

# Economic Regulation of NERL: Illustrative proposals for modifying the Licence to support the implementation of a UK Airspace Design Service

CAP 3063

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# Contents

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<b>Contents</b>	<b>3</b>
<b>About this document</b>	<b>7</b>
<b>Introduction</b>	<b>8</b>
<b>Background</b>	<b>8</b>
<b>Content and structure of this consultation</b>	<b>9</b>
<b>Next steps and views invited</b>	<b>11</b>
<b>Consultation questions</b>	<b>11</b>
<b>Chapter 1</b>	<b>13</b>
<b>The design of licence modifications to implement the Airspace Design Service</b>	<b>13</b>
<b>Introduction</b>	<b>13</b>
<b>Our overall approach to designing modifications to the Licence</b>	<b>13</b>
<b>Identifying appropriate licence modifications</b>	<b>14</b>
<b>Our duties under the TA00</b>	<b>15</b>
<b>Questions for consultation</b>	<b>15</b>
<b>Chapter 2</b>	<b>16</b>
<b>Licence modifications to implement the proposals in the Joint Consultation</b>	<b>16</b>
<b>Introduction</b>	<b>16</b>
<b>Defining NERL's role in providing the Airspace Design Service</b>	<b>16</b>
Summary of the Joint Consultation	16
Illustrative licence provision	17
<b>Setting the Geographic scope of the Airspace Design Service</b>	<b>18</b>
Summary of the Joint Consultation	18
Illustrative licence provision	18
<b>The obligations on NERL to provide the Airspace Design Service</b>	<b>19</b>
Summary of the Joint Consultation	19
Illustrative licence provision	19
<b>Matters NERL would need to consider in carrying out the Airspace Design Service</b>	<b>20</b>

Summary of the Joint Consultation	20
Illustrative licence provision	21
<b>The Advisory Board</b>	<b>21</b>
Summary of the Joint Consultation	21
Illustrative licence provision	23
<b>Relationships with stakeholders</b>	<b>23</b>
Summary of the Joint Consultation	23
Illustrative licence provision	24
<b>Administration of the UK Airspace Design Fund</b>	<b>24</b>
<b>The role of ACOG</b>	<b>24</b>
Summary of the Joint Consultation	24
Illustrative licence modification	25
<b>Questions for consultation</b>	<b>25</b>
<b>Chapter 3</b>	<b>26</b>
<b>Consequential modifications to the Licence</b>	<b>26</b>
<b>Introduction</b>	<b>26</b>
<b>Changes to the financial ringfence, accounting requirements and obligation to prepare an intervention plan</b>	<b>26</b>
<b>Condition 8: Requirement for mandated independent directors and corporate governance</b>	<b>28</b>
<b>Condition 9: Prohibition of cross-subsidies</b>	<b>29</b>
<b>Questions for consultation</b>	<b>29</b>
<b>Chapter 4</b>	<b>30</b>
<b>Costs of new airspace design services</b>	<b>30</b>
<b>Introduction</b>	<b>30</b>
<b>Cost projections for the Airspace Design Service</b>	<b>31</b>
<b>Cost modelling and projections for the Airspace Design Support Fund</b>	<b>33</b>
<b>NR23 cost allowances</b>	<b>34</b>
<b>Summary and key consultation questions</b>	<b>35</b>
<b>Chapter 5</b>	<b>36</b>
<b>Form of control, other regulatory mechanisms, and illustrative charges</b>	<b>36</b>

<b>Introduction</b>	<b>36</b>
<b>Options for cost recovery</b>	<b>37</b>
Option 1: Cost pass-through	37
Option 2: Fixed allowances for costs	37
Option 3: Hybrid approaches	38
Our views	38
<b>The profile of cost recovery over time</b>	<b>39</b>
Recovering the costs of the Airspace Design Service	39
Recovery of the Airspace Design Support Fund	40
Our views	40
<b>Duration of control</b>	<b>40</b>
Our views	41
<b>Other regulatory mechanisms and incentives</b>	<b>41</b>
Correction factor	41
Inflation adjustment	42
Delivery incentives	42
<b>Charge design</b>	<b>43</b>
How the new charge could be collected	43
Structure of charges	43
<b>Illustrative charges</b>	<b>44</b>
Illustrative new licence condition	46
<b>Summary and key questions for consultation</b>	<b>46</b>
<b>Appendix A</b>	<b>48</b>
<b>Our statutory duties</b>	<b>48</b>
<b>UK's International Obligations (section 2(2)(d) TA00)</b>	<b>49</b>
<b>Appendix B</b>	<b>50</b>
<b>Illustrative draft licence modifications</b>	<b>50</b>
<b>Possible modifications to Condition 1 (Interpretation and construction)</b>	<b>50</b>
New definitions	50
Illustrative draft new definitions:	51
Modified Definitions	51

Illustrative draft modified definitions	52
<b>New Provisions: Obligation to provide the Airspace Design Service</b>	<b>52</b>
Illustrative draft new provision	53
<b>Consequential modifications to Condition 5 (Availability of resources and financial ringfencing)</b>	<b>56</b>
Illustrative draft modified Condition	57
Restriction on Activity and Financial Ring-Fencing	58
<b>Consequential modifications to Condition 6: Regulatory accounting requirements</b>	<b>60</b>
Illustrative draft modified Condition	60
<b>Consequential modifications to Condition 7: Requirement to maintain an intervention plan</b>	<b>63</b>
Illustrative draft modified Condition	63
<b>Consequential modifications to Condition 8: Requirement for mandated independent directors and corporate governance</b>	<b>65</b>
Illustrative draft modified Condition	65
Interpretation	68
<b>Appendix C</b>	<b>69</b>
<b>Illustrative draft licence condition introducing a new airspace design charge</b>	<b>69</b>
<b>Condition 21b: Control of Airspace Design Charge</b>	<b>69</b>

## About this document

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This consultation document is complementary to the joint CAA and DfT consultation on proposals for creating a UK Airspace Design Service (the “Joint Consultation”).<sup>1</sup> This consultation explains how elements of the proposals set out in the Joint Consultation are relevant to the economic regulation of NATS (En Route) plc (“NERL”) and could be implemented through modifications to its air traffic services licence (the “Licence”).<sup>2</sup>

The approach set out in this consultation is illustrative and may change following consideration of responses to the Joint Consultation, to this consultation any any related policy consultations.

This document covers the broad approach to the licence modifications that may be necessary and appropriate to give NERL responsibility for the UK Airspace Design Service, the likely scale of the costs that NERL would incur in providing these services and possible charging arrangements that would allow NERL to recover these costs, consistent with the broad approach set out in the Joint Consultation. Alongside these illustrative proposals, this consultation sets out draft modifications to the Licence to show how we could implement the policy proposals if we were to adopt them in the form set out in this document.

Depending on the outcome of the Joint Consultation, this consultation and any related policy consultations, we would need to consult further before making any modifications to the Licence.

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<sup>1</sup> [www.caa.co.uk/CAP3029](http://www.caa.co.uk/CAP3029)

<sup>2</sup> The [NERL's licence](#) is published on the CAA website.

# Introduction

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## Background

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1. On 22 October 2024, the Department for Transport (“DfT”) and the UK Civil Aviation Authority (“CAA”), as co-sponsors of airspace modernisation, published a joint consultation (the “Joint Consultation”)<sup>3</sup> on a proposal to introduce a single entity for modernising the design of UK airspace, referred to in the Joint Consultation as “UKADS” and referred to in this consultation as the “Airspace Design Service”. That consultation seeks views on what the Airspace Design Service could do and how it might be set up.
2. The proposal being consulted in the Joint Consultation is to set up the Airspace Design Service in two phases. In the first phase, it is envisaged that NATS (En Route) plc (“NERL”) would be tasked to provide airspace design services under its existing air traffic services licence (the “Licence”) so that the service could be established as soon as possible. It would focus initially on taking forward airspace change proposals to modernise the complex airspace around London. Subject to the Airspace Design Service’s capability and capacity, the scope may be expanded in the future.
3. In a second phase, the provision of the service could follow a different model and the provider would be responsible for sponsoring and progressing all airspace change proposals in the UK. This second phase, which is being developed in parallel but necessarily on a longer timeframe, may require primary legislation. The second phase would be conditional on the outcome of a review of the first phase, and it would be the subject of further consultation.
4. This consultation is complementary to, and should be read in conjunction with, the Joint Consultation. It sets out the approach that the CAA is considering as to how elements of the proposals for the Airspace Design Service set out in the Joint Consultation could be implemented through modifications to the Licence.<sup>4</sup> This consultation does not address the proposals for a second phase.
5. This consultation sets out illustrative proposals for modifications to the Licence that are intended to assist stakeholder understanding by setting out the broad approach to the licence modifications, the scale of costs and the charging arrangements that could be required to support implementation of the Airspace

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<sup>3</sup> [www.caa.co.uk/CAP3029](http://www.caa.co.uk/CAP3029)

<sup>4</sup> For the avoidance of doubt, this consultation is issued solely by the CAA in its capacity as economic regulator of NERL under the Transport Act 2000 (“TA00”) and references to “we”, “our” and “us” in it are references to the CAA alone.



Design Service in the manner currently envisaged. Depending on the outcome of the Joint Consultation, this consultation and any related policy consultations, we would need to consult further before making any modifications to the Licence.

6. Alongside proposals for the Airspace Design Service, the Joint Consultation also proposes to reform the funding of airspace change proposals across the whole of the UK by creating a new UK Airspace Design Charge to be levied on airspace users. This new charge would:
  - allow the recovery of the efficient costs of NERL to provide the Airspace Design Service, and
  - support the creation of a new UK Airspace Design Support Fund, administered by NERL, to provide financial support for relevant costs of the sponsors of eligible UK airport airspace change proposals outside the scope of the Airspace Design Service.
7. As set out in chapter 8 of the Joint Consultation,<sup>5</sup> in order to allow NERL to provide the Airspace Design Service, an amendment to the Air Navigation Directions 2023 and a new statutory instrument would also be needed, in addition to modifications to the Licence.

## Content and structure of this consultation

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8. Chapter 1 (The design of licence modifications to implement the Airspace Design Service) sets out our general approach to designing modifications to the Licence that could be needed to implement these proposals and sets out our initial views on how these modifications would discharge our duties under the Transport Act 2000 (“TA00”).
9. The licence modifications would need to:
  - create an appropriate obligation for NERL to provide the Airspace Design Service and to administer the Airspace Design Support Fund, which is subject to further policy development;
  - establish arrangements to allow NERL to recover the costs of providing the Airspace Design Service and the Airspace Design Support Fund; and
  - make any consequential amendments required to the existing provisions of the Licence to address the knock-on impact that implementing the proposals in the Joint Consultation could have for existing conditions of the Licence.
10. Our initial views on the modifications that could be used to create an appropriate obligation on NERL that would implement the proposals set out in the Joint

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<sup>5</sup> See the Joint Consultation at paragraph 8.13.

Consultation are set out in chapter 2 (Licence modifications to implement the proposals in the Joint Consultation). Key elements of these modifications include:

- creating a new definition in the Licence to set out the scope of the new Airspace Design Service that NERL would be required to undertake;
- creating a new obligation on NERL to provide the Airspace Design Service and to do so in a manner that is aimed at delivering airspace modernisation;
- setting out the matters that NERL would need to address in carrying out the Airspace Design Service;
- requiring the appointment of an Advisory Board for the Airspace Design Service to provide a route for communication between NERL and stakeholders and ensure transparency and non-discrimination;
- addressing how the Airspace Design Service should deal with third parties; and
- requiring the Airspace Design Service to administer the Airspace Design Fund (subject to further policy development).

11. Chapter 3 (Consequential modifications to the Licence) addresses the impact of the possible changes on existing elements of NERL's regulatory framework, such as the financial ringfence, regulatory accounting and governance. In broad terms, our approach in these areas has been to seek to find ways to accommodate the Airspace Design Service within existing regulatory arrangements without making broader changes to them.
12. Chapter 4 (Costs of new airspace design services) discusses the potential level of efficient and incremental costs for NERL to provide the Airspace Design Service and to create the Airspace Design Support Fund. Recognising there is a significant level of uncertainty about the required level of costs, we have appointed Egis to identify and assess the scope of potential costs and set out some illustrative cost projections for both the Airspace Design Service and the Airspace Design Support Fund. Egis's report is being published alongside this consultation.<sup>6</sup>
13. In light of the scope of costs identified, chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges) considers the options for recovery and treatment of those costs, how the new UK Airspace Design Charge could be structured, and the duration of any charge control. Subject to the statutory processes set out in the TA00, the design of a new charge control would inform the specification of any new charge under the Chargeable Air

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<sup>6</sup> [www.caa.co.uk/CAP3063A](http://www.caa.co.uk/CAP3063A)

Services provisions of the TA00, which would allow NERL to cover its costs in relation to its potential role in providing the Airspace Design Service, and in relation to the Airspace Design Support Fund.

14. Appendix A sets out a summary of our duties under the TA00. Appendix B and Appendix C set out initial illustrative drafts of modifications to the Licence that could be used to implement NERL taking on the role of providing Airspace Design Services.

## Next steps and views invited

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15. This consultation will run for seven weeks. Please e-mail responses to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk) by no later than **9 January 2025**.
16. We expect to publish responses on our website as soon as practicable after the consultation period ends. Any material that is regarded as confidential should be clearly marked as such and included in a separate annex. We have powers and duties with respect to the disclosure of information under Schedule 9 of the TA00 and the Freedom of Information Act 2000 and it may be necessary to disclose information consistent with these requirements.
17. Having considered the responses to the Joint Consultation, this consultation and any related policy consultations, any proposals for modification of the Licence would be subject to further consultation in accordance with the requirements of the TA00.
18. Any questions related to this consultation should be sent to [matt.claydon@caa.co.uk](mailto:matt.claydon@caa.co.uk).

## Consultation questions

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19. Key consultation questions are set out at the end of each chapter and consolidated below. We welcome stakeholders' views on any aspects of the approach set out in each chapter and, in particular, on the following matters:
  - (a) our overall approach to establishing licence modifications for NERL that will enable it to successfully provide the Airspace Design Service;
  - (b) the views set out in chapter 1 (The design of licence modifications to implement the Airspace Design Service) that this approach is consistent with our statutory duties, including in relation to safety, furthering the interests of customers and consumers, economy and efficiency, and NERL's financeability;
  - (c) the prospective obligation on NERL to perform the Airspace Design Service and the approach to setting the geographic scope of these activities;

- (d) the prospective obligations on NERL's with respect to its relations with third parties, including through the Advisory Board and working arrangements with partner organisations;
- (e) the approach to distinguishing between NERL's new obligations and those relating to the Airspace Change Organising Group ("ACOG");
- (f) any views on the consequential changes to NERL's licence discussed in chapter 3 (Consequential modifications to the Licence);
- (g) the estimates of the costs of providing the Airspace Design Service and the Airspace Design Support Fund discussed in chapter 4 (Costs of new airspace design services);
- (h) any other information stakeholders have on costs or the assumptions it is reasonable to make in projecting costs for the period 2025 to 2035;
- (i) whether the cost pass through approach for recovering costs related to the Airspace Design Service and the Airspace Design Support Fund is appropriate;
- (j) whether these costs should be recovered from users in the year that they are incurred;
- (k) whether the duration of the initial charge control for the Airspace Design Service and Airspace Design Support Fund should be 2½ years and then be aligned with NERL's main price control reviews;
- (l) the illustrative charges set out in table 5.1 in chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges); and
- (m) any comments on illustrative drafting of the licence modifications set out in Appendix B and Appendix C.

## Chapter 1

# The design of licence modifications to implement the Airspace Design Service

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## Introduction

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- 1.1 This chapter sets out our overall approach to the licence modifications that could implement the proposals to appoint NERL to take on the provision of the Airspace Design Service set out in the Joint Consultation. To that end, this chapter sets out an overview of:
- our overall approach to this work;
  - the elements of the Joint Consultation that would require changes to the Licence; and
  - how these modifications would support the discharge of our duties under the TA00.

## Our overall approach to designing modifications to the Licence

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- 1.2 Licence obligations that are designed to focus on requiring NERL to undertake the role in providing the Airspace Design Service in support of delivery of the Airspace Modernisation Strategy are likely be both the simplest and most effective approach to implement the policy set out in the Joint Consultation.
- 1.3 The approach we have adopted to considering licence modifications assumes that the obligations should, so far as is practicable, be relatively high level. This would give NERL both the freedom as well as the responsibility to use its judgement in seeking to ensure compliance, as it does with other obligations in the Licence.
- 1.4 We have sought to avoid proposing very detailed licence obligations as they could quickly become outdated. Given that modifying the Licence is a relatively slow process requiring significant consultation, we consider that very detailed obligations could hinder the effective implementation of these proposals. Where appropriate, high-level obligations in the Licence could be supported by directions or guidance given by the CAA and/or Secretary of State, which provides for more flexibility.
- 1.5 Similarly, we consider that overly specific obligations might lead stakeholders to seek the use of licence enforcement tools to challenge the substance of designs proposed by NERL. We consider that this would be undesirable, given that the

Airspace Change Process already includes tailored checks and balances to address issues arising from changes to the notified airspace design.

- 1.6 Not all of the policy proposals set out in the Joint Consultation can be implemented through the Licence. For example, as it binds only NERL, the Licence cannot prevent other parties from bringing forward airspace change proposals within the geographic scope of the Airspace Design Service provided by NERL: that prohibition would require regulatory changes elsewhere, such as to the CAA's Airspace Change Process.<sup>7</sup>

## Identifying appropriate licence modifications

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- 1.7 Our view is that implementation of the proposals set out in the Joint Consultation could require modifications to:
- the definitions set out in Condition 1 (Interpretation and construction) to define what NERL's role would be as the provider of the "Airspace Design Service";
  - create a new obligation to require NERL to undertake the role of the Airspace Design Service provider (including administering the Airspace Design Support Fund, subject to further policy development) and address:
    - a) the matters that NERL would be required to consider in performing that role;
    - b) the need for NERL, as the Airspace Design Service provider, to act transparently, without favouring any particular group or individual and to reasonably deal with conflicts of interest; and
    - c) NERL's relationship with stakeholders in its role providing the Airspace Design Service, including those with which it would partner in developing airspace change proposals.
- 1.8 A number of consequential amendments would be needed, falling into two broad areas:
- how NERL's existing role in relation to airspace modernisation through maintaining the Airspace Change Organising Group ("ACOG") set out in Condition 10a (Airspace Modernisation) of the Licence would evolve; and
  - consequential amendments to other existing provisions, especially those that make up the financial ring fence.

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<sup>7</sup> The Airspace Change Process (CAP1616). See: [www.caa.co.uk/cap1616](http://www.caa.co.uk/cap1616). In this document, we refer to this as "the Airspace Change Process".

- 1.9 These possible modifications are discussed in more detail in chapter 2 (Licence modifications to implement the proposals in the Joint Consultation) and chapter 3 (Consequential modifications to the Licence).

## Our duties under the TA00

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- 1.10 The approach we adopted to the development of these proposals is fully aligned with our primary duty to maintain a high standard of safety in the provision of air traffic services because any airspace design developed would need approval through the Airspace Change Process, so that any design approved has been subject to a safety assessment.
- 1.11 We also consider that the proposals set out in the Joint Consultation and our approach to the Licence modifications would:
- further the interests of customers and consumers<sup>8</sup> through the delivery of the Airspace Modernisation Strategy whose vision is to deliver quicker, quieter, and cleaner journeys and more capacity for the benefits of those who use and are affected by UK airspace;<sup>9</sup>
  - promote economy and efficiency in the provision of these services and so NERL's activities if it were to be required to provide the Airspace Design Service; and
  - by allowing for cost recovery, the approach would support NERL in being able finance these activities.

## Questions for consultation

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- 1.12 We welcome stakeholders' views on any aspects of the approach set out above and in particular on the following matters:
- our overall approach to establishing licence modifications for NERL that will enable it to successfully provide the Airspace Design Service;
  - the views set out above that this approach is consistent with our statutory duties, including in relation to safety, furthering the interests of customers and consumers, economy and efficiency, and NERL's financeability.

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<sup>8</sup> We use the term "customers and consumers" as shorthand to refer to the interests of owners and operators of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them (see section 2(2) TA00).

<sup>9</sup> See further chapter 2 of the Joint Consultation

## Chapter 2

# Licence modifications to implement the proposals in the Joint Consultation

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## Introduction

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- 2.1 This chapter provides stakeholders with an early and illustrative view of how the proposals set out in the Joint Consultation could be implemented by changes to the Licence.
- 2.2 This chapter covers the:
- definition of NERL’s role in providing the Airspace Design Service;
  - geographical scope of providing the Airspace Design Service;
  - obligations on NERL in respect of providing the Airspace Design Service;
  - matters NERL would need to take account of in providing the Airspace Design Service;
  - the role and composition of the proposed Advisory Board;
  - relationships with stakeholders; and
  - key questions for consultation.
- 2.3 Illustrative drafts of the modifications that we consider could be appropriate to implement the proposals discussed in the rest of this chapter are set out in Appendix B.

## Defining NERL’s role in providing the Airspace Design Service

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### Summary of the Joint Consultation

- 2.4 NERL’s proposed new role as Airspace Design Service provider would be to “hold the pen” on a single design for airspace change within the geographic area it is responsible for (initially the London TMA region, with the priority being airports forming the London cluster of the airspace change masterplan).
- 2.5 The Joint Consultation proposes that the Licence would be amended to require NERL, in providing the Airspace Design Service, to combine airspace change proposals such that the outcome is a single design that prioritises maintaining a high standard of safety and secures system-wide benefits and overall network optimisation. Consistent with the Airspace Modernisation Strategy, the single London TMA region design would need to result in the most efficient and resilient



airspace network practicable, while giving due consideration to local circumstances and environmental impacts.<sup>10</sup>

- 2.6 NERL would be required to sponsor each proposal through the Airspace Change Process and be responsible for certain activities in addition to the development of a single airspace design, to include:<sup>11</sup>
- instrument flight procedure design;
  - programme management;
  - economic assessment;
  - environmental assessment;
  - aeronautical information; and
  - post-implementation review.
- 2.7 In addition, NERL would have a significant coordination role for airspace change proposals forming part of the airspace change masterplan, and potentially transitioning an existing masterplan cluster or deployment of airspace change proposals into a single proposal.
- 2.8 The airport or other airspace change partner would be responsible for the safety case, implementation of the change, and certain elements of consultation, working collaboratively with NERL as the Airspace Design Service provider and sponsor of airspace change proposals.

### Illustrative licence provision

- 2.9 The scope of the new activities would need to be sufficiently clearly defined to support new obligations being placed on NERL. To promote clarity, the scope of the Airspace Design Service could best be set out by creating a new defined activity in the Licence of “Airspace Design Service” covering the activities described above. This could be:
- tailored to the requirements of the proposed approach; and
  - separated from the existing activities covered by the Licence, so improving transparency.
- 2.10 This definition could then be used to support a new provision requiring NERL to undertake the Airspace Design Service discussed below. This approach would

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<sup>10</sup> See the Joint Consultation at paragraphs 5.9, 5.19 to 5.21 and 7.19ff

<sup>11</sup> *Ibid* at paragraph 6.8-6.10

also avoid the need for significant changes to existing obligations and mechanisms.<sup>12</sup>

- 2.11 An illustrative draft of a new definition of “Airspace Design Service” (and relevant supporting definitions) is set out in Appendix B after paragraph B6. This draft seeks to describe the activities that would be required as part of the provision of the Airspace Design Service, namely:
- assessing, shortlisting and selecting proposals promoted by third parties;
  - combining those proposals to develop a single design proposal for changes to UK airspace; and
  - sponsoring that proposal through the Airspace Change Process.

## Setting the Geographic scope of the Airspace Design Service

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### Summary of the Joint Consultation

- 2.12 The Joint Consultation proposes that the geographic scope of NERL’s role as being the exclusive proposer of airspace changes should be limited to the “London TMA region”.<sup>13</sup> It describes this by reference to:
- the London Terminal Control Area (generally abbreviated to London TMA); and
  - adjoining airspace serving neighbouring airports (for example, Bournemouth and Southampton) that is outside the London TMA but has interdependencies with the London TMA.
- 2.13 The Joint Consultation refers to the use of the UK Aeronautical Information Publication as being a possible place where the definition might be set out.
- 2.14 Having done so, the Joint Consultation proposes that the modifications made to the Licence should include provision for the geographical scope of the Airspace Design Service to be widened or amended over time without amending the Licence.<sup>14</sup>

### Illustrative licence provision

- 2.15 In setting the geographic area in which NERL would provide the Airspace Design Service, it would be essential to ensure consistency with the new parallel rules to be introduced into the Airspace Change Process that would, if necessary,

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<sup>12</sup> Particularly to the “self-modification” procedures already set out in NERL’s licence in Condition 3 (Modification to Core Services and Specified Services) and Condition 4 (Further Provisions Relating to the Modification of Specified Services)

<sup>13</sup> *Ibid* at paragraphs 3.7 to 3.9

<sup>14</sup> *Ibid* at paragraph 8.7

prevent other parties bringing forward airspace change proposals in respect of the London TMA region. As noted above, it would also be appropriate to allow for changes to the geographic scope of the Airspace Design Service without amending the Licence.

- 2.16 Some of the possible approaches to achieving these aims we have considered include:
- defining the geographic scope of the Airspace Design Service in detail in the Airspace Change Process; and
  - that the geographic scope be set by a direction made by the Secretary of State. This would facilitate consistency with the Airspace Change Process if each of the Licence and the Airspace Change Process adopted the same approach.
- 2.17 An approach to addressing this matter using a specification made by the Secretary of State is set out in paragraph 3 of the illustrative new provision that would create the obligation to provide the Airspace Design Service in Appendix B after paragraph B11.

## The obligations on NERL to provide the Airspace Design Service

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### Summary of the Joint Consultation

- 2.18 As set out in paragraphs 2.4 to 2.7 above, fundamental to the proposals set out in the Joint Consultation is that, if it is appointed to do so, NERL's new role in providing the Airspace Design Service would be to "hold the pen" to create a single airspace design for airspace change in the London TMA region and sponsor it through the Airspace Change Process.

### Illustrative licence provision

- 2.19 These requirements could be delivered through a relatively simple obligation set out in a new provision in the Licence,
- 2.20 We consider that fundamental to this obligation would be the objectives identified in the Joint Consultation. As such, we consider that these could be included in the obligation.
- 2.21 An illustrative draft of a new provision that could create the new obligation is set out in Appendix B after paragraph B11. This draft is predicated on a "purpose" that NERL would undertake the Airspace Design Service of delivering the Airspace Modernisation Strategy. Part A of that draft new provision sets out the obligation to provide the Airspace Design Service, together with what that means in terms of:
- programme management;

- particular requirements of the Airspace Change Process (including post-implementation review); and
- an obligation at all times to develop and maintain its assets, personnel, systems and other parts of the business so as to be able to comply with its licence obligations.<sup>15</sup>

## Matters NERL would need to consider in carrying out the Airspace Design Service

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### Summary of the Joint Consultation

2.22 The Joint Consultation contemplates that the Licence would need to address how, in carrying out the Airspace Design Service, NERL would need to respond to:

- strategic priorities set by the DfT and CAA as “co-sponsors” of airspace modernisation: the Airspace Design Service would create a detailed plan to deliver the single airspace design for the London TMA region based on those priorities. Where appropriate, the co-sponsors would also provide guidance, for example in the event of a new policy or a change in government priorities that could affect NERL’s work;<sup>16</sup>
- the prioritisation principles: the single airspace design for the London TMA region should be suitable for delivering the Airspace Modernisation Strategy and have regard to the CAA’s prioritisation principles;<sup>17,18</sup>
- practical constraints: the approach that the Airspace Design Service adopts to creating the single airspace design for the London TMA region would need to take into account other constraints such as resourcing, controller training requirements and the AIRAC (aeronautical information) cycle;<sup>19</sup> and

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<sup>15</sup> This is consistent with the obligations on NERL to provide the Core Services and the Specified Services set out in Condition 2 (General Obligation to provide Core Services and Specified Services)

<sup>16</sup> See the Joint Consultation at paragraphs 5.26, 5.27 and 8.9

<sup>17</sup> The CAA is required by Direction 4(4) of the Air Navigation Directions to establish these principles to set out the CAA’s approach to the consideration of airspace change proposals, including how it would prioritise those submitted to it for decision. That document must take into account the Airspace Modernisation Strategy and any associated implementation plan, the priority needed to be given to urgent safety and national security proposals, and any other policy objective notified to the CAA by the Secretary of State. The CAA’s prioritisation principles are set out in CAP 2541. See: [www.caa.co.uk/CAP2541](http://www.caa.co.uk/CAP2541)

<sup>18</sup> See the Joint Consultation at paragraphs 5.26 and 5.27

<sup>19</sup> *Ibid* at paragraph 5.27

- the views of stakeholders arising from consultation or engagement as the design evolves; the Joint Consultation contemplates that as NERL considers options and trade-offs to resolve design conflicts, it would take into account the views of airports, and other stakeholders that are consulted or engaged with as part of the process.<sup>20</sup>

### Illustrative licence provision

2.23 We consider that these matters could be addressed in the new provision creating the obligation to provide the Airspace Design Service. An illustrative draft new provision set out after paragraph B11 of Appendix B addresses these matters. Part B of that new provision set out obligations on how NERL would deliver the Airspace Design Service, including:

- the roles and importance of strategic priorities set by, and guidance issued by, the CAA and/or Secretary of State; and
- other matters to which NERL would need to have regard in complying with the overall obligation to carry out its role as Airspace Design Service.

## The Advisory Board

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### Summary of the Joint Consultation

2.24 The Joint Consultation proposes that the governance of the Airspace Design Service would be designed to hold NERL to account, overseeing and assuring impartiality. It would be implemented through requirements in the Licence in relation to discrimination against parties in the provision of its licensed activities. Governance could include an Advisory Board comprising independent members, subject matter experts from airports, airlines and other key stakeholders including consumer representation, to provide oversight and scrutiny of the work of the Airspace Design Service.<sup>21</sup>

2.25 The Joint Consultation proposes that governance arrangements for NERL's Airspace Design Service role need to ensure that:

- NERL develops a strategic plan for the timely delivery of airspace modernisation;
- NERL demonstrates transparent, fair, impartial and effective decision making;

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<sup>20</sup> *Ibid* at paragraphs 5.7 and 5.10

<sup>21</sup> *Ibid* at paragraph 5.7

- there are clear lines of communication between NERL’s Airspace Design Service and the proposer of any given airspace change proposal (which in most cases would be an airport or air navigation service provider);
- NERL operates in the best interests of the UK network and without unreasonably favouring particular stakeholders (including NERL), and is seen to do so;
- stakeholders have confidence in NERL’s strategic delivery plan, and can influence its delivery through a formal “Advisory Board” and effective engagement between the Airspace Design Service and the co-sponsors;
- NERL delivers that plan, on time; and
- there is sufficient oversight, reporting and assurance of progress with the plan.<sup>22</sup>

2.26 The Joint Consultation contemplates that the Advisory Board would meet regularly and would: <sup>23</sup>

- advise on Airspace Design Service’s approach to delivering its strategic plan and other objectives through feedback from stakeholders;
- provide transparency for stakeholders on NERL’s Airspace Design Service and thus external assurance and scrutiny of its performance;
- provide a common understanding of progress and issues, allowing stakeholders to raise matters of concern or seek more information in relation to the provision of the Airspace Design Service (including differences of view from, or disputes with, NERL) and a means for NERL to respond;
- allow the strategic plans for the Airspace Design Service are to be socialised and discussed;
- demonstrate how the Airspace Design Service is being provided in an impartial manner and with a fair approach;
- have independent members and include subject matter experts from airports, airlines and other key stakeholders and consumer representation.

2.27 However, it is important that responsibility for delivery of the Airspace Design Service remains with NERL.

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<sup>22</sup> *Ibid* at paragraphs 8.4

<sup>23</sup> *Ibid* at paragraph 8.8, 8.26 and 8.27

## Illustrative licence provision

- 2.28 We consider that these elements of the proposals could be implemented by requiring NERL to set up an Advisory Board, with a remit designed to address the matters, have the indicative independent membership, and discharge the oversight responsibilities set out in paragraph 2.26 above.
- 2.29 We consider that this could be achieved relatively straightforwardly as part of a new provision setting out NERL's obligations to provide the Airspace Design Service. Part C of the illustrative new provision set out after paragraph B11 of Appendix B sets out possible arrangements for creating and constituting an Advisory Board and its relationship with the Airspace Design Service.

## Relationships with stakeholders

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### Summary of the Joint Consultation

- 2.30 The Joint Consultation proposes that, where an airspace change proposal is in scope of the Airspace Design Service, it would be the sponsor through the Airspace Change Process. The airport, air navigation service provider or other organisation initiating the airspace change proposal would have a formal role as "partner" in the process, underpinned by working arrangements between the Airspace Design Service provider and its partners. There may be more than one partner for a given airspace change proposal and NERL would work closely with the partner(s) throughout. The partner could undertake certain aspects of the process to the extent agreed with NERL in its role as the Airspace Design Service provider.<sup>24</sup>
- 2.31 To take this forward, the Joint Consultation contemplates that, as part of the wider collaborative consultation and engagement arrangements, NERL would agree with each airport (or other organisation) partnering the airspace change proposal who has responsibility for which consultation tasks, depending on the scenario. The agreement would set out whether the airport (or other partner) is responsible, consulted or informed depending on such factors as:
- the type of airspace change proposal (how it impacts stakeholders);
  - the airport's (or other partner's) own resource availability and expertise; and
  - the airport's (or other partner's) appetite to be responsible in terms of the level of interest or the level of control it wishes to retain with stakeholders.<sup>25</sup>

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<sup>24</sup> *Ibid* at paragraph 6.2, 6.8 to 6.10 and 6.13 to 6.19

<sup>25</sup> *Ibid* at paragraph 6.14

- 2.32 As discussed above, the Joint Consultation also contemplates that NERL be required to deliver the Airspace Design Service transparently and in a non-discriminatory manner.

### Illustrative licence provision

- 2.33 While NERL would retain overall responsibility for delivery, we consider that these proposals could be implemented relatively simply by placing an obligation on NERL to use reasonable endeavours to enter into working arrangements covering the specified matters, such as roles and responsibilities in relation to consultation.
- 2.34 Part D of the illustrative provision set out after paragraph B11 of Appendix B contains possible obligations to address these matters. This part of the illustrative draft also sets out a draft obligation addressing issues of transparency and non-discrimination.

### Administration of the UK Airspace Design Fund

- 2.35 The Joint Consultation also envisages that NERL would administer the Airspace Design Support Fund, subject to appropriate and transparent governance. The Joint Consultation acknowledges the need to develop the details of the fund further, taking into account feedback from that consultation.<sup>26</sup>
- 2.36 Given that the arrangements for the administration of the UK Airspace Design Fund remain subject to further policy development, the new provision set out after paragraph B11 of Appendix B contains a placeholder for where these matters might be addressed in the Licence.

### The role of ACOG

#### Summary of the Joint Consultation

- 2.37 The Joint Consultation envisages that the Airspace Design Service provider would take over the Airspace Change Organising Group's ("ACOG's")<sup>27</sup> role of producing the masterplan in respect of the London cluster and coordinating any related airspace change proposals. Perpetuating ACOG's role for the London cluster would complicate, rather than simplify, the existing approach.<sup>28</sup>
- 2.38 In respect of the non-London clusters the Joint Consultation envisages ACOG's role to continue as now for the time being, that is, to develop the masterplan and

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<sup>26</sup> *Ibid* at paragraph 9.12ff

<sup>27</sup> ACOG is an impartial unit within NERL, separate from its other functions, to coordinate the airspace changes necessary to develop an airspace change masterplan. ACOG's function is to coordinate, but it cannot dictate the airspace design, nor does it have design capabilities itself.

<sup>28</sup> *Ibid* at paragraph 5.11



coordinate the related airspace change proposals and their sponsors. It would continue to operate as a unit within NERL. ACOG's activities are overseen by a Steering Committee comprising an independent chair and senior experts drawn from across the aviation sector. The Steering Committee's role would be unchanged in respect of the residual ACOG activities and would be separate from and play no part in the activities of the Airspace Design Service.<sup>29</sup>

### Illustrative licence modification

2.39 The policy aims of the Joint Consultation set out above could be achieved by limiting geographic scope of ACOG to areas where NERL's role as the Airspace Design Service provider does not apply. A simple modification to Condition 10a (Airspace Modernisation) of the Licence could be made by adding a new paragraph 13 to give effect to this approach. That said, we recognise that further policy development may be required in this area. In this context no illustrative drafting has been included in Appendix B.

### Questions for consultation

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- 2.40 We welcome stakeholders' views on any aspects of the approach set out above and in particular on the following matters:
- the prospective obligation on NERL to perform the Airspace Design Service and the approach to setting the geographic scope of these activities;
  - the prospective obligations on NERL with respect to its relations with third parties, including through the Advisory Board and working arrangements with partner organisations; and
  - the approach to NERL's new obligations and those existing obligations relating to ACOG.

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<sup>29</sup> *Ibid* at paragraph 5.14

## Chapter 3

# Consequential modifications to the Licence

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## Introduction

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- 3.1 This chapter addresses the consequential amendments to be made to the Licence that could be required if NERL were to provide the Airspace Design Service in the manner discussed in the previous chapter.
- 3.2 These consequential modifications would be needed on the basis that NERL's obligations in relation to the conduct of the Airspace Design Service activity would be separate from other activities that NERL is required to carry out under the Licence, particularly the "Core" control services and the "Specified Services" set out in Schedule 4 of the Licence.<sup>30</sup>
- 3.3 The potential changes we have identified to date would affect:
- Condition 5 (Availability of resources and financial ringfencing);
  - Condition 6 (Regulatory accounting requirements);
  - Condition 7 (Requirement to maintain an intervention plan);
  - Condition 8 (Requirement for mandated independent directors and corporate governance); and
  - Condition 9 (Prohibition of Cross-Subsidy).
- 3.4 These are dealt with in turn in the following sections. At the end of the chapter we identify key questions for consultation.

## Changes to the financial ringfence, accounting requirements and obligation to prepare an intervention plan

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- 3.5 A core element of the financial "ringfence" that protects NERL's revenues in the interests of consumers is that NERL's activities are currently restricted to the conduct of the En route (UK) Business and the En route (Oceanic) Business,<sup>31</sup> together with certain specified activities and other activity that falls within the "*de minimis*" cap set out in Condition 5 (Availability of Resources and Financial Ringfencing).

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<sup>30</sup> The current version of the Licence can be found at: <https://www.caa.co.uk/publication/download/21346>

<sup>31</sup> See Condition 5, paragraph 9ff of the Licence.

- 3.6 If the proposals in the Joint Consultation were to be implemented, then the Airspace Design Service would be included in the activities that NERL is permitted to carry out. Given that regulated revenues would be used by NERL for the conduct of the Airspace Design Service activity, the financial ring fence should be adjusted so that funds raised from regulated charges are applied to carrying out the Airspace Design Service in the interests of consumers. Alongside this, it would be important that appropriate accounting information is provided to the CAA and other stakeholders.
- 3.7 Much of any required modification could be achieved by amending the definition of “Permitted Purpose” in Condition 1, but specific changes might also be needed to clarify that this is the case.
- 3.8 If we were to extend the scope of the Financial Ring-Fence to cover the Airspace Design Service, then it would require amendment to accommodate this change. Currently, NERL’s licence permits NERL to carry out only the “Core Services” (ATC) and the “Specified Services” (including North Sea Helicopters etc) and allows “*de minimis*” activities up to a low threshold (up to 4.5% of turnover/to the value of 1% of share capital etc.).<sup>32</sup> These rules are designed to allow NERL limited flexibility to carry out additional activities, while limiting consumers’ exposure to any risk created to the finances of the licensee.
- 3.9 So, as the Licence stands, the conduct of the Airspace Design Service would need to fall within the *de minimis* thresholds not to place NERL in breach of the ringfence.
- 3.10 Addressing this raises two issues:
- whether the Airspace Design Service should be conducted within, and count towards, the *de minimis* cap; and
  - if not a *de minimis* activity, should turnover from the Airspace Design Service be used to calculate the *de minimis* cap, thereby increasing it.
- 3.11 Taking these issues in turn, as the Airspace Design Service would be an activity that NERL is specifically permitted to undertake by Condition 5, so that it would not count towards the *de minimis* caps. This would:
- be consistent with the approach taken in Condition 5 that activities NERL is required to do by the Licence do not count towards the *de minimis* caps; and

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<sup>32</sup> These are set out in Condition 5, paragraph 12 at sub-paragraphs (a) (vi) and (b)

- avoid a situation in which NERL would be required to undertake the Airspace Design Service, but be required to count it towards the calculation of the *de minimis* cap, which, irrespective of whether the Airspace Design Service could be provided within the thresholds set by the cap, would have the consequential effect of limiting NERL's ability to conduct other *de minimis* activities.

3.12 As for whether the Airspace Design Service should count towards the calculation of the *de minimis* cap, it is not clear that, if NERL were to be required to carry on the new activity, that this should increase the level of the *de minimis* cap and, in so doing, extend its existing freedom to carry on other activities. Given this, it appears, therefore, that the appropriate approach would be to exclude the new activity from the calculation of the *de minimis* cap, so that, so far as possible, the financial ringfence remains unchanged by the implementation of the policy in the Joint Consultation.

3.13 On this basis:

- the Airspace Design Service and the collection of charges in respect of the design fund would need to be specifically permitted;
- NERL's obligations in relation to regulatory accounting would need to be extended to cover the Airspace Design Service; and
- NERL's obligation to prepare and maintain an intervention plan<sup>33</sup> should be extended to cover the Airspace Design Service.

3.14 Further discussion of these issues is set out in Appendix B at paragraphs:

- B12 to B19 (consequential modifications to Condition 5);
- B20 to B21 (consequential modifications to Condition 6);
- B22 to B23 (consequential modifications to Condition 7); and
- B24 to B26 (consequential modifications to Condition 8).

along with illustrative draft licence modifications designed to address the potential changes.

## Condition 8: Requirement for mandated independent directors and corporate governance

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3.15 NERL is currently subject to an obligation to have independent directors appointed to its Board. The scope of the condition as it currently stands is

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<sup>33</sup> This is the document(s) that NERL is required to prepare containing information that would be sufficient to allow an administrator appointed under the Special Administration regime to obtain the information they could reasonably be expected to require to carry out their functions.

limited, having been designed to address potential conflicts between the interests of NERL and the rest of the NATS group. The CAA granted a consent in 2016 effectively suspending that obligation because independent directors from the NATS main board have been appointed to NERL's board.<sup>34</sup>

- 3.16 We currently consider that the governance arrangements and provisions for impartiality, transparency and dealing with conflicts of interest set out in chapter 2 (Licence modifications to implement the proposals in the Joint Consultation) would be sufficient to support the effective delivery by NERL of the Airspace Design Service, not least because the arrangements involving the proposed Advisory Board are designed to bolster such assurance.
- 3.17 However, it is possible that modifications to the Licence might be needed in the interests of customers and consumers. These matters are discussed in more detail in Appendix B, along with a draft of the current Condition 8 (Requirement for mandated independent directors and corporate governance) indicating where modifications could be required. We welcome stakeholders' views on these matters.

## Condition 9: Prohibition of cross-subsidies

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- 3.18 As NERL's activities in relation to providing the Airspace Design Service would be funded by a separate charge, it appears that it could be appropriate, for NERL's role as the Airspace Design Service provider to be treated as a separate business from the En Route and Oceanic businesses for the purposes of the prohibition on cross-subsidies in Condition 9 (Prohibition of cross-subsidies).
- 3.19 This change could be effected by including the Airspace Design Service in the definition of "Separate Business" in Condition 1 (Interpretation and construction). If this change were to be made, no further change would be needed to Condition 9 itself. Further discussion of this issue is set out in Appendix B.
- 3.20 A draft of a modified definition of "Separate Business" is set out in Appendix B.

## Questions for consultation

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- 3.21 We welcome stakeholders' views on the approach set out above in relation to possible consequential changes to NERL's licence.

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<sup>34</sup> Full details on the current position and the reasons for the consent are set out in the CAA's "Decision on modifications to NATS (En Route) plc licence in respect of Governance and Ringfencing" ([CAP 1380](#)).

## Chapter 4

# Costs of new airspace design services

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## Introduction

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- 4.1 This chapter seeks to provide stakeholders with an indicative view of the overall costs of establishing and providing the Airspace Design Service, as well as the likely costs of providing and administering the Airspace Design Support Fund, if NERL is tasked with these roles as proposed in the Joint Consultation.
- 4.2 NERL is already responsible for some airspace design and modernisation projects, funded through the NR23 decision.<sup>35</sup> While NERL's capital expenditure programme has continued to evolve, our NR23 decision included £540 million (2020, CPI prices) capital expenditure allowance, of which approximately £83 million related to airspace. While this figure relates to all of NERL's airspace activities, which will be broader than airspace changes within the scope of the Airspace Design Service, we envisage that those costs would continue to be funded by existing arrangements for at least the remainder of NR23. In this chapter, we therefore consider the incremental costs of establishing and providing the Airspace Design Service and the Airspace Design Support Fund.
- 4.3 The Joint Consultation includes a provisional estimate of annual costs for the Airspace Design Service of around £10 million to £20 million.<sup>36</sup> However, it was noted that that estimate required further work and might change depending on the final scope for the Airspace Design Service and the Airspace Design Support Fund.
- 4.4 There is a high degree of uncertainty in determining the appropriate level of costs of providing the Airspace Design Service. This arises because the Airspace Design Service is a new activity for NERL to undertake and because the timing and scope of the activities that NERL could be responsible for, as the Airspace Design Service provider, has not been fully determined, as discussed further in chapter 2 (Licence modifications to implement the proposals in the Joint Consultation).
- 4.5 This high degree of cost uncertainty, combined with the relatively small magnitude of expected costs (in comparison to overall NERL costs) that would need to be recovered by any new Airspace Design Charge, suggest that a

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<sup>35</sup> The CAA conducts periodic price control reviews and sets determined costs, charges and service quality incentives for NERL's regulated activities. The latest review and decision, referred to as "NR23" covers the period January 2023 to December 2027. [NR23 | Civil Aviation Authority](#)

<sup>36</sup> See the Joint Consultation at para 9.18.

relatively flexible approach to costs and charges should be adopted, at least in the first years of the operation of the Airspace Design Service and the Airspace Design Support Fund (as discussed further in the next chapter).

4.6 This chapter sets out:

- a summary of cost projections for the Airspace Design Service;
- a summary of cost projections for the Airspace Design Support Fund;
- discusses the cost allowances made as part of the NR23 price control; and
- an overall summary and key questions for consultation.

## Cost projections for the Airspace Design Service

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4.7 To establish an indicative view of costs for the Airspace Design Service, we appointed consultants, Egis, to help identify and assess NERL's potential incremental costs of providing the Airspace Design Service and of capitalising the Airspace Design Support Fund. Egis' report is published alongside this consultation.<sup>37</sup> Egis spoke to NERL and 13 airports falling within the scope of the airspace change masterplan, to seek to understand the costs and resources that they deploy related to the airspace change proposals to date and to collect data on key cost assumptions for the future. Recognising the timing constraints of the data collection, NERL and those airports have been clear that the information provided is highly indicative, and Egis highlights that its modelling reflects the uncertainties inherent at this early stage of the consultation process. We anticipate that NERL, airports and other stakeholders will provide further cost data in response to this and/or future consultations and information requests.

4.8 Egis developed cost projections for the Airspace Design Service covering a period of ten years, for various airspace change deployments across the London TMA region. Egis assumed that there are four deployments which would take place over approximately a decade, with the Airspace Design Service provider handling two deployments at any given time. Key cost drivers include stakeholder engagement and consultation, environmental assessments, and project support.

4.9 Three cost scenarios were modelled based on varying levels of involvement by the Airspace Design Service provider in stakeholder engagement and consultation activities:

- scenario 1: the Airspace Design Service leads on all stakeholder engagement and consultation activities;

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<sup>37</sup> [www.caa.co.uk/CAP3063A](http://www.caa.co.uk/CAP3063A)

- scenario 2: the Airspace Design Service and the airport partners work together on stakeholder engagement and consultation activities, with the Airspace Design Service responsible for producing the consultation strategy and consultation materials; and
- scenario 3: airports lead on all stakeholder engagement and consultation activities, with support from the Airspace Design Service on the production of consultation materials and attendance at events.

4.10 For the purposes of cost modelling, Egis used the following assumptions:

- costs were modelled over ten years (from mid-2025 to mid-2035). The model assumes that only the costs of delivering the London TMA region deployments would be incurred over this ten-year time period;
- the Airspace Design Service would undertake four deployments in the support of delivery of UK Airspace Modernisation over this horizon and would be able to handle two deployments at any given time;
- the Airspace Design Service would be required to follow the Airspace Change Process and would inherit the ongoing airspace change proposals from airports at Stage 3 of the Airspace Change Process, thereby building upon the progress already made by the airports up to that point. Therefore, the earlier stages (Stages 1 and 2) of airspace change proposals would not be repeated;
- the Airspace Design Service would mobilise in mid-2025 and would prioritise modernisation of the complex airspace around London;
- the London Airspace South airspace change proposal would continue as currently planned and would remain outside the scope of the Airspace Design Service;
- airspace change proposals in scope of the Airspace Design Service would be the twelve airspace change proposals within the London cluster. These are assumed to be Biggin Hill, Bournemouth, Farnborough, Gatwick, Heathrow, London City, Luton, Manston, RAF Northolt, Southend, Southampton, and Stansted;
- the Airspace Design Service would be staffed by a combination of existing and new NERL employees. The Airspace Design Service would use external specialist support for environmental assessment. The Airspace Design Service would recruit a number of new communications/engagement staff, supported by external specialists;



- the Airspace Design Service staff would be partially based within a London office, to ensure reasonable proximity to the partners of the airspace change proposals. Some office space and simulation facilities would be used within NATS' existing offices and charged back to the Airspace Design Service; and
  - cost information was presented in 2024 prices.
- 4.11 Egis' report suggests the annual total cost of the Airspace Design Service was found to be within the range of £10 million to £16 million per year, based on the information provided by stakeholders and the three scenarios described above, and adding an optimism bias premium to the total costs in each of the three scenarios.
- 4.12 Under those assumptions, the total projected cost of the Airspace Design Service from its initiation in mid-2025 for a period of ten years would range between £100 million and £160 million in total (consistent with the £10 million to £16 million per year noted above), with 85% of costs expected to come from staff expenses, and the remaining costs associated with office space, software and additional simulation facilities. For the remainder of the NR23 period (assumed to be 2½ years, from mid-2025 to the end of 2027), these costs are estimated to total between £26 million and £42 million.

## Cost modelling and projections for the Airspace Design Support Fund

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- 4.13 The Joint Consultation also proposes that NERL might become responsible for administering the Airspace Design Support Fund.<sup>38</sup> For the purposes of developing illustrative costs, the Egis report assumed the fund will support airports outside the London TMA region with eligible airspace change proposals from Stage 3 to Stage 7 of the Airspace Change Process that are deemed to be in support of the Airspace Modernisation Strategy. This is broadly consistent with the approach taken in relation to the Airspace Design Service for airspace change proposals in the London TMA region.
- 4.14 Egis has made a projection of the costs of developing the Airspace Design Support Fund. These projections look forward for a period of 10 years and make a number of assumptions around the operation of the fund:
- the Airspace Design Support Fund would fund airspace change proposals from Stage 3 to Stage 7, consistent with the operation of the Airspace Design Service;

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<sup>38</sup> See paragraph 9.10 of Joint Consultation.

- the Airspace Design Support Fund would be available from mid-2025, consistent with the Airspace Design Service;
  - each new airspace change proposal would take an average of four years to complete;
  - there is no limit to the number of airspace change proposals that could be funded at the same time;
  - NERL would only be responsible for administering the fund and the associated costs of this administration. Two FTEs would be required to administer the fund, co-located with the Airspace Design Service; and
  - cost information was presented in 2024 prices.
- 4.15 These projections involve three scenarios to reflect a degree of uncertainty around which airports might be eligible for funding and when they might apply. There is also a range for optimism bias applied to the data, to give a low, mid, and high estimate for the total costs in each of the three scenarios.
- 4.16 Egis estimated that annual costs for this fund would range between £5.9 million and £8.0 million depending on the level of airport participation. The fund's total cost from mid-2025 for a period of 10 years is therefore estimated to be between £59 million and £80 million. For the remainder of the NR23 period these costs are estimated to total between £16 million to £23 million.
- 4.17 If the scope of the Airspace Design Service were to expand in the future, it would be expected that increases in costs of providing the Airspace Design Service would be largely offset by reduced calls on the Airspace Design Support Fund and so this would not be expected to cause a significant increase in net costs.

## NR23 cost allowances

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- 4.18 As part of our NR23 decision, we sought to support airspace modernisation activities by allowing for the associated costs and investment that NERL proposed for the period, including all the capital expenditure NERL requested in its business plan for its role in airspace modernisation and funding for the ACOG function.
- 4.19 As part of NR23, NERL already has a capital expenditure allowance to take forward required airspace design functions in upper airspace. As such, we consider that the costs to be funded by a new Airspace Design Charge during NR23 should not include these costs, but only the incremental costs of sponsoring additional airspace change proposals in scope of the Airspace Design Service (for the London TMA region) and providing the Airspace Design Support Fund.

## Summary and key consultation questions

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- 4.20 For the purposes of illustrating the magnitude of costs that would need to be recovered by a new Airspace Design Charge, we initially assume that those costs, in 2024 prices, would be in the region of £19.4 million per year or £194 million over a period of ten years. This is based on Egis' 15 per cent (mid) optimism bias case and Scenario 2 for both the operation of the Airspace Design Service and the provision the Airspace Design Support Fund. For the remainder of the NR23 period (assumed to be 2½ years, from mid-2025 to the end of 2027), the estimated combined costs of providing the Airspace Design Service and the Airspace Design Support Fund would be approximately £52 million.
- 4.21 However, we would emphasise that these cost estimates are highly indicative and reflect the uncertainty inherent at this early stage of the process. These figures are based on a set of assumptions and are intended to support the consultation. Final figures may differ depending on future developments and the consultation outcome.
- 4.22 We welcome views from stakeholders on any aspects of the matters discussed in this chapter and in particular on:
- the estimates of costs of providing the Airspace Design Service and the Airspace Design Support Fund; and
  - any other information stakeholders have on costs or the assumptions it is reasonable to make in projecting costs for the period 2025 to 2035.

## Chapter 5

# Form of control, other regulatory mechanisms, and illustrative charges

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## Introduction

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- 5.1 The proposals in the Joint Consultation envisage NERL recovering the costs of providing the Airspace Design Service and the Airspace Design Support Fund through charges to the users of its services. In order to allow NERL to recover costs and to regulate how the charges would be determined, it will be necessary to make further changes to NERL's licence and take these matters into account in our future reviews of NERL's price control arrangements.
- 5.2 These new charge control arrangements would form the basis for the CAA to specify any new charge under the TA00, as is currently the case for the UK en route (Eurocontrol) charge, the London Approach Service charge, and the Oceanic charge.
- 5.3 The new Airspace Design Charge would provide funding for:
- NERL's efficient costs of providing the Airspace Design Service, and
  - a new Airspace Design Support Fund to cover relevant costs of the sponsors of eligible UK airport airspace change proposals that are outside the scope of the Airspace Design Service, to be administered by NERL.
- 5.4 As noted in the previous chapter, the level of cost required to meet the efficient costs of the Airspace Design Service and the Airspace Design Support Fund are uncertain, and we have taken account of this uncertainty in designing the arrangements set out in this chapter.
- 5.5 This chapter addresses:
- options for cost recovery;
  - the profile of cost recovery over time;
  - duration of control;
  - other regulatory mechanisms and incentives;
  - charge design;
  - illustrative charges; and
  - summary and key questions for consultation.

## Options for cost recovery

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- 5.6 As NERL would only be responsible for administering the Airspace Design Support Fund (rather than the underlying costs) we are of the view that NERL should not be exposed to these cost risks and that they should be passed through to airspace users using the new Airspace Design Charge.
- 5.7 For the costs of the Airspace Design Service, we considered various approaches for cost recovery, which at a high level, can be characterised as presenting three broad options:
- Option 1: Cost pass-through, where all costs incurred to provide the Airspace Design Service would be recovered from airspace users that will pay the charge (discussed below), with any underspends returned to those airspace users.
  - Option 2: Fixed allowances for costs, where the cost borne by airspace users to provide the Airspace Design Service would be fixed for a set period; NERL would then bear the risk of overspends, and benefit from underspends and efficiencies.
  - Option 3: Hybrid approaches of the two options above, which could take several forms, including a cost risk-sharing approach or a mix of pass-through and fixed-cost approaches.

### Option 1: Cost pass-through

- 5.8 Advantages: Given the significant uncertainty about these costs, particularly in the short term, cost pass-through arrangements would protect NERL and users from potentially significant windfall gains and losses.
- 5.9 Disadvantages: Adopting a cost pass-through approach would provide little incentive for NERL to outperform the cost allowance and drive efficiency. Nonetheless, there may be scope for introducing measures such as audits of costs and efficiency reviews to provide at least some limited incentives for efficiency.

### Option 2: Fixed allowances for costs

- 5.10 A fixed-cost approach would mean that the costs to deliver the Airspace Design Service would be established at the start of the period and there would be no adjustment to account for actual costs being greater or lower than the set allowance.
- 5.11 Advantages: A fixed-cost approach would incentivise NERL to deliver the Airspace Design Service as efficiently as possible. At future price control reviews the benefits of reductions to costs would be passed on to users through lower

charges. There would also be a higher degree of certainty about charges for the period of the price control.

- 5.12 Disadvantages: There are a number of potential disadvantages of applying a fixed-cost approach. As previously discussed, the costs are uncertain and so this approach could generate significant windfall gains and losses. Further, if cost recovery was fixed and the efficient level of costs turned out higher than expected, there may be incentives on NERL to cut costs rather than deliver a full service, which could mean that the benefits of airspace modernisation are not delivered in a timely way.

### Option 3: Hybrid approaches

- 5.13 There are several approaches which combine certain features of the two options above, some of which are further discussed in the Egis report. They include:
- cost risk-sharing, in which the risk of incurring overspends, or underspends is shared between NERL and the airspace users, for example based on a fixed sharing rate;
  - cost allowance, in which a maximum cost that could be recovered by NERL would be set, with any underspend returned to airspace users. In essence, it would work as a fixed-cost approach for the treatment of overspends and a cost pass-through for the treatment of underspends; and
  - a mixed approach, in which certain categories of cost would be subject to cost pass-through and other categories of cost would follow a fixed-cost approach.
- 5.14 Advantages: Adopting cost risk-sharing or mixed approaches could combine the advantages of both the cost pass-through and fixed-cost methods, thereby achieving some (albeit reduced) incentives for cost efficiency and a degree of certainty about charge levels.
- 5.15 The main advantage of a cost-allowance approach is that it would provide certainty to airspace users around the maximum level of charges while also allowing them to benefit from underspends.
- 5.16 Disadvantages: The hybrid approach would have the same disadvantages as fixed-cost allowances (windfall/gains losses and the possible difficulties of incentivising under delivery) but these risks are to some extent mitigated, depending on the detail of the arrangements.

### Our views

- 5.17 Given the uncertainty in costs highlighted in chapter 4 (Costs of new airspace design services), it appears that an approach based on cost pass-through (Option 1) is likely to be most effective in supporting the delivery of the Airspace

Design Service as proposed in the Joint Consultation for the first few years of its operation. However, in the medium-term, there may be advantages in introducing a hybrid or fixed-cost allowance approach, to strengthen incentives for delivery when costs are more certain.

- 5.18 For the reason set out in paragraph 5.6, we also consider that the Airspace Design Support Fund should be recovered on a cost pass-through basis.

## The profile of cost recovery over time

- 5.19 For NERL's main UK and Oceanic en route air traffic services' businesses, costs associated with investment in equipment and some aspects of airspace design work are capitalised and added to NERL's regulatory asset base. These costs are then recovered through allowances for regulatory depreciation and returns over a longer period of time, to smooth the recovery of what can be relatively lumpy costs over time. Separate from those capital expenditure costs, operating costs (that is, those costs associated with running the business and providing services) are generally recovered in the period in which they are incurred.

## Recovering the costs of the Airspace Design Service

- 5.20 The costs of the Airspace Design Service could be recovered/treated under the following options:
- Option 1: all costs associated with the provision of the Airspace Design Service are treated as if they were operating costs. Costs would be recovered through charges in the period of the provision of the service.
  - Option 2: all costs associated with the provision of the Airspace Design Service are treated as if they were capital expenditure. Costs would be added into a regulatory asset base, earn a regulated return, and then would be depreciated through charges over an extended period.
  - Option 3: a mix of the two options above, where some costs of the Airspace Design Service would be treated as operating costs and recovered through in period charges, and some would be treated as capital expenditure, added to the regulated asset base, earn a regulatory return, and be depreciated through charges over an extended period.
- 5.21 Necessarily, Options 2 and 3 lead to higher levels of average charges overall as they involve allowances for regulated return. Nonetheless, they allow for the smoothed recovery of "lumpy" expenditure over a relatively long period and lower charges in the early years (as the additions to the regulatory asset base build-up).
- 5.22 As the Egis modelling (addressed in chapter 4) does not indicate that the Airspace Design Service costs will be particularly lumpy on their own, and when considering NERL's en route costs, there would seem to be advantages in

recovering these costs in the period that they are incurred. This would also avoid a build-up in the regulatory asset base and higher average charges in the medium-term and beyond. Therefore, our initial view is that Option 1, to treat the Airspace Design Service as an operating cost, would be the preferred approach.

## Recovery of the Airspace Design Support Fund

5.23 In administering the Airspace Design Support Fund, NERL would simply be allocating funds to third parties that meet the necessary criteria. It would not be undertaking any airspace design work itself. While it might incur administration costs and some financing costs, these may be expected to be low and should be recovered through the overall charge on airspace users. On this basis, we consider the Airspace Design Support Fund costs should be treated as if they were operating costs and recovered in period.

## Our views

5.24 At this stage, our view is that an approach that treats the combined costs of the Airspace Design Service and the Airspace Design Support Fund as if they were operating costs (Option 1), would be the most appropriate and likely to be effective in supporting the delivery of the Airspace Design Service proposed in the Joint Consultation.

## Duration of control

5.25 To implement the proposal in the Joint Consultation, it is necessary to consider the duration of any regulatory approach we might establish. Specifically, for what period we might set the first charge control and, therefore, the new Airspace Design Charge. We have considered two broad options: to establish a short initial control aligned with the current NR23 period (until December 2027); or establish a longer initial control for a longer period, such as five years (consistent with common regulatory practice in setting price controls) or until the end of the NR28 period (December 2032).

5.26 A short initial control would:

- recognise and reflect the level of uncertainty around the costs to be recovered through a new charge;
- provide an opportunity to gain some insights based on the initial operation of the Airspace Design Service ahead of setting a longer control;
- enable NERL to align and potentially integrate its business planning for the Airspace Design Service with the next main price control review for the NR28 period; and



- allow for consistent changes in regulatory approaches to be introduced as part of NR28, such that the scope of the costs associated with the provision of the Airspace Design Service could be wholly separated from its other related airspace activities.

5.27 Longer controls would provide more time for experience and learning from setting up the Airspace Design Service. Planning for the NR28 review will begin in 2025. The proposal in the Joint Consultation does not foresee the Airspace Design Service being operational until the second half of 2025 at the earliest. A longer initial control would provide more opportunity to assess the effectiveness of the initial control prior to NR28. However, a longer control would need to deal with the uncertainty that surrounds the present estimates of costs, which may generate additional issues.

### Our views

5.28 At this stage, our view is that an approach based on a short initial control and charge, aligned with the current NR23 period, would be the most appropriate, and most likely to be effective, in supporting the delivery of the Airspace Design Service as proposed in the Joint Consultation. It would allow NERL to quickly establish the Airspace Design Service, benefiting from a flexible regulatory regime, which, with the benefit of greater clarity on the likely costs and timescales for delivery, could then be further developed for the NR28 period. It would also allow for and promote a coordinated approach to cost allocation issues between the Airspace Design Service and NERL's other activities in the NR28 price control review.

### Other regulatory mechanisms and incentives

5.29 In developing approaches that might support the implementation of the Airspace Design Service, as proposed in the Joint Consultation, it is appropriate to consider other regulatory mechanisms and incentives that might address forecasting uncertainty and support delivery. In this section, we discuss a correction factor to reflect the differences between forecast and actual levels of cost recovery (due to unexpected variations in traffic levels and inflation). We also discuss the merits of developing delivery incentives to support the Airspace Design Service.

### Correction factor

5.30 In setting its charges, NERL will use a traffic forecast, where the overall revenue to be recovered will be divided by a measure of traffic volume to create a per unit charge. In practice, outturn traffic will inevitably vary from the forecast and without a regulatory adjustment mechanism, there is a risk that NERL could make windfall gains or losses unrelated to the service it is providing.

- 5.31 Therefore, we consider it would be necessary to include a correction factor to account for traffic deviations from forecast traffic, which is applied through an adjustment to required revenue in year n+2.

### Inflation adjustment

- 5.32 Similarly, when establishing the costs on which charges will be based for a period of time, it is necessary to make assumptions about the impact of inflation on prices. Generally, this is done by identifying costs using a consistent price base and then inflating those costs by a forecast of inflation over the period. In practice, outturn inflation may vary from the forecast used and where we do not consider NERL should bear these risks, it is necessary to include an inflation adjustment mechanism to account for deviations between forecast and actual inflation.
- 5.33 If we were to adopt the cost pass-through approach to cost recovery discussed from paragraph 5.6 above based on nominal costs, then it should not be necessary to include a separate inflation adjustment to avoid double counting the impact of inflation variations. If we adopt a different approach to cost recovery and introduce an adjustment, consistent with the approach to indexing NERL's main price control we would use CPI to make such inflation adjustments.

### Delivery incentives

- 5.34 In addition to creating the legal and regulatory mechanisms that would allow NERL to establish and recover its costs for providing the Airspace Design Service, there is also merit considering how NERL would be held accountable for the timely and efficient delivery of the objectives of the Airspace Design Service.
- 5.35 At this stage, with ongoing work to define the detailed potential scope of the Airspace Design Service and the uncertainties about costs, it would be challenging to develop formal delivery incentives as part of the price control arrangements.
- 5.36 Nonetheless, the wider legislative and regulatory framework does provide levers that could be used to hold NERL to account for delivery. As discussed in the Joint Consultation, the NATS Board would be accountable for delivery of the Airspace Design Service to the Department for Transport and CAA as co-sponsors of airspace modernisation. Also, any expanded definition of air traffic services to encompass airspace design services would mean NERL's duties under section 8 of the TA00 would also apply, as would the licence obligations discussed in chapter 2 (Licence modifications to implement the proposals in the Joint Consultation).
- 5.37 These licence modifications and requirements set out in the Airspace Change Process mean that NERL would need to set out its plan for delivery and progress against that plan.

- 5.38 In future we would also consider whether to develop price control delivery incentives, including in NR28.

## Charge design

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- 5.39 Chapter 9 of the Joint Consultation sets out the proposal to establish a new Airspace Design Charge specifically to meet the costs of providing the Airspace Design Service and capitalising the Airspace Design Support Fund. It also set out that the new charge should be paid by airspace users that would benefit from the designs proposed by NERL as the Airspace Design Service provider (that is, commercial airlines). To maintain consistency with the user pays principle, in the future, as the scope of the Airspace Design Service evolves, it may be necessary to expand the scope of the entities that pay an Airspace Design Charge. However, on the basis of the proposed initial scope of the Airspace Design Service and the Airspace Design Support Fund, it is not necessary at this stage.
- 5.40 Following on from the principles set out in the Joint Consultation, it would seem the most effective way to capture the beneficiaries of modernised airspace design would be to levy the charge on those users that receive en route air traffic services in the UK. This is because most commercial airspace users fly within the en route structure, either flying within or over the UK. Not only airlines using the London TMA region would benefit from the reforms, as airports in other regions would also be able to call on the Airspace Design Support Fund. We propose that airlines overflying the UK should also pay the Airspace Design Charge, as improvements to UK airspace would also be likely to benefit operations in upper airspace and, in the future, this charge may also be used to fund airspace change proposals in upper airspace.

## How the new charge could be collected

- 5.41 How the new charge would be collected is a matter for NERL to consider in consultation with airspace users. Nonetheless, it is our understanding that NERL may have the ability and systems to recover the new charge directly from airspace users. It may also be expedient for NERL to investigate and consider opportunities to engage a third party to support collection of charges if it would be efficient to do so.<sup>39</sup>

## Structure of charges

- 5.42 In developing a new charge, we consider there may be merits adopting some of the characteristics and structure of the existing UK en route charge, used to fund

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<sup>39</sup> In its report, Egis notes the possibility of utilising Eurocontrol's Central Route Charging Office capabilities to support collection of a new charge. It also notes, the feasibility of such an approach has not been explored.

the provision of en route air traffic services in the UK, as these are well understood by NERL and airlines alike.

- 5.43 We have considered two main options for the denominator of the new charge:
- a charge per flight; or
  - a charge per service unit.<sup>40</sup>
- 5.44 The main advantage of establishing a charge per flight is its simplicity. Such a charge would be straightforward to calculate and administer, with a fixed fee applied to each movement irrespective of aircraft weight or distance flown. This approach eliminates the need for distance or weight data, reducing the likelihood of disputes or confusion over calculation. However, this method has drawbacks in terms of proportionality, as it does not take into account the use of airspace or the airspace users' ability to pay. Smaller aircraft, with fewer passengers and smaller payloads, and shorter flights would pay a disproportionate amount compared to larger, longer-distance ones.
- 5.45 In balancing the benefits of simplicity versus proportionality, and noting the familiarity of a service unit-based approach to prospective charge payers, it is our initial view that an Airspace Design Charge based on service units would be more appropriate.

## Illustrative charges

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- 5.46 To provide illustrative charging information on the proposal set out in the Joint Consultation, based on the cost data discussed in chapter 4, we set out below indicative average Airspace Design Charges for:
- the remainder of NR23. This assumes that 2½ years' worth of costs (mid-2025 to end of 2027) would be recovered in 2026 and 2027; and
  - modelled costs over a ten-year period starting mid-2025 to be recovered over ten years (that is 2026 to 2035).
- 5.47 We illustrate the potential average charge both on a per flight and per service unit basis, although we consider that establishing the charge on the basis of

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<sup>40</sup> A service unit is a unit used for charging purposes based on the multiplication of an aircraft's [weight factor](#) (the square root of the result obtained by dividing the maximum take-off weight (in metric tons) of the aircraft by 50) by the distance factor (the distance in km (divided by 100), between the aerodrome of departure within, or the point of entry into, the airspace of the State and the aerodrome of arrival, or the point of exit from, that airspace. From the distances to be taken into account, 20 km is deducted for each take-off and landing on the territory of a member State). Service units is the measure of traffic volume used to determine the UK en route charge.

service units would be more appropriate. The illustration assumes costs are treated as if operating costs, with all costs recovered in period.

**Table 5.1: Summary illustration for average Airspace Design Charges**

Variable	NR23	10-years
Estimated total cost of providing the Airspace Design Service and the Airspace Design Support Fund (2024 prices)	£52 million	£194 million
Flights forecast (000s) <sup>41</sup>	5,144	27,365
Service unit forecast (000s) <sup>42</sup>	25,727	137,723
Total cost per flight (2024 prices)	£10.12	£7.08
Total cost per Service Unit (2024 prices)	£2.02	£1.41

5.48 For context, the 2024 UK en route unit rate is £75.21.<sup>43</sup> As such, we estimate that, on average, the Airspace Design Charge would be equivalent to approximately 2% of the UK en route charge.

<sup>41</sup> Source: Egis based on [STATFOR Spring 2024 7-year forecast 2024-2030](#): detailed forecasts for UK FIR. After 2030, the CAGR is used to forecast forwards.

<sup>42</sup> Source: Egis based on [STATFOR Spring 2024 7-year forecast 2024-2030](#): detailed forecasts for UK FIR. After 2030, the CAGR is used to forecast forwards.

<sup>43</sup> Source: Eurocontrol Route Charges System, [Information to users \(No.2024/01\)](#). Conversion based on EUR/GBP rate of 0.861581.

- 5.49 As explained in chapter 4, the cost estimates underlying these calculations are illustrative, based on several assumptions about the scope of the Airspace Design Service and the Airspace Design Support Fund. They are provided to help stakeholders understand the potential costs and charges of the proposals set out in the Joint Consultation. We note that, if a cost pass-through approach was adopted, the final charges paid by airspace users will depend on actual costs incurred by NERL, rather than any forecasts used to establish the initial cost allowance.

### Illustrative new licence condition

- 5.50 An illustrative charge control condition based on our current views as expressed in this chapter is set out in Appendix C.

### Summary and key questions for consultation

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- 5.51 Recognising the uncertainties associated with establishing accurate cost projections for the Airspace Design Service and Airspace Design Support Fund, we consider there are benefits in taking a flexible regulatory approach that provides for costs to be passed-through and recovered in the period they are incurred. Establishing a relatively short initial control period that aligns with NR23 would allow NERL to quickly establish the Airspace Design Service and Airspace Design Support Fund. With the benefit of greater clarity, the likely costs and timescales for delivery could then be further developed for the NR28 period. It would also allow for and promote a coordinated approach to cost allocation issues between the Airspace Design Service and NERL's other activities in the NR28 price control review.
- 5.52 Levying the new Airspace Design Charge on users of en route air traffic services would most likely capture those airlines that will benefit from the modernised airspace designs from the Airspace Design Service, or from airports using the Airspace Design Support Fund. Adopting a charge design that uses service units will provide a well understood volume metric to charge payers and reflect the use of airspace and ability of users to pay.
- 5.53 On this basis, we have estimated an illustrative charge to fund the provision of the Airspace Design Service and the Airspace Design Fund of about £2 per service unit in NR23. It is estimated that the new Airspace Design Charge would, on average, be equivalent to approximately 2% of the UK en route charge.
- 5.54 We welcome views from stakeholders on any aspects of the matters discussed in this chapter and in particular on:
- whether the cost pass through approach for recovering costs related to the Airspace Design Service and the Airspace Design Support Fund is appropriate;

- whether these costs should be recovered from users in the year that they are incurred;
- the duration of the initial charge control for the Airspace Design Service and Airspace Design Support Fund should be 2½ years and then be aligned with NERL's main price control reviews; and
- the illustrative charges set out in table 5.1.

## APPENDIX A

## Our statutory duties

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- A1 Chapter I of the TA00 provides for the economic regulation of air traffic services.<sup>44</sup> NERL is currently the only licence holder under the TA00. In making decisions as to how NERL is regulated, the CAA is bound by the requirements of the TA00. The CAA's 'primary duty' is set out in subsection 2(1) TA00 as follows:
- “The CAA must exercise its functions under this Chapter so as to maintain a high standard of safety in the provision of air traffic services; and that duty is to have priority over the application of subsections (2) to (5).”*
- A2 The CAA must also exercise its Chapter I TA00 functions in the manner it thinks best calculated to discharge its 'secondary duties' (over which the primary duty has priority), set out in subsections 2(2) to 2(5) TA00, namely:
- to further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them (referred to as “customers and consumers”);<sup>45</sup>
  - to promote efficiency and economy on the part of licence holders;
  - to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences. We interpret this as referring to financeability of the notionally financed company;
  - to take account of any international obligations of the UK notified to the CAA by the Secretary of State (whatever the time or purpose of the notification) (see further below);
  - to take account of any guidance on environmental objectives given to the CAA by the Secretary of State. It should be noted that no such guidance has been given to the CAA by the Secretary of State;
- A3 Subsection 2(5) TA00 provides that if, in a particular case, there is a conflict in the application of the secondary duties noted above, the CAA must, in relation to

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<sup>44</sup> See section 98 TA00 for the definition of “air traffic services”: [Transport Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>45</sup> In doing so, the only interests the CAA can consider are those regarding the range, availability, continuity, cost and quality of air traffic services. Where the CAA thinks it appropriate, it may further customers' and consumers' interests by promoting competition in the provision of air traffic services.



that case, apply them in the manner it thinks reasonable having regard to them as a whole.

- A4 Subsection 2(6) TA00 provides that the CAA must exercise its functions under Chapter I of the TA00 so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions.
- A5 The TA00 also places duties on NERL as a licence holder. It must:<sup>46</sup>
- secure that a safe system for the provision of authorised air traffic services in respect of a licensed area is provided, developed and maintained;<sup>47</sup>
  - take all reasonable steps to secure that the system is also efficient and coordinated;
  - take all reasonable steps to secure that the demand for authorised air traffic services in respect of a licensed area is met; and
  - have regard, in providing, developing and maintaining the system, to the demands which are likely to be placed on it in the future.

## UK's International Obligations (section 2(2)(d) TA00)

- A6 Section 2(2)(d) TA00 requires the CAA to take account of the UK's international obligations which have been notified to the CAA by the Secretary of State. These include:
- Article 15 of the Chicago Convention 1944;
  - the Eurocontrol Multilateral Agreement relating to Route Charges 1981 (the Multilateral Agreement);
  - air services agreements and provisions relating to the imposition of charges on airlines for the provision of air traffic services in agreements between the UK and third countries; and
  - agreements between the UK and Republic of Ireland on parts of the Atlantic Ocean.

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<sup>46</sup> See section 8 TA00: [Transport Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>47</sup> Subsection 8(4) TA00 explains that, for the purposes of subsection 8(1)(a), “a system for the provision of services is safe if (and only if) in providing the services the person who provides them complies with such requirements as are imposed by Air Navigation Orders with regard to their provision.”

## APPENDIX B

## Illustrative draft licence modifications

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- B1 This Appendix sets out illustrative drafts of how the Licence could be modified were the proposals set out in the Joint Consultation to be implemented. The elements of the proposals that these illustrative draft modifications have been designed to address are set out in chapter 2 (Licence modifications to implement the proposals in the Joint Consultation) and chapter 3 (Consequential modifications to the Licence). The illustrative modifications set out in this Appendix remain subject to policy development in the light of stakeholders' responses to the Joint Consultation and further consideration by the CAA.
- B2 Any modifications to the Licence would be subject to further consultation prior to implementation in accordance with the requirements of TA00. Nonetheless, we consider that these illustrative modifications will be useful to stakeholders in helping them to understand what the proposals in the Joint Consultation could mean for the modification of the Licence.
- B3 We welcome stakeholders' comments on both the substance and drafting of these illustrative draft modifications.
- B4 These illustrative draft modifications are set out in the order that they appear in the Licence. References to chapter 2 (Licence modifications to implement the proposals in the Joint Consultation) and chapter 3 (Consequential modifications to the Licence) are provided to indicate where the relevant explanatory text is to be found.

### Possible modifications to Condition 1 (Interpretation and construction)

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#### New definitions

- B5 As discussed at paragraphs 2.4 to 2.11, the illustrative modifications to Condition 2 set out below are designed to support both:
- a new condition that could create NERL's obligations to provide the Airspace Design Service; and
  - any consequential modifications required to other conditions of the Licence
- that might be needed were the proposals set out in the Joint Consultation to be implemented in the form set out in that consultation.

B6 As discussed in chapter 2 (Licence modifications to implement the proposals in the Joint Consultation), a new provision could be inserted in the Licence requiring NERL to provide the Airspace Design Service. If such a provision were to be used, it would need to be supported by a definition of the “Airspace Design Service”, together with subsidiary definitions of “Airspace Change Process” and “Airspace Modernisation Strategy”. Illustrative drafts of these definitions are set out below.

### Illustrative draft new definitions:

**“Airspace Design Service”** means:

- (a) assessing, shortlisting and selecting proposals to change the design of UK airspace promoted by the Licensee, interested parties such as airports, the Ministry of Defence and others, taking into account relevant law, Government policy and CAA policy;
- (b) combining those proposals to develop a single airspace design proposal for changes to UK Airspace that prioritises maintaining a high standard of safety and secures system-wide benefits and overall network optimisation, maximising the efficient use of airspace and the resilience of the airspace network, while giving due consideration to local circumstances and environmental impacts; and
- (c) sponsoring that single design for changes to UK airspace through the Airspace Change Process.

**“Airspace Change Process”** means the procedures for dealing with airspace change proposals (as that term is defined in section 1 of the Air Traffic Management and Unmanned Aircraft Act 2021) developed from time to time by the CAA in accordance with directions given under section 66 of the Act (air navigation directions given by the Secretary of State to the CAA).

**“Airspace Modernisation Strategy”** means the UK’s strategy (as defined in the Secretary of State’s Air Navigation Directions 2023 to the CAA) published from time to time by the CAA in accordance with directions given under section 66 of the Act (air navigation directions given by the Secretary of State to the CAA) setting out the ends, ways and means of modernising airspace published by the CAA as CAP1711, CAP1711A and CAP1711B and includes such updates to that strategy as the CAA may issue from time to time.

### Modified Definitions

B7 As discussed at paragraphs 3.1 to 3.13, to support the consequential modifications that might be needed to:

- the financial ringfence in Condition 5 (Availability of Resources and Financial Ringfencing); and

- Condition 9 (Prohibition of cross-subsidies)

the definitions of “Permitted Purpose” and “Separate Business” in Condition 1 (Interpretation and construction) could be modified as follows (new text marked in underline/strikeout). If this approach were to be adopted, no further amendment would be required to Condition 9 (Prohibition of cross-subsidies) to include the Airspace Design Service, as such a change would bring the new activity within the ambit of that condition that that it would cover the relationships between each of the En route (UK) Business, the En route (Oceanic) Business and the provision of the Airspace Design Service.

### Illustrative draft modified definitions

“**Permitted Purpose**” means the purpose of all or any of the following:

- (a) the En route (UK) Business, the En route (Oceanic) Business, the Airspace Design Service or any business or activity within the limits of Condition 5.9 to 5.12; and
- (b) without prejudice to the generality of paragraph (a), any payment or transaction lawfully made or undertaken by the Licensee for a purpose within sub-paragraphs (i) to (vii) of paragraph 19(b) of Condition 5

“**Separate Business**” means each of the En route (UK) Business, ~~and~~ the En route (Oceanic) Business and the provision of the Airspace Design Service taken separately from one another and from any other business of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any such business of the Licensee (and of any other affiliate or related undertaking) so as to form a single Separate Business.

### New Provisions: Obligation to provide the Airspace Design Service

B8 As discussed in paragraphs 2.18 to 2.36, new provisions could be inserted in the Licence requiring:

- NERL to provide the Airspace Design Service;
- addressing also how NERL might be required to carry out that activity;
- the role of the Advisory Board; relationships with stakeholders, including requirements to act impartially and transparently; and
- the administration of the UK Airspace Design Fund.

B9 Stakeholders will note that the proposed approach refers to “UK airspace” rather than the existing defined term of “Controlled Airspace”: we consider that this approach could better reflect that the proposals set out in the Joint Condition are

intended to apply to airspace generally in the United Kingdom at all levels whether or not that airspace constitutes “Controlled Airspace”.<sup>48</sup>

B10 Such a new provision could be drafted in the manner set out below. For illustrative purposes, we have set out below possible proposals on the basis the provisions would set out in new provisions in the Licence.

B11 We welcome stakeholders’ views on the drafting of this new provision.

### Illustrative draft new provision

1. The purpose of this Condition (the “Purpose”) is to require the Licensee to undertake the Airspace Design Service so that it prepares and submits proposals for permanent changes to the design of UK Airspace to the CAA that, if approved by the CAA in accordance with the Airspace Change Process, would deliver the objectives of the Airspace Modernisation Strategy.
2. This Condition sets out:
  - (a) in Part A, the Licensee’s obligations to provide the Airspace Design Service;
  - (b) in Part B, the Licensee’s obligations on how it shall deliver the Airspace Design Service;
  - (c) in Part C, the arrangements for an Advisory Board to assist the Licensee in providing the Airspace Design Service;
  - (d) in Part D, obligations in respect of interested parties; and
  - (e) in Part E, Administration of The UK Airspace Design Fund.

#### **Part A: requirement to provide the Airspace Design Service**

3. The Licensee shall, provide the Airspace Design Service to deliver the Purpose in such geographic area as is specified by the Secretary of State from time to time.
4. The Licensee shall be responsible for the overall programme management of the activities required to deliver the Purpose, whether those activities are undertaken by the Licensee or third parties in accordance with this Condition.
5. In providing the Airspace Design Service to deliver the Purpose, the Licensee shall undertake each of the:
  - (a) design of instrument flight procedures;

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<sup>48</sup> “Controlled Airspace” is defined in the Licence as “airspace which has been notified as Class A, Class B, Class C, Class D or Class E airspace under the United Kingdom Aeronautical Information Publication.

- (b) economic and environmental assessments of the proposal; and
- (c) development of aeronautical information

required by the Airspace Change Process.

6. If the single design for changes to UK airspace prepared by the Airspace Design Service is approved by the CAA, the Licensee shall be responsible for the elements of the post-implementation review required to be undertaken by sponsors of airspace changes by the Airspace Change Process.
7. The Licensee shall at all times develop and maintain its assets, personnel, systems and other parts of the business so as to be able to comply with its obligations under this Condition.

### **Part B: The Licensee's obligations on how it shall deliver the Airspace Design Service**

8. In preparing and submitting a single proposal for permanent changes to the design of UK airspace, the Licensee shall take account of those elements of possible designs for UK airspace put forward by itself and third parties, including airports and the Ministry of Defence, that are seeking to initiate changes to UK airspace needed to deliver the Purpose.
9. The Licensee shall use its best endeavours to deliver any strategic priorities set by the [CAA and/or Secretary of State] and comply with any guidance issued by the [CAA and/or Secretary of State], provided that such guidance shall not have effect unless the [CAA and/or Secretary of State] has first consulted the Licensee and any other relevant parties on that guidance or any revision of it (whether or not such consultation commenced prior to this condition coming into effect).
10. In delivering the Purpose, the Licensee shall have regard to:
  - (a) any prioritisation principles that the CAA is required to produce by Direction 4(4) of Air Navigation Directions made under sections 66(1), 68 and 104(2) of the Act, as amended from time to time;
  - (b) local circumstances and practical constraints, including, but not limited to, resourcing, air traffic controller training requirements and the schedule for changing airspace structures and routes set out in the Aeronautical Information Regulation and Control (AIRAC) published by the International Civil Aviation Organisation from time to time;
  - (c) the views of the Advisory Board that the Licensee is required to maintain in accordance with paragraph 11 of this condition; and
  - (d) the views expressed by respondents to consultations on specific proposals for changes to UK airspace, whether or not that consultation is

undertaken by the Licensee or other party in accordance with any written ways of working agreed pursuant to paragraph 15 of this condition.

**Part C, the arrangements for an Advisory Board to assist the Licensee in providing the Airspace Design Service**

11. The Licensee shall appoint an Advisory Board to provide a forum for interested parties to:
  - (a) review and comment on the strategy developed by the Licensee for delivering the Purpose;
  - (b) secure that NERL operates in the best interests of the system of UK airspace overall;
  - (c) oversee and comment on the Licensee's plans for, and progress in, delivering the Purpose in a timely manner so that stakeholders have confidence in those plans;
  - (d) secure that the Licensee demonstrates transparent, fair and effective decision-making, in the best interests of UK airspace without unreasonably favouring particular person or groups of persons (including itself);
  - (e) secure that the Licensee communicates clearly with parties initiating permanent changes to UK airspace (including in relation to matters agreed between NERL and that party; and
  - (f) provide a forum to enable stakeholders to raise matters of concern or seek more information on the Licensee's approach to, and progress in, delivering the Purpose.
12. The Licensee shall ensure that the Advisory Board meets regularly and sufficiently frequently to enable it to discharge its activities in relation to the matters set out in paragraph 11 of this condition.
13. The Licensee shall secure that the Advisory Board includes members that:
  - (a) are independent from the interests of parties initiating permanent changes to UK airspace;
  - (b) are subject matter experts from airports, airlines and other key stakeholders; and
  - (c) represent the interests of passengers.

**Part D obligations in respect of interested parties**

14. The Licensee shall, in carrying out the Airspace Design Service, act transparently and not unduly prefer or discriminate against any person or class of persons.

15. The Licensee shall use reasonable endeavours to agree written ways of working with any party promoting permanent changes to UK airspace in the geographic area covered by the area in which the Licensee is required to provide the Airspace Design Service in accordance with paragraph 3 of this condition. Any such written ways of working should set out how the Licensee shall work with the relevant party in respect of the Airspace Design Service. Any such agreement shall address matters including which party has responsibility for particular elements of the consultation processes required to be undertaken by the Airspace Change Process and the level of control each party is to retain over such processes.

#### **Part E: Administration of the UK Airspace Design Support Fund**

16. [Placeholder for an obligation for the Licensee to administer The UK Airspace Design Support Fund in accordance with [the policy document referred to in the Joint Consultation at paragraphs 9.12 and 9.13.]]

### **Consequential modifications to Condition 5 (Availability of resources and financial ringfencing)**

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- B12 Building on the discussion in paragraphs 3.1 to 3.13, the illustrative draft modifications to existing conditions of the Licence set out below have been prepared on the basis that the definition of “Permitted Purpose” in Condition 1 (Interpretation and construction) would be amended to include the Airspace Design Service.
- B13 While taking this approach is not sufficient to address all the consequential issues that requiring NERL to undertake the Airspace Design Service would bring, this change would mean that no further modification would be needed to the existing requirements on NERL relation to:
- the requirement to have sufficient resources available in paragraph 2;
  - the obligation to provide compliance certificates in relation to financial resources in paragraphs 3 and 4;
  - the obligation to provide compliance certificates in relation to operational resources in paragraph 5 and 6;
  - the obligations in relation to amendments to the finance documents in paragraph 14;
  - the restrictions on the disposal of assets and indebtedness in paragraphs 15 to 20;
  - the requirement for an ultimate controller undertaking in paragraphs 21 to 22;
  - the obligation to maintain an investment grade credit rating in paragraph 23;



- the restrictions on financial indebtedness in paragraphs 24 to 28; or
  - the interpretation of the condition in paragraph 29.
- B14 Furthermore, no modification would be required to the following provisions in any event:
- the text of the required compliance certificates in relation to certain conditions in paragraphs 7 and 8;
  - the obligation to provide certificates to the CAA in relation to dividends in paragraphs 8A to 8E.
- B15 As a result, the provisions that would not need to be modified have not been reproduced below.
- B16 Stakeholders will observe that we have not set out below any change to paragraph 12(a)(iii) of this condition, on the basis that it is not clear that the Airspace Design Service, being an activity of significantly different nature to the En route businesses, would need to enter into transactions with each other.
- B17 As for the restriction on NERL's activity and financial ringfence set out in paragraphs 9 to 12, it is not clear that the inclusion of the Airspace Design Service within the activities that NERL is permitted to carry on should lead to an increase in the level of the "*de minimis*" caps that allow NERL engage in smaller activities not exceeding cap on the aggregate level of turnover from those activities set out in paragraph 12(a)(vi) or investment in paragraph 12(b).
- B18 As a result, we have developed the drafting below on the basis that, while the Airspace Design Service would be included in the list of activities that NERL is permitted to carry on in paragraph 12(9), it would not be included in the activities that contribute to the calculation of the *de minimis* caps in paragraphs 12(a)(vi) and 12(b). On this basis, no modification to the definition of "Connected Business" in paragraph 29 would be required.
- B19 We welcome stakeholders' views on these issues.

### Illustrative draft modified Condition

1. The objectives of this Condition are to set out measures which, inter alia:
  - (a) require the Licensee to act in a manner calculated to secure that it has available to it sufficient resources to perform its Licence obligations and that it informs the CAA about the resources available to it and its compliance with certain conditions of this Licence;
  - (b) limit the scope of activities which the Licensee undertakes which are outside the En route (UK) Business, ~~and~~ the En route (Oceanic) Business and the provision of the Airspace Design Service;

- (c) create an effective financial ring-fence around the En route (UK) Business, and the En route (Oceanic) Business and the provision of the Airspace Design Service and promote transparency;
- (d) require the Licensee to make the CAA aware of any material steps proposed to be taken under the Finance Documents;
- (e) require the Licensee to notify the CAA on the occurrence of certain events which might prejudice the licensees' financial stability;
- (f) control the disposal of relevant assets, and place certain restrictions on the ability of the Licensee to incur debt;
- (g) require the ultimate holding company to undertake not to act, or cause any subsidiary to act, in such a way as to cause the Licensee to breach the Licence;
- (h) prohibit the Licensee from entering into any agreement or arrangement with any affiliate or related undertaking except on an arm's length basis and on normal commercial terms unless otherwise permitted;
- (i) require the Licensee to use all reasonable endeavours to maintain at all times an investment grade issuer credit rating; and
- (j) establish a financial gearing target and cap.
- (k) This paragraph 1 provides a descriptive summary of the provisions which follow in this Condition. This paragraph 1 is not part of the Condition nor is it intended to add to the provisions which follow and, for the purposes of interpretation, it is the detailed provisions which prevail.

[...]

### Restriction on Activity and Financial Ring-Fencing

9. Save as required under this Licence or as provided by paragraphs 11 and 12 below, neither the Licensee nor any related undertaking of the Licensee shall conduct any business or carry on any activity other than the En route (UK) Business, and the En route (Oceanic) Business and the provision of the Airspace Design Service.
10. The Licensee shall not without the written consent of the CAA acquire shares in any undertaking except:
  - (a) in any body corporate which was a subsidiary of the Licensee prior to the date of this Licence coming into effect;
  - (b) in a body corporate which conducts business only for a Permitted Purpose; or

- (c) acquired in order to avoid dilution of a shareholding in a body corporate in which the Licensee holds shares in conformity with this Licence.

If the Licensee does so acquire shares, it shall do so subject to the provisions of paragraph 2.

11. Nothing in paragraph 9 of this Condition shall prevent:
  - (a) any affiliate or related undertaking of the Licensee from conducting any businesses or carrying on any activity;
  - (b) the Licensee from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistent with the provisions of this Licence;
  - (c) the Licensee from performing the supervisory or management functions of a holding company in respect of any subsidiary; or
  - (d) the Licensee from carrying on any business or conducting any activity to which the CAA has given its consent in writing.
12. Nothing in paragraph 9 of this Condition shall prevent the Licensee conducting any business complying with the following limitations:
  - (a) the business consists of all or any of:
    - (i) the collection of route charges on behalf of other air traffic service providers pursuant to an international agreement;
    - (ii) activities required by any contract with the CAA or with the Crown related to services required by the Licence;
    - (iii) transactions which the En route (UK) Business and the En route (Oceanic) Business make with each other;
    - (iv) transactions with its affiliates which comply with paragraph 19;
    - (v) the provision of air traffic services in conjunction with other air traffic service providers in a Functional Airspace Block established in accordance with Regulation (EC) No.551/2004 of 10 March 2004 on the organisation and use of airspace in the single European sky (as amended) or established in substantially similar arrangements but not associated with the single European sky; and
    - (vi) any other business not otherwise permitted pursuant to any of paragraphs 11 and 12(a)(i) to (v) inclusive of this Condition and which is a Connected Business, provided the turnover of such business when aggregated with that of any related undertaking of the Licensee does not in any regulatory year of the Licensee exceed four and a half per cent of the aggregate turnover of the En route Businesses;

- (b) the aggregate amount of all investments by the Licensee in the businesses described in sub-paragraph 12(a)(vi) above does not at any time exceed one per cent of the share of capital in issue, share premium and consolidated reserves of the Licensee as shown by its most recent audited historic cost financial statements then available.

[...]

## Consequential modifications to Condition 6: Regulatory accounting requirements

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- B20 The illustrative draft modifications set out below have been prepared on the basis that the provision of the Airspace Design Service by NERL would be a distinct activity within NERL that would need to be accounted for separately. Such an approach would help to secure the CAA's ability to engage in appropriate monitoring of NERL's activities as a whole and would support the approach to the financing of NERL's activities set out in chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges).
- B21 We welcome stakeholders' views on these issues.

### Illustrative draft modified Condition

1. This Condition applies for the purpose of making available, in a form and to a standard reasonably satisfactory to the CAA, such regulatory accounting information as will, in furtherance of the requirements of this Licence:
  - (a) enable the CAA and the public to assess the financial position of the Licensee and the financial performance of the UK Air Traffic Services Business, ~~and~~ the En Route (Oceanic) Business and the provision of the Airspace Design Service on a consistent basis, distinct from each other and its affiliate or related undertakings;
  - (b) assist the CAA to assess the Licensee's compliance with this Licence;
  - (c) assist the CAA and the public to assess performance against the assumptions underlying the current price control; and
  - (d) inform future price control reviews.
2. The Licensee shall draw up in consultation with the CAA, and implement in a form approved by the CAA (such approval not to be unreasonably withheld or delayed), guidelines governing the format and content of such regulatory accounts and the basis on which they are to be prepared so as to fulfil the purpose set out in paragraph 1 as from time to time amended by the Licensee with the approval of the CAA.

3. The Licensee shall keep, shall procure that any affiliate keeps and, so far as it is able, procure that any related undertaking keeps the accounting records which each is required by the Companies Act 2006 to keep in such form as is necessary to enable the Licensee to comply with this Condition and the Regulatory Accounting Guidelines.
4. The Licensee shall prepare on a consistent basis from the accounting records referred to in paragraph 3, in respect of the regulatory year commencing on 1 January 2020 and each subsequent regulatory year, regulatory accounts in conformity with the Regulatory Accounting Guidelines for the time being in force and identifying separately the amounts attributable to the UK Air Traffic Services Business, the En route (Oceanic) Business, the provision of the Airspace Design Service and the Licensee as a whole in accordance with this Condition and the Regulatory Accounting Guidelines.
5. The Regulatory Accounting Guidelines prepared pursuant to paragraph 2 shall, without limitation:
  - (a) provide that, except so far as the CAA reasonably considers necessary, the regulatory accounts shall be prepared in accordance with applicable law and International Financial Reporting Standards (IFRS) as adopted by the EU from time to time; and
  - (b) state the accounting policies to be adopted, including the basis on which any amount has been either:
    - (i) charged from or to the UK Air Traffic Services Business, and the En route (Oceanic) Business and the provision of the Airspace Design Service together with a description of the basis of that charge; or
    - (ii) determined by apportionment or allocation between the UK Air Traffic Services Business, and the En route (Oceanic) Business and the provision of the Airspace Design Service.
  - (c) explain the basis on which incurred costs have been apportioned or allocated to services provided to New Users, specifying in particular which services have been provided and, where possible, to which types of New User.
6. The Licensee shall:
  - (a) procure, in respect of the regulatory accounts prepared in accordance with paragraph 4 in respect of a regulatory year, a report by the Auditors addressed to the CAA which provides their opinion on those accounts. The opinion should be worded in the form required by those professional bodies accountable for prescribing the form of audit reports on regulatory

accounts and should reference compliance with the Condition and Regulatory Accounting Guidelines;

- (b) deliver to the CAA the Auditors' report referred to in sub-paragraph (a) and the regulatory accounts referred to in paragraph 4 as soon as reasonably practicable, and in any event not later than seven months after the end of the regulatory year to which they relate; and
- (c) arrange for copies of the regulatory accounts and Auditors' report referred to in sub-paragraphs (a) and (b), respectively, to be made publicly available.

7. The Licensee shall also:

- (a) make reasonable endeavours to secure agreement between itself, the CAA and the Auditors on Agreed Upon Procedures which are designed to provide the CAA with factual findings, where, from time to time, the CAA reasonably considers such procedures are relevant to the fulfilment of its duties and proportionate to any concerns of the CAA in respect of the CAA in respect of its fulfilment of those duties, in each case relating to the following:
  - (i) the appropriateness of any amounts referred to in paragraphs 5(b)(i) and 5(b)(ii) of this Condition;
  - (ii) the Licensee's compliance with the prohibition of cross-subsidies in paragraph 1 of Condition 9; and
  - (iii) any other aspect of the regulatory accounts on which the CAA reasonably considers it requires factual findings.
- (b) procure, as required from time to time by the CAA, in respect of the regulatory accounts prepared in accordance with paragraph 4, a report by the Auditors addressed to the CAA which states that they have carried out Agreed Upon Procedures and which sets out their findings.

8. The regulatory year of the Licensee shall run from 1 January to 31 December unless otherwise agreed with the CAA.

9. In this Condition:

**“Regulatory Accounting Guidelines”** means the guidelines drawn up in accordance with paragraph 2 of this Condition.

**“UK Air Traffic Services Business”** means the Licensee's business other than the En route (Oceanic) Business.

**“Agreed Upon Procedures”** means procedures which are from time to time agreed between the CAA, the Auditors and the Licensee and which the Auditors carry out and report on factual findings.

**“New Users”** means a User who:

- is or is in the process of applying to be an “unmanned aircraft system operator” or “UAS operator” carrying out “UAS operations” as defined in UK Regulation (EU) 2019/947;
- is the holder of or is in the process of applying for an “operator licence” or a “spaceport licence” as defined in the Space Industry Act 2018 is the owner of a “spacecraft” or a “carrier aircraft” as defined in the Space Industry Act 2018; or
- is any other User who owns, operates, or is in the process of applying for the relevant approvals to own or operate, a novel type of aircraft for which the Licensee has not previously provided air traffic services and who wishes to use such services.

## Consequential modifications to Condition 7: Requirement to maintain an intervention plan

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B22 Given the strategic importance of the Airspace Design Service, and that its conduct would be a distinct activity within NERL, it appears that it may be appropriate to extend the scope of this condition so that the intervention plan that NERL is already required to maintain covers this new activity.

B23 We welcome stakeholders’ views on these matters.

### Illustrative draft modified Condition

1. The Licensee shall prepare by 1 April 2016, or within 6 months of this condition coming into effect in this Licence, whichever is the later and, thereafter, maintain an intervention plan fulfilling the criteria set out in paragraph 3.
2. The requirement for the information described in paragraph 3 will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can readily be obtained, and those documents or records are either maintained by the Licensee itself or are available to the Licensee at all times under a legal or contractual right.
3. For the purposes of this condition, an intervention plan shall be a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow any person appointed under an air traffic administration order (within the meaning in Chapter I of the Act) in respect of the Licensee readily to obtain the information they could reasonably be expected to require in order for that person efficiently to carry out

his functions and to remain compliant with the Act and this Licence. The form of the intervention plan shall, as a minimum, contain information on:

- (a) the financial assets, resources and facilities of the Licensee;
- (b) the non-financial assets, rights and resources of the Licensee, including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the Licensee, including contingent and contractual liabilities with counterparty and maturity information;
- (d) the tax affairs of the Licensee;
- (e) the personnel of the Licensee and any personnel employed by any affiliate or related undertaking of the Licensee who are engaged in operating any aspect of the Permitted Purpose activities of the Licensee;
- (f) any pension schemes of which those personnel referred to in subparagraph (e) are members and which are sponsored or administered by the Licensee or any affiliate or related company of the Licensee;
- (g) any mortgages, charges, or other forms of security over the Licensee's assets; the systems and processes by which the Licensee carries on the En route Businesses and the Airspace Design Service with information on any significant contractual arrangements, including those that impose obligations on the Licensee.
- (h) any arrangements under which the Licensee has delegated any part of the En route Businesses or the Airspace Design Service to any affiliate of the Licensee;
- (i) any contractual rights to receive cash or other financial assets from any affiliate of the Licensee or any other person;
- (j) any contractual obligations to deliver cash or other financial assets to any affiliate of the Licensee; and
- (k) the Licensee's arrangements and procedures for ensuring compliance with legislative requirements relating to the provision of air traffic services and with its obligations under this Licence, including the conditions set out in Part III of this Licence.

4. The form, scope and level of detail of the intervention plan prepared in accordance with paragraph 1 shall be approved by the CAA (such approval not to be unreasonably withheld or delayed).
5. The Licensee shall keep the intervention plan under review at all times and, at least annually, shall review the appropriateness of the intervention plan and



submit to the CAA a Compliance Certificate within four months of the end of the Licensee's financial year in the following form:

*"The Licensee has reviewed its intervention plan as required by condition 7 of its Licence. In the opinion of the directors of the Licensee, the intervention plan is fit for purpose and complies with the Licensee's obligations under that condition."*

## Consequential modifications to Condition 8: Requirement for mandated independent directors and corporate governance

- B24 As discussed in at paragraphs 3.15 to 3.17, the current form of the condition was not designed to resolve conflicts of interest between NERL in its role as provider of the Airspace Design Service and either NERL's other activities or other stakeholders if NERL were to undertake the Airspace Design Service.
- B25 That said, we note that it is not clear that the other arrangements proposed for the implementation of the Airspace Design Service are insufficient to address any relevant risks. We have set out below a draft of Condition 8 (Requirement for mandated independent directors and corporate governance) marked up to indicate where modifications could be needed to extend the matters that the condition is designed to address.
- B26 In this context, we welcome stakeholders' views on whether:
- the obligation to have independent directors should be modified so that the scope of the condition extends to managing conflicts of interest with the Airspace Design Service;
  - the requirements for demonstrating that a director is independent should be modified; and
  - it should continue to be possible for NERL to seek consent not to appoint independent directors, and if so, on what basis.

### Illustrative draft modified Condition

1. Where potential conflicts exist between the interests of the Licensee and those of:

(a) any affiliates or related undertakings of the Licensee, or

(b) or class of persons proposing permanent changes to UK any person airspace

the directors of the Licensee, in discharging their responsibilities as directors of the Licensee shall act independently of the interests of any affiliate or related undertaking of the Licensee (including the provision of the Airspace Design Service, as the case may be) and ensure that they have regard exclusively to the

interests of the Licensee in complying with the requirements of the Act and this Licence.

2. Subject to paragraph 13, the Licensee shall ensure that at all times after a date which is 12 months after this condition comes into effect, it has at least two non-executive directors who meet the criteria set out in paragraphs 3, 4 and 5. In this condition such directors are referred to as “mandated independent directors”.
3. A mandated independent director shall:
  - (a) be a natural person;
  - (b) in the reasonable opinion of the Licensee, have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the Licensee and participate fully in the decision making of the board of directors of the Licensee;
  - (c) not have any executive duties within the Licensee’s business; and
  - (d) be of sufficient standing to ensure that directors of the Licensee, in discharging their responsibilities as directors of the Licensee, act independently of the interests of any affiliate or related undertaking of the Licensee and ensure that they have regard exclusively to the interests of the Licensee.
4. A mandated independent director shall not be, and shall not have been during the 12 months before his appointment as a director of the Licensee or the coming into force of this condition (whichever is the later):
  - (a) an employee of the Licensee; or
  - (b) a director or employee of an associate of the Licensee; or
  - (c) an employee or director of an airport operator or airline.
5. A mandated independent director shall not:
  - (a) have, or have had during the 12 months before his appointment as a director or the coming into force of this condition (whichever is the later), any material business relationship with the Licensee, or any associate of the Licensee, an airport operator or an airline;
  - (b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the Licensee, or the interests of any associate, or the interests of any particular shareholder or group of shareholders of any associate of the Licensee or the interest of any particular airport operator, airline or group of airport operators or airlines; or

(c) receive remuneration from the Licensee, or any associate of the Licensee or any airport operator, airline or group of airport operators or airlines apart from a director's fee and reasonable expenses.

6. For the purposes of sub-paragraphs 5(a) and 5(c) respectively:

(a) the holding of a small number of shares or associated rights in the Licensee, ~~or~~ any associate of the Licensee or any airport operator, airline or group of airport operators or airlines shall not, of itself, be considered a material business relationship; and

(b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the Licensee, or any associate of the Licensee or any airport operator, airline or group of airport operators or airlines

shall not be considered to be remuneration.

7. The Licensee shall notify the CAA of the names of its mandated independent directors appointed pursuant to paragraph 2 within 14 days of the date on which they are appointed.

8. The terms of appointment of each mandated independent director shall include a condition stipulating that both the Licensee and the appointee will use their best endeavours to ensure that the appointee remains independent during his term of office, having particular regard to the criteria set out in paragraphs 3, 4 and 5.

9. A term of appointment for a mandated independent director may not be for longer than eight years, but an individual may be reappointed thereafter with the consent of the CAA provided that he continues to meet the criteria set out in paragraphs 3, 4 and 5.

10. The Licensee shall notify the CAA in writing within 14 days if any mandated independent director is removed from office or resigns, giving reasons for the removal or (to the extent that they are known to the Licensee) the resignation. For the purposes of this requirement, the reasons for a resignation may, if applicable, be stated to be personal reasons.

11. If at any time the Licensee has fewer than two mandated independent directors because of a removal or resignation or other reason (including death or incapacity), the Licensee shall use reasonable endeavours to ensure that a new director is, or new directors are, appointed to fulfil the obligation in paragraph 2 as soon as is reasonably practicable to bring the number of mandated independent directors up to at least two.

12. Where mandated independent directors have been appointed to fulfil the obligation in paragraph 2, the Licensee shall ensure that (save where necessary to meet urgent safety or operational matters of the Licensee) meetings of its board of directors are:

- (a) quorate only if attended by at least one of those mandated independent directors; and
  - (b) clearly distinct, and held at a separate time, from any meeting of the board of directors of any associate of the Licensee.
13. Paragraph 2 shall not have effect where and to the extent that the CAA consents otherwise. The CAA may grant such consent where it considers that the corporate governance arrangements applicable to the Licensee provide equivalent assurance to the CAA in relation to any potential conflicts between the interests of the Licensee and those of any affiliates or related undertakings of the Licensee as if the mandated independent directors required by paragraph 2 had been appointed. Any consent granted by the CAA pursuant to this condition may be on such terms as the CAA considers appropriate in all the circumstances.
14. Nothing in this condition shall be construed as requiring any director of the Licensee to act in a manner that is not consistent with that director's legal obligations as a director.

## Interpretation

15. In this condition:

**“associate”** means:

- (a) an affiliate or related undertaking of the Licensee;
- (b) an ultimate holding company of the Licensee;
- (c) a participating owner of the Licensee; or
- (d) a common control company;

**“common control company”** means any company, any of whose ultimate holding companies (applying the definition set out in Condition 1 (Interpretation and construction) but substituting that company for the Licensee) is also an ultimate holding company of the Licensee;

**“participating owner”** For the purposes of the definition of “associate”, a person is subject to a participating interest by another person (a “participating owner”) if:

- (a) that other person holds a participating interest in the person; or
- (b) the person is subject to a participating interest by a person who is himself subject to a participating interest by that other person; and
- (c) “participating interest” has the meaning given in section 421A of the Financial Services and Markets Act 2000.

## APPENDIX C

## Illustrative draft licence condition introducing a new airspace design charge

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- C1 If the proposals in chapter 4 (Costs of new airspace design services) and chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges) were implemented, we envisage that a new Airspace Design Charge could be established by the following additional licence condition (new condition 21B). We welcome comments from stakeholders on this draft condition.

### Condition 21b: Control of Airspace Design Charge

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1. Without prejudice to Condition 25 (Suspension and Modification of Charge Control Conditions), for each Year beginning on 1 January 2026 and 2027, the maximum Permitted average Airspace Design Charge ( $MaxADC_t$ ) shall be calculated as follows:

$$MaxADC_t = \frac{DCAD_t + CostPassAdj_t}{ForecastTSU_t}, \text{ where:}$$

- (a)  $DCAD_t$  means determined costs of providing the Airspace Design Service and the cost to NERL of funding activities supported by the Airspace Design Support Fund, expressed in nominal terms for relevant year  $t$ .

Year $t$	£ - nominal
2026	27,310,381
2027	27,888,283

- (b)  $ForecastTSU_t$  means the forecast of Total Service Units (TSUs) for relevant year  $t$  as follows:

<b>Year <math>t</math></b>	<b><math>ForecastTSU_t</math> -</b>
2026	12,750,000
2027	12,977,000

- (c) Total Service Units (TSUs) means the route service units calculated in accordance with Eurocontrol's Central Route Charges Office's Conditions of Application of the Route Charges System and Conditions of Payment as amended from time to time including the service units relating to military exempt flights.

(d)  $CostPassAdj_t = ACAD_{t-2} - DCAD_{t-2} \times \frac{ActualTSU_{t-2}}{ForecastTSU_{t-2}}$

- (e)  $ACAD_t$  is the actual cost, in nominal terms, of providing the Airspace Design Service and the cost to NERL of funding activities supported by the Airspace Design Support Fund in year  $t$  as reported by NERL in accordance with Condition 6 (Regulatory accounting requirements).

- (f)  $ActualTSU_t$  means the actual level of Total Service Units for relevant year  $t$  published by Eurocontrol.

2. The  $CostPassAdj_{2028}$  and  $CostPassAdj_{2029}$  terms will therefore correct for any under or over recoveries in relation to 2026 and 2027 respectively.