

Scottish Government – Onshore Wind Sector Deal

Recommendations of the Work Package 5 Group – Transparency

20th March 2025

Introduction

The WP5 group was tasked with examining the transparency of the policies, processes and contractual arrangements currently used when implementing aviation mitigation solutions.

The stated aim of the group is to produce recommendations to enable:

“An agreed approach and associated process which demonstrates best practice, reasonableness, transparency and consistency with aviation policy which provides clarity and certainty to all stakeholders in delivering enduring coexistence between wind energy generation and aviation”.

The group have examined recent planning decisions by both the ECU and local authorities as well as looking at current policy statements from both UK and Scottish Government. There was also a need to understand the relationships between DfT, CAA and DESNZ to enable a top-down approach to targeting the recommendations.

The recommendations in this document are focused on two main areas:

- DfT. They set the policy and legislation framework which the CAA, as the independent aviation regulator, operate under. To date, much of what the CAA has produced on windfarm mitigation has been in the form of guidance due to the constraints of its remit. A stronger, more focused policy direction from DfT would give more authority and weight to the CAA publications.
- Planning authorities. Although based on Scottish planning cases, these recommendations are based on UK wide planning principals and should be able to be applied across the UK.

The aim of the group was not to produce brand new guidance, rather, to produce some clear recommendations to consolidate changes and precedents that are already being set within the existing planning and regulatory frameworks. Ultimately, this will add clarity to processes and remove uncertainty within the policy framework. All stakeholders will benefit from this approach, and it will simplify the guidance.

In light of the precedents that are emerging, there is a clear need for the current forms of contract to be updated as they are no longer fit for purpose. The North Ayrshire Council decision on Swinlees, together with the Energy Consents Unit decisions on Clauchrie and Sanquhar II, demonstrate that conditions can be crafted without the need for complex and opaque mitigation agreements when implementing a mitigation solution. More importantly, these conditions are aligned with existing planning principals and CAA guidance. The recommendations here, if implemented, should allow a much simpler, and more transparent form of financial instrument to become the norm.

Developers and ANSPs should apply the tests in the planning guidance and CAA documents as a check that any mitigation scheme is compliant and determine what the most appropriate and transparent mechanism is to facilitate that solution.

These recommendations should help simplify the guidance to facilitate a more transparent and consistent approach to implementing aviation mitigation solutions.

James Wylie
Work Package 5 lead

1. Proposed guidance from DfT to CAA

Context

The Secretary of State for Transport has powers to provide the Civil Aviation Authority with guidance and direction on a wide range of matters. In light of UK Government mandated targets and the transition to net zero, the onshore and offshore wind industries recommend that clear direction is provided on the topic of how aviation interests address the impact of the increasing deployment of onshore and offshore wind developments. Proposed content is set out below.

Supporting decarbonisation

It is essential that that co-existence between aviation and wind industries is fully recognised, without compromising safety. UK Government's policy in support of the deployment of both onshore and offshore wind requires a rapid increase in the number and scale of wind projects deployed in order to meet our net zero targets.

We recognise that the CAA has been engaged with the wind industry for many years and has provided guidance to aviation and wind stakeholders through CAP 764. However, the wind industry is not currently recognised as a significant or relevant stakeholder in the formal sense compared with sectors such as the Oil and Gas industry. Consequently, as DfT and CAA formulate and develop aviation policies, regulations and guidance, the relationship with and potential impact of the wind industry on aviation interests is not currently addressed during those stages. As a result, successful coexistence of wind and aviation interests can only be achieved through costly and complex remediation measures to deliver mitigation.

The Clean Energy Action Plan 2030 makes it clear that there is a need to implement a change of approach which recognises the role of the wind industry as a formal stakeholder in airspace and CNS infrastructure to better co-ordinate the interactions between wind and aviation infrastructure. This will enable strategy, policy, regulation and guidance to reflect the need for delivering coexistence of wind and aviation interests through implementing measures from the outset that recognise the wind industry as a key element of national energy security.

It is acknowledged that there is a need for a transitional period to meet this goal. To facilitate that transition it is now necessary to improve the arrangements in place between the wind industry and aviation stakeholders to take account of the following:

- to the extent it is not already in place, CAA should introduce a requirement for ANSPs and other aviation stakeholders to engage promptly and pro-actively with wind industry developers with a view to carrying out a proper assessment of whether or not any mitigation is needed and then identifying the most appropriate and cost-effective mitigation;
- current CAA procedures (CAP 764) should be actively monitored, and non-compliance should be reported on by CAA;
- CAA should positively engage during planning/consenting processes to offer its view on compliance with its guidance and on the acceptability of mitigation solutions that have been proposed
- CAA should introduce a requirement for aviation infrastructure to be modernised at the first available opportunity by aviation stakeholders in a manner that recognises that wind turbines are part of the built environment and therefore that aviation infrastructure is designed to avoid, minimise or address any adverse impacts of wind turbines wherever possible;
- that during the transition period until that is achieved and where there are still adverse impacts of proposed wind projects the immediate aim should be to raise the threshold of windfarm tolerance through regulatory requirements so that mitigation implementation is transparent and requires the minimum necessary to satisfy specific airport and ANSP safety requirements. In that context, commercial arrangements between aviation stakeholders and wind developers should:
 - reflect the costs demonstrably and reasonably incurred in relation to the required mitigation needed to address the specific impacts of the proposed wind development on the relevant aviation infrastructure;
 - where relevant, make fair provision for wind developers to share the costs of mitigation measures installed at the cost of one or more initial developers where it is possible for

- future developers to benefit from the use of those mitigation measures for their projects – see annex 1 for a framework for such arrangements;
 - be reasonable, fair, transparent and non-confidential;
- to reflect the need for transparency of the impact of costs on electricity consumers, ANSPs and other aviation stakeholders are required to report the costs they incur and income they receive in relation to mitigation for wind farm developments separately and identifiably in their annual/regulatory accounts.

Annex 1

Framework for cost recovery and sharing for new assets

- 1.1 There is a need to address concerns around “first mover disadvantage” as a potential hinderance to the deployment of renewable energy (in other words developers holding back on proposals because they are concerned that they will ultimately end up funding full aviation mitigation solutions at their sole cost which others will then benefit from).
- 1.2 Where it is identified that more than one developer of wind turbine projects may be able to benefit from the same mitigation (whether now or in the future) and the costs of implementing that mitigation have been met in full by a first developer (or developers), it is reasonable for the reimbursement of demonstrable costs mentioned above to include an appropriate contribution towards the costs borne by the first developer(s) and for the aviation interest to then pay that appropriate contribution to the first developer(s) (a “Cost Recovery and Sharing Arrangement”).
- 1.3 Cost Recovery and Sharing Arrangements should be developed on the basis of the following principles:
 - they should be reasonable, fair, transparent and non-confidential.
 - the first developer(s) should seek reimbursement only of costs incurred and there should be no element of revenue or profit generation for the first developer(s) or the relevant aviation interest in setting the level of the appropriate contribution (other than to cover identified administrative costs of implementing the Cost Recovery and Sharing Arrangement)
 - An “appropriate contribution”:
 - should be set on a non-confidential, transparent, fair and reasonable basis;
 - should take account of the extent of the impact that the developer’s proposed wind farm project would have had on the relevant aviation assets had the mitigation not been previously funded and implemented by (or for) the first developer(s);
 - The Cost Recovery and Sharing Arrangements should provide for:
 - the original developer(s) to recover up to the level that ensures they still make an appropriate contribution to the costs in relation to extent of the impact of their original project(s);
 - a time limit beyond which the arrangements cease to have effect.

2. Aviation Conditions Planning Guidance

Government Guidance on the model planning conditions and the use of planning conditions generally is found in UK Government Circular 11/95¹ and the Planning Practice Guidance² and Scottish Government Circular 4/1998³. The basic principles in both jurisdictions are very similar.

The Guidance and Circulars recognise the fundamental principles that planning conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. They confirm that planning conditions should only be imposed where they meet all of the following tests

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

The Guidance and Circulars provide advice on the use of conditions in particular circumstances (e.g. retail developments, developments with an impact on highways and roads, developments that create noise impacts) and model planning conditions are suggested to assist with the regulation of developments with particular characteristics. None of the documents provides specific advice on conditions that should be attached where a wind turbine development could have an impact on existing aviation interests.

Given the urgent need to deploy wind energy at scale it is now essential that both the UK and Scottish Governments set out consistent guidance on conditions that should be used to mitigate the impact of wind energy developments on aviation interests.

The issue of what form of condition should be used has been considered at a number of public inquiries in Scotland⁴. In those cases, Scottish Ministers' Reporters have recognised that Aviation safety is a matter of utmost importance and that, currently, wind turbine developments should pay the cost of putting in place appropriate mitigation of any significant adverse impacts on the Airport's operations.

In view of experience gained from consideration of wind turbine proposals that could affect aviation interests, we would recommend that both Governments update their planning guidance along the following lines:

- 2.1 In any case where there is the possibility that wind turbine development may have an adverse impact on Aviation interests, it is important that developer and the relevant Aviation interest liaise to understand the nature of the potential impact and the procedural or technical mitigation solutions that may be available.
- 2.2 It is essential that the Aviation interest in question is open and transparent as to its assessment of potential risk in line with Civil Aviation Authority Guidance including the potential mitigation options it has considered. It should be noted that, as explained by the CAA in CAP 670 Air Traffic Services Safety Requirements, such mitigation could be procedural rather than technical.
- 2.3 Mitigation can be secured effectively by means of a suspensive condition attached to a planning permission or relevant consent under the Electricity Act 1989 or the Planning Act 2008. Any

¹ [The use of conditions in planning permissions: circular 11/1995 - GOV.UK](#)

² [Planning practice guidance - GOV.UK](#)

³ [Planning Circular 4/1998: the use of conditions in planning permissions - gov.scot](#)
[Planning Circular 4/1998: model planning conditions addendum - gov.scot](#)

⁴ See for example <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=121198> and <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=121337>

such conditions must follow the general principles set out within Government Guidance on Planning Conditions and should therefore meet all of the following tests:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

- 2.4 The developer of the proposed wind turbines should provide a binding undertaking to meet the demonstrable costs of delivering the mitigation required to reduce any impact on the aviation interest to an objectively safe level. The undertaking would provide that once such mitigation has been installed or implemented (e.g. through an enhancement to a technical installation or a modification to the aviation interest's procedures), the aviation interest should provide details of the actual costs incurred to the developer. The developer would then reimburse the aviation interest for those costs.
- 2.5 It is not appropriate for the developer to be required to meet ongoing costs of the aviation interest during the life of the windfarm. Once the relevant mitigation measure has been implemented, it becomes part of the aviation interest's operational system for which it will be responsible under the relevant legislation that governs its ability to provide relevant aviation services.

A suggested model form of condition is as follows:

The Developer shall not hang any wind turbine blades until the **[insert decision maker]**, in consultation with the Civil Aviation Authority, are satisfied that the Developer has put in place a binding undertaking to pay **[the aviation interest]** such sums as are demonstrably and reasonably incurred by **[the aviation interest]** in **[insert agreed scope of mitigation]**

Reason: in the interests of aviation safety, and to ensure the impact of the development on the systems of **[the aviation interest]** is adequately mitigated.