

Consultation on Statement of Policy on Penalties under Chapter 1 of Transport Act 2000

CAP 2617

Published by the Civil Aviation Authority, 2023

Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

You can copy and use this text but please ensure you always use the most up to date version and use it in context so as not to be misleading, and credit the CAA.

First published 2023

Enquiries regarding the content of this publication should be addressed to: economicregulation@caa.co.uk

The latest version of this document is available in electronic format at: www.caa.co.uk

Contents

Contents	3
About this document	5
Views invited	5
Chapter 1	6
Introduction and summary	6
Introduction	6
Summary of when we may impose penalties under the TA00	6
Summary of our approach to the draft statement	8
Structure of the draft statement	8
Key issues for consultation	9
Chapter 2	10
Draft statement of the CAA's policy on imposing penalties under Chapter 1 of the Transport Act 2000	10
Background	10
Procedure for imposing a penalty	12
The CAA must issue a notice before imposing a penalty	12
The CAA must issue a notice that it has imposed a penalty	13
Is a penalty appropriate?	13
Considerations likely to be relevant in all cases	13
Considerations relating to the facts of the case	14
Considerations where the CAA has multiple enforcement tools	15
Considerations in determining the amount of the penalty	16
Considerations required by Schedule B1	17
Considerations in relation to the seriousness of the contravention or act	17
Considerations in relation to the culpability of the person	17
Aggravating and mitigating factors	18
Considerations in relation to provision of false information, or altering, suppressing or destroying a required document	19
Consideration of the overall level of the penalty	19

Determining the form of the penalty – fixed and/or daily amounts	19
Qualifying turnover and qualifying period for penalties	20
Revision of this policy	21
Duties of Licence Holders under section 8	22

About this document

1. We are reviewing our approach to our enforcement powers under the Transport Act 2000 (“TA00”) in the light of the changes introduced to the TA00 by section 10 of the Air Traffic Management and Unmanned Aircraft Act 2021 (“ATMUA21”). As part of this, we are now consulting on a draft statement of policy on penalties to support our enforcement work under the TA00.
2. This document sets out in:
 - Chapter 1: a summary of the approach we have taken in developing a draft statement of policy on penalties for Chapter 1 of the TA00; and
 - Chapter 2: the proposed statement of policy on penalties for Chapter 1 of the TA00.

Views invited

3. We are seeking views on the approach set out in this draft statement of policy on penalties from stakeholders with an interest in our enforcement work under Chapter 1 of the TA00.
4. Please e-mail responses to economicregulation@caa.co.uk by no later than 31 January 2024. We cannot commit to take into account representations received after this date. Once the consultation has closed, we will consider all responses carefully. Please note that any non-confidential responses to the consultation may be published on our website. Any material that is regarded as confidential should be clearly marked as such and included in a separate annex. Please note that we have powers and duties with respect to information under section 102 and Schedule 9 of the TA00 and the Freedom of Information Act 2000.
5. If you would like to discuss any aspect of this consultation, please email Pedro.Pinto@caa.co.uk.

Chapter 1

Introduction and summary

Introduction

- 1.1 The Civil Aviation Authority is the independent regulator for the UK aviation sector. In this role, we may need to take enforcement action against:
- a) a TA00 licence holder who has failed to comply with a licence condition, statutory duty or enforcement notice; and/or
 - b) a licence holder and/or persons who have:
 - failed to comply with a formal information notice; and/or
 - destroyed information requested in a formal information notice; and/or
 - made a false statement in providing information.

The changes introduced to the TA00 by section 10 of ATMUA21 updated the CAA's powers so that they became more aligned with those in other areas of economic regulation, including under the Civil Aviation Act 2012.

- 1.2 Section 25C of the TA00 requires the CAA to prepare and publish a statement of its policy with respect to imposing penalties under Chapter 1 TA00 and determining the amount of such penalties. Section 25C(3) TA00 provides that when imposing such a penalty or determining its amount, the CAA must have regard to its policy statement on these matters. Under Section 25C(4) TA00, when preparing a statement of policy, the CAA must consult such persons as it considers appropriate.
- 1.3 We are seeking views on this draft statement of policy on penalties following the changes introduced to TA00 by the ATMUAA21.

Summary of when we may impose penalties under the TA00

- 1.4 In summary, the TA00 allows the CAA to impose penalties on:
- a) a licence holder where we:
 - 1) have given that licence holder a contravention notice under Schedule B1 TA00 and have determined that the licence holder is contravening or has contravened:

- its duties under section 8 TA00;¹
 - any obligation contained in a condition of its licence;
- 2) have determined that the licence holder is contravening or has contravened an enforcement order issued under Schedule B1 TA00; or
 - 3) have determined that the licence holder is contravening or has contravened an urgent enforcement order issued under Schedule B1 TA00 that has been confirmed.

In these cases, the CAA may impose fixed fines of up to 10% of the licence holder's qualifying turnover and/or a daily amount up to 0.1% of its qualifying turnover;²

- b) any person who, without reasonable excuse, fails to provide information or documents required by the CAA in a notice given under the CAA's information gathering powers.³

In these cases, the CAA may impose fines of a fixed amount up to £2 million and/or a daily amount up to £100,000;⁴ or

- c) any person:

- 1) where the CAA is satisfied beyond reasonable doubt that the person, in giving information to the CAA, has committed an offence of making false statements etc. under section 101 TA00 by knowingly or recklessly provided false information to the CAA; or
- 2) who intentionally alters, suppresses⁵ or destroys a document that they are required to provide by a notice given under the CAA's information gathering powers.

In these cases, the CAA may impose fines of a fixed amount of up to £2 million.⁶

¹ See Annex A below.

² Paragraphs 9, 10, 13-15, Schedule B1, TA00

³ The CAA's information gathering powers are set out in section 25 and paragraph 1, Schedule C1, TA00

⁴ Paragraph 2, Schedule C1, TA00

⁵ Reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in a legible format (paragraph 4, Schedule C1, TA00).

⁶ Paragraphs 3 and 4, Schedule C1, TA00

Summary of our approach to the draft statement

- 1.5 We consider that a single statement of policy on penalties is suitable to cover all these circumstances under which the CAA may impose penalties pursuant to Chapter 1 of the TA00.
- 1.6 In preparing this statement of policy on penalties, we have had regard to:
- our duties under section 2 TA00;
 - our published regulatory enforcement policy;⁷
 - our economic licensing enforcement guidance;⁸
 - our regulatory principles;⁹
 - the Macrory principles on imposing penalties;¹⁰
 - penalties policy statements that we have previously published;¹¹ and
 - the penalties policy statements published by other regulators.

Structure of the draft statement

- 1.7 The draft statement:
- starts with a factual description of our powers to impose penalties and summarises certain procedural obligations in relation to these matters;
 - discusses whether a penalty would be appropriate and proportionate and what the amount should be, in line with our obligations under the TA00;
 - sets out our draft policy of what factors we will consider in determining the amount of any penalty, including the factors we will consider in determining the seriousness of the breach, aggravating and mitigating factors, and what factors we will consider in deciding whether the penalty should be a fixed and / or a daily amount and the point at which we will consider the overall level of the penalty; and
 - concludes by setting out how the penalties policy statement may be revised.

⁷ The CAA's regulatory enforcement policy can be found at www.caa.co.uk/cap1326.

⁸ The CAA's economic licensing enforcement guidance can be found at www.caa.co.uk/cap1234.

⁹ Our regulatory principles are available at www.caa.co.uk/cap2181, p15.

¹⁰ The Macrory report can be found at: https://www.regulation.org.uk/library/2006_macrory_report.pdf. In summary, a penalty should: aim to change the behaviour of the offender; aim to eliminate any financial gain or benefit from non-compliance.

¹¹ See www.caa.co.uk/cap1143, part 2; www.caa.co.uk/cap1156; and www.caa.co.uk/cap2431, chapter 4.

Key issues for consultation

Question 1: Do you have any comments on the draft penalties policy statement for TA00?

Question 2: Do you have any additional comments on this consultation?

Chapter 2

Draft statement of the CAA's policy on imposing penalties under Chapter 1 of the Transport Act 2000

Background

- 2.1 This statement of policy on penalties ("penalties policy statement") sets out the basis on which the CAA will calculate penalties under the Transport Act 2000 ("TA00") where it decides to exercise its discretion to impose a penalty following contraventions or acts (also referred as breaches) under Schedule B1 or Schedule C1. The CAA is issuing this statement in performance of its statutory obligation to publish a statement of its policy with respect to imposing penalties under Chapter 1 TA00 and determining their amount, as required by s.25C TA00. In this statement, any reference to a Part, Chapter, section or Schedule refers to a section or Schedule in the TA00 unless specified otherwise.
- 2.2 This penalties policy statement refers to the CAA's powers in the TA00 to impose a penalty:
- (a) on a person¹² who holds an air traffic services licence issued under the TA00 ("licence holder") and where we have determined that the licence holder is contravening or has contravened:
 - (i) a duty imposed on the licence holder by section 8 and/or an obligation imposed by a condition in its licence (each a "Chapter 1 requirement" and together the "Chapter 1 requirements"), in circumstances where we have given the licence holder a contravention notice and the representation period has ended (paragraph 9, Schedule B1);
 - (ii) a requirement of an enforcement order (paragraph 10(a), Schedule B1); or
 - (iii) a requirement of an urgent enforcement order that has been confirmed (paragraph 10(b), Schedule B1);¹³
- the CAA may impose a fixed amount up to 10% of the licence holder's qualifying turnover for the qualifying period and/or a daily amount up to

¹² In this statement, the term 'person' refers to a company or individual who may be subject to a penalty under Chapter 1.

¹³ Schedule B1 sets out the CAA's powers to issue contravention notices, enforcement orders and urgent enforcement orders.

0.1% of its qualifying turnover as set out in paragraphs 13, 14 and 15 of Schedule B1;

- (b) on any person who is required to provide information or documents to the CAA in response to an information notice issued under paragraph 1, Schedule C1 and where that person:
 - (i) fails to comply with that information notice without reasonable excuse: the CAA may impose a fixed amount that must not exceed £2 million and/or a daily amount that must not exceed £100,000 (paragraph 2, Schedule C1); or
 - (ii) intentionally alters, suppresses, or destroys a document that they are required to produce under that information notice: the CAA may impose a fixed amount that must not exceed £2 million (paragraph 4, Schedule C1).
- (c) on any person who has given information in relevant circumstances¹⁴ and where the CAA is satisfied beyond reasonable doubt that the person, in giving information to the CAA, has committed an offence under section 101:¹⁵ the CAA may impose a fixed amount up to a maximum of £2 million (paragraph 3, Schedule C1).

2.3 In addition to the above:

- (a) where a person fails to comply with the information notice without reasonable excuse (paragraph 2, Schedule C1), the CAA may do either or both of the following (a) impose a penalty; or (b) enforce the duty to comply with the notice by bringing civil proceedings for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; and
- (b) where the CAA decides to impose a penalty on a person in respect of the provision of false information (paragraph 3, Schedule C1), that person may not at any time be convicted of the offence under section 101 in respect of the act or omission giving rise to the penalty.

2.4 The situations outlined in paragraph 2.3(b) are set out in Schedule C1 which, pursuant to section 25, makes provision to enable the CAA to obtain information

¹⁴ Under section 101(2), a person gives information or makes an application in relevant circumstances if they give or make it in pursuance of (a) a provision contained in or made under Part I, or (b) a direction given, notice served or other thing done in pursuance of such a provision.

¹⁵ Under section 101(1) a person commits an offence if in giving information or making an application in relevant circumstances (a) they make a statement which he knows to be false in a material particular, or (b) they recklessly make a statement which is false in a material particular.

for the purposes of carrying out its functions under section 34 and Schedule B1, for enforcement in connection with the exercise of those powers and for connected appeals.

2.5 Any penalty imposed under the paragraphs above must be such amount as the CAA determines to be appropriate and proportionate to the contravention or act in respect of which it is imposed. In this context it is important to note that while we consider there should be broad consistency in our approach, we are not necessarily bound by the precedent established by our previous decisions.

2.6 Any sums received by the CAA by way of a penalty or interest under the TA00 must be paid into the Consolidated Fund operated by HM Treasury.¹⁶

Procedure for imposing a penalty

The CAA must issue a notice before imposing a penalty

2.7 Schedules B1 and C1 lay out procedural requirements to be followed by the CAA, both before and after imposing a penalty. While there are small differences between the procedures under Schedules B1 and C1, broadly, the CAA must:¹⁷

- (a) give notice to the person that the CAA proposes to impose a penalty;
- (b) publish the notice as soon as practicable;
- (c) send a copy of the notice to those specified in paragraph 11(3), Schedule B1 or paragraph 5(4), Schedule C1 as appropriate;
- (d) allow at least 21 days for making representations; and
- (e) consider any representations made within that period (and not withdrawn).

2.8 The notice must in all cases specify that the CAA proposes to impose a penalty and the proposed amount of that penalty. Where a penalty includes a daily amount, the notice must specify the day on which the daily amounts would begin to accumulate and the day on which, or the circumstances in which, they would cease to accumulate. These procedural requirements apply afresh if the CAA intends to vary the proposed amount of a penalty.¹⁸

2.9 In respect of a penalty imposed under Schedule B1, the notice must also specify:

- (a) the Chapter 1 requirement that the CAA has determined is being or has been contravened;

¹⁶ Section 25B(4)

¹⁷ Paragraphs 11-12, Schedule B1 and paragraphs 5-6, Schedule C1.

¹⁸ Paragraph 11(6), Schedule B1, and paragraph 5(6), Schedule C1.

- (b) the act or omission that the CAA has determined constitutes a contravention of the requirement; and
- (c) where the penalty would be imposed under paragraph 10, the Chapter 1 requirement in respect of which the enforcement order or urgent enforcement order (as the case may be) was given.

2.10 In respect of a penalty imposed under Schedule C1, the notice must give the CAA's reasons for imposing a penalty.

The CAA must issue a notice that it has imposed a penalty

2.11 As soon as practicable after imposing a penalty under Schedule B1 or Schedule C1, the CAA must give a notice to the person on whom the penalty is imposed, publish the notice and send a copy of the notice to the persons specified in paragraph 12, Schedule B1 or paragraph 6, Schedule C1 as appropriate. The notice must specify the same information as in the notice proposing the penalty and set a reasonable period in which the penalty must be paid or reasonable periods within which different portions of the penalty must be paid.

2.12 Where the CAA imposes penalties of a daily amount, it must, as soon as practicable after those daily amounts have ceased to accumulate, give a notice to the person on whom it imposed the penalty confirming the day on which they ceased to accumulate, send a copy of that notice to the same persons referred to in the previous paragraph and, in the case of penalties imposed under Schedule B1, publish the notice.

2.13 The person receiving a penalty may appeal to the Competition Appeals Tribunal.¹⁹

Is a penalty appropriate?

2.14 It may not be appropriate to set a penalty in all cases where we have determined there has been a relevant contravention, act or omission. Set out below are examples of the considerations that we will take into account when determining whether to exercise our discretion to impose a penalty.

Considerations likely to be relevant in all cases

The CAA's Duties

2.15 Our starting point in considering whether a penalty is appropriate will be consideration of our statutory duties. The CAA's primary duty under section 2 is to exercise its functions under Chapter 1 so as to maintain a high standard of safety in the provision of air traffic services. This penalties policy statement will

¹⁹ Paragraph 19, Schedule B1 or paragraphs 7, Schedule C1.

aid this duty by encouraging a holder of an air traffic services licence to comply with the Chapter 1 requirements, as well as deterring potential breaches in relation to the information enforcement provisions in Schedule C1, and helping to ensure that any enforcement action is taken on the basis of information which is as accurate and comprehensive as practicable.

- 2.16 The CAA must also exercise its Chapter 1 functions in the manner it thinks best calculated to:
- (a) further the interests (regarding the range, availability, continuity, cost and quality of air traffic services) of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them. This includes furthering the interests (where the CAA thinks it appropriate) by promoting competition in the provision of air traffic services;
 - (b) promote efficiency and economy on the part of licence holders;
 - (c) secure that licence holders will not find it unduly difficult to finance activities authorised by their licences;
 - (d) take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (whatever the time or purpose of the notification); and
 - (e) take account of any guidance on environmental objectives given to the CAA by the Secretary of State after the coming into force of this section.

The CAA's objectives in setting a penalty

- 2.17 In making regulatory decisions, we will have regard to our statutory duties. Our primary objective in issuing a penalty will be to deter non-compliance in general and to change the future behaviour of the person so that they comply with all their obligations. We also aim to incentivise compliance by all parties that have obligations under the TA00 or under their licence.
- 2.18 To the extent it is practicable, we will seek to eliminate any financial gain or benefit that the person may have made from the failure to comply and to deter non-compliance in a proportionate manner to the seriousness of the breach.
- 2.19 We will normally impose a penalty if we consider that the penalty would achieve these objectives. In doing so, we will take a proportionate approach, bearing in mind the circumstances of the infringing party and the particular infringement or issue.

Considerations relating to the facts of the case

- 2.20 In deciding whether a penalty is appropriate, the CAA will take full account of the particular facts and circumstances of non-compliance, including:

- (a) the reasons for issuing the relevant contravention notice or enforcement order, including any representations made to that notice; and
- (b) any representations made in response to the notice setting out the CAA's proposal to impose a penalty.

- 2.21 Where a person has failed to comply with the requirements of an information notice under paragraph 1, Schedule C1, the CAA must take into account any reasonable excuses. Such reasonable excuses are not defined in legislation, and we would consider on a case-by-case basis. Nevertheless, they may include circumstances that are genuinely unforeseeable and outside of the person's control which directly prevented compliance with the obligation. In addition, we would expect the person concerned to inform us as soon as practicable of any difficulties identified before the deadline for submission of the information.
- 2.22 In determining whether to impose a penalty for providing false information, the CAA must be satisfied beyond reasonable doubt that the person has knowingly or recklessly made a statement which is false in a material particular. In determining whether to impose a penalty for altering, suppressing or destroying a document required by a notice under paragraph 1, Schedule C1, the person must have intentionally altered, suppressed or destroyed documents that they are required to produce by a notice under paragraph 1, Schedule C1.²⁰

Considerations where the CAA has multiple enforcement tools

Imposing a penalty or seeking an injunction

- 2.23 Where we have a choice between imposing a penalty or using civil proceedings or a combination of both,²¹ our approach will normally be to seek to use the approach which is most likely to achieve the goals set out in paragraphs 2.17 to 2.19 above.
- 2.24 Given the importance of deterrence, we are likely to favour the imposition of penalties over seeking injunctive relief. However, we would consider civil proceedings in cases where deterrence may not be the most effective way to further our duties under section 2.

Imposing a penalty under TA00 or using competition law

- 2.25 Paragraph 16, Schedule B1, requires the CAA to consider whether it would be more appropriate to proceed under the Competition Act 1998 (the CA98) before imposing a penalty under paragraphs 9 and 10, Schedule B1.

²⁰ See section 101 and paragraphs 3 and 4, Schedule C1.

²¹ Paragraph 2(1)(b), Schedule C1 and paragraph 8(7), Schedule B1

- 2.26 By this stage of our process, we will usually have already carried out a similar exercise in our initial consideration of whether (and how) to take enforcement action. Having already satisfied ourselves that enforcement action under the TA00 in response to the relevant contravention was more appropriate than using our CA98 powers or taking enforcement action in relation to matters of safety, the question would then be whether to open an investigation using our competition law powers rather than imposing a penalty for non-compliance with an enforcement order or contravention notice under TA00.
- 2.27 While we might be expected to take the same view at this stage as we had done in deciding whether to commence enforcement action, we would act consistently with the statute and consider these matters afresh. The outcome of these considerations would depend on all the information we had available, including in relation to any intervening events or whether additional evidence about the conduct of the licence holder had come to light in the period between opting for enforcement action under TA00 and making a decision to impose penalties.

Imposing a penalty under TA00 or criminal proceedings for the offence of providing false information

- 2.28 The CAA may impose a penalty where we are satisfied beyond reasonable doubt that the person, in giving information to the CAA, has committed an offence under section 101 (making of false statements etc). Where a penalty is imposed, that person may not then be convicted of the offence under section 101 in respect of the act or omission giving rise to the penalty.
- 2.29 We will consider investigation with a view to prosecution or imposing a penalty whenever there is an alleged breach of section 101. Factors taken into consideration in determining whether to prosecute or impose a penalty include, but are not limited to, whether the false statement was made knowingly or recklessly, whether the provision of false information had or may have had any safety implications, whether the person cooperated with the CAA's investigation and whether we are satisfied that a decision to prosecute would comply with the Code for Crown Prosecutors.

Considerations in determining the amount of the penalty

- 2.30 As noted above, the amount of the penalty must be such as the CAA determines to be appropriate and proportionate to the contravention or action for which the penalty is imposed. Set out below are examples of the considerations that we will take into account in determining the amount of a penalty, including whether any adjustments are appropriate to reflect mitigating or aggravating factors in the particular case. It is possible that not all considerations will be relevant in a specific case. In each case, we will exercise our discretion, in accordance with our duties under section 2, to decide what level of penalty should apply and in accordance with the statutory maximum penalty prescribed in each case.

Considerations required by Schedule B1

- 2.31 Paragraph 13(3) provides that in determining the amount of a penalty under Schedule B1, the CAA must have regard, in particular, to factors summarised as follows: representations received during the consultation period set out in the notice (see section on "Procedure for imposing a penalty" above), steps taken by the licence holder to comply with the relevant requirements and any steps taken by the licence holder towards remedying the consequences of the relevant contravention.

Considerations in relation to the seriousness of the contravention or act

- 2.32 Any penalty should be proportionate to the seriousness of the relevant contravention or act. This will be the CAA's usual starting point in considering the general level of the penalty.
- 2.33 We will consider the level of harm (or potential harm) to airspace users, the wider public and other market participants as a result of the contravention or act, including:
- whether the breach could have seriously endangered such persons;
 - the numbers of such persons affected;
 - the benefits and opportunities foregone by, or harm caused to, such persons;
 - the duration of the harm caused and the duration of the breach; and
 - (to the extent relevant) the level of harm to the CAA's ability to carry out its functions.
- 2.34 The general level of penalty will also be influenced by any gain (financial or otherwise) that the person has made because of the contravention or act (which may include an estimate of the cost savings associated with not complying with the relevant obligation).

Considerations in relation to the culpability of the person

- 2.35 The CAA will also consider the culpability of the person, including (depending on the type of contravention or act) whether they have acted negligently, recklessly, knowingly or intentionally, or whether the contravention or act was accidental or inadvertent. In so doing, we may also consider whether:
- the person had identified (or should have identified) the risk of a contravention and failed to put in place an effective mitigation strategy; and
 - what steps (if any) the person had taken (or should have taken) to avoid a breach before it took place.

- 2.36 While in some cases, there may be comparatively little evidence in relation to these matters, we in general expect licence holders to have clear and effective licence compliance strategies and good standards of record keeping and document retention (bearing in mind our statutory powers to request information as discussed further below).

Aggravating and mitigating factors

- 2.37 The CAA will take account of relevant mitigating and aggravating factors. These might include:
- (a) the speed with which steps have been taken to return to compliance, including whether these were initiated by the person or in response to the CAA's actions;
 - (b) any steps which have been taken to minimise the risk of the contravention or act recurring, such as new processes put in place or training needs addressed may be considered a mitigating factor. Conversely, not identifying or implementing such actions could be an aggravating factor that could lead to an increase in the overall penalty;
 - (c) the extent of involvement of directors or senior management in the contravention or act or their lack of appropriate involvement in action to remedy it;
 - (d) repeated or continuing contraventions or acts (whether of the same or a different nature);
 - (e) whether the person reported the contravention or act promptly after it took place or, conversely, whether the person tried to conceal it. We consider that self-reporting and on-going comprehensive reporting, including additional information as it comes to light should be duly incentivised and considered as a mitigating factor;
 - (f) cooperation with the CAA's investigation, including, but not limited to, speed of responses, availability, openness and willingness of staff (including directors and senior managers) to engage, and availability of data;
 - (g) whether the relevant person has sought to compensate other persons affected by the contravention or act in addition to taking steps to rectify the breach; and
 - (h) any other mitigating or aggravating factors relevant to the specific case.
- 2.38 Where the facts about a mitigating or aggravating factor are unclear or disputed, the CAA may take account of the strength of the evidence in deciding what weight to place on that factor.

- 2.39 In accordance with its duties under section 2, the CAA will apply an adjustment reflecting the net effect of the mitigating or aggravating factors. The net effect of these factors may be significant, including reducing the penalty to zero or increasing it to the maximum limit specified in the TA00.

Considerations in relation to provision of false information, or altering, suppressing or destroying a required document

- 2.40 Where false information is provided, the CAA may impose a penalty where it is satisfied beyond reasonable doubt that the person providing that information has committed an offence under section 101. This will be the case where that person knows that the information is false in a material particular or is reckless as to whether it is false in a material particular.
- 2.41 Where a required document has been altered, suppressed or destroyed, a penalty may be imposed if an intention to do so can be shown.
- 2.42 In both cases, it is likely that the CAA will consider such acts to be either serious or very serious.

Consideration of the overall level of the penalty

- 2.43 In all cases, having considered the factors set out above, the CAA will consider the overall level of the penalty in the round to assure itself that it deters non-compliance, is appropriate and proportionate to the contravention or act in question, while ensuring the penalty does not exceed the maximum specified in statute.
- 2.44 As noted in paragraph 2.8 above, the CAA can propose varying the amount of any penalty (and, so, the balance between any fixed and daily amounts) if it gives a further notice (see paragraph 5(6), Schedule C1). This allows the CAA to better target the penalty to the particular case if emerging circumstances suggest this is appropriate and proportionate and, at the same time, effectively incentivises compliance by all parties that have obligations under the TA00 or under their licence.

Determining the form of the penalty – fixed and/or daily amounts

- 2.45 The TA00 sets out for which contraventions under Schedule B1 and which acts under Schedule C1 the CAA may impose fixed and/or daily penalties. Where relevant, the CAA will decide whether to impose a fixed or daily penalty, (or a combination of the two), in the light of the circumstances of the case. Where both may be imposed, the appropriate balance between the two, including the period we consider appropriate for a daily penalty to accumulate, will depend on the specific facts and circumstances of the case.

- 2.46 We note that daily penalties, (either alone or in combination with a fixed penalty) may be more appropriate for ongoing infringements as they create greater incentives to comply quickly.²² If the contravention or act has ended before the penalty is imposed, a fixed penalty will most likely be appropriate.

Schedule B1

- 2.47 In respect of a penalty in relation to a contravention by a licence holder under Schedule B1, a daily amount is an amount payable where the contravention in respect of which the penalty is imposed continues after it is imposed.
- 2.48 In respect of a penalty imposed under paragraph 9, Schedule B1, a daily amount can only be imposed if the contravention has been continuous since the end of the representation period for the relevant contravention notice (paragraph 15(2), Schedule B1).

Schedule C1

- 2.49 The CAA is likely to impose both a fixed amount and a daily amount for non-compliance with an information notice given under paragraph 1, Schedule C1, based on the factors set out above.
- 2.50 A penalty for providing false information or for destroying documents etc will be a fixed amount as set out in paragraphs 3 and 4, Schedule C1.

Qualifying turnover and qualifying period for penalties

- 2.51 Under paragraphs 14 and 15, Schedule B1:
- (a) where a fixed penalty is imposed, this may not exceed 10% of the licence holder's "qualifying turnover" for the "qualifying period";
 - (b) where a daily penalty is imposed, the daily amount must not exceed 0.1% of the licence holder's "qualifying turnover" for the "qualifying period".
- 2.52 A licence holder's "qualifying turnover" is the turnover from its provision of air traffic services as reported in accounts that the licence holder is required to prepare by a licence condition.
- 2.53 The "qualifying period" is the last regulatory year ending on or before the day on which the notice proposing the penalty is given (see "Procedure for imposing a penalty") except in certain circumstances as provided in paragraphs 14(4)-(5), Schedule B1.

²² The period during which daily amounts accumulate must be such as the CAA considers appropriate. However, it must begin after the CAA gives notice that it has imposed a penalty and end before the contravention(s) cease.

Revision of this policy

- 2.54 The CAA may, from time to time, review this policy. If the CAA decides to revise this policy, it must consult on the proposed revisions before making them in accordance with section 25C(4).

APPENDIX A**Duties of Licence Holders under section 8**

While a licence is in force its holder:

- (a) must secure that a safe system for the provision of authorised air traffic services in respect of a licensed area is provided, developed and maintained;
- (b) must take all reasonable steps to secure that the system is also efficient and co-ordinated;
- (c) must take all reasonable steps to secure that the demand for authorised air traffic services in respect of a licensed area is met;
- (d) must have regard, in providing, developing and maintaining the system, to the demands which are likely to be placed on it in the future.

A licensed area is an area in respect of which the licence authorises its holder to provide air traffic services.

Authorised services are services of the description specified in the licence as the description of services which the holder of the licence is authorised to provide.