

Decision on modifications to NATS (En Route) plc licence in respect of certain planning and reporting requirements under Conditions 10 and 10a

CAP 1418

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Chapter 1

Introduction

Purpose of this document

1.1 This document sets out the CAA's decision to modify, as proposed in our consultation document CAP1405¹, the air traffic services licence held by NATS (En Route) plc (NERL). The modifications require NERL to produce detailed technology and airspace programmes for the remainder of the current Single European Sky Reference Period (RP2 (2015-19)), and outline programmes for the next Reference Period RP3 (2020-24). They also allow us to appoint an Independent Reviewer (IR) to report on the delivery of the milestones in the programmes. The modifications remove the current requirement in the Licence for NERL to submit plans in respect of:

- raising the United Kingdom Transition Altitude (TA); and
- implementation of the next phases of terminal airspace redesign under the London Airspace Modernisation programme (LAMP);

the specific requirements for which have been overtaken by events.

Our proposals and representations

1.2 With NERL's consent under section 11 (1) of the Transport Act 2000 we published on 6 May 2016, in CAP1405, proposals to modify condition 10 and delete condition 10a in NERL's licence by notice under section 11 (2) of the Act.

1.3 We invited representations on our proposals by 3 June 2016. Representations were received from:

¹ [CAP 1405 – proposal to modify NATS \(En Route\) plc licence in respect of certain planning and reporting requirements under Conditions 10 and 10a: Notice under section 11\(2\) of the Transport Act 2000](#)

- NERL;
- London (Heathrow) Airline Consultative Committee (LACC), supported by the Heathrow Airline Operators Committee (AOC);
- British Airways;
- Virgin Atlantic;
- Prospect (ATCO²'s Branch);
- a resident of Tunbridge Wells affected by Gatwick noise; and
- a resident of Isleworth affected by Heathrow noise.

1.4 NATS, British Airways, LACC, Virgin and Prospect supported our proposals overall. Although LACC and British Airways thought the proposals for Condition 10 (5), (6), (7) and (8) should be amended to remove the ability of the CAA and NERL to bilaterally agree later dates for the programmes and options. British Airways also said it did not have enough understanding of the proposal for an IR to support it. The individuals commenting on noise issues both wanted additional requirements on NERL to report on noise and one of them possibly on air quality as well.

1.5 Some respondents made additional points related to NERL's investment programme and CAA requirements, which were not relevant to the proposed modifications themselves but to how NERL would comply with and we would monitor and enforce the revised requirements. These are mentioned below.

1.6 NERL said it would work with us and airlines to ensure that it provides the required extra transparency around its capex plan. It also said that it would engage constructively and positively with an IR.

1.7 LACC emphasised the importance of implementing all phases of the Future Airspace Strategy (FAS) and LAMP Phase 2 to airlines and their passengers. It also set out some particular requirements:

- the CAA should identify a clear delivery date on NERL for LAMP Phase 2, or at the very least critical elements of the programme that

² Air Traffic Controllers.

can be independently worked on and delivered as early as possible. There should be a clear roadmap for NERL delivery of all elements of LAMP phase 2, overseen by the CAA and agreed with the airline community.

- Some components of the SESAR³ implementation of ATM functionalities should be brought forward from RP3 and the CAA should progress a review with NERL.
- There should be clarity around TA. If raising TA to 18,000 feet does not happen in RP2, LACC would query the benefit in raising, on an interim basis, TA in controlled airspace to 6,000 feet.
- It will be important that the IR delivers value for money, actively coordinates with the airline community and understands the wider network issues including the interests of passengers and consumers.
- The CAA should explain the reasoning for the final chosen IR. While a one year contract has been mentioned, there would be merit in the ongoing participation of the IR in an assurance role, once an assessment of the initial year has been conducted. The arrangements for the IR should be reviewed before the commencement of RP3.

1.8 Virgin made similar points to LACC.

1.9 British Airways agreed with many of LACC's points. It additionally said that as many of the components of NERL's airspace programme are already known, it expected NERL to present an overview of its thinking in the 2017 SIP, and take industry views into account in the plan due on 31 March 2017. British Airways also wanted more clarity on the proposal for an IR as it expected that we already had the capability to effectively oversee and challenge NERL on its programme reporting. It could be persuaded that there would be merit in having an independent view to provide us with assurance, but wanted clarity on the IR's role, responsibilities, the costs and benefits of the IR, and understanding of its Terms of Reference and the selection process. British Airways also

³ Single European Sky Air Traffic Management (ATM) Research.

thought that if the IR would be carrying out work which we currently do, there should be a reduction in our charges.

- 1.10 Prospect thought that rather than requiring specific proposals on areas such as London Terminal Airspace redesign, there should be a higher level approach requiring NERL to comply with the requirements of the Pilot Common Programme (PCP). This would allow NERL freedom to identify how it will comply with European legislation to produce the benefits that the CAA seeks. Prospect supported the appointment of an IR, but suggested that there should be a requirement to consult all stakeholders, including staff.

Chapter 2

The CAA's decision

- 2.1 In Condition 10 (5), (6), (7), (8), (9) and (10), we included the ability for the CAA and NERL to delay the dates for the provision of the programmes and options so that if there were events outside both parties' control that meant that producing the material would not be sensible, we would not have to go through a formal process to modify the licence. It is not our intent to agree later dates with NERL unless there are compelling reasons for doing so. In particular, we will not agree to later dates without first taking views from users (airlines and airports). We, therefore, have decided not to amend our proposed modification to Condition 10 to remove the ability to agree to delay the provision of programmes and options.
- 2.2 We understand the concerns of residents affected by aviation noise, and consider that robust reporting on noise levels and the number of people affected by noise is important. However, we note that the current regulatory framework and associated Performance Plan for Reference Period 2 (2015-2019) of the SES Performance Scheme, do not contain noise performance indicators and that such indicators would take time to develop and would require extensive consultation. We therefore consider that this Licence modification, on the development of and reporting on airspace and technology programmes, is not the appropriate mechanism to introduce noise performance indicators. Notwithstanding, we do expect to consider noise performance in our approach to the next Reference Period.
- 2.3 Whilst we acknowledge that some respondents would like the CAA to set a clear delivery date for LAMP Phase 2 by NERL as part of this Licence modification, we do not consider it either appropriate or practical. Aside from those deliverables required by law, as in the case of the SESAR Pilot Common Project, it is not appropriate for us to set deadlines for delivery of

individual projects, and therefore place obligations in the Licence, unless those obligations are wholly within the control of the Licensee to deliver. Where there are external factors, which may substantially impact on the Licensee's ability to meet obligations placed upon it, we consider it more appropriate to require the Licensee to set out clearly defined plans and programmes and report progress and delivery against significant milestones. The proposed framework strengthens our oversight role of, and facilitates and helps to inform, airline engagement with NERL on industry priorities. However, if there are external factors that have an impact on significant deliverables, our approach provides for all parties to understand those factors and engage in a meaningful way as to how to address them.

- 2.4 Notwithstanding, as we mentioned in CAP 1405, we remain committed to supporting the necessary airspace redesign as part of the implementation of the FAS. Accordingly, in Condition 10(4), we have retained the requirement for NERL to use reasonable endeavours deliver the London terminal and related airspace redesign and implement the ATM functionalities in the Pilot Common Project.
- 2.5 We do not agree with Prospect that this is being too specific; on the contrary we consider that some specificity is required to help prevent necessary and important airspace changes slipping when difficulties in implementing them arise. Requiring NERL to report on specific elements of airspace change means that programmes cannot slip without the reasons for slippage being made transparent to all stakeholders.
- 2.6 In respect of SESAR delivery, the Pilot Common Project regulation establishes the deadlines by which ATM functionalities must be implemented. If there are specific functionalities that airlines believe would deliver greater benefit from early delivery, we would encourage engagement with NERL through SIP and Operational Partnership Agreement arrangements. Once these requirements are established, we would then expect to monitor progress against delivery through the reporting processes provided for in this modification.

- 2.7 We note the comments made by LACC about TA. We can clarify that as yet we have not developed a policy for raising the few remaining areas of 5,000ft TA inside Controlled Airspace to an interim harmonised level of 6,000ft, prior to the planned RP3 introduction of an 18,000ft TA. Rather, our approach is that when an airspace change is being proposed, we would expect the airspace change sponsor to consider the opportunity afforded by that proposal of complying with the CAA's extant 2004 TA policy of '*...progressively moving to a Transition Altitude of 6000ft, as it becomes operationally feasible...*'.
- 2.8 Most respondents welcomed the proposal for us to be able to appoint an IR to review the accuracy of NERL's reporting, and for us to publish the IR's reports. However, British Airways wanted more clarity before it could support the proposal. LACC, British Airways and Virgin wanted transparency on proposed candidates for the role and the reasoning for the final choice of IR. LACC and Virgin saw merit in the on-going participation of an IR once an assessment of the initial year had been conducted and deemed effective.
- 2.9 As set out in CAP 1405, the intention of creating the IR role is to provide stakeholders with an assessment of the accuracy of NERL's reporting, thereby assuring the quality of the information and informing the engagement between NERL, its customers and the CAA. This is different in nature from the Independent Fund Surveyor role in scrutinising Heathrow Airport capital expenditure. The rationale for this is two-fold. Generally speaking, ATM investment is different in kind to airport investment, delivering skills and systems enhancements and upgrades as opposed to more traditional physical infrastructure. Moreover, this is the first time such a role has been envisaged in ATM, and it is therefore pragmatic to take a proportionate approach to a third party reviewer role, as all parties learn how such a role can add value to oversight of capital programme delivery. We would expect to review the efficacy of the IR role periodically to take account of relevant developments, with a view to its further development ahead of the next Reference Period. Therefore, we would intend to appoint the IR, initially, for a one year period and whilst

we have not finalised the funding and selection process for the IR at present, we will however engage with stakeholders before making any appointment. Notwithstanding, if the IR is funded via the NERL component of the FAS Facilitation Fund, there will be a direct stakeholder role through the FAS Deployment Steering Group.

- 2.10 As we will publish the IR's reports, all stakeholders, including Prospect and individual ATCOs, will be able to see and comment on them. However, we are not persuaded that we should stipulate that the IR must consult Prospect when producing its reports.
- 2.11 In conclusion we consider that our proposed licence modifications will add a necessary level of guidance to NERL on what we and users require it to include when reporting on its investment programme. This together with formalising NERL's practice of issuing an interim SIP, in Condition 10(3) and the independent assessment role of the IR should give greater transparency to NERL's plans which will assist users in questioning and, where necessary, challenging those plans. We have, therefore, decided to modify Condition 10 and to delete Condition 10a with effect from 29 June 2016, as proposed in our notice of 6 May 2016. Our decision is consistent with our duties under section 2 of the Act.
- 2.12 The modifications are set out in Appendix A.

Appendix A

Modifications to Condition 10 and 10a

Condition 10: Business Plans, Service and Investment Plans and Periodic Reports

1. The Licensee shall prepare a full five year business plan fulfilling the requirements of Paragraph [410](#) of this Condition. The business plan must be consistent with any overall business plan of the Licensee but, provided that it fulfils the requirements of paragraph [310](#), for the avoidance of doubt need not constitute the entirety of any such overall business plan. The Licensee's RP2 Revised Business Plan (2015-2019) delivered on 18 October 2013 and published on the CAA's website as amended subsequently for the purpose of producing the UK's RP2 Performance Plan and any further changes made and published by the European Commission following its own assessment process shall be deemed to meet this requirement.
2. Business plans prepared under paragraph 1 shall be submitted to the CAA not less than twelve months before each Plan Renewal Date and shall relate to the five year period beginning on that Plan Renewal Date (or the period until expiry of the Licence whichever is the shorter period). Later business plans shall always supersede any earlier business plan in respect of a period which is covered by both. Business Plans shall also comply with the relevant requirements for a business plan in Annex 1 of Commission Implementing Regulation No 1035/2011 laying down common requirements for the provision of air navigation services (or in any subsequent legislation).
3. Every year the Licensee shall submit:
 - a. ~~not later than 28 February 2015 and subsequently~~ not later than 31 December in each year, a service and investment plan fulfilling the requirements of Paragraph [511](#) of this condition; ~~and~~

- b. with effect from 1 January 2017, not later than 30 June in each year, an interim service and investment plan fulfilling the requirements of Paragraph 11 of this Condition; and
 - c. with effect from 1 January 2016, not later than seven months after the end of the regulatory year, a business plan report fulfilling the requirements of Paragraph 613 of this Condition which shall relate to the previous regulatory year.
4. Subject to meeting its general obligations under Condition 2, the Licensee shall use reasonable endeavours to further implement the major air traffic management (“ATM”) modernisation programmes set out in the UK FAS Deployment Plan. These programmes include the London terminal and related airspace redesign; and implementation of the ATM functionalities set out in Commission Implementing Regulation (EU) No 716/2014 on the establishment of the Pilot Common Project supporting the implementation of the European Air Traffic Management Master Plan.
5. By 31 March 2017, or any later date agreed with the CAA, the Licensee shall provide the CAA, and publish, a detailed technology programme covering the period to 31 December 2019.
6. By 30 June 2018, or any later date agreed with the CAA, the Licensee shall provide the CAA and publish, an outline technology programme covering the period January 2020 to December 2024.
7. By 31 March 2017, or any later date agreed with the CAA, the Licensee shall provide the CAA, and publish, a detailed airspace programme covering the period to 31 December 2019.
8. By 30 June 2018, or any later date agreed with the CAA, the Licensee shall provide the CAA, and publish, an outline of options for implementing lower level airspace changes in the London terminal and related airspace redesign area in the period January 2020 to December 2024.
9. The technology and airspace programmes provided under Paragraphs 5, 6 and 7 shall have been subject to consultation with users (including

airports). Such consultation shall, so far as is reasonably practical, take place in the context of consultation on the SIP as described in Paragraphs 3(a) and 3(b). The programmes shall include (but may not be limited to):

- a. proposed ATM system upgrades as set out in the FAS deployment plan (and any subsequent evolution thereof) and the Pilot Common Project;
- b. how the programme furthers airspace and ATM modernisation in respect of the key performance areas of safety, capacity (as measured by ATFM delay), the environment (as measured by flight efficiency and enabled fuel saving) and cost efficiency;
- c. significant delivery milestones, dependencies and risks; and
- d. an explanation of where training and deployment activities may impact service quality.

10. The purpose of each business plan shall be to describe in detail the Licensee's plans and expectations for each of the En route Businesses including its capital investment and operational plans, together with measures which it proposes to take to improve the efficiency and effectiveness of its operation in providing the services required by this Licence. Business plans shall include such information as is reasonably necessary to achieve this including, but not limited to, details concerning the following:

- a. the demands, in terms of the volumes of flights, which the Licensee forecasts that it will be required to serve in meeting its general obligation under Condition 2 together with the principal factors which it expects to determine those demands;
- b. the standards of service that the Licensee plans to meet in serving the demands in sub-paragraph (a), including the expected levels of and variations in delays to the flights in respect of which services are provided, and other appropriate measures;

- c. the capacities which the Licensee plans to provide in order to meet the demands in sub-paragraph (a) at the standards of service in subparagraph (b);
- d. any underlying assumptions regarding airspace;
- e. the likely level of and developments in any constraints on the volume of services which the Licensee may provide in each of the Licensed Areas and any proposed changes thereto;
- f. the Licensee's capital investment plans and how these will contribute to the provision of the planned outputs;
- g. the Licensee's plans with respect to operating and human resources and practices, operating expenditure and how these will contribute to the provision of the planned outputs; and
- h. forecasts of the Licensee's financial results in terms of a regulatory income statement with associated cash flow statements and the effects on the regulatory asset base projection.

11. Each service and investment plan shall provide (by reference to the most recent business plan [and the technology and airspace programmes provided under Paragraphs 5 and 7](#) an update ~~each year~~ of:

- a. the Licensee's investment plans, [including its technology and airspace programmes](#); ~~and~~
- b. [the Licensee's delivery against the programme milestones provided under Paragraph 9\(c\)](#); and
- c. material changes in the Licensee's expectations as to the level and quality of the services it will provide, the means by which the services will be provided, and the likely implications for charges to Users beyond the expiry of the period for which charges are for the time being set pursuant to the Charge Control Conditions. Service and investment plans shall include such information as is reasonably necessary to achieve this including, but not limited to, material

changes in the Licensee's expectations as to its operating practices and resources.

12. The CAA may appoint a person (the Independent Reviewer) to review the accuracy of the Licensee's reporting, referred to in Paragraph 11(b). The CAA will publish the conclusions reached by the Independent Reviewer. Unless the CAA directs otherwise, the Independent Reviewer will be paid for by the Licensee.
13. Each business plan report shall provide a description of progress achieved in relation to the business plan and the latest service and investment plan, reconciling actual performance against these plans. Each business plan report shall also include information on the performance of the Licensee against its obligations in Condition 2(1)(a) of this Licence.
14. The form, scope and level of detail of the plans referred to in this Condition shall be as reasonably approved by the CAA and shall take into account the views of Users consulted in accordance with Condition 16.
15. The Licensee shall make available a copy of the latest business plan, business plan report and service and investment plan to any person who requests a copy of such plan or report.
16. The Licensee may with the prior consent of the CAA (provided that such consent is not unreasonably withheld or delayed) omit from any document made available under paragraph [815](#) any details as to the terms of any agreement between the Licensee and any User, or other information disclosure of which the Licensee satisfies the CAA, or the CAA otherwise considers, would seriously and prejudicially affect the commercial interests of the Licensee or any third party.
17. The Licensee may make a charge for any copy document given or sent pursuant to paragraph [815](#) of an amount reflecting the Licensee's reasonable costs of providing such copy document.
18. In this Condition:

“**Plan Renewal Date**” means 1 January 2015 and ~~e~~ every fifth anniversary thereof.

Condition 10a: [Condition deleted]