authorisations given in the absence of the authorising officer

- 126 Paragraph 6 amends section 94 of the Police Act 1997 (authorisations given in the absence of authorising officer).
- 127 Paragraph 6(2) inserts into the Police Act 1997 a new paragraph (ba) to subsection (1) of section 94. This sets out when an urgent case may arise in respect of an England and Wales prison authorisation.
- 128 Paragraph 6(3) inserts into the Police Act 1997 a new paragraph (bb) to subsection (1) of section 94. This sets out when an urgent case may arise in respect of a Northern Ireland prison authorisation
- 129 Paragraph 6(4) inserts into the Police Act 1997 a new paragraph (bc) to subsection (1) of section 94. This sets out when an urgent case may arise in respect of a Scottish penal institution authorisation.
- 130 Paragraph 6(5) inserts new paragraph (de) under subsection (2) of section 94 of the Police Act 1997 to enable a deputy or assistant chief constable of the CNC to authorise the interference with property and wireless telegraphy in the absence of the Chief Constable of the CNC.
- 131 Paragraph 6(6) inserts into the Police Act 1997 a new paragraph (fb) to subsection (2) of section 94. This describes who may be designated by the Secretary of State to exercise the powers conferred on an authorising officer in an urgent case in respect of an England and Wales prison authorisation.
- 132 Paragraph 6(7) inserts into the Police Act 1997 a new paragraph (fc) to subsection (2) of section 94. This paragraph (fc) describes who may be designated by the Department of Justice in Northern Ireland to exercise the powers conferred on an authorising officer in an urgent case in respect of a Northern Ireland prison authorisation
- 133 Paragraph 6(8) inserts into the Police Act 1997 a new paragraph (fd) to subsection (2) of section 94. This paragraph (fd) describes who may be designated by the Scottish Ministers to exercise the powers conferred on an authorising officer in an urgent case in respect of a Scottish penal institution authorisation.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

134 Paragraph 6(9) inserts into the Police Act 1997 a new paragraph (ba) to subsection (4) of section 94. This allows the Secretary of State to designate a member of senior management for prisons in England and Wales as a designated deputy in respect of an England and Wales prison authorisation.

135 Paragraph 6(10) inserts into the Police Act 1997 a new paragraph (bb) to subsection (4) of section 94. This allows the Department of Justice in Northern Ireland to designate a member of senior management for prisons in Northern Ireland as a designated deputy in respect of a Northern Ireland prison authorisation.

136 Paragraph 6(11) inserts into the Police Act 1997 a new paragraph (bc) to subsection (4) of section 94. This allows the Scottish Ministers to designate a member of senior management for penal institutions in Scotland as a designated deputy in respect of a Scottish penal institution authorisation.

137 Paragraph 6(12) inserts into the Police Act 1997 a new subsection (4A) to section 94. This provides for definitions to be consistent with those set out in section 93 in respect of an “England and Wales prison authorisation”, “member of senior management for prisons in England and Wales” and “relevant England and Wales institution”.

138 Paragraph 6(13) inserts into the Police Act 1997 a new subsection (4B) to section 94. This provides for definitions to be consistent with those set out in section 93 in respect of a “Northern Ireland prison authorisation”, “member of senior management for prisons in Northern Ireland” and “relevant Northern Ireland institution”.

139 Paragraph 6(14) inserts into the Police Act 1997 a new subsection (4C) to section 94. This provides for definitions to be consistent with those set out in section 93 in respect of a “member of senior management for penal institutions in Scotland”, “Scottish penal institution authorisation” and “relevant Scottish penal authorisation”.

Interpretation

140 Paragraph 7 sets out definitions of terms used in this Schedule and is self-explanatory.

Clause 12: Police powers relating to requirements in the ANO 2016

141 Clause 12 introduces Schedule 9 which makes provision about police powers relating to requirements in the ANO 2016.

Schedule 9: Police powers relating to requirements in the ANO 2016

Part 1: Registration as SUA operator and competency of remote pilot

Exercise of the powers conferred by this Part

142 Paragraph 1 sets out when a constable may use the powers set out in paragraphs 2 to 4 and restricts them to only being permissible if the constable has reasonable grounds for believing that a flight of an SUA is taking or has taken place and that the requirements of articles 94D and 94F of the ANO 2016 apply. Article 94D of the ANO 2016 sets out the requirement for the registration of an SUA operator if their SUA has a mass of 250g up to and including 20kg. Article 94F of the ANO 2016 sets out the requirement for a remote pilot to have an acknowledgement of competency from the CAA before flying an SUA with a mass of 250g up to and including 20kg.

Provision of documentation or evidence by remote pilots

143 Paragraph 2(1) gives the power to a constable to require the remote pilot of an SUA to provide a valid acknowledgement of competency (or other information to assist the constable in

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

verifying that such an acknowledgement of competency was held), information as to the identity of the SUA operator and any other information, documentation or evidence specified by the Secretary of State. This provision will assist constables in enforcing the competency requirement and in investigating any offences or incidents in which a UA has been involved. The provision for the Secretary of State to set out in regulations any further information, documentation of evidence that might be required, provides flexibility in this area as it is possible that existing legislation will be updated with additional requirements. This power will be subject to the negative resolution procedure in Parliament.

144 Paragraphs 2(2) to 2(3) provide that the information as to the identity of the SUA operator can either be made by a physical identification if the operator is present at the scene or can be given by providing their registration number, or name and address. This gives the remote pilot a range of options which they could reasonably be expected to know, in order to identify the SUA operator.

145 Paragraphs 2(4) to 2(7) provide that if a person is or was a remote pilot of the SUA, and fails to comply with a requirement from a constable to identify the SUA operator in the manner set out in this paragraph, they are guilty of an offence and liable, on summary conviction, to a level 2 fine. Paragraph 2(7) links to a defence which is provided in Schedule 9 paragraph 8.

Provision of documentation or evidence by SUA operators

146 Paragraph 3(1) gives a constable the power to require an SUA operator to provide a valid certificate of registration (or other information to assist the constable in verifying that such a certificate was held), information as to the identity of the person they believed to be the remote pilot and any other information, documentation or evidence specified by the Secretary of State. This provision will assist constables in enforcing the registration requirement and in investigating any offences or incidents in which a UA has been involved. This provision will also allow existing legislation to be updated with additional requirements as necessary. This power to specify information, documentation or evidence will be subject to the negative resolution procedure in Parliament.

147 Paragraphs 3(2) to 3(4) provide that if a person is or was the operator of the SUA and fails to comply with a request from a constable to show any of the information required under this paragraph, they are guilty of an offence and liable, on summary conviction, to a level 2 fine. Paragraph 3(4) links to a defence which is provided in Schedule 9 paragraph 8.

Power to inspect small unmanned aircraft

148 Paragraph 4(1) gives the constable the power to inspect the SUA if they consider it necessary to determine the weight of the SUA. The registration and competency requirements only apply to UA weighing over 250g, and it may be difficult to determine, from a distance, what the weight of the UA is. This power will also enable a constable to confirm that a person is in compliance with the requirement in article 94D(2)(b) of the ANO 2016 that the SUA operator's registration number is appropriately displayed on the aircraft.

149 Paragraph 4(2) is self-explanatory.

150 Paragraphs 4(3) and 4(4) provide that failure to comply with a requirement under this paragraph is an offence, and set out the penalty.

Part 2: Permissions for flights and exemptions from requirements

Provision of evidence of permissions for certain flights

151 Paragraph 5(1) gives a constable the power to request evidence of a permission for a flight to take place, if they have reasonable grounds to believe that one is taking place or has taken place and that a permission is required under the ANO 2016.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

152 Paragraph 5(2) gives the constable the power to ask anyone they believe to be, or have been, the remote pilot or the SUA operator to show evidence of a permission and any other information, documentation or evidence specified by the Secretary of State. This power to specify information, documentation or evidence will be subject to the negative resolution procedure in Parliament.

153 Paragraphs 5(3) to 5(5) provide when a person is guilty of an offence under this paragraph, set out the penalty, and refer to the paragraph 8 defence which may be used in relation to an offence under this paragraph.

154 Paragraph 5(6) is self-explanatory.

Provision of evidence of exemptions for certain flights

155 Paragraph 6(1) gives a constable the power to request evidence of an exemption for a flight to take place, if they have reasonable grounds to believe that one is taking place or has taken place and that the flight contravenes a provision of the ANO 2016.

156 Paragraph 6(2) provides that a constable may ask anyone they believe to be, or have been, the remote pilot or the SUA operator to show evidence of an exemption and any other information, documentation or evidence specified by the Secretary of State. This power to specify information, documentation or evidence will be subject to the negative resolution procedure in Parliament.

157 Paragraph 6(3) provides that a person showing evidence to a constable under this provision must also show that the relevant ANO exemption applies to that particular SUA, or to the SUA operator or remote pilot, and that it also applies to that flight.

158 Paragraph 6(4) sets out when a person is guilty of an offence under this paragraph, and provides for a defence in the form of a “reasonable excuse”.

159 Paragraphs 6(5) and 6(6) set out the penalty, and provide for defences, including the paragraph 8 defence which may be used in relation to an offence under this paragraph.

160 Paragraph 6(7) is self-explanatory.

Part 3: General

Offence of providing false or misleading information

161 Paragraph 7 makes it an offence to provide false or misleading information, and sets out the penalty in relation to the offence. This provides an incentive for persons to provide true and accurate information.

Provision of information etc at a police station

162 Paragraph 8 provides that a person can meet the requirement to produce information by presenting it within seven days of the request or as soon after that period as is reasonably practicable. This allows for reasonable flexibility for those who are compliant with requirements, but were unable to provide the required information immediately.

163 Paragraph 8(2) provides a defence where it was not reasonably practicable to provide the required documentation at the nominated police station before the day on which court proceedings commenced, and makes provision for those who are genuinely unable to get to a police station within the required time period.

164 Paragraph 8(3) describes the time at which the proceedings are considered to be commenced for the purposes of paragraph 8(2). This will vary between the jurisdictions of England and Wales, Scotland, and Northern Ireland.

Powers of Secretary of State exercisable by regulations

165 Paragraph 9 sets out that the Secretary of State must use regulations to specify the particular descriptions of information, documentation or evidence to be requested or obtained by a constable under the powers in this Schedule.

Interpretation

166 This paragraph defines certain terms used throughout this Schedule and is self-explanatory.

Clause 13: Fixed penalties for certain offences relating to unmanned aircraft

167 Clause 13 introduces Schedule 10, which contains provisions about fixed penalties.

Schedule 10: Fixed penalties for certain offences relating to unmanned aircraft

Power to issue fixed penalty notices

168 Paragraph 1 of this Schedule gives constables the power to issue FPNs for fixed penalty offences.

169 Paragraphs 1(2) and 1(3) give the constable the power to issue FPNs when the constable believes that the offender did not cause or intend to cause various types of harm or damage when committing the offence. This provision therefore limits the use of FPNs to less serious offences.

170 Paragraphs 1(2) and 1(4) give the constable the power to issue FPNs only when the person can be properly identified by way of their name and address.

Fixed penalty offences

171 Paragraph 2(1) gives the Secretary of State the power to prescribe in regulations (secondary legislation) the offences in relation to which FPNs may be issued. This power will be subject to the affirmative resolution procedure in Parliament the first time it is used and thereafter the negative resolution procedure, as is set out in clause 17 on Regulations.

172 Paragraph 2(2) sets out which types of offences which may be prescribed as fixed penalty offences for the purpose of this Bill.

173 Paragraph 2(3) amends the ANO 2016 to provide for FPNs where an offence under the ANO 2016 is prescribed as a fixed penalty offence under this Bill.

174 Paragraphs 2(4) and 2(5) are self-explanatory.

Fixed penalty notices

175 Paragraphs 3(1) and 3(2) set out the definition of an FPN, the information that must be included in it and the procedure for paying the fixed penalty.

176 Paragraph 3(3) provides that two different amounts may be specified in an FPN; if this is the case then only the lower amount is payable if the payment is made within a specified period of not more than 14 days.

177 Paragraph 3(4) sets out how fixed penalties that may be made by post may be made, and the time that payment will be regarded as having been made.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

Effect of fixed penalty notice

178 Paragraph 4 allows a person given an FPN 21 days in which to pay it and avoid being convicted of the offence. The proceedings for the offence cannot begin until after that 21-day period unless the person in receipt of the FPN requests a hearing in respect of the offence.

Amount of fixed penalty

179 Paragraph 5 gives the Secretary of State the power to prescribe in regulations the amount of the fixed penalty. The amount prescribed may vary between the offences, and may be adjusted by future amendment to the regulations. This power will be subject to the affirmative resolution procedure in Parliament the first time it is used and thereafter the negative resolution procedure, as is set out in clause 17 on Regulations.

180 Paragraph 5(2) provides that the amount that may be prescribed is limited. This means that a fixed penalty amount will never exceed half of the maximum fine that would have been payable if the person was convicted for that offence. Provision has also been made in paragraph 5(2)(b) for the possibility of a future offence attracting an unlimited fine (level 5 on the standard scale for summary offences). As it is not possible for an unlimited amount to be halved, in this scenario an FPN would be set at the amount corresponding to level 4 on the standard scale.

Supplementary provision

181 Paragraph 6 gives the Secretary of State the power, by regulations, to prescribe further requirements in relation to FPNs, and provides that these regulations may amend or repeal primary legislation. As is set out in clause 17 on Regulations, this power will be subject to the affirmative resolution procedure in Parliament, when regulations contain provision amending or repealing provision contained in an Act of Parliament.

Issuing of registration documents

182 Paragraph 7 sets out when registration documents in relation to FPN may be issued, and the procedure for doing so, in England and Wales, Scotland, and Northern Ireland. It also sets out requirements as to the information a registration document must contain. The registration document is a step in the enforcement process that occurs after a person has failed to pay a fixed penalty within the response period, and when that person has not requested a hearing.

Sending of registration documents

183 Paragraph 8 sets out the procedure for the sending of registration documents when a person is given an FPN and a registration document has been issued. The person to whom the documents are sent varies between the jurisdictions of England and Wales, Scotland, and Northern Ireland. Registration documents will be sent to the designated person in the area where the recipient of the FPN appears to reside, and if there is no relevant recipient in that area, the documents will be sent to the designated person in the area in which the offence was committed. This provision ensures that enforcement is possible against non-residents of the United Kingdom, or against others whose residence is not determined.

Registration of fixed penalty: document sent to designated officer in England and Wales

184 Paragraph 9 relates to the registration of the fixed penalty document received by a designated officer in England and Wales.

185 Paragraphs 9(1) and 9(2) are self-explanatory.

186 Paragraphs 9(3) to 9(6) provide that when a registration document is received by the designated officer, and the person to whom it relates resides in that area, the officer must

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

register the penalty as a fine in the register of a magistrates' court for that area. If the person to whom it relates does not reside in that area, it will be sent to the appropriate person in the jurisdiction in which that person appears to reside.

187 Paragraphs 9(7) to 9(11) provide that if a registration document is not dealt with under subparagraphs (3) to (6), the designated officer who receives a registration document in relation to an offence committed in that area must register the penalty in the register of a magistrates' court for that area. If the offence was committed elsewhere in England and Wales, or in Scotland or Northern Ireland, the designated officer must send it to the appropriate person in that jurisdiction. The title of that person varies between Scotland, England and Wales, and Northern Ireland.

188 Paragraphs 9(12) to (15) provide that, once a fixed penalty is registered as a fine, the recipient of the FPN must be given notice of the registration against them, and set out the information the notice must contain. They further provide that once the penalty is registered as a fine, it will have effect as a fine imposed by the magistrates' court. The date of registration will be considered as the date of conviction. Section 85 of the Magistrates' Courts Act 1980 (power to remit a fine in whole or in part) applies to a sum registered in a magistrates' court by virtue of this paragraph.

Registration of fixed penalty: document sent to clerk in Scotland

189 Paragraph 10 provides for the registration of the fixed penalty document in Scotland.

190 Paragraphs 10(1) and 10(2) are self-explanatory.

191 Paragraphs 10(3) to 10(6) provide that when a registration document is received by the clerk of a court of summary jurisdiction, and the person it relates to resides in the area of the court, the clerk will register the penalty as a fine for enforcement by that court. If the person to whom it relates does not reside in that area, it will be sent to the appropriate person in the jurisdiction in which that person appears to reside. The title of that person varies between Scotland, England and Wales, and Northern Ireland.

192 Paragraphs 10(7) to 10(11) provide that if a registration document is not dealt with under subparagraphs (3) to (6), the clerk who receives the registration document in relation to an offence committed in that area must register the penalty as a fine by enforcement of that court. If the person to whom it relates does not reside in that area, it will be sent to the appropriate person in the jurisdiction in which that person appears to reside.

193 Paragraphs 10(12) and 10(13) provide that, once a fixed penalty is registered as a fine, the recipient of the FPN must be given notice of the registration against them, and set out the information the notice must contain.

194 Paragraph 10(14) provides that once the penalty is registered as a fine, it will have effect as a fine imposed by the court for the purposes of any enactment referring to such a fine. The date of registration will be considered as the date of conviction.

195 Paragraph 10(15) provides that an enactment referred to in 10(14) includes those made by the Scottish Parliament.

Registration of fixed penalty: document sent to clerk of petty sessions in Northern Ireland

196 Paragraph 11 provides for the registration of the fixed penalty document in Northern Ireland.

197 Paragraphs 11(1) and 11(2) are self-explanatory.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

198 Paragraphs 11(3) to 11(5) provide that when a registration document is received by the clerk of petty sessions, and the person it relates to resides in the area of the court, the clerk will register the penalty as a fine for enforcement by entering it in the Order Book of a court of summary jurisdiction. If the person to whom it relates does not reside in that area, it will be sent to the appropriate person in the jurisdiction in which that person appears to reside.

199 Paragraphs 11(6) to 11(9) provide that if a registration document is not dealt with under subparagraphs (3) to (5), the clerk who receives the registration document in relation to an offence committed in that area must register the penalty as a fine by enforcement by entering it in the Order Book of a court of summary jurisdiction. If the person to whom it relates does not reside in that area, it will be sent to the appropriate person in the jurisdiction in which that person appears to reside.

200 Paragraphs 11(10) to 11(12) provide that, once a fixed penalty is registered as a fine, the recipient of the FPN must be given notice of the registration, and set out the information the notice must contain. They further provide that, once the penalty is registered as a fine, it will have effect as if the amount registered were a fine imposed by the court on the conviction of the recipient on the date of the registration.

201 Paragraphs 11(13) and 11(14) provide that the clerk of petty sessions must refer the case to a district judge at a magistrates' court. The judge will then decide whether to make a collection order and, if the order is made without a court hearing, the date by which the fine is due must be the same as the date specified in the notice of registration, unless the court directs otherwise.

202 Paragraph 11(15) is self-explanatory.

Bodies corporate and the Crown

203 Paragraph 12(1) explains the procedure for an FPN if it is issued to a corporate body. If an FPN is issued to a corporate body, their registered or principal office is their address and the place where they reside.

204 Paragraph 12(2) provides that an FPN may not be given to the Crown when the Crown is immune from liability in relation to the offence.

Interpretation

205 Paragraph 13 is self-explanatory.

Clause 14: Amendment and enforcement regulations

206 Clause 14 introduces Schedule 11 which makes provision about the amendment of provisions that relate to offences in consequence of an Air Navigation Order, and makes provision for the enforcement of particular EU-derived legislation, including provision for criminal offences or civil penalties.

Schedule 11: Amendment and enforcement regulations

Part 1: Amendment of provisions that relate to offences

Amendments in consequence of an Air Navigation Order

207 Paragraph 1(1)(a) provides that the power to make Air Navigation Orders includes the power to make amendments of Schedule 8 of the Bill, only so far as it relates to offences under an ANO. Paragraph 1(1)(b) also provides that the power to make Air Navigation Orders includes the power to make amendments of section 13 and Schedule 9 of the Bill. The "relevant purpose" for which such amendments may be made is set out in paragraph 1(2).

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

208 Paragraph 2 amends Part 2 of Schedule 13 of the Civil Aviation Act 1982 in order to provide that the Parliamentary procedure for provisions made for the purpose of paragraph 1(2)(b) will be the affirmative resolution procedure; such provisions therefore must be actively approved by both Houses of Parliament. For any other purpose under this Schedule, the negative resolution procedure applies.

Part 2: Enforcement of particular EU-derived legislation

Regulations providing for criminal offences or civil penalties

- 209 Paragraph 3 gives the Secretary of State a new power to make regulations providing for criminal offences or civil penalties in relation to any “relevant legislation”. Paragraph 3(2) limits this power by excluding from it provision for offences to be triable only on indictment, authorisation of the imposition of any term of imprisonment or fine exceeding the statutory maximum, and authorisation of the imposition of a term of imprisonment exceeding two years. Paragraph 3(3) limits the statutory maximum for a civil penalty such that it cannot exceed the amount of a fine at level 4 on the standard scale.
- 210 Paragraph 3(4) states that where a civil penalty is imposed, the regulations must also include provision for a right of appeal to a court or tribunal. Paragraph 3(5) determines the manner in which such an appeal may be made, including the jurisdiction of the court or tribunal, the grounds, the procedure, the suspension of the imposition of the penalty pending determination, the powers of the court or tribunal, and the method by which any sum payable in pursuance of a decision of the court or tribunal is to be recovered. The powers of the court or tribunal to which an appeal is made are further clarified by 3(6), which defines these as powers to confirm and to withdraw the penalty, to vary the amount of the penalty, and to award costs.
- 211 Paragraph 3(7) states that provision made in regulations under paragraph 3 may amend relevant legislation, while paragraph 3(8) establishes that paragraph 3 does not limit the provision that may be made by an Air Navigation Order. Paragraph 3(9), read together with the interpretation provisions in paragraph 5, defines “relevant legislation” as Commission Implementing Regulation (EU) 2019/947 and any subordinate legislation relating to any provision of Commission Implementing Regulation (EU) 2019/947, both dated 24 May 2019.
- 212 The powers conferred by paragraph 3(1)(a), which allow for the creation of criminal offences, will be subject to an affirmative resolution procedure in Parliament, as set out in clause 17(3)(e) of the Bill. The powers conferred by paragraph 3(1)(b), which allow for the creation of civil penalties, will be subject to the negative resolution procedure in Parliament.

Amendments in consequence of regulations under paragraph 3

- 213 Paragraph 4 gives the Secretary of State the power to amend the Bill. Paragraph 4(1) enables the Secretary of State to make amendments of Schedule 8 in relation to offences, or of section 12 and Schedule 9, for a relevant purpose in consequence of regulations made under the power conferred by paragraph 3.
- 214 Paragraph 4(2) defines “relevant purpose” to include an amendment being made in order to maintain the effect of a provision which would otherwise cease to be effective because of those regulations, or in order to extend a provision to apply to an offence under those regulations to which the provision does not already apply.
- 215 The Parliamentary procedure for provisions made for the purpose of paragraph 4(2)(b) will be the affirmative resolution procedure, as set out in clause 17(3)(f) of the Bill; such provisions

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

therefore must be actively approved by both Houses of Parliament. For any other purpose, the negative resolution procedure applies.

Part 3: Interpretation

Interpretation

216 This Part is self-explanatory.

Clause 15: Disclosures of information

217 This clause facilitates the disclosure of information under provisions in Part 3 of the Bill, provided that such disclosure does not contravene data protection legislation or the Investigatory Powers Act 2016.

Clause 16: Interpretation

218 The clause is self-explanatory.

Part 4: General

Clause 17: Regulations

219 Regulations under this Act will be made by statutory instrument. This will allow regulation to adapt to future needs. This clause sets out which powers are subject to affirmative resolution procedure, and which are subject to the negative resolution procedure.

Clause 18: Extent

220 Clause 18 provides that this Act will extend to England and Wales, Scotland, and Northern Ireland.

Clause 19: Commencement

221 Clause 19(1) provides which provisions in the Bill will come into force immediately, when the Bill is passed and becomes an Act.

222 Clause 19(2) provides that the section 13 and Schedule 9 provisions, other than those relating to regulations, will come into force two months after the Act is passed.

223 Clause 19(3) provides that the Act otherwise will come into force on the date set out in regulations. This provides for flexibility for the coming into force date.

224 Clause 19(4) provides that different days may be appointed for different purposes or areas.

225 Clause 19(5) provides for transitional, transitory or saving provision to be made in connection with the coming into force of any provision of the Act.

226 Clause 19(6) provides that the power to make regulations under subsection (5) includes power to make different provision for different purposes.

227 Clause 19(7) states that the Regulations made under section 19 are to be made by statutory instrument.

Clause 20: Short title

228 Clause 20 sets out that the Bill, once passed, will be called the Air Traffic Management and Unmanned Aircraft Act.

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

Financial implications of the Bill

229 Full details of the financial implications of the Bill are set out in the Impact Assessment. The total net present cost of the policies contained in the Bill affecting Government and business is approximately £1.8 million. The benefits of these policies have not been monetised. Further details of the costs and benefits of individual provisions are set out in more detail in the published impact assessment.

Compatibility with the European Convention on Human Rights

230 The Government considers that the Air Traffic Management and Unmanned Aircraft Bill [HL] is compatible with the European Convention on Human Rights ("ECHR").

231 The provisions of Parts 1 to 3 of the Bill confer a number of powers on the Secretary of State, the CAA, the police and other public officials, which affect the private interests of those in relation to whom the powers are exercised. For example this includes power to give directions requiring the recipient to prepare or submit an airspace change proposal (Part 1), power to modify existing licence provisions (Part 2), and police powers to stop and search persons or vehicles (Part 3). Such provisions are liable to engage Article 8 (private life) of the ECHR or Article 1 of Protocol 1 (enjoyment of property). The Government considers that these provisions are suitably circumscribed in the Bill, and are justified as a proportionate means of achieving legitimate aims. It is also relevant that those on whom the powers are conferred are themselves public authorities who are required by section 6 of the Human Rights Act 1998 to act compatibly with the Convention rights under the ECHR. A number of provisions of the Bill also contain appeal rights which the Government considers appropriate, both as an important safeguard for these Convention rights, and also to ensure compliance with Article 6 (fair trial).

Related documents

232 The following documents are relevant to the Bill:

- The ANO 2016 and the subsequent 2018 and 2019 amendments.

ANO 2016: <http://www.legislation.gov.uk/uksi/2016/765/contents/made>

2018 amendment: <https://www.legislation.gov.uk/uksi/2018/623/made>

2019 amendment: <https://www.legislation.gov.uk/uksi/2019/261/made>

- Department for Transport consultation: *Taking Flight: The Future of Drones in the UK*.

Consultation document:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729458/taking-flight-the-future-of-drones-in-the-uk.pdf

Government response:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771673/future-of-drones-in-uk-consultation-response-web.pdf

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

- Department for Transport consultation: Modernising the licensing framework for air traffic services

Consultation document:

<https://www.gov.uk/government/consultations/modernising-the-licensing-framework-for-air-traffic-services>

Government response:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/590630/modernising-licensing-framework-air-traffic-services-government-consultation-response.pdf

- Home Office consultation: *Stop and Search: Extending police powers to cover offences relating to unmanned aircraft (drones), laser pointers and corrosive substances.*

Consultation document:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739629/06_09_18_Stop_and_Search_Consultation_Document_.pdf

Government response:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780367/ss_consultation_gov_response.pdf

- Policy Impact Assessment: Introduction of police powers and stop and search for unmanned aircraft misuse
- Delegated Powers Memorandum

Annex A – Territorial extent and application in the United Kingdom

233 The provisions in this Bill extend to the whole of the United Kingdom. Civil aviation (including airspace) is reserved under Schedule 3 to the Northern Ireland Act 1998, Schedule 5 to the Scotland Act 1998, and Schedule 7A to the Government of Wales Act 2006; therefore, the legislative consent motion process is not engaged in relation to airspace or air traffic services related provisions. Where the Bill makes provision for stop and search powers with regards to use of UA for prison related offences, these also apply to Scotland and Northern Ireland. The legislative consent motion process is engaged in relation to provisions in paragraphs 5 and 6 of Schedule 8 to the Bill. These provisions authorise interference with property and wireless telegraphy in relation to UA near custodial institutions. This alters the executive functions of Scottish Ministers and the Northern Ireland Department of Justice. The legislative consent motion process does not apply in relation to the Welsh Assembly because executive functions relating to prisons are reserved in relation to Wales. This position has been agreed with the devolved administrations in Scotland, Wales and Northern Ireland and contact has been made with the corresponding Territorial Offices.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 - Airspace Change Proposals (clauses 1-7)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 2 – Air Traffic Services (clauses 8-10)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3 – Unmanned Aircraft (clauses 11-15)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (Scotland and Northern Ireland)

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17)

AIR TRAFFIC MANAGEMENT AND UNMANNED AIRCRAFT BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Air Traffic Management and Unmanned Aircraft Bill [HL] as introduced in the House of Lords on 22 October 2019 (HL Bill 17).

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