

# Regulatory treatment of London Approach charges in Reference Period 2 (2015-2019) of the Single European Sky Performance Scheme: CAA Conclusions

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## CHAPTER 1

# Introduction

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### Purpose

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- 1.1 The purpose of this document is to set out the CAA's conclusions following a consultation with stakeholders on the regulatory treatment of London Approach charges in Reference Period 2 (RP2, 2015-2019) of the Single European Sky (SES) Performance Scheme.
- 1.2 These conclusions inform the drafting of the UK component of the Draft UK-Ireland Performance Plan which is also being published at the same time.

### Background

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- 1.3 The CAA published a consultation paper in October 2013 to seek stakeholders' views on the most appropriate regulatory treatment of charges for the London Approach service (LA) consistent with the EU Performance and Charging Regulations<sup>1</sup> ('the Regulations') and the CAA's statutory duties under the Transport Act 2000. This followed revision of the regulations in 2013 and the UK's finding that the terminal services at airports do not currently pass the market conditions test.
- 1.4 In particular, this document considered three questions:
  - Whether there should continue to be a separate charge for LA?
  - If so, whether it should be considered as an en route or terminal service under the SES requirements?
  - How costs should be allocated to any separate LA charge?
- 1.5 The position in RP1 (2012-2014) is that LA is treated as if it is neither a terminal nor an en route service and its costs are borne via a

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<sup>1</sup> COMMISSION IMPLEMENTING REGULATION (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions and COMMISSION IMPLEMENTING REGULATION (EU) No 391/2013 of 3 May 2014 laying down a common charging scheme for air navigation services.

separate charge on air traffic users terminating at the five main London airports<sup>2</sup> and UK en route users generally.

- 1.6 The consultation document identified three options alongside the status quo.
- Option 1: A separate Terminal Charge with the current allocation of costs;
  - Option 2: A separate Terminal Charge with full allocation of costs; and
  - Option 3: A consolidation of current LA charges in the Eurocontrol en route charges.
- 1.7 The CAA's initial view was that the UK should move to Option 2 over time in line with an assessment of the treatment of approach services across the EU and the development of a common approach for the EU. In the meantime, however, for RP2 the CAA was minded to pursue Option 1, but welcomed views from stakeholders before coming to a decision on the matter.

## What is London Approach?

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- 1.8 LA consists of the control and sequencing of flights between NERL's en-route service (which operationally includes holding stacks) and the tower service at London airports (which is provided at each by an ANSP under contract with the airport operator). LA usually hands control to the relevant airport tower when aircraft are established on their final approach. For departures the handover points depend on various factors including the particular airport, routeing, weather and the potential for conflict with arrival traffic sequencing. The relevant airport tower may hand over to LA or directly to an en route sector.
- 1.9 LA is provided from the Terminal Control (TC) room at NERL's Swanwick centre and it is integrated with the rest of NERL's TC Operations which are charged to users via the en route business. It therefore has some characteristics of both an en route and a terminal service.

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<sup>2</sup> Heathrow, Gatwick, Stansted, Luton and London City.

## CHAPTER 2

# London Approach - responses to consultation

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- 2.1 We received five responses to our consultation on the approach to regulating London Approach in RP2, from: NERL, Heathrow Airport Limited (HAL), British Airways (BA), IATA, and Airlines for America. The responses are on our website at:  
<http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=585>
- 2.2 The respondents mainly commented on which of the three options we consulted on would be most appropriate and what factors we should consider in the timing of moving to a different approach.

## Summary of responses

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- 2.3 Respondents differed on which of our three options would be most appropriate in RP2:
- NERL said it had no direct economic interest in any of the options we identified. It agreed that LA charges should be consistent with the Charging Regulation and, in principle and should better reflect the underlying costs of providing the service. However, it thought that the implications of more cost reflective charging needed to be understood fully before implementation. NERL thought we should take account of the views of all stakeholders before making our decision.
  - HAL supported Option 1, maintaining a separate LA charge in RP2, as LA could not be considered wholly as a terminal or an en route service. In the absence of better information, HAL supported recovering the same proportion of costs from LA users, with the remainder recovered from en route users. In the longer term, HAL mentioned that the redesign of airspace as part of LAMP (London Airspace Management Programme) might change the demarcation of airspace between en route and terminal.

- BA thought there was no consistent precedent for us to follow in RP2. It considered that Article 5.3 of the Charging Regulation could be construed as allowing LA costs to be recovered through en route charges. BA hoped we would encourage the European Commission to address matters of consistency, including the logic of separate approach charges in other complex Terminal Manoeuvring Areas (TMAs) such as Paris and Milan. BA thought if we were minded to make changes we should move to Option 3 recovering costs through en route charges, as this would be in line with other key member states such as Germany. If we were not minded to change, it strongly suggested we should remain with Option 1. BA mentioned that if we made changes before the end of RP2 we risked further changes being required when LAMP and Transition Altitude were delivered.
- IATA thought that the LA charges system including the subsidy by en route is inconsistent with European Regulation requirements and basic ICAO charges principles. IATA preferred Option 2 for a separate terminal charge with a revised allocation of costs for RP2. It thought that the conclusions of the European Commission's proposed study<sup>3</sup> into harmonising cost allocation and terminal control in early 2014 should be implemented in RP2. IATA thought that establishing a complex charging area could be regarded as a more cost-reflective solution, which if implemented should also be used in other complex European TMAs.
- Airlines for America considered that LA charges are currently cross-subsidised by approximately 60%. It believed that the current practice violated international and EU law which required users of that service should pay for the cost of its provision.

#### 2.4 Other issues considered by respondents included:

- BA thought we should consider the relevance of including a weight element in LA charges as weight was broadly irrelevant in establishing air traffic control charges in general. However, IATA thought that LA charges were currently inconsistent with the requirement in the Charging Regulation to take account of aircraft weight.

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<sup>3</sup> A study has not yet been published.



BA and IATA said we should review the free service provided at four smaller other London airports. BA also wanted us to consider the cost reflectivity of the annual fee charged to Biggin Hill.

## CHAPTER 3

# CAA View

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### Overview

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- 3.1 The CAA takes from the responses that there are different views on how this issue should be taken forward and at what pace.
- 3.2 One particularly difficult issue is to set an appropriate demarcation line between terminal and en route services generally, as there is not a common approach across the EU in general and in particular to complex airspace around major systems of airports. This confusion is increased because the term London Approach is used to describe both:
- a function which has characteristics of both an en route and a terminal service: and
  - the charge to recover the costs relating to the terminal part of that function alone.
- 3.3 This CAA believes that the European Commission and Performance Review Body (PRB) are planning to consider this issue during RP2 with a view to ensuring a consistent basis across the EU in future Reference Periods.
- 3.4 In the meantime, the CAA has to take a view on this issue in order to prepare the UK's contribution to the Draft UK-Ireland Performance Plan for RP2 on which it is now consulting.

### Whether there should continue to be a separate charge for LA?

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- 3.5 While discontinuing the LA charge and recovering all the relevant costs through the EUROCONTROL en route charges would be administratively simple and may reflect custom and practice in some other EU countries, this would move away from the principle of users bearing the costs of the services that they use. BA were the only respondent that looked favourably on such a move but it argued from the point of view of making the practice in London consistent with

what occurred in some other similar situations in Europe rather than as a principle.

- 3.6 The CAA has therefore decided to continue with a separate LA charge.

### **If so, whether it should be considered as an en route or terminal service under the SES requirements?**

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- 3.7 Although BA argued for LA charges being assimilated into en route EUROCONTROL charges, no respondent argued that there should be a separate en route charge for LA.
- 3.8 While the London Approach function has elements of both en route and terminal functions, the LA charge is directly paid only by operators making an approach to the five relevant airports. To the extent that this function and the related charges relate to terminal services and not en route, it seems reasonable to the CAA that it should be considered as a terminal charge.

### **How costs should be allocated to a separate LA charge?**

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- 3.9 The consultation document put forward three options for cost allocation:
- Option 1: A separate Terminal Charge with the current allocation of costs;
  - Option 2: A separate Terminal Charge with full allocation of costs (for the LA function); and
  - Option 3: A consolidation of current LA charges in the Eurocontrol en route charges.
- 3.10 Opinion between respondents was split between the three options.
- 3.11 As set out above, the CAA is not inclined to adopt Option 3.
- 3.12 While Option 2, gaining a better understanding of the nature of the service and its costs - to allow for a revised allocation of costs on to a more transparent basis, is a reasonable long-term goal, the CAA is mindful that:

- simply accepting NERL's current fully allocated cost estimate may not reflect the benefits to users overflying South-East England of providing the terminal service from an en route centre. Such benefits are likely to be positive but difficult to quantify. The CAA has not independently tested the cost allocation presented by NERL in the consultation (although it does not have reason to dismiss this estimate);
  - the arrangements for allocating equivalent approach costs in the rest of Europe vary and that in some circumstances the costs of such services may be borne by users not using those approach services; and
  - the current Charging Regulation does not appear to foresee or provide for a separate Charging Zone and service which comprises both terminal and en route elements.
- 3.13 The CAA has, therefore, concluded that it will be inclined to move to Option 2 over time in line with a common approach that could be adopted for the EU. In doing so, the CAA will work closely with the PRB and European Commission with a view to ensuring a consistent basis across the EU.
- 3.14 The CAA considers that it would be logically consistent if and when it pursues moves to a revised cost allocation for the costs for LA to be considered on the same accounting basis as the EUROCONTROL charge, i.e. a regulatory asset based approach.
- 3.15 For the purposes of the UK element of the UK-Ireland Performance Plan the CAA intends to adopt a separate Terminal Charge with the current allocation of costs. That allocation of costs will continue to offset EUROCONTROL en route charges.

## Other issues

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### Legal issues

- 3.16 Airlines for America and IATA have raised questions of whether the current approach is consistent with international law and European regulations.
- 3.17 The CAA considers that the test of what is and is not a terminal service is not clear. The London Approach positions at Swanwick, an en route centre, have elements of both terminal and en route. There

are no clear criteria to determine what should be allocated to terminal and what to en route. As far as custom and practice is concerned across Europe, it is unclear how much of these grey costs are allocated to terminal charges by other Member States. The CAA is therefore of the view that the approach taken with LA is within the bounds of reasonable discretion.

### The basis of charging to other airports

- 3.18 BA asked the CAA's view on the implication of any changes to LA charges on NATS' commercial contracts with Biggin Hill and the existing equity of the treatment of smaller airports and airfields within the London TMA in relation to also being liable for payment.
- 3.19 The CAA is not proposing a fundamental change to the LA charge for RP2 so there does not appear to be any implications for existing contracts. The CAA considered the proposition of increasing the scope of the LA charge to cover Biggin Hill three years ago and concluded that it did not see a good case given the small scale of operations at that airport compared to other airports in the London area. It still holds this view, which also applies to other very small airports in the London TMA.

### Removing weight

- 3.20 BA also asked the CAA to consider the inclusion of the weight element within the LA charge as it argues that weight is broadly irrelevant to air traffic control.
- 3.21 The form of terminal charges is prescribed under the Charging Regulation. This is weight-based although somewhat different in structure to the existing weight-based structure. Removing weight is therefore not permissible for a terminal charge under the Charging Regulation.

### CAA conclusion

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- 3.22 In the future, the CAA will move to a common EU approach to cost allocation and will work closely with the PRB and European Commission in its development with a view to ensuring a consistent basis across the EU.
- 3.23 In RP2, for the purposes of the UK element of the UK-Ireland Performance Plan, the CAA intends to adopt a separate Terminal

Charge with the current allocation of costs. That allocation of costs will continue to offset EUROCONTROL en route charges.