CABINET

POLICY GUIDANCE TO THE CIVIL AVIATION AUTHORITY:
DRAFT WHITE PAPER

Note by the Secretary of State for Trade and Industry

1. The Ministerial Committee on Economic Policy (EPC) at its meeting on 9 February approved, subject to certain amendments, a draft White Paper containing the proposed policy guidance to the Civil Aviation Authority circulated under cover of a memorandum by the Minister for Trade.

2. I now circulate, for the information of the Cabinet, a copy of the Minister for Trade's memorandum; the final draft of the White Paper, as amended in the light of EPC's discussion; and the text of the direction to the National Air Traffic Service to be published in the same Paper.

3. I expect that the White Paper will be published on 21 February.

J D

Department of Trade and Industry

16 February 1972
The Civil Aviation Act 1971 provides for the establishment of a Civil Aviation Authority to undertake the economic and safety regulation of civil aviation and to provide, jointly with the Secretary of State for Defence, air navigation services. The Authority came formally into being on 22 December 1971 and is due to assume its full functions on 1 April 1972.

2 Section 3 of the Act sets out the main objectives which the Authority should pursue and provides that the Secretary of State may give further guidance to it about the way in which it should perform its functions. The intention is that this guidance should amplify the objectives by setting out the policies to be pursued by the Authority in particular areas. Section 3 further provides that the guidance must be approved by affirmative resolution of both Houses of Parliament before being given.

3 Because of the impossibility of drafting policy guidance in language that would pass the Select Committee on Statutory Instruments, the Act does not provide for the guidance to be tabled as a Statutory Instrument. Instead it should issue as a White Paper. If sufficient time is to be allowed for Parliament to debate this in both Houses before 1 April, it should if possible be tabled no later than about 17 February. In view of these special reasons for the guidance being in White Paper form and of the short time scale for tabling it, I seek the concurrence of my colleagues to its not being submitted to the Cabinet for further discussion. I intend to table at the same time the various regulations for which the Act provides, and a new Air Navigation Order, which are all subject to negative resolution. I propose to publish with the White Paper, for information, the text of the direction to the National Air Traffic Service which the Secretary of State is making jointly with the Secretary of State for Defence and which is not subject to any Parliamentary procedure.
4 The Act requires the Secretary of State for Trade and Industry to consult the Civil Aviation Authority before giving the guidance and this has been done. The present text takes account of its comments and the Chairman designate is content. The Air Transport Licensing Board, the Air Registration Board, the industry and the Government Departments concerned have also been consulted and, so far as possible, account has been taken of the comments received.

5 The White Paper will not be subject to line by line amendment but must be approved or disapproved as a whole. I am confident that the draft annexed to this paper will be broadly acceptable to Government supporters. It might be possible to restrict the debate to half a day in each House.

6 The draft White Paper which I annex sets out the proposed guidance in paragraphs 7-30. The politically sensitive passages are those dealing with air transport licences, particularly paragraphs 15-18 which deal specifically with the relationship between the Air Corporations (referred to as the British Airways Board airlines) and the second force airlines (British Caledonian Airways). These paragraphs embody the assurances contained in the statement which I made on 3 August 1970, so far as these have not already been implemented by the transfer of routes from the Corporations to the second force.

7 For the rest, the guidance places emphasis on the importance of the consumer, on the merits of competition and the desirability of going for the necessary minimum of detailed control, carrying forward the philosophy of the Edwards Report. It stresses the need to look at the place of British civil aviation as a whole in the world market, and to maximise its profitable share. Domestically it requires the Authority to look at the role of air services in the context of regional development and overall transport policy, and the need to plan the matching development of aerodromes. Paragraph 24 makes it clear that, in regulating travel organisers, the Authority should not set out to deal with complaints about unfinished hotels and cancelled cruises.

8 The financial objective in paragraph 29 will require a very substantial increase in the rate of recovery of costs from the industry and users of its services over a five year period. Paragraph 21 provides, in this connection, for a two year period during which the Authority is to make proposals for dealing with the intractable problem of financing air services, aerodromes and navigation services in the Scottish Highlands and Islands.

9 I seek the Committee's agreement to the annexed draft, to be tabled, without further discussion, as a White Paper on 17 February for approval on a motion by both Houses of Parliament before 1 April 1972.

MACN

Department of Trade and Industry
London SW1

4 February 1972
INTRODUCTION

The Civil Aviation Act 1971 provides for the creation of a Civil Aviation Authority charged with the regulation of airlines and organisers of air travel, the control of the safety of civil flying generally, the operation jointly with the Secretary of State for Defence of air navigation services, advising on the provision of aerodromes and the management of certain aerodromes in Scotland. The Authority came into being on 22 December 1971 and will assume its principal functions on 1 April 1972.

2. Section 3(1) of the Act sets out the broad objectives of Government policy for the British civil air transport industry, which it will be the Authority's duty to pursue. These objectives are:

(a) to secure that British airlines provide air transport services which satisfy all substantial categories of public demand (so far as British airlines may reasonably be expected to provide such services) at the lowest charges consistent with a high standard of safety in operating the services and an economic return to efficient operators on the sums invested in providing the services and with securing the sound development of the civil air transport industry of the United Kingdom;

(b) to secure that at least one major British airline which is not controlled by the British Airways Board has opportunities to participate in providing, on charter and other terms, the air transport services mentioned in the preceding paragraph;

(c) subject to the preceding paragraphs, to encourage the civil air transport industry of the United Kingdom to increase the contribution which it makes towards a favourable balance of payments for the United Kingdom and towards the prosperity of the economy of the United Kingdom; and

(d) subject to the preceding paragraphs, to further the reasonable interests of users of air transport services;
3. Section 3(2) of the Act provides for the Secretary of State to give guidance to the Authority, so as to amplify and supplement these four objectives in more detail and so as to cover also the Authority's functions in other areas; he may vary this guidance from time to time. It will be the Authority's duty to follow this guidance when it has been approved by affirmative vote of both Houses of Parliament.

4. In framing the guidance it has been the Government's aim to leave the Authority a wide measure of discretion. They have therefore expressed the guidance in general terms rather than as a comprehensive set of detailed instructions. It will be for the Authority to work out the detail and apply it in particular cases. In any case that comes to him on appeal the Secretary of State will have regard to the objectives and the guidance and will uphold the Authority's decision unless there is clearly a substantial reason for departing from it.

5. Civil aviation is and will continue to be closely regulated throughout the world. This is necessary in order to secure standards of safety and public amenity, to ensure that public transport services are dependable and because international services (which account for by far the greater part of British airlines' activity) largely depend on the consent of other countries or on agreements for the exchange of traffic rights. These considerations must necessarily limit the United Kingdom's freedom of action in practice and the guidance must be read against the background of these limitations. The Authority and the Department of Trade and Industry will need to work closely together in these matters.

6. The remaining paragraphs of this White Paper set out the guidance which the Secretary of State, after consultation with the Authority and the industry, now submits for approval. The appendix sets out the terms of the direction that the Secretary of State has given to the Authority under
Section 28(2) of the Act, concerning the provision of air navigation services.

THE GUIDANCE

GENERAL

7. Civil air transport exists by serving the public; the Authority should inform itself of the public's needs and take full account of them. The Authority, acting within the framework of the objectives and of this guidance and within the limitations affecting international services, should aim always to impose the least restraint upon the industry* or upon the users of its services. Arrangements which restrain competition or innovation should be accepted only so far as they contribute to the realisation of the objectives and this guidance. Although it will be much concerned with airlines, the Authority should keep in mind the needs of general aviation including flying schools and clubs.

SAFETY

8. The Authority should aim to secure a high standard of aviation safety. It should seek to ensure that this high standard is achieved in the construction, maintenance and operation of aircraft and in the use of aerodromes. In so doing it should give effect to safety requirements deriving from international agreements, in particular the Chicago Convention and the Annexes thereto. It should also ensure, where necessary, that timely preventive and remedial measures are taken and should promote the development of new equipment and techniques.

* In this guidance references to "British airlines" are to be taken as referring to holders of air transport licences and references to "the industry" are to be taken as referring to holders of air transport, air travel organisers' and aerodrome licences.
9. In providing air traffic and navigation services the Authority should have due regard to the interests of both military and civil users, including general aviation interests, so as to make safe, efficient and economical use of the limited air space that is available.

AIR TRANSPORT LICENSING

10. The Authority should seek to maximise the opportunities for the industry profitably to increase its share of the world civil air transport market. It should encourage the provision by British airlines of services that will foster the development of the United Kingdom's trade and tourism and strengthen the balance of payments.

11. The Authority should seek to ensure that the scale and character of the operations of British airlines are within their skills and resources. In granting air transport licences and in regulating or advising on the levels of charges, the Authority should also seek to ensure so far as possible that efficient British airlines in both the public and private sectors have the opportunity to operate profitably so as to justify the rate of capital expenditure necessary for the maintenance and development of their services.

12. In allocating air transport licences the Authority should also consider the suitability of particular airlines to engage in particular types of operations and the pattern of routes and operations which will bring the greatest benefit in terms of the objectives.

13. The Authority should not reserve any particular type of operation exclusively to public or private enterprises by reason of their being publicly or privately owned or impose any particular balance as between public and private
CONFIDENTIAL

It is in general desirable that more than one British airline should engage, or be available to engage, in each type of operation even though the entry of additional airlines into particular types of operations may sometimes need to be carefully controlled in order to avoid undue fragmentation of effort. Subject to paragraph 15 below, airlines should be given the opportunity of allocating their resources flexibly as between one type of service and another in line with the development of the market.

14. The Authority should further the maintenance and development of a viable network of scheduled services so far as may be necessary, and reasonable in the context of Section 3(1)(a) of the Act, to provide for individual passengers wishing to buy seats directly from the airlines or their agents at the public fare. Restrictions on the wholesaling of seats through air travel organisers, on any type of service, should be kept to the minimum necessary to ensure that such provision is made and that efficient British airlines have the opportunity to operate profitably.

15. The British Airways Board airlines should remain the principal providers of scheduled services. British Caledonian Airways, the airline to which Section 3(1)(b) of the Act should be applied, should continue to be the principal independent scheduled airline. The Authority should seek to ensure that these airlines have adequate opportunities to compete effectively in the world civil air transport market. For this reason it will need in general to limit, at least for some years to come, the grant to other British independent airlines of licences to serve additional international scheduled routes.

16. Subject to paragraphs 11 and 12 above and to the limitations imposed by the United Kingdom's international relations the Authority should license more than one British airline to serve the same scheduled service route or traffic points wherever it is satisfied that

a. the traffic is likely to be sufficient to support competing services profitably within a reasonable time,

b. the choice and standard of services available to the public are likely to be improved and, in the case of an international route, either
c. the aggregate share of total traffic that is secured by the British airlines is likely to be increased to an extent that will more than offset any lasting diseconomies, or

d. where the British share of capacity is predetermined, the licensing of a second British airline within that share is likely to increase the total traffic secured by British airlines more rapidly than would otherwise be likely.

17. The Authority should bear in mind the need to give British Caledonian Airways adequate opportunities to develop its route network particularly during this airline's formative years. The Authority should therefore give preference to British Caledonian Airways when licensing an additional British airline to serve an existing scheduled service route. The Authority should also give British Caledonian Airways a measure of preference over other airlines in allocating licences for new scheduled service routes, and for non-scheduled services where the number or capacity of British airlines need for the time being to be restricted. The Authority should however in every case take account also of the considerations in paragraphs 10, 11 and 12 above and the effect of its decisions on the development of other airlines; it is not the Government's intention that any preference should be automatic or complete.

18. In order to further the rationalisation of route networks the Authority should, when circumstances warrant, examine with the British Airways Board and the other British airlines concerned whether routes should be adjusted or reallocated among them; but routes should be transferred between airlines only where this would be likely to promote the objectives and the policies in paragraphs 10, 11 and 12 above.

19. The Authority should encourage mergers that will, in its judgment, strengthen the industry in pursuit of the objectives without unduly impairing competition. The
CONFIDENTIAL

Authority should inform itself of commercial and pooling agreements in order to judge how far they are consistent with the objectives as a basis both for its own decisions and for its advice to the Secretary of State.

20 In regulating domestic air services, the Authority should have regard to their place in the total internal transport system. It should take account of the contribution which both international and domestic air services may make to regional economic and social development in the United Kingdom and should have regard to the particular interests of the Channel Islands and the Isle of Man when regulating air services to or among them. The Authority should advise the Secretary of State and others concerned as to the provision and development of aerodromes to match the development of air services and general aviation.

21 The Authority should in particular examine, with the airlines and other bodies concerned, the economics and organisation of air services, and of its aerodromes and air navigation services in the Scottish Highlands and Islands and make recommendations to the Secretary of State if possible by 31 March 1974. Until that time the Authority, in seeking fuller recovery of its costs in this area, should be careful to avoid prejudice to the continued operation of those air services which are essential to the region's economic and social development.

PRICING

22 To the extent that the charges for air transport or for holidays by air need to be controlled, either because of the United Kingdom's international relations or for the reason stated in paragraphs 11 and 14 above, the Authority should seek to secure tariff provisions and associated conditions that are rational, simple and enforceable. As a guiding principle for the longer term, each charge should be related to costs at a level which will yield sufficient revenue to cover the costs of efficient operators, including an adequate return on capital. This does not for example preclude the cross-subsidisation of new services which are being developed or differential pricing that reflects differences in the cost of producing particular
facilities or which is designed to reduce wide fluctuations in demand; but the Authority should keep pricing structures under review so as to promote the sound allocation of resources. The Authority should have regard to the need to restrain increases in charges for domestic air services that would adversely affect the prosperity of the United Kingdom economy.

INTERNATIONAL MATTERS

23 The Authority should maintain a close working relationship with the Department of Trade and Industry in all matters concerning relations with countries and territories outside the United Kingdom, the United Kingdom's membership of international organisations and the implementation of the United Kingdom's international obligations. In particular it should provide advice and should make staff available to attend international discussions. The Authority should make its expert assistance available to foreign governments and others where this would promote British interests including the export of British aviation products.

AIR TRAVEL ORGANISERS

24 The Authority's powers under the regulations made under Section 26 of the Act are designed to ensure that only those who act within the rules and who have adequate resources or financial arrangements shall engage in the organising and wholesaling of air travel. The Authority should not use these powers to regulate competition among travel organisers. The Authority's concern with standards of service should be confined to the operation of air services, whether or not these form part of a holiday arrangement.

ENVIRONMENT

25 The Authority will need to take full account of Government policies on the control of aircraft noise and the safeguarding of the environment and to advise the Government on these matters. It should assist the industry to meet and adapt to such requirements as may become necessary and should also assist the Government to implement them.
26. Subject to Sections 36 and 61 of the Act the Authority should publish promptly and at suitably frequent intervals statistical and other information about the industry and enterprises within it including information relating to safety matters. It should make the records of its public hearings readily available for inspection.

RESEARCH

27. The Authority should support an adequate programme of research and development on matters within its responsibility, in particular air safety and airworthiness, air traffic control and navigation services and air transport economics, co-ordinating its activities with Government Departments and other bodies engaged in these fields.

CONSULTATION

28. The Authority should maintain and develop appropriate consultative arrangements over the whole range of its functions.

FINANCIAL

29. The Authority should perform its functions efficiently and economically. Its financial objective should be to recover as soon as possible the whole of its costs, and a return on capital reasonable in relation to the nature of its activities and prevailing commercial standards, from those, including Government Departments, who use or benefit from its services. Until the Authority breaks even the Government will pay to it a grant-in-aid sufficient to meet its expected deficit on revenue account. This grant will be assessed annually in advance. The aim of the Government will be to reduce the grant progressively and the Authority should formulate its
financial plans with a view to dispensing with it by 1977/78. The Government recognise however that the Authority cannot itself fix charges for navigation services and that in the case of en route charges the need to reach international agreement may delay the achievement of this aim in this particular area of activity. Nonetheless the Authority should from time to time make proposals to the Secretary of State for achieving its financial objective in this area. The Government also recognise that, until a conclusion is reached on the matters referred to in paragraph 21 above, the Authority will be unable to make significant progress towards the recovery of its costs in relation to the Scottish Highlands and Islands.

4 February 1972
The Secretary of State in exercise of his powers under Section 28(2) of the Civil Aviation Act 1971 (hereinafter called "the Act") hereby gives the following Directions to the Civil Aviation Authority (hereinafter called "the Authority").

1. These Directions may be cited as the Civil Aviation Authority (Air Navigation Services) Directions 1972, and shall come into operation on 1 April 1972.

2. The Authority shall join with the Secretary of State for Defence in relation to the matters specified in section 28(2)(a) and (b) of the Act in the manner specified in the following paragraphs.

3. The Authority shall collaborate with the Secretary of State for Defence in exercising its functions in providing air navigation services through a joint organisation known as the National Air Traffic Services (hereinafter referred to as "NATS"). The functions exercised jointly through NATS shall include those services which have hitherto been provided through NATS jointly by the Secretary of State for Trade and Industry and the Secretary of State for Defence. NATS shall be manned jointly by civilian staff of the Authority and by personnel of the Services and civilian staff to be made available by the Secretary of State for Defence, and shall make use of civil and military facilities and installations as appropriate. The senior officer of NATS shall be known as the Controller, his Deputy as the Deputy Controller, and the officer in charge of operations in the field as the Joint Field Commander.

4. The services provided through NATS shall be available to all classes of civil and military aircraft both within the UK national airspace and within any airspace for which the UK has in pursuance of international arrangements undertaken to provide such services (hereinafter referred to as "the UK ATC airspace").

5. The services provided through NATS shall be planned, provided and operated in such a way as to secure safe separation of aircraft whilst facilitating, consistently with flight safety and having regard to costs, the most expeditious flow, the greatest possible freedom and the optimum utilisation of aircraft required by operating interests. The services shall be operated in such a way as to
CONFIDENTIAL

Facilitate the differing civil and military air traffic operational needs in order to assist efficient and economic operation by civil aircraft while having full regard to the operational and training requirements of military aircraft, but preferential treatment shall not be accorded to either civil or military users as such. Standardised procedures shall be introduced progressively with the object of providing a common standard of service to all aircraft within a given airspace. In the planning of airspace arrangements, the requirements of all air user interests, including general aviation, shall be taken into account.

6. The functions exercised jointly through NATS shall include:

(a) subject to the provisions of subparagraph (c) of this paragraph the provision of services within the UK ATC airspace and the taking of decisions as to the nature and scale of such services in consultation with the users as necessary and taking into account the cost of the services and the means of recovering that cost;

(b) ensuring that the relevant international agreements binding on the United Kingdom are observed where applicable and in any case of doubt as to the interpretation of such agreements seeking the advice of the appropriate Secretary of State thereon;

(c) the provision of services to aircraft in the upper airspace to enable the Secretary of State to discharge his obligations under the contract dated 19 January 1972 between the Secretary of State and the European Organisation for the Safety of Air Navigation (Eurocontrol);

(d) the provision and operation of approach and aerodrome control services at such civil aerodromes as may be determined by the Authority, and dealing with such matters relating to those services at Ministry of Defence airfields as may be agreed with the Secretary of State for Defence;

(e) in consultation with all interested users advising on air traffic control aspects of establishing danger, restricted or special flying areas with a view to ensuring the efficient use of the UK ATC airspace;

(f) advising the Secretary of State for Defence and the Secretary of State for Trade and Industry on the air traffic control aspects of any proposals to establish new or reactivate disused civil and military aerodromes and on problems connected with aerodrome traffic patterns on which
CONFIDENTIAL

advice is sought.

The Authority shall assist the Air Traffic Control Board appointed by the Secretary of State for Defence and the Secretary of State for Trade and Industry in any review of the services which the Board may from time to time carry out and may refer to the Air Traffic Control Board for advice any questions of special difficulty arising between NATS and operators of aircraft or organisations representative of operators of aircraft, which cannot be resolved in discussion.

8. The Authority shall not make any major changes in the structure, organisation and manning arrangements of any part of NATS which is staffed in whole or in part by persons designated for that purpose by the Secretary of State for Defence except with the consent of the Secretary of State for Defence. Appointments to the posts of Controller, Deputy Controller and Joint Field Commander shall be made jointly by the Authority and the Secretary of State for Defence and before the appointment of any person to be Controller the Authority shall obtain the consent of the Secretary of State for Trade and Industry.

9. The cost-sharing arrangements existing between the Secretary of State for Trade and Industry and the Secretary of State for Defence before 1 April 1972 shall apply between the Authority and the Secretary of State for Defence until otherwise mutually agreed. Where a facility or service, the cost of which is not taken into account in the existing cost-sharing arrangements, is to be provided on a cost-sharing basis through NATS, the cost, except the cost of discharging any liability to a third party incurred in the course of providing such facility or service, shall be borne proportionately by the Authority and the Secretary of State for Defence having regard to the extent to which the facility or service is expected to be used by civil and military aircraft respectively. The proportions shall be agreed between the Authority and the Secretary of State for Defence before the decision to provide the facility or service is taken and shall be reviewed by the parties from time to time in the light of any change in the expected use of the facility or service.

Where the Authority and the Secretary of State for Defence agree that the cost of a facility or service provided through NATS is to be wholly borne by the Authority or the Secretary of State for Defence, and that cost is not taken into account in cost-sharing
Arrangements, the Authority or, as the case may be, the Secretary
State for Defence may raise a fully economic charge on the
other party for any use made of that facility or service by
military or, as the case may be, civil aircraft, unless, in the
particular case, a charge is raised against some other person.

10. Any disagreements between the Authority and the Secretary of
State for Defence which cannot be resolved in discussion shall be
referred by the Authority to the Secretary of State for Trade and
Industry for consideration in consultation with the Secretary of
State for Defence.

14 February 1972

Secretary of State for Defence