AVIATION SAFETY REGULATION

1. AVIATION SAFETY REGULATION IN THE UK
2. OPTIONS FOR AVIATION SAFETY REGULATION

ROBIN ALLAN
Deputy Legal Adviser
Civil Aviation Authority

1. AVIATION SAFETY REGULATION IN THE UK

AVIATION SAFETY REGULATION IN THE UK

STRUCTURE OF UK CIVIL AVIATION LEGISLATION

UK domestic legislation

Statute & common law

Primary legislation (the CAA Act)

Secondary legislation (the ANO)

European law

EU Regulations

eg EASA Regulations Single European Sky Regulations

EU Directives

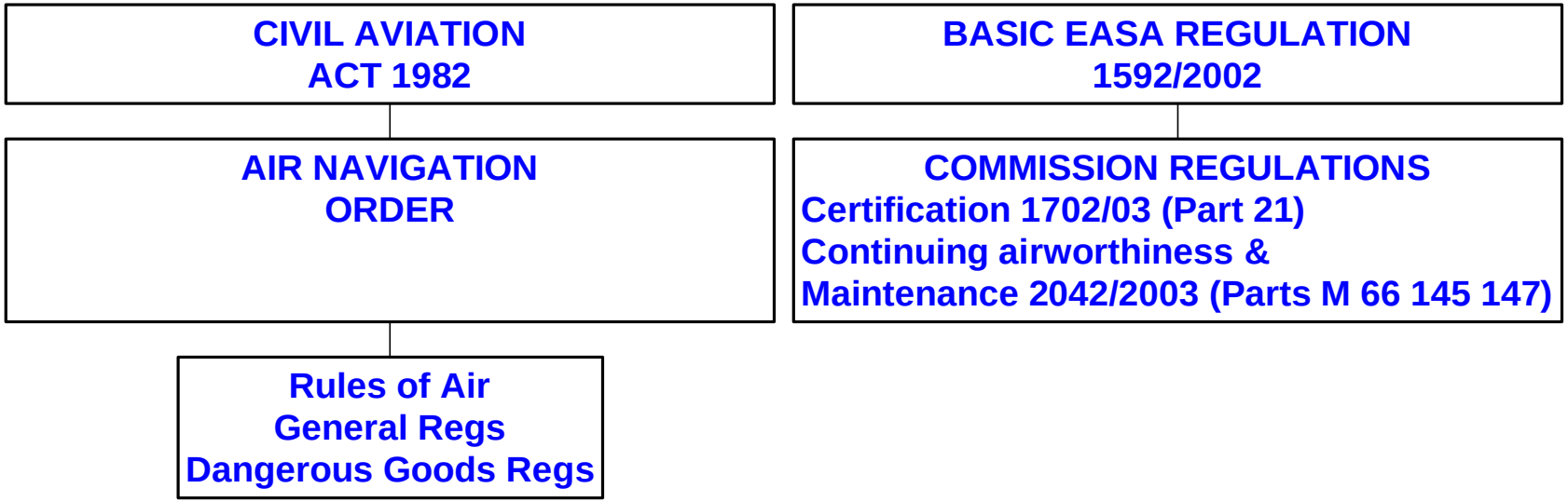
eg Occurrence Reporting

AVIATION SAFETY REGULATION IN THE UK

Structure of UK aviation safety legislation

Two roots:

UK Acts of Parliament and EU Regulations



AVIATION SAFETY REGULATION IN THE UK

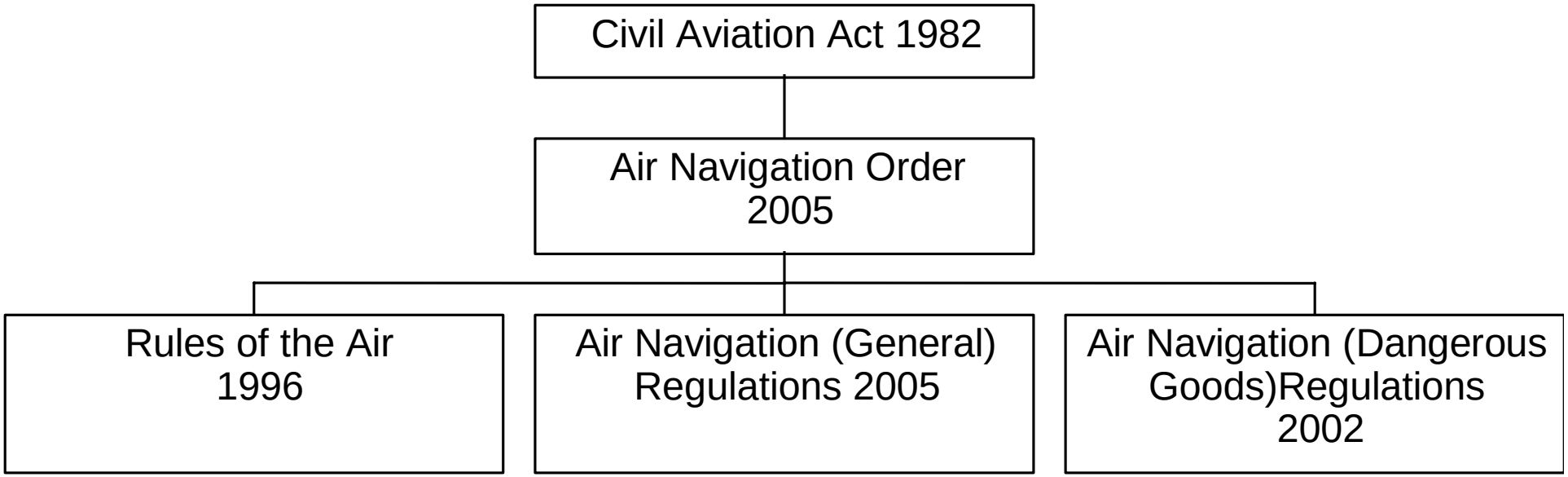
Structure of United Kingdom aviation safety legislation

Civil Aviation Act 1982.

- Section 2 - Existence of the Civil Aviation Authority
- Section 60 - Enables Air Navigation Order (ANO) to implement the Annexes to the Chicago Convention
- Section 61 - Provides for criminal enforcement of ANO
- The ANO further enables Regulations to be made

AVIATION SAFETY REGULATION IN THE UK

Structure of United Kingdom aviation safety legislation



AVIATION SAFETY REGULATION IN THE UK

For almost every aviation related activity a prior permission is required eg -

- Certificate of airworthiness/permit to fly
- Flight crew licence
- Air traffic controller licence
- Air Operator Certificate
- Aerodrome licence
- Design Organisation Approval
- Maintenance engineer licence
- Maintenance organisation approval

AVIATION SAFETY REGULATION IN THE UK

Enforcement and Regulation 6

Enforcement

- UK aviation safety legislation part of criminal law
- Any breach is a criminal offence
- CAA given responsibility by DfT to enforce
- CAA has team of investigation officers to investigate & CAA will prosecute where appropriate

Licence action

CAA cannot take away a licence to punish

EASA REGULATIONS

The Basic EASA Regulation

EC Regulation1592/2002

Made by co-decision procedure

- Existence of EASA
- Functions – airworthiness and continuing airworthiness
- Essential requirements for airworthiness
- Authorises the making of implementing rules

The Implementing Rules

Commission Regulations

Made by comitology

EASA REGULATIONS
The Implementing Rules

Certification Regulation (1702/2003)

Airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as the certification of design and production organisations

Part 21

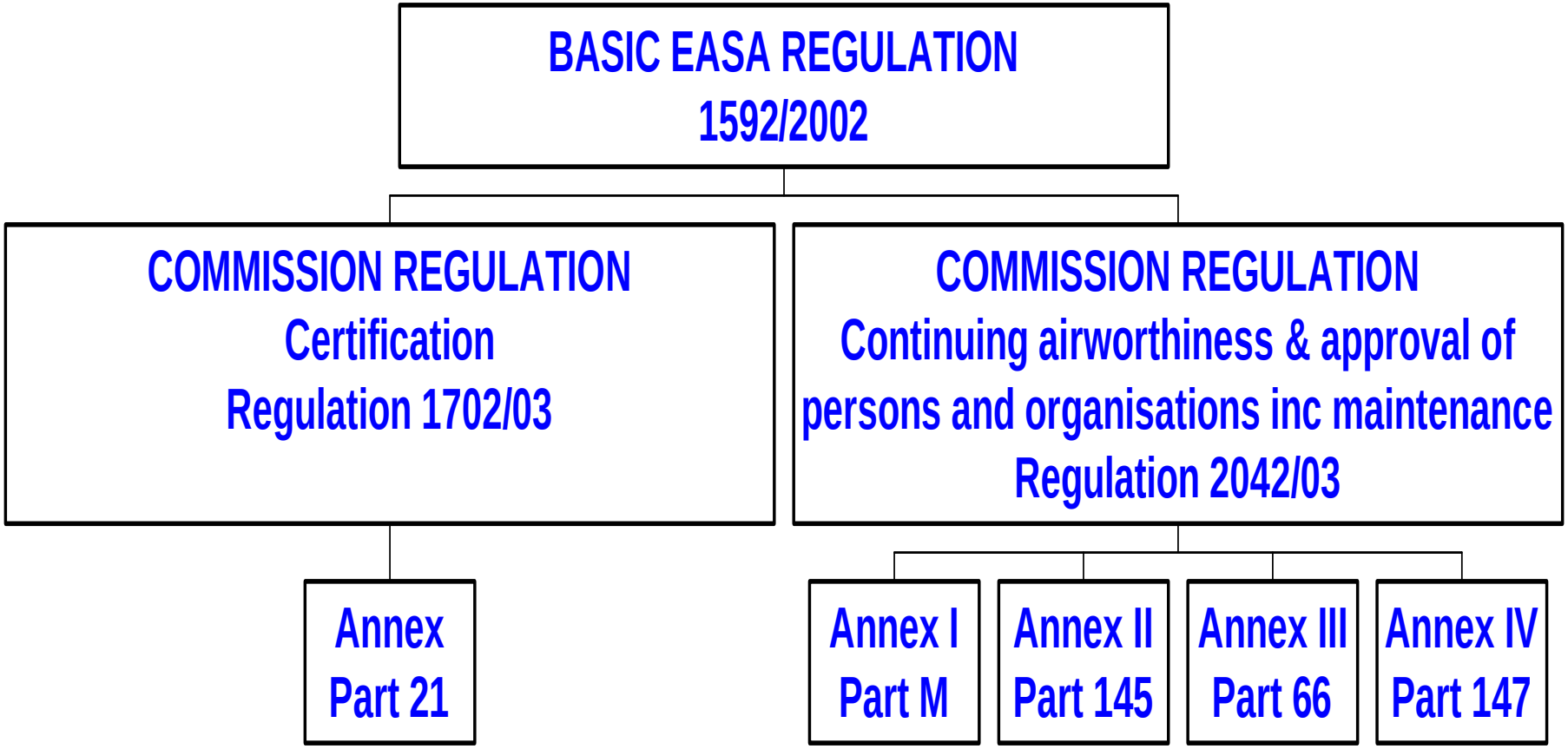
Continuing Airworthiness Regulation (2042/2003)

Continuing airworthiness of aircraft and aeronautical products, parts and appliances, and the approval of organisations and personnel involved in these tasks (including maintenance)

Part M, Part 145, Part 66 and Part 147

AVIATION SAFETY REGULATION IN THE UK

EASA REGULATIONS



EASA FUNCTIONS

1. RULEMAKING

Three types of deliverable

- *certification specifications*
- *guidance material*
- *draft regulations*

2. ISSUE SOME CERTIFICATES & APPROVALS

eg Type certificates for aircraft
Design Organisation Approvals

3. STANDARDISATION OF NAA'S

AVIATION SAFETY REGULATION IN THE UK

NAA FUNCTIONS UNDER EASA REGS

ISSUE SOME CERTIFICATES & APPROVALS

- Individual certificates of airworthiness
- Production Organisation Approvals
- Maintenance Organisation Approvals
- Individual licences and approvals

CAA IS DESIGNATED AS THE NAA FOR THE UNITED KINGDOM

EASA AND NON-EASA AIRCRAFT

Three categories of aircraft which are not subject to the EASA Regulation or Implementing Rules

(1) Annex II of the Basic EASA Regulation

(2) Transitional provisions

(3) State aircraft

ARTICLE 10 OF BASIC EASA REGULATION

Three cases

Case 1: Article 10(1) - Safety Problems

MS may react immediately to a safety problem

Case 2: Article 10(3) – Exemptions

MS may exempt where unforeseen urgent operational circumstances or operational needs of a limited duration

Case 3: Article 10(5) - Equivalent Level of Protection

MS may depart from implementing rules where equivalent level of protection can be achieved by other means

AVIATION SAFETY REGULATION IN THE UK

GLIDERS

The Regulation permits gliders which flew in UK before 28 September 2003 to continue to fly in the UK without any airworthiness certification until 28 March 2007

Exemption issued by DfT under Article 10(3) of the EASA Regulation so that gliders arriving in UK since 28 Sept 2003 do not need to be certificated

ANO now requires ***EASA*** gliders (ie post Sept 2003) to be registered but CAA exemption means that no glider need be registered until it gets a certificate of airworthiness

EASA - THE FUTURE

Operations and Licensing

Essential Requirements IRs & EU OPS

Note EU OPS complication

Airports and ATS

The Commission has asked EASA to start the preparatory work to pave the way for a future Agency opinion to extend its remit to airports and ATS

AVIATION SAFETY REGULATION IN THE UK

EASA REGULATIONS

WHEN OPS & LICENSING ADDED

BASIC EASA REGULATION 1592/2002 amended to include Ops and licensing

- **COMMISSION REGULATION Certification**
- **COMMISSION REGULATION Continuing airworthiness**
- **NEW COMMISSION REGULATION Operations *EU OPS?***
- **NEW COMMISSION REGULATION Licensing**

2. OPTIONS FOR AVIATION SAFETY REGULATION

OPTIONS FOR AVIATION SAFETY REGULATION

SIX QUESTIONS

1. ***What (if any) should be the rules?***
2. ***Who (if anyone) should be the regulator?***
3. ***How (if at all) should regulated activities be overseen?***
4. ***How (if at all) should the rules be enforced?***
5. ***What should be the obligations of participants?***
6. ***What will be the appropriate regulatory regime?***

OPTIONS FOR AVIATION SAFETY REGULATION

1. What (if any) should be the rules?

TYPES OF "RULES"

Permissioning

Individuals to be licensed, organisations to be approved before they may undertake specified activities

eg may not pilot powered aircraft without a licence, may not operate a public transport aircraft without an AOC

May be combined with goal based or prescriptive rules

Prescriptive

Persons undertaking particular activities must comply with detailed legally binding rules

eg must not drive more than 30 mph in specified areas, must not fly below 1000 feet over a congested area

OPTIONS FOR AVIATION SAFETY REGULATION

1. What (if any) should be the rules?

Goal based regulation

Legal duty to achieve specified goal when undertaking a particular activity

eg to operate machinery safely "so far as is reasonably practicable" (SFAIRP) or so that risks are as low as reasonably practicable (ALARP)

Code of practice

- Need not necessarily have any special legal status
- Often supports goal based regulation
- Breach of a statutory code not in itself be an offence but burden on operator to show that if not complied with code, has operated with equivalent safety

OPTIONS FOR AVIATION SAFETY REGULATION

1. What (if any) should be the rules?

Guidance material

Guidance material may be published to encourage good practice to be adopted. It would have no specific legal status but could be taken into account in the event of litigation in which the duty of care might be of relevance

Nothing

Simply rely on the general legal duties

eg washing up, laying the table,

OPTIONS FOR AVIATION SAFETY REGULATION

2. Who (if anyone) should be the regulator?

TYPES OF "REGULATOR"

Public regulator

Public regulator with powers and duties established in law by Government *eg CAA, EASA*

Approved body

AKA a qualified entity or assessment body.
Approved by public regulator for specific purposes
eg EASA regulation & Article 165 ANO 2005

Voluntary body

Established by its members. It has no legal powers

Appropriate type of regulator depends upon the types of rules and oversight

OPTIONS FOR AVIATION SAFETY REGULATION

3. How (if at all) should regulated activities be overseen?

TYPES OF OVERSIGHT

Regular inspection

By whom? Depends upon –

- Under what "rules" the inspection is being carried
- What powers the inspectors are to have

Order to cease operations? Criminal prosecution?

Periodic audit

Reactive

Await complaints

eg enforcement of Working Time Directive

OPTIONS FOR AVIATION SAFETY REGULATION

4. How (if at all) should the rules be enforced?

Focus on safety

Revoking licences or approvals where these are required

Improvement or prohibition notices

This is the approach adopted under the Health & Safety at Work Act 1974

Punitive enforcement

Criminal prosecution where breach of rules a criminal offence

eg Air Navigation Order and Rules of the Air

Administrative penalties where provided for in the law

eg FAA rules

OPTIONS FOR AVIATION SAFETY REGULATION

5. What should be the obligations of participants?

Passive

Comply with rules as rigorously enforced by regulator

Active

Identify and manage own risks

Cullen Report recommending goal based regulation

"...Apathy is the greatest single contributing factor to accidents at work. This attitude will not be cured so long as people are encouraged to think that safety and health at work can be ensured by an ever expanding body of legal regulations enforced by an ever increasing army of Inspectors…"

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

There are significant constraints imposed by international obligations

eg *ICAO*

and most significantly the current and future requirments adopted by

EASA

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

HSE summary of hierarchy of options

- Reliance on the general duties and the Management of H&S at Work etc. Regulations
- Use of guidance
- Codes of Practice
- Goal-setting regulations
- Specific or prescriptive regulations
- Permissioning

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

FACTORS

Reliance on ***general duties*** sufficient unless eg

- past experience shows this is not adequate;
- EC Directives require more specific legislation;
- societal concerns require that some explicit form of action is needed, politically or to allay public fears

Reliance on ***guidance*** sufficient unless eg

- need to address societal concerns requires more;
- current record suggests guidance will not be effective;
- statutory regulation required for level playing field;
- stakeholders view is that guidance leaves too much uncertainty in interpreting “reasonable practicability

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

FACTORS

Reliance on ***codes of practice*** sufficient if industry is highly organised and capable of a fair degree of self-regulation **but not** if hazard requires an absolute and/or prescribed duty or need to address societal concerns requires more

Reliance on ***goal setting regulations*** sufficient unless adequate control of risk from hazard requires specific standards or need to address societal concerns requires more

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

FACTORS

Prescriptive regulations may be needed to –

- deal with high risk hazards or societal concerns;
- deal with new hazards to ensure consistency of action;
- secure a step change in behaviour in areas of bad practice;
- cut down duty holders and/or inspectorial discretion;
- ban a specific activity where this is justified

Permissioning will be proposed by HSC where there are significant hazards which require a high degree of regulatory control. Will be proposed only as a last resort, where the normal forms of regulation are not sufficient and where the extra demands imposed by the regime are justified by the benefits it brings

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

Hampton Principles of inspection and enforcement 1

- Regulators to use comprehensive risk assessment to concentrate resources on areas that need them most;
- Regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted;
- No inspection should take place without a reason;
- Businesses should not have to give unnecessary information, nor give the same information twice

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

Hampton Principles of inspection and enforcement 2

- Regulators should provide authoritative, accessible advice easily and cheaply;
- Businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- When new policies are being developed, explicit consideration should be given to how they can be enforced to minimise the administrative burden imposed;
- Regulators should be of the right size and scope; and
- Regulators to recognise key element of their activity will be to allow/encourage economic progress and only intervene when clear case for protection

OPTIONS FOR AVIATION SAFETY REGULATION

6. What will be the appropriate regulatory regime?

"RULES"	***OVERSIGHT***	***"REGULATOR"***
Nothing	None	Not applicable
Guidance	None	Voluntary body as persuader?
Goal setting / general duty Code of practice statutory/informal	Inspection Audit Random checks	Public regulator
Prescriptive	Reactive	Approved body
Permissioning	None	Voluntary body