

To HM Revenue & Customs

"Proposed Commissioners' Directions on reporting of passenger and crew information for customs purposes: a Consultation Document" dated 25 March 2015

We note that the Consultation Document is addressed to "anyone". The following comments are from general aviation pilots based in the Republic of Ireland who are affected by these reporting requirements, whose names are listed in the email to which this document is attached.

COMMENTS ON CONSULTATION DOCUMENT

These comments are dated 22 April 2015.

The following abbreviations are used in these Comments

"Document": the subject Consultation Document;

"ROI": Republic of Ireland;

"UK": United Kingdom, including Northern Ireland;

"NI": Northern Ireland;

"GB": UK excluding NI;

"BF": UK Border Force, and police activities in border security.

"GAR": General aviation report as published by HMRC and various UK police forces;

"TA": Terrorism Act 2000 of the UK;

"GA": general aviation, by which we refer to private light aircraft flying generally on a non-commercial basis;

"ACPO" Association of Chief Police Officers;

"flights": this document is referring to non-commercial GA flights only;

"FIR" flight information region, used in international flight plans.

Preliminary:

The subject of the Document is stated to be "*for customs purposes*". However the Document does not mention that GAR requirements for UK-ROI GA traffic arise primarily from the TA, which is stated to be for the prevention of terrorism. So the Document sheds no light whether the 12-hours advance notice requirement for UK- ROI flights as enshrined in UK legislation will be affected by the proposals, or indeed whether "customs" purposes include immigration control and anti-terrorism security. Police and immigration requirements are referred to in paragraph 5.4 of the Document but without any clarification whether the notice proposals are proposed to be instead of the police requirements, or in addition. Our comments below are largely based on the premise that the Document's proposals do intend to supersede the TA requirements, albeit the Document does not actually say this and is therefore in need of clarification. If "customs purposes" were indeed the full scope of the Document, GB-NI matters would not be relevant, there being no customs.

Main Comments:

1. Free movement of people and aircraft:

It is a basic principle of EU law that persons and craft such as aircraft should be free to move among the member states, subject only to controls that are proportionate. We would respectfully submit that the draconian provisions of the TA as they now apply to UK-ROI flights, with 12 hour notice periods, and police discretion in effect to intercept any pilot for lengthy interrogation, are not proportionate. Furthermore there is supposed to be a "Common Travel Area" between UK and ROI for passport-free travel which is not referred to in the document. There would in the past have been concern about Irish-originating terrorism, but it is hard to believe today that this poses a greater threat to GB than domestic UK factors, or that ROI circumstances demand more restrictive GA travel controls than to/from other European Union countries such as France.

Pity the poor pilot from continental Europe, thinking he/she can tour the scenic British Isles - how is such a person to navigate the impenetrable maze of UK GAR requirements, both the nationally-stated ones, and the actual local ones? Those of us who travel frequently between ROI and UK airfields find it hard enough, especially when unforeseen weather or technical issues intervene in our plans. Such poor pilot would be incredulous to hear government policy is to make the UK the best country for GA

There must come a point where the UK's byzantine restrictions on intra-EU GA traffic so completely undermine a diligent law-abiding pilot's ability to travel, that EU free movement principles are offended. We should consider a complaint to the Commission if the present consultation does not produce a material improvement.

Many of our Irish fellow-pilots whose aircraft have sufficient range actively avoid landing in the UK when en-route to or from the European continent, due to the impracticable notice periods and all-around inflexibility of the GAR regime. In those cases Fortress UK can be avoided.

Can this be the same country whose government is committed to encouraging GA, and which recently published a paper that points out that there are 38,000 GA jobs in the UK and including the following sentiments:

"General Aviation Strategy - 2. VISION

*The Government's vision is of the UK being the best place in the world for GA as a flourishing, wealth generating and job producing sector of the economy."*¹

The paper refers to the GAR regime (pages 41-42) but without specifics and appear to acknowledge that there will be continue in future to be two overlapping GAR requirements whose notice periods may be different, with resultant continuing confusion. It refers (page 41) to "*introducing a GAR emergency telephone line for notifying changes to GAR information*", but we understand the emergency line actually introduced is for emergencies as the word is commonly

¹ UK Department of Transport paper on General Aviation Strategy, March 2015, section 2 first paragraph.

understood, and not for notifying any other changes to GAR information. We comment further on changes to GAR information, an important practical issue, in section 3 below.

2. Local rules trump national rules:

ROI GA's main interaction with GB security is with BF enforcing the TA notice periods. Now, we understand there are over 50 regional police forces in GB, holding a wide variety of opinions as to how the TA rules should be applied. If anyone doubts this, a quick review of the GA requirements described on regional forces' websites will show it to be the case. There seems to still be a widespread reluctance to accept that GARs submitted via the new online systems are sufficient to discharge the pilot's customs/immigration/police notice obligations, notwithstanding BF/ACPO confirmation that this is the preferred method.

Inbound to the UK, local rules always trump national rules, so flying into a particular UK airfield it really doesn't matter what the national rules are; because local BF can impose their will through the airfield operator, making compliance with whatever gold-plated requirements it may choose a condition of getting permission to land. At larger airports BF can impose their will via handlers. Broadly, one might observe that the further you go from London the worse these fiefdoms are. We can give you examples.

Related to this is the comment in the Document (paragraph 2.5) that the existing time limits "are not being enforced". This would be news, apparently, to many police forces whose enforcement of legislation in the TA continues as before. A national non-enforcement policy is of limited practical use to a ROI-UK GA pilot, arriving in the UK at some small field and confronted with a censorious BF officer who asserts that the small ports office of the relevant police force has not received the GAR, or did not get the GAR the mandatory 12 hours before arrival. While the pilot might perhaps be safe from a successful prosecution, the BF officer has all the powers; he/she can take the pilot away for questioning, or to interfere with him continuing his journey. It is no use whatsoever to such a pilot to cite a national non-enforcement policy when the regulations continue to be enforced locally.

Some of us have taken to carrying on board detailed Home Office/BF/ACPO documentation to fend off local BF complaints on arriving in the UK. If honest and otherwise law abiding ROI pilots need to arrive equipped for adversarial interactions with BF there must be something fundamentally wrong; one would have thought that BF resources would be better employed seeking the co-operation of the great body of the honest in isolating those of real interest to UK security.

The persistence of locally-enforced rules contrary to UK-wide national rules and continuing culture of local autonomy seems to be basically a failure of management of the relevant agencies.

3. Variation of intended flight:

The normal course of events in flying light aircraft under our "visual flight rules" in north-west Europe is that weather interferes with many or most trip plans. Variations from originally-intended plans due to the vagaries of our weather are normal.

It should be self-evident that the primary duty of the pilot is to ensure the safety of his passengers and himself. That overrides all other obligations.

The Document however makes no reference at all to what is supposed to happen when an intended flight is delayed, advanced or diverted, due to unforeseen circumstances ?

Unforeseen circumstances are usually to do with weather, but may also be a range of technical issues.

There is a new "emergency" helpline for BF issues but unforeseen circumstances do not have to escalate to the stage of being an emergency, before the prudent pilot's plan must change.

This is a safety issue. One of the common causes of serious accidents in GA is the so-called "get-home-itis" where an imprudent pilot presses on into unsuitable weather or with some other problem, where the prudent pilot would amend, divert or abandon his flight. The lack of any mechanism (short of an actual emergency) in the existing BF procedures, or in the Document under review, for alteration of GA plans or even any acknowledgement that such situations exist, is a serious gap. A change of plan or diversion must not be taken ipso facto as putting the pilot under suspicion of customs/immigration offences - changes of plan are a normal feature of prudence in GA activities.

4. Northern Ireland:

The UK seems to be the only country in Europe with police control of domestic GA flights, i.e. NI-GB.

Why is this justified? Customs controls do not apply. There appears to be no reason why a NI-GB GA flight in a small aeroplane represents a greater threat to UK security than any other flight by the same aircraft within GB. This looks like a control that has long outlived its usefulness, if it ever had any. Yet security controls once put in place are hard to remove. We suggest that this control is waste of police resources.

A hypothetical return flight from ROI to Scotland with intermediate fuel stops in NI each way requires at present no less than 6 GAR filings to be made and processed.

NI-ROI GAR controls also appear to be a waste of resources, these controls are supposed to apply to aircraft flying across the land border. The anomalous nature of this control can be illustrated by thinking of a scenario say of adjacent farmers' fields, straddling the frontier; a microlight aircraft in one field wishing to travel to the other field can be taxied across with no control of any sort, just like a car, whereas if the pilot makes an airborne hop into the other field the whole GAR procedure is required with currently 12 hours advance notice².

Why, therefore, is there (at least in theory) detailed flight-by-flight control of NI-ROI flights in small aeroplanes, but no systematic control at all of private passenger vehicles? The latter would be a far easier way of moving criminals or contraband.

We propose that the NI-ROI GAR requirement be removed, or the NI-GB requirement be removed, or both.

5. Other comments:

(i) The whole thrust of recent BF restrictions and the control of every GA flight in small aeroplanes to/from the UK appears to us to impose a widespread cost on the law-abiding GA community to achieve very little. No distinction is being made between large GA aircraft that might for example be of some use to a smuggler, and the small types (under say 2 tonnes maximum all up weight) typically flown. We are unclear why small types should not be exempted in the interests of consistency with road traffic, especially in an intra-Ireland context.

(ii) The introduction of departure controls from the UK (otherwise than to ROI which is already controlled) to intercept criminals or malefactors seems to be of doubtful logic; a GAR form seems unlikely to figure largely in the considerations of a fleeing suspect.

(iii) The proposed two hours notice is still too long in its practical application, and notice should be from the time of arrival not the time of departure. The latter treats short flights into the UK differently from long ones.

(iv) It appears to be a waste of police resources to repeatedly screen the same relatively small group of pilots who fly frequently on ROI-UK GA flights. We propose a visa or preclearance scheme where personal details of relevant pilots of verified probity can be filed online and screened annually. BF will still be notified of flights via flight plans.

(v) The Document proposes to introduce a new restriction on flights from UK police-designated airports to ROI. At present no advance notice is required for such departures. Any new restriction on departures from the UK, from an airport which has on site police resources, is to be deplored.

² Just to cover a technicality with this scenario, no flight plan would normally be required for the "hop" as significant parts of ROI are in the Scottish FIR and likewise parts of NI are in the Shannon FIR

(vi) The draft legislation in the Document (at Annex A) appears deficient in a number of respects. Paragraphs (2) and (4) refer to the "proper officer". No definition of "proper officer" is provided. Paragraph (4)(1) (a) (i) and (ii) refer to the proper officer having direct access to the data or it being transmitted to the proper officer. This opens up the whole argument that has bedevilled GA pilots' interaction with UK police forces in the past, where GAR forms sent to a force were instructed to be routed to a named individual police officer (usually with a non-functioning fax number provided), who would not accept that references to "a constable" in the TA (Chapter 11 section 12(3)(b)) could mean anyone other than him/herself. In other words, the common stance was that if DC Bloggs didn't get the GAR form, the required notice was not given, so the pilot was to blame.

Any new regulations need to make it crystal-clear beyond any challenge or debate that the pilot's GAR obligations are fully discharged by sending the information to a central website/fax or phone number or via an approved online platform.

If the "proper officer" does not get the data, or there is a computer failure or whatever mishandling occurs to the data after its transmission, that must not be a responsibility of the pilot.

(vii) Schedule 2, presumably the contents of the GAR, is blank in the Document. However we notice that in Schedule 1 item 2(a) requires "*any other information described on the person's travel document*". Please note that ROI-UK travel does not as far as we are aware require any travel document to be carried, and where a driving licence or pilot licence were used as a travel document the concept of "and any other information" would include a mass of utterly irrelevant details.