

# 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

**CAP 1405**



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# Contents

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Contents.....	2
<b>Chapter 1.....</b>	<b>3</b>
Introduction .....	3
Purpose of this document.....	3
Views invited .....	3
Next steps .....	4
<b>Chapter 2.....</b>	<b>5</b>
Background.....	5
<b>Chapter 3.....</b>	<b>7</b>
Our proposals.....	7
<b>Appendix A .....</b>	<b>11</b>
Proposed modifications to Condition 10 and 10a .....	11

## Chapter 1

# Introduction

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## Purpose of this document

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1.1 This document invites representations on a proposal to modify the requirements for NATS (En Route) plc (NERL) to prepare service and investment plans. The proposal is to specify that NERL must 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). We also propose that NERL's reporting on the delivery of the milestones in the programmes will be subject to review by an Independent Reviewer (IR). The proposal would remove the current separate 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.

## Views invited

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1.2 Under section 11(1) of the Transport Act 2000 (the Act) the CAA may modify the conditions of a licence if its holder consents to the modifications. NERL, as the licence holder, has given its consent to the modifications proposed in this document.

1.3 Under sections 11(2) and (3) of the Act, before making modifications to a licence, the CAA must publish a notice setting out the proposed modifications, their effect and the reasons for the proposal, and must state the period (of not less than 28 days) within which representations may be

made regarding the proposed modifications. This document constitutes such a notice.

- 1.4 Any representations about the proposals in this document should be sent, if possible by e-mail, to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk) by 3 June 2016. Alternatively, comments may be sent by post to:

Rod Gander  
Consumers and Markets Group  
Civil Aviation Authority  
CAA House  
45-59 Kingsway  
London WC2B 6TE

- 1.5 We expect to publish the representations on our website for other interested parties to read as soon as practicable after the period for written representations expires. Any material that is regarded as confidential should be clearly marked as such. Please note that we have powers and duties with respect to information under section 102 of the Transport Act 2000 and the Freedom of Information Act 2000.
- 1.6 If you have any questions on this document please contact Matt Claydon on 020 7453 6508 (or by e-mail to [matt.claydon@caa.co.uk](mailto:matt.claydon@caa.co.uk)).

## Next steps

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- 1.7 Once we have considered the representations, we will decide what modifications, if any, to make to NERL's licence. We will publish notice of our decision which, we propose, will take effect on 29 June 2016.

## Chapter 2

## Background

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2.1 In January 2015, in support of the UK-Ireland FAB Performance Plan for RP2 (2015-2019), we introduced a new Condition 10a in NERL's licence on the implementation of and reporting on programmes that fall under the Future Airspace Strategy (FAS) Deployment Plan. The Condition requires NERL to use reasonable endeavours to implement the major air traffic management modernisation programmes set out in the UK FAS Deployment Plan of December 2012. These include raising the Transition Altitude (TA) to 18,000 feet, the London Airspace Management Programme (LAMP) and the implementation of the SESAR Pilot Common Project (PCP).<sup>1</sup>

2.2 To help us oversee the implementation of the modernisation programmes, the Condition required NERL to submit plans to the CAA in respect of TA and LAMP as follows:

- For TA, to submit by 31 December 2015 a detailed project plan for implementing by 31 March 2018 a TA of 18,000ft; and
- For LAMP, to submit by 31 December 2015 a detailed project plan for the period until 31 December 2017 and an outline plan for the period from 31 December 2017 to 31 December 2019.

2.3 The plans were to be subject to consultation with users through NERL's annual consultation on its Service and Investment Plan (SIP) as required under Condition 10 of the Licence. During 2015 NERL identified the need to significantly change part of its investment plans for RP2, in particular in relation to the delivery of TA and LAMP Phase 2<sup>2</sup> and further identified an opportunity to bring forward intended SESAR-related investment from RP3 to RP2, whilst remaining within the RP2 cost envelope. To allow

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<sup>1</sup> Commission Implementing Regulation (EU) No 716/2014 on the establishment of the Pilot Common Project of the European Air Traffic Management Master Plan.

<sup>2</sup> LAMP Phase 1A was implemented in February 16.

NERL sufficient time to consult users fully on these proposed changes, through the SIP process, we amended the deadline for these reports to 30 June 2016 ([CAP1362](#) – Decision on modifications to NATS (En Route) plc licence in respect of reporting of certain plans under Condition 10a).

- 2.4 When we introduced Condition 10a we considered that the new plans for TA and LAMP would provide more specific information to users, ourselves and other stakeholders which would supplement the SIP. With the decision to delay TA and subsequent phases of LAMP-related airspace, it is our view that the provision of such specific information in the stated timeframe would be of limited or no utility. Added to NERL's decision to bring forward other technology plans from RP3 to RP2 in support of SESAR, we feel it is appropriate to review, and as appropriate amend, Condition 10a and its objectives.

## Chapter 3

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## Our proposals

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- 3.1 Acknowledging the challenges associated with delivering the parts of the airspace programme set out in the NERL RP2 Revised Business Plan, in respect of the changes outlined in paragraph 2.4 above and taking account of concerns previously raised by airspace users in respect of the need to enhance the current SIP process, has highlighted a need to review and modify the NERL Licence against the objectives below:
- Greater transparency and understanding of the NERL capital programmes for the remainder of RP2, given the significant changes from the October 2013 Revised Business Plan. Recognising airspace users views regarding the level of detail and transparency in the SIP, the requirement to develop, consult and adopt detailed programmes for airspace and technology for the remainder of RP2 will provide clarity around what NERL is expected to deliver and when, along with the expected benefits. This will give users a greater opportunity to engage more actively in the direction of those programmes and provide justification should those programmes need to be amended in response to changing circumstances, dependencies and the latest available information;
  - Alignment with good regulatory practice in terms of ongoing independent monitoring of delivery against significant milestones in the agreed programmes. Such an approach also aligns with the recommendations of the Independent Enquiry into the NATS System Failure in December 2014 and will provide a useful evidence base and experience against which to consider the capital programme oversight arrangements for RP3;
  - Strengthening and clarifying the SIP process, by building guidance into the Licence around the information that should be considered, formalising the interim SIP arrangements and bringing all the



reporting requirements into a single condition – compared to the current Condition 10a, which contains some SIP-like reporting requirements but does not form part of Condition 10; and

- Removing RP2 implementation and reporting requirements in respect of TA and LAMP, which NERL could not reasonably be expected to deliver in that timeframe, whilst maintaining momentum to deliver ATM modernisation in the context of FAS and the SESAR PCP.

3.2 In pursuit of these objectives, we believe there would be benefit from greater transparency of NERL’s airspace and technology programmes and monitoring of progress against their delivery, for both airspace users and the CAA; and that this might most usefully be provided in the context of the existing SIP process, with the CAA providing additional guidance in respect of what it expects to be reported, rather than through separate requirements. The remainder of this Chapter sets out our proposals to address the above objectives.

3.3 We propose to modify Condition 10 of NERL’s licence to include requirements to produce:

- detailed technology and airspace programmes for the remainder of RP2 by 31 March 2017; and
- an outline technology programme and airspace proposals for RP3 by 30 June 2018. We propose that the outline airspace plan should include options for implementing lower level airspace changes in the London terminal and related airspace area.

3.4 By way of guidance to NERL and to ensure the programmes provide meaningful information to both airspace users and the CAA, we also set out minimum criteria we expect the programmes to address in the proposed Condition 10(9). These include the expected benefits in terms of safety, environment, capacity and cost-efficiency; significant delivery milestones, risks and dependencies; and information relating to potential

service quality impacts during the deployment phase of any airspace and technology programme changes.

- 3.5 The dates by which we propose that NERL should produce the required programmes reflect discussions we have had with NERL about the time it needs to consult users and the need to ensure that they are sufficiently mature and approved by NERL's Board before publication. However, we expect NERL to share its developing thinking through draft airspace and technology programmes in the context of the SIP process in advance of the March 2017 deadline.
- 3.6 In bringing the requirements to develop detailed airspace (and new technology) programmes explicitly into Condition 10, we also propose to delete Condition 10a in its entirety in the interests of simplifying and consolidating the relevant drafting.
- 3.7 We remain committed to supporting the necessary airspace redesign in the FAS and, therefore, will retain the requirement within the revised Condition 10, currently in Condition 10a(1), for NERL to use reasonable endeavours to further implement the major air traffic management modernisation programmes that support the delivery of the FAS deployment plan. The requirement will specify that these programmes shall at least include London terminal and related airspace redesign and implementation of the ATM functionalities of the SESAR PCP. The requirement will be contained in Condition 10(4).
- 3.8 We have maintained the principle contained in Condition 10a of requiring NERL to report progress against significant programme milestones, by amending the SIP provisions to introduce specific requirements in Condition 10(11) to report against the delivery of the milestones contained in the detailed programmes.
- 3.9 Condition 10a(6) requires NERL to co-operate with any person we appoint to advise us on its progress and delivery against TA, LAMP and the SESAR PCP. We propose to maintain this scrutiny of NERL's delivery, by introducing a new Condition 10(12) which sets out that we may appoint an

Independent Reviewer (IR) to review the accuracy of NERL's reporting on its technology and airspace programmes. Furthermore we will publish the IR's conclusions. The role of the IR will be to monitor and provide advice to airspace users and the CAA on the accuracy of NERL reporting, with the output then available to inform views during the interim and full SIP consultation processes. In addition to providing scrutiny and assurance to airspace users, this will also provide an independent view to strengthen our ability to assure ourselves on the delivery of the NERL capital programme, in line with the recommendations of the Independent Enquiry into the NATS System Failure of December 2014.

- 3.10 We also propose, in Condition 10(12) that NERL shall pay for the IR, unless we direct otherwise. Given that this is a new role, it would be appropriate to appoint the IR on a one year contract initially. It is our view that as the IR will provide an assurance role on the activities to deploy FAS related projects, it would be appropriate for NATS to make an application to the NERL component of the FAS Facilitation Fund (FFF), which is focussed on disbursements in respect of additional operating expenditure in support of delivery of FAS projects covered by the FAS Deployment Plan. This would, however, be subject to approval of the FAS Deployment Steering Group (DSG) on the basis of alignment with [CAP 1249](#), which sets out the eligibility criteria for applying for funds under the FFF.
- 3.11 Implementing this condition at this stage in RP2, including the reporting and IR process, will provide experience and evidence for when we consider the arrangements for development of capital plans and their oversight in the RP3 context.
- 3.12 The proposed refinements to the SIP process provide the opportunity to formalise within the Licence the enhanced SIP process already in use for RP2, specifically, the additional Interim SIP requirement in June of each year in addition to the Final SIP to be delivered in December of each year.
- 3.13 Our proposals to modify Condition 10 and to delete Condition 10a are in Appendix A.

## Appendix A

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## Proposed modifications to Condition 10 and 10a

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### 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 ~~4-10~~ 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 ~~5-11~~ 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 ~~6~~13 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 8-15 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 8-15 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]**