

**STEPHENSON
HARWOOD**

Aviation Regulatory update 2023/2024

Developments in Aviation Regulation

2023 has seen a raft of aviation-related consultations in the UK and we expect that the results of these consultations will start to filter into UK aviation regulation over the next 12 months. 2023 also saw key steps forward in developments in aspects such as decarbonising air travel with the first ever 100% SAF fuelled transatlantic flight, plus the issuance of the UK's first vertical launch spaceport licence.

Our 2022/2023 aviation regulatory update may be found [here](#).

Key developments

BREXIT	
Regulatory reforms following the Retained EU Law (Revocation and Reform) Bill 2023	The Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act"), which received Royal Assent on 29 June 2023, paves the way for significant regulatory reforms in the UK. It enables the removal of retained EU law – known from 1 January 2024 as "assimilated" law – from the UK statute books. On 22 January 2024, the Department for Business & Trade published its first six-monthly statutory report to Parliament on assimilated law. This described two statutory instruments which amended assimilated law within an aviation context, namely: 1 The Aviation Statistics Regulations 2023, which consolidated multiple pieces of assimilated law relating to the collection of aviation statistics by the UK aviation regulator, the Civil Aviation Authority ("CAA"), into a single piece of domestic legislation; and 2 The Aviation (Consumers) (Amendment) Regulations 2023, which restated key principles of relevant European Union case law related to passenger rights under Regulation (EC) 261/2004 ("EU261") (see below item for further details). Looking forward, the Department for Transport ("Dft") has plans to reform UK aviation regulation. This includes implementing the latest amendments to Standards and Recommended Practices (SARPs) contained in Annex 16 to the Convention on International Civil Aviation (the "Chicago Convention") on aircraft noise, aircraft engine emissions and aeroplane CO₂ emissions (see Regulation (EU) 2018/1139), and repealing sections of Regulation (EU) 2015/1998 as part of an ongoing programme of legislation on aviation security. These reforms are in addition to the ongoing programme of amendments to aviation consumer policy and the powers of the CAA initiated by the UK Government (see below for more detail).

PASSENGER RIGHTS AND CASE DEVELOPMENTS

Regulation 261/2004 – latest cases in the UK and EU

Fortunately for airlines, there were limited EU261 case developments in 2023 from the Court of Justice of the European Union ("CJEU"). The most notable cases were:

- *Austrian Airlines v TW (Case C-49/22)* in which the court clarified the rules on re-routed flights in the context of repatriation flights during the Covid-19 pandemic;
- *FW v LATAM Airlines Group SA (Case C-238/22)* where the court held that pre-emptively denying boarding to a passenger on a return flight because they were a no-show on their outbound flight would fall within the definition of 'denied boarding' and it is not necessary for a passenger to prove that they presented themselves for boarding in order to seek compensation; and
- the joined cases of *TAP Portugal v flightright GmbH and Myflyright GmbH (Cases C-156/22 to C-158/22)* where the unexpected death of a co-pilot resulting in the cancellation of the flight was not regarded as an extraordinary circumstance.

The most significant development in respect of EU261 in 2023 was the European Commission's proposal to finally amend EU261. The European Commission opened a consultation and requested feedback on its proposals by 29 January 2024. Unsurprisingly, the key proposed changes heavily favour consumers: (a) establishing reimbursement rights for passengers who have booked through a third party intermediary, like a travel agent, such that the air carrier either reimburses the passenger via the intermediary, or in the event no reimbursement is received by the passenger from the intermediary, they can seek this from the airline directly; (b) creating service quality standards on the information carriers must make available to passengers on their rights under EU261; (c) standardised form for reimbursement and compensation; and (d) development of a compliance monitoring program by the national enforcement bodies to ensure compliance by carriers, airports and intermediaries with EU261.

In the UK, the DfT missed the opportunity to improve EU261, which is retained in English law by the Air Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 ("**UK261**"), and instead campaigned for the [Aviation \(Consumers\) \(Amendment\) Regulations 2023](#). This came into force on 14 December 2023 and codifies certain CJEU case law in respect of EU261 into UK law. This includes the *Sturgeon* ruling on providing compensation for delayed flights, widening the definition of extraordinary circumstances to take into account the decision in *Wallentin-Hermann*, a definition for time of arrival, and confirmation that connecting flights are

	considered as a single unit and the two-year limitation period in the Montreal Convention 1999 does not apply to claims under UK261. The DfT's aim to ensure a high level of consumer protection is mirrored by the CAA, and is evident from their recent enforcement action against Wizz Air in 2023, in which Wizz Air was required to pay £1.24 million to passengers in refunds for replacement flight costs, transfers, and care and assistance following flight disruption. Wizz Air also signed undertakings to amend its policies in respect of re-routing and care and assistance for passengers.
The Montreal Convention 1999 – latest cases in the UK and EU	In recent years, the CJEU has consistently widened the scope of Article 17(1) airline liability under the Montreal Convention 1999 in relation to an accident, which provides "[t]he carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking". For example, in <i>JR v Austrian Airlines AG (Case C-589/20)</i>, the CJEU found that where a passenger falls for no obvious reason while disembarking the aircraft, an 'accident' will have occurred without the passenger requiring to prove any further causes, and in <i>BT v Laudamotion (Case C-111/21)</i>, the CJEU further expanded the meaning of 'bodily injury' by determining that psychological injuries (such as PTSD) could fall within the scope of Article 17(1). Over the past year this trend has continued, as demonstrated by the case of <i>DB v Austrian Airlines AG (Case C-510/21)</i>. The Austrian court sought clarification from the CJEU on whether the provision of first aid on board an aircraft, which subsequently resulted in further injury, could be considered as a single 'accident' originating from the initial injury. In this case, the passenger was scalded by a pot of coffee, and the burn was not adequately treated on board, leading to further medical complications for the passenger. The CJEU analysed causation by examining the passenger's initial injury; it concluded that had the initial scald not occurred, the subsequent inadequate medical treatment would not have taken place. Consequently, the chain of causation linking the original burn to the subsequent injury caused by the inadequate first aid remained unbroken, thereby holding the airline liable for all injuries stemming from the initial injury to the consequences of the insufficient first aid. The trend to widen the scope of Article 17(1) of the Montreal Convention has not been uniform however, as <i>Arthern v Ryanair DAC</i> [2023] EWHC 46 (KB) proves that the English courts have been more reluctant to expand the definition of 'accident'. The passenger in this case had slipped and fallen, once the aircraft was airborne, while on the way to use the on board toilet. During boarding, the poor weather had resulted in passengers transferring, on their shoes, de-icing liquid and rainwater from the outside tarmac into the aircraft cabin. Under Article 17(1), an accident

	occurs when the event is "<i>a distinct event, not being part of the usual, normal and expected operation of the aircraft</i>" (<i>Air France v Saks</i> [1985] 470 US 392). The High Court, on appeal from the County Court at Manchester, found that the judge at first instance was entitled to conclude that it would not be unusual or unexpected, from the viewpoint of a reasonable passenger, that a large amount of de-icing fluid was tracked into the aircraft cabin by the numerous passengers. The High Court therefore dismissed the passenger's appeal meaning that the airline was not liable for the passenger's injury.
Persons with reduced mobility ("PRMs")	Continuing with the theme of improving consumer protection, the CAA and DfT have taken steps to improve accessibility for Persons with Reduced Mobility ("PRMs") in air travel. The CAA's annual report on airport accessibility (CAP 2565, issued 20 July 2023) assessed the standard of PRM services provided by 26 airports in the UK, all of which had an annual passenger volume of more than 150,000 passengers in that year. The report demonstrated an increase in the number of passengers requesting assistance at UK airports since the pandemic, with 3.45 million passengers in 2022 receiving airport assistance. The CAA found that majority of the UK airports are complying with their obligations under Regulation (EC) No 1107/2006 ("PRM Regulation"), although improvements are still needed. Ways of driving improvement in aviation accessibility is a priority area for the DfT. In June 2023, the then UK Aviation Minister, Baroness Vere, convened an accessibility roundtable, and the DfT used the insights gathered from this roundtable to host an online Aviation Accessibility workshop on 28 November 2023. The workshop considered improvements to training; information sharing between airlines, airports, assistance service providers and ground handlers; complaint handling; change of culture and removing the cap on compensation for wheelchair damage. The DfT's priorities are in line with the developments seen in the EU, where the European Commission has proposed improvements to the PRM Regulation, and on 4 December 2023 requested feedback from the industry on the proposed changes. The window to provide feedback closes on 14 March 2024. The draft amendments propose enhancing the service and information quality standards for air carriers, requiring national enforcement bodies to develop a compliance monitoring program, obliging air carriers, airports and tour operators to share information with national enforcement bodies, improving the information available on alternative dispute resolution, and encouraging cooperation between Member States and the Commission. Since Brexit, there is no obligation on the UK to adopt these changes to the PRM Regulation, and it can do so of its own volition. Given the similarities between the proposed changes from the European Commission and the key areas of concern highlighted during the Aviation Accessibility workshop, it would not be surprising if the UK did adopt some of these amendments in the Air

	Passenger Rights and Air Travel Organisers' Licensing (Amendment) (EU Exit) Regulations 2018, which retains the PRM Regulation in UK law.
REGULATORY REFORM	
Consumer policy	On 27 June 2023, the DfT published the outcome of the Aviation Consumer Policy Reform consultation that closed in March 2022. The consultation covered potential reforms in four key areas to ensure that consumers are protected, treated fairly, and that best practice from the aviation industry becomes commonplace. The UK Government's response to this consultation was: • To legislate to grant additional administrative powers to the CAA to enforce consumer protection laws, which may include some further informal consultation with stakeholders. The CAA's current powers were subject to an independent review by the UK Government, the results of which were published in August 2023 (see below for further details). • To legislate to introduce mandatory membership of a CAA-approved ADR (alternative dispute resolution) scheme for all airlines operating to, from and within the UK. • To conclude that more work is needed to consider the merits and limitations of any changes to the current rules around compensation for delayed domestic UK flights, including reforms so that compensation is linked to the price of the ticket and available for shorter delays. • To continue further engagement with stakeholders and the CAA (including the consultation on an airline accessibility framework mentioned above) and to continue this work with service users with personal experience, to further understand the barriers to flying faced by disabled and less mobile passengers, and what more can be done to help support them. For further details, see our article from July 2023 "Update: DfT response to consultation on Aviation Consumer Policy Reform". On 29 September 2023, the CAA announced its Consumer Strategy, which sets out the overarching aims for its regulatory activities and encompasses five key priority focus areas: 1 To promote improvements for consumers in vulnerable circumstances; 2 To improve routine compliance with consumer protection legislation; 3 To empower consumers to take full advantage of the competitive market; 4 To further the interests of consumers in competition and growth; and 5 To embed the consumer interest in CAA governance structures and policy development.

	The strategy is open to stakeholder scrutiny over the next year and the CAA will be engaging with stakeholders to seek their feedback, with a view to updating the strategy if there is a need. On 24 January 2024, the UK Government published its response to a consultation launched by the Department for Business and Trade to review drip pricing and unfair commercial practice: Smarter Regulation: Improving Price Transparency and Product Information for Consumers. The five areas this consultation focussed on were the display of pricing information, hidden fees and drip pricing, fake and misleading reviews, online platforms, and online interface orders. The UK Government, in line with recommendations previously made by the UK Competition and Markets Authority (CMA) report of 20 July 2023 on unit pricing, has made the following proposals which are relevant to airlines: • Clarify the law on drip pricing by introducing new requirements in the Digital Markets, Competition and Consumers Bill on drip pricing that require unavoidable ("mandatory") fees to be included in the headline price or indicated at the start of the purchasing process; and • Continue to explore the case for extending private redress rights to further unfair commercial practices.
Independent review of the CAA	In July 2023, an independent review of the CAA by the UK Government (the Newman Review) found the regulator to be fit for purpose and delivering a high-quality service, describing it as having a "<i>world-leading role as the UK's independent specialist in aviation and airspace, safety, security, consumer rights, spaceflight and economic regulation</i>". This review supported the findings of a recent International Civil Aviation Organization ("ICAO") safety audit, which gave an "<i>outstanding report</i>" and rated the UK CAA as one of the best aviation safety regulators in the world. The review also made recommendations for changes which the UK Government considers will further improve the work the CAA does, and the services it provides, including proposals on governance, accountability, efficiency and efficacy such as: • Keeping the CAA as a separate, independent entity from the UK Government; • The publication of a new framework document¹ between the CAA and the DfT, which clearly defines their respective roles and responsibilities across areas such as airspace modernisation, sustainability and emerging technology, and sets out the DfT's and UK Government's over-arching objectives for the CAA;

¹ As of 6 December 2023, work on an updated framework document was progressing; see [Chief Executive's Office \(caa.co.uk\)](#).

	• The CAA being clear as to the information it requires from stakeholders to make all regulatory decisions and the timetable for submission of information and decision making, and improving its current mechanism for and level of engagement with stakeholders including giving feedback to show how decisions have been informed; • Concluding the review of the CAA's scheme of charges to reduce its complexity; • Contingent on the CAA optimising the use of its current consumer protection powers and demonstrating that it is doing so, the UK Government will consider providing the CAA with additional powers to effectively regulate – in the interests of consumers – where it considers that an aviation related business has breached consumer rights law; and • The CAA working providers of new and emerging technology in developing regulation.
Independent review of NATS technical failure	On 6 October 2023, the CAA launched an independent review into the technical issue encountered by NATS – the provider of en-route air traffic control services within the UK – on 28 August 2023. This issue temporarily affected air traffic control services that saw many hundreds of flights delayed or cancelled. This review, to be conducted by three independent panel members, will consider the causes, response, how the incident was managed and lessons for the future. Terms of reference were published in October 2023 and a call for inputs from stakeholders was made in November 2023. An interim report was expected in January 2024 but has yet to be published. A final report – the timing for which is to be agreed between the independent Panel and the CAA – will be provided to the CAA and the Secretary of State for Transport before publication. The Transport Committee held a one-off evidence session regarding the NATS outage on 18 October 2023, the aim of which was to investigate how passengers and airlines were affected, and how effectively airlines supported their passengers. On 26 October 2023, the CAA published CAP2597, its final decision on NATS' en-route charges for airlines for the five-year regulated price control period from 1 January 2023. This decision was met with consternation by users of NATS' service – especially UK-based airlines – due to a 26% increase in air traffic services charges.
ATOL	On 24 January 2023, the CAA issued CAP 2496 "ATOL Reform: assessing the impacts of the options for reform – request for further information" in which the CAA updated stakeholders on the progress of the ATOL reform by setting out its findings to date, provided further details on its options for reform and the timeline going forward, as well as requesting further information from stakeholders on the proposed changes to the ATOL scheme. The CAA provided further information on how financial segregation options may work, consumer attitudes to ATOL protections and

	changes to the scheme, changes to the funding of the Air Travel Trust Fund and factors that might support a future variable ATOL Protection Contribution. The window for responding to the request for information closed on 31 March 2023. The CAA received 293 responses from a range of stakeholders and had initially planned to consult on final proposals at the end of 2023, together with the DfT. However, due to the complexity of the proposed changes and the responses received from stakeholders, the CAA has been unable to meet its timeline and final proposals have been delayed until further notice. The CAA and DfT remain of the view that there is a "<i>strong case to reform the ATOL scheme</i>"² and therefore we would expect the next consultation to open at some point in 2024.
Slots	On 4 December 2023, the DfT launched the airport slot allocation system reform consultation. This consultation seeks views on the proposals for reform that will apply to slot allocation at Level 3 slot coordinated airports in the UK, namely Heathrow, Gatwick, London City, Stansted, Luton, Manchester, Birmingham and Bristol. A Level 3 airport has a coordinator appointed to allocate slots to airlines and other aircraft operators using or planning to use the airport as a means of managing the declared slot capacity. The consultation's objectives are to stimulate a competitive environment by creating a more efficient, transparent, and dynamic slot market, and establish a framework for the allocation of new slots. This includes time-limiting historic slots or 'grandfather rights' as it may be that such rights are hindering optimum use of airport slot capacity, especially at the busiest airports. Despite the consultation not being closed until 8 March 2024, the DfT's proposals have already been criticised by IATA who stated that the UK Government's proposals "<i>could have a global impact</i>" and "<i>need to be carefully addressed</i>", and that IATA are "<i>not in favour if time-limiting historic slots. Historic slots are a legally protected right under EU law. Airlines are likely to sue if they lose slots</i>".
Ground-handling	On 30 March 2023, the UK Government set out ten areas for the aviation industry to focus on to ensure airport group operations get back to full capacity and avoid a repeat of the travel disruption that occurred in summer 2022. These include the CAA and the DfT working with industry to clarify and encourage greater use of performance standards, collaboration and coordination to improve productivity/efficiency, along with the formation of a ground-handling trade association – Air Services UK – to enable better government and industry engagement. It follows from this that,

² [Update on ATOL reform programme | Civil Aviation Authority \(caa.co.uk\)](#)

	should there be any further issues attributed to industry or process failures, these could ultimately lead to new regulation.
Air navigation	On 30 October 2023, and following a comprehensive review and the receipt of feedback and insights from stakeholders by way of a consultation, the CAA published the revised airspace change proposal known as CAP1616 (fifth edition), which outlines the process for airspace change in the UK. The package of improvements makes the airspace change process easier to understand and clarifies the requirements needed to be met to progress an airspace change proposal. The CAA's improvements focus on simplification, clarification and proportionality. Although the way the CAA makes airspace decisions is not changing, the revised airspace change process and improved guidance clearly defines the requirements. The new version of CAP1616 came into force on 2 January 2024 and further associated guidance will be published in due course.
SUSTAINABILITY	
The outcome of COP28 for the aviation industry	The UN's COP28 climate change conference took place from 30 November to 13 December 2023 in Dubai, UAE. COP28 was significant in that it marked the first global stocktake for countries and stakeholders to assess the progress they have made in meeting their climate change objectives under the Paris Agreement that was adopted by 196 parties at COP21 in December 2015. The overarching goal of the Paris Agreement was to limit the global temperature rise to 1.5°C. The COP28 global stocktake revealed that global progress across all areas of climate change action has been too slow, meaning that global emissions are not on track to meet this goal. At COP28, countries considered how to accelerate action across all areas by 2030. The main outcome of COP28 was for governments to focus their climate commitments on the transition away from fossil fuels and towards renewable energies. For the aviation industry, this focus on transitioning away from fossil fuels is a welcome opportunity to advance the development of Sustainable Aviation Fuels ("SAF"). IATA's Director General, Willie Walsh, commented that it was encouraging that governments have formally recognised the necessity to transition away from fossil fuels, and that in order for the aviation industry to do so "<i>we need SAF production to rapidly increase to meet demand that is already there</i>". Walsh calls on governments to "<i>deliver policies to support SAF production</i>" and on fuel producers to "<i>heed the clear call from governments in the COP 28 declaration for them to prioritise investments in renewable fuels</i>". The CAA is working with the aviation and aerospace industry and with the UK Government to support the safe development and use of SAF, drones and new types of aircraft. In November 2023, the UK CAA issued Virgin Atlantic with a permit to fly the first ever 100% SAF fuelled transatlantic flight. The permit was granted following a programme of technical reviews by the

	CAA, including ground testing with Rolls Royce on a Trent 1000 engine running on 100% SAF. The 100% SAF fuelled Virgin Atlantic Boeing 787 flew from London Heathrow to JFK International Airport in New York on 28 November 2023, marking a major milestone in decarbonising air travel. Another technological innovation that the CAA is supporting in the move away from fossil fuels is the development, manufacture and use of electric vertical take-off and landing ("eVTOL") aircraft for both cargo and passengers. eVTOL aircraft are designed to land and take off like helicopters and have the potential to provide a more sustainable way to travel between cities and airports (ultimately purpose built vertiports). The CAA also issued a test permit to ZeroAvia, a company developing hydrogen-electric engines, allowing the company to undertake a series of initial test flights in 2023 at Cotswold Airport in Gloucestershire, with the hydrogen-electric aircraft managing to fly for a ground-breaking 23 minutes.
Greenwashing claims	Despite the industry taking significant strides to improve its carbon footprint, airlines are still being scrutinised for their sustainability claims and environmental advertising campaigns. On 6 June 2023, the consumer organisation BEUC and 23 of its members from 19 countries filed a complaint with the European Commission against 17 European airlines for greenwashing, alleging a breach of EU Directive 2005/29/EC on unfair commercial practices. The claims by airlines that were criticised ranged from slogans like "<i>Think Green Fly Green</i>" to advertisements claiming that air travel can be sustainable, and the benefits of offsetting and neutralising CO₂ emissions. The consumer organisations are requesting that the European Commission ban any claims that allege air travel is carbon neutral and to establish a vigorous quality criterion for environmental claims. This call for stronger monitoring of environmental claims by airlines has also infiltrated the UK, where recent decisions from the Advertising Standards Authority ("ASA") in December 2023 have demonstrated the heightened scrutiny of environmental claims run by airlines. The ASA found that advertising campaigns by Air France, Lufthansa and Etihad promoting their commitments to sustainability were misleading and that there is currently no viable technology or initiatives that airlines can adopt to substantiate absolute green claims. This ruling sets a high, some might say unattainable, bar for airlines to achieve in a climate where passengers are becoming more attuned to the reduction of their own carbon footprint and will look closely at airlines' claims to be flying greener and more sustainably.

AIRPORT SECURITY

Shake-up of airport security rules for liquids and carry-on baggage

The DfT previously set a deadline of June 2024 for UK airports to invest in new 3D scanners that would put an end to the 100ml allowance on liquids in hand luggage, allowing passengers to leave liquids of up to two litres and large electrical items such as laptops in their luggage as they go through security. The advanced computed tomography (CT) scanners use advanced x-ray technology to create 3D images that enable security staff to better identify the contents of luggage and to detect explosives without the need for hand baggage to be unpacked.

Whilst London City and Teesside airports were among the first to introduce these new machines, other airports including Heathrow, Gatwick, Stansted and Manchester airports are behind schedule, and are not expecting to finish the installation until 2025. Airports that do not meet the June 2024 deadline will be able to apply for an extension but the possibility of imposing penalties on these airports has not been ruled out. The delay for some airports has been caused by the fact that introducing these scanners is not only expensive but also requires the reconfiguration of security areas, including in some cases reinforcement of the floor due to the weight of these machines.

Facial recognition could replace passports at UK border control

New rules that are set to launch on 6 October 2024 could see passports replaced by facial recognition technology at UK airports. Passengers who are eligible to use e-gates in the UK will be able to pass through border control without needing to present their passport.

Facial recognition systems are already being used in Australia and Dubai, which caught the attention of UK Border Force director Phil Douglas. To use those systems, Douglas explained that passengers must apply for an electronic travel authorisation ("**ETA**") in advance and use a smartphone to read the chip in their passport. This process sends the photo image from the passport to the relevant authority so that on arrival the passenger does not need to remove their passport from their bag. Douglas envisages that in the future borders will be paperless with passports being replaced by biometrics.

UK Electronic Travel Authorisation

Since our article on "[Digitalising borders: ETIAS and ETA](#)" in May 2023, the UK has made great strides and opened its ETA scheme on 15 November 2023. The ETA will be rolled out in phases and currently only applies to Qatari nationals, who will need to apply on the UK Government website for an ETA before travelling to the UK. From 22 February 2024, nationals from Bahrain, Kuwait, Oman, United Arab Emirates, Saudi Arabia and Jordan need an ETA to travel to the UK. The ETA scheme will be rolled out to other nationalities as and when they are added to the Immigration Rules Appendix Electronic Travel Authorisation. The aim is that the ETA scheme will apply to all non-visa nationalities, including EU nationals, by the end of 2024. To apply for an ETA, visitors

	need to provide biometric and biographic data, answer questions on criminal records and suitability and pay a fee of £10. Unfortunately for the EU, the implementation of the EU Entry/Exit System ("EES") and the European Travel Information and Authorisation System ("ETIAS") have been delayed until late 2024 and mid-2025 respectively. The plan is that the EES and ETIAS will still apply to all non-EU nationals (including British nationals) who are visiting all Member States within the EU (except for Ireland), as well as Norway, Iceland, Switzerland and Lichtenstein (as they are part of the border-free Schengen area). The ETIAS authorisation is still intended to last for three years, once approved, and will cost €7 for people aged 18 to 70.
DRONES AND UNMANNED AIRCRAFT SYSTEMS	
Drone and unmanned aircraft systems	Between 22 November 2023 and 10 January 2024, the CAA held a consultation to review the UK's unmanned aircraft systems ("UAS") regulations. The purpose of the review was to try and find ways to make it easier for drone operators in the UK to use drones safely and in accordance with their regulatory obligations, recognising the increasingly significant role that UAS now plays, primarily by simplifying the applicable regulations. The consultation reflects the CAA's intention to impose regulatory requirements on the manufacture of UAS from 1 January 2026 onwards, which is part of the CAA's policy of building in safety by design and of redistributing the regulatory burden from pilots and operators to manufacturers. The CAA has confirmed that it expects to be able to publish the findings of its consultation next year, which will then be submitted to the DfT for final consideration. On 19 January 2024, the CAA also initiated a consultation inviting comments on its proposed 'vertiport' design proposals. The CAA defines a 'vertiport' as an aerodrome that is used or intended to be used for the arrival, departure or surface movement of VTOL (vertical take-off and landing) aircraft. The purpose of the consultation is to obtain input from industry stakeholders to allow the development of VTOL infrastructure, specifically eVTOL infrastructure, in the UK. The design proposals contained in the consultation focus on existing aerodromes, as the CAA envisages that initial eVTOL travel will take place using this infrastructure. The CAA notes, however, that the ICAO Annexes do not currently support the operation of VTOL aircraft operations at existing aerodromes: where necessary they have consulted Volumes I and II of Annex 14 and Document 9261 (the Heliport Manual) instead, and the specifications within the CAA's proposals are broadly based on the principles of heliport design. The consultation closes on 15 March 2024. In October 2023, as part of the regulator's wider Airspace Modernisation Strategy, the CAA selected six projects to take part in an "innovation sandbox" for the purpose of testing and developing beyond visual line of sight ("BVLOS") capabilities for UAS. The "sandbox" provides a

	controlled environment in which organisations can put their technology to the test against the CAA's existing regulatory framework: this helps operators learn more about the capabilities of their equipment while also helping the CAA to assess the effectiveness of its regulatory framework. In particular, the CAA will be using the testing process to work out how UAS can be integrated safely with other airspace users; given that the CAA is also consulting on the construction of nationwide VTOL infrastructure, this is becoming a pressing concern. A significant benefit of the "sandbox" approach for operators is that they will be allowed to operate within a "temporary reserved area", which removes the need to apply for a "temporary danger area" (i.e., a temporary airspace closure).
SPACE	
SaxaVord spaceport licence	See our article on "One small step closer: the UK's first fully licensed vertical spaceport" in February 2024. In December 2023, SaxaVord received the UK's first vertical launch spaceport licence. This is also the first vertical launch spaceport licence issued in Western Europe. It is a significant achievement for the UK space launch industry and takes the UK one small step closer to achieving its objective of having a fully functioning, commercially viable vertical launch industry before the end of the decade. Numerous operators are currently working with the CAA to obtain launch licences that will allow them to deploy vertical launch vehicles at SaxaVord (e.g., HyImpulse) and it is hoped that the first vertical launches may take place before the end of 2024. It will be interesting to see how these efforts fare in comparison to those of Virgin Orbit and Spaceport Cornwall. SaxaVord's road to regulatory approval was long and complex, taking over 22 months. The process was overseen by the CAA under the auspices of the Space Industry Act 2018 and the Space Industry Regulations 2021. Before issuing the licence, the CAA had to be satisfied that SaxaVord complied with stringent safety, security, financial and environmental standards. The regulatory relationship continues now, as SaxaVord will be closely monitored by the CAA and will need to submit more information prior to their first launch (as well as each subsequent launch). SaxaVord's licence also imposes strict limitations on how many launches it is allowed to carry out in any given timeframe, and also dictates which launch azimuths may be used to ensure that all launch trajectories remain clear of inhabited areas.

Contacts



Paul Phillips

Partner

T: +44 20 7809 2302

E: paul.phillips@shlegal.com



Chloe Challinor

Of counsel

T: +44 20 7809 2142

E: chloe.challinor@shlegal.com



Johnny Champion

Managing associate

T: +44 20 7809 2358

E: johnny.champion@shlegal.com



Patrick Bettle

Managing associate

T: +44 20 7809 2934

E: patrick.bettle@shlegal.com



Rupali Sharma

Associate

T: +44 20 7809 2689

E: rupali.sharma@shlegal.com



Lucy Moseley

Associate

T: +44 20 7081 4165

E: lucy.moseley@shlegal.com



Fergus Mclaverty

Trainee solicitor

T: +44 20 7809 2346

E: fergus.mclaverty@shlegal.com



www.shlegal.com

© Stephenson Harwood LLP 2024. Any reference to Stephenson Harwood in this document means Stephenson Harwood LLP and its affiliated undertakings. Any reference to a partner is used to refer to a member of Stephenson Harwood LLP. Information contained in this document is current as at the date of first publication and is for general information only. It is not intended to provide legal advice.