DRONES - THE GOOD, THE BAD AND THE UGLY

Flights being grounded, drugs being smuggled into prison, people's lives being saved whilst lost in the bush: drones are being used in humanitarian, military and criminal activities as well as a hobbyist's toy. Yasin Patel and Amy Hazlewood look at the problems surrounding drones, the current law and future legislation.

Drones: no, we are not talking about the ones in the Star Wars films or other sci-fi series. We are talking about those that are now seen and used in society everywhere. Some call them, an unmanned aerial vehicle (UAV), others say unpiloted aircraft and some refer to them as flying robot. Whether the toy of hobbyists for pleasure or the weapon used for military purposes in targeted attacks, drones are used by individuals, organisations and governments. The natural world and humanitarian causes benefit from them too: they are used to detect sharks off the coast of New South Wales, and to identify swimmers struggling in the sea. They have been used to assist rescue mountain climbers and to carry emergency medical supplies and organs for transplant.

And as night follows day, the popularity of the drones means those involved in their production and development are making and will continue to make a great deal of money: Goldman Sachs estimates that the market for drones will be worth $100 billion in areas such as delivery, security and surveying. Drones are here to stay and are being used in more activities by the day. Where they are used for legal and humanitarian reasons, there are no difficulties. However, where they are used for criminality, illegal activities and purposes that are unregulated, that is where the problems lie. Yasin Patel and Amy Hazlewood look at drones and in particular three areas relating to them. Problems posed by drones, the current law surrounding them and possible future developments on the law surrounding drones.

Drones & Problems

The problems caused by drones has been more well documented on 3 specific areas and recent cases:

1. The closure of Airports
2. Smuggling of contraband into prison; and
3. The use of drones to 'snoop'.

Gatwick

Between the 19th and 21st December 2018, drone sightings at Gatwick airport caused an estimated 1000 flights to be cancelled or diverted, affecting approximately 140,000 passengers. The result meant Gatwick was an international laughing stock due to the havoc caused to British aviation and in particular air passengers.

Two people were arrested, questioned and named and shamed as being behind the Gatwick chaos. Within a few days, they were released without charge. Their public 'trial' via newspapers, television and the social media was made complete by the humiliating way in which they were portrayed and described in the press and media. The information released by the investigating authorities in relation to them did not help. The authorities had no plan as to how to 'tackle' the drones, but to make matters worse, they then publicised as the perpetrators wholly innocent people.

One of the problems encountered during the Gatwick incident was how to bring the drone down. Some airports already have technology to;

1. Track drones;
2. Identify whether they pose a risk to air traffic, and
3. Disable the drone and bring it down if required.

Bringing a drone down is simple: either firing it down or blocking the signal. Firing it down may not be possible if the drone is in a residential area. Signal jamming may have the unintended consequence of affecting other instruments that rely on air signals such as radio waves and air-navigation systems. A further method is to use counter-drones to bring down rogue-drones. However, in the game of 'cat and mouse', the problem lies in that counter-drones can be spotted by the rogue-drone user who can then navigate the aircraft away from the presence of the counter-drones. No doubt 140,000 passengers at Gatwick want to know 'what was the Airports plan for drones being spotted'?

Smuggling Contraband into Prisons

One of the biggest problems faced by Her Majesty's Prison Service is the smuggling of contraband into prisons. One case recently highlights this as Craig Hickinbottom led a group of eight people who did just this. And they did so by using drones as one of their trusted methods. The offences took place between July 2015 and May 2017 at prisons in Birmingham, Yorkshire, Cheshire, Liverpool, and Perth. The police said the enterprise involved at least 49 drone flights that were equipped with fishing lines and hooks. An estimated £1 million worth of items were smuggled in: mobile phones, drugs, sim cards, weapons, screw drivers and even a Freeview box with a remote control were all said to be smuggled into prisons.

Having pleaded guilty to conspiring to bring prohibited items into prison and conspiracy to supply psychoactive substances, at Birmingham Crown Court, His Honour Judge Henderson stated in his sentencing remarks that, "supplying things into prison that should not be there – drugs, phones, tools and the like, threatens proper management and creates real risks of violence and loss of control and discipline".

The sentences imposed upon the conspirators highlights the seriousness of their offending. Craig Hickinbottom was sentenced to seven years and two months. Mervyn Foster, the pilot of the drones, received a sentence of six years and eight months. Others received sentences from

4 years and 8 months to suspended sentences. The offences ranged from the conspiracy to possessing a mobile phone in custody.

Lisa Hodgetts pleaded guilty to money laundering and received a 16-month suspended sentence.

The sentences reflect the Court's increasing willingness to impose lengthy sentences on those who break the law in their use of drones. More importantly, they show how drones can be used to deliver contraband to specific cells. Delivery to a cell window without going anywhere near the prison highlights how deliverers are now highly skilled and proficient in providing items and delivering them to specific jails, wings and cells.

Snooping

A further concern relates to incidents of snooping. Rogue users of drones are increasingly using their drones, equipped with cameras, to observe someone, or something, without the owner's permission. Using drones in such a way can vary in severity. From annoyance and nose irritation on the one hand, to scoping properties in preparation for robberies on the other. Drones with cameras have been used by criminals to assess the security arrangements and possible escape routes around a property and to establish whether windows and/or doors around properties are open or locked. Whilst the latter (assist in the commission of robbery) may be suitable for criminal sanctions, those incidents that fall into the former (noise and annoyance) may give rise to a civil action.

Civil Law

The requirements pursuant to the Civil Aviation Act 1982, section 76(1) legislates for trespass and nuisance that is caused by the flight of an aircraft over a property. Under this section, where a material loss of damage is caused by the flight of an aircraft over a property, the owner of the aircraft is required to pay damages to those affected.

Alternatively, a rogue user of a drone could be arrested for breach of the peace. Breach of the peace is not a criminal offence. Accordingly, it is not punishable either by a fine or imprisonment and proceedings for breach of the peace do not give rise to a conviction.

Magistrates can, however, bind someone over to keep the peace. This means the offender has to agree to keep the peace for a set amount of time. Any breach of the bind-over can result in a financial penalty or custodial sentence. A failure to agree to keep the peace may of itself lead to a person being committed to custody under the Magistrates Court Act 1980.

Any "snooping" offence can also be dealt with in criminal law.

The problem with the civil law punishments is the likely cost and the amount of time it may take for proceedings to finally reach court.

Criminal law

It is in the scope of Criminal law that there has been a great deal of activity regarding legislation. The most recent legislation can be found in The Air Navigation Order 2016 (ANO). Five articles outline the offences in law that can be brought against those who use drones illegally. Section 94 begins by placing a series of pro-active responsibilities on drone users. The latter part of section 94 prohibits drone users in a number of ways by placing certain responsibilities upon them:

i. Not to drop anything from a drone that could endanger a person or property.
ii. To be reasonably satisfied that the flight can be safely made.
iii. To maintain direct, unaided visual contact with the drone.

Breaking the law with regards to this section could lead to a fine of £2,500.

Section 94 has further prohibitions for drones weighing more than 7kg (excluding fuel, but including articles or equipment attached to drones) from doing any of the following:

- Flying into restricted airspace unless permission is obtained from the appropriate air traffic control unit.
- Flying with an aerodrome traffic zone unless permission is obtained from the appropriate air traffic control unit.
- Flying more than 400 feet above the surface.

Again, these offences can lead to a fine of £2,500.

In addition to this, the small drone:

- Must not be flown within 50m of persons or buildings;
- Must not be flown within 150m of densely populated areas; and
- Must not allow any article or animal to be dropped from the drone as to endanger persons or property.

ANO section 95 prohibits drones from being flown in the following circumstances:

a) Over or within 150 metres of any congested area;
b) Over or within 150 metres of an organised open-air assembly of more than 1,000 persons;
c) Within 50 metres of any vessel, vehicle or structure which is not under the control of the SUA operator or the remote pilot of the aircraft; or
d) Within 50 metres of any person.

ANO section 240 makes it an offence to recklessly or negligently act in a manner likely to endanger an aircraft, or any person in an aircraft.

The Aviation and Security Act 1982, s.2 (1)(a) makes it an offence to damage an aircraft or endanger its safety in flight.

ANO section 241 makes it an offence to recklessly or negligently endangering the safety of any persons or property, s.241.

Pursuant to ANO section 265, breach of laws under the ANO carry the sentence of either an unlimited fine, up to five years in prison, or both.

ANO sections 94, 95, 240 and 241 are expected to be the first option for the CPS to go to when deciding on the charge to bring against drone users who break the law.

Under the Aviation and Maritime Security Act (1990), intentional use of a device to commit an act of violence at an international airport which causes or is likely to cause death, serious personal injury and endanger safe operations could result in a penalty of life imprisonment.

The introduction of such extensive and specific legislation with regards to drone use indicates a deliberate effort to tighten legislation and deter rogue use of drones. These sentences are tough. The mistake would be to assume that tougher penalties would automatically equate to fewer people breaking the rules. Accordingly, for any approach to address the rogue use of drones needs to go further than simply looking at legislation.

However, the 'fight' against drones is about to become even more extensive with a numerous amount of new legislation looking set to come on to the statute books in the coming months.

New Law

Registration

From 30th November 2019, owners of drones weighing 250 grams or more will be required to register with the Civil Aviation Authority (CAA). Failure to register can lead to a fine of £1,000.

Online Test

From November 30 2019, drone operators will be required to take an online safety test.

The Government ran a public consultation on a batch of new proposals from 6th July 2018 to 17th September 2018. Proposals that look set to become legislation include:

1. A New Restriction Zone
2. Air Traffic Control
3. Minimum Age Requirements
4. Draft Drone Bill

A New Restriction Zone

It was felt by the Government, that the current 1km restriction near airports does not extend far enough. Accordingly, a new restriction zone has been proposed. This restriction zone is to include rectangular extensions from the end of runways measuring 5km long by 1km wide.

The proposal as it stands is for the new zone to apply to all small drones weighing more than 250g. The purpose of this "restriction rectangle" at the end of run ways is to better protect take-off and landing paths.

Air Traffic Control

A further proposal is for all drones' users to be required to ask permission from the airport's Air Traffic Control to fly within the air traffic zones.

Minimum Age Requirements

The Government proposed during the consultation that the age of 18 be set as the minimum age at which a person may register to fly a drone.

In addition to this, the Government have outlined proposals for a Drones Bills.

Draft Drone Bill

The details released at present centre around in increasing police powers. Under the proposals, the police will have the power to require the production of:

- Drone registration' and
- Permission granted by the CAA to make certain flights (a seven-day grace period to produce the required document(s)).

Where there is a reasonable suspicion of the commission of an offence the police will have the power to:

- Obtain names and addresses of the registered drone operator;
- Require the drone to land
- Enter and/or search premise, with a warrant
- Seize and retain a drone
- Access information stored electronically on a seized drone

Fixed Penalty Notice (FPNs)

The Government are also proposing to give the police powers to introduce FPNs for less serious offences including:

- Not producing a registration document at the request of a police officer.
- Not producing evidence that a flight plan has been submitted before flying.
- Not producing evidence of relevant permissions required by legislation.
- Not complying with a police officer when instructed to land a drone.
- Flying a drone without a valid acknowledgement of competency, or failure to provide evidence of meeting this competency requirement when requested.

Whilst not being raised in the consultation, discussion is also being had with regards to compulsory insurance of drones, and registration of drones of all sizes, as appose to just small

ones. There is also discussion with regards to prohibiting all drones with a camera to commercial and state use only.

Further ideas that are being discussed concern questions as to whether all drones should be incorporated into the air-traffic control system. The suggestion is that technology companies should be required to include tracking/ monitoring devices into the drones they manufacture. The problem herein lies that any inbuilt system installed by manufacturers could be overcome by interfering with inbuilt safety systems.

These proposals, if passed into law, place burdensome restrictions on drone users. However, the fundamental concern is with regards to the ever-increasing police powers. And the Draft Drones Bill increases Police Powers significantly. It is another set of laws that encroach upon the individual's human rights and liberties. Although it has been argued that the requirement for police to prove beyond reasonable doubt that a crime has taken place before a person can be punished affords a balance and safety net to the public, the reality is that like many other offences, although the onus will be on the police to prove guilt, the individual will be trying to persuade the court as to their innocence. Just look at the recent Gatwick example! Accordingly, a careful balance must be struck.

The Need for Balance

The heart of any further legislation must be to ensure that drones are used safely. Within this context, the important balancing act is to be carried out between deterring the problems outlined above on the one hand whilst not inhibiting the social, economic and humanitarian benefits of drones on the other hand. This balancing act can be presented in even clearer terms. Draconian regulation on the one hand may stifle economic and humanitarian development. However, light-touch regulation could make accidents more likely.

The solution has to be that of prevention, i.e. creating an environment whereby drone users are deterred from using their drones in illicit ways before their drone is even put into flight. This requires the development of a policy framework that encourages safe use, whilst discouraging harmful use. Necessarily, this goes beyond punitive and restrictive measures and requires a more holistic view to be taken.

To this end, it is essential that education, and safety are at the forefront of a truly collaborative approach between manufactures, users, the civil aviation authority and policy makers.