

# PROVISIONAL IMPACT ASSESSMENT FOR THE INTRODUCTION OF A COMMON REQUIREMENTS REGULATION FOR AIR NAVIGATION SERVICE PROVIDERS IN THE UK

## 1. Purpose and intended effect of measure

### 1.1. Objective

1.1.1. Common Requirements (CRs) for Air Navigation Service Providers (ANSPs) are due to be adopted by the Single European Sky Committee (SSC) in March 2005.

1.1.2. The CRs:

- (i) introduce a common system for the certification of ANSPs (including providers of air traffic services (ATS); meteorological information (MET); aeronautical information services (AIS); and communication, navigation and surveillance services (CNS)) and
- (ii) include requirements for technical and operational competence, systems and processes for safety and quality management, reporting systems, quality of services, financial strength, liability and insurance cover, ownership and organisational structure, human resources and security.

1.1.3. The CRs support the objective of the Service Provision Regulation (EC 550/2004 ) to establish common requirements for safe and efficient provision of air navigation services in the European Community.

1.1.4. This provisional Impact Assessment is based on the text of the CRs which was put to the SSC on 17 March. It does not consider in any detail the designation process, which falls outside the Common Requirements Regulation and which may involve an overlay of safety and other requirements to those found in the CRs. This will require a more detailed analysis once the CRs have been finalised.

### 1.2. The background

1.2.1 The European Commission's objective through the CRs is to provide a broadly homogenous system for the provision of air navigation services (ANS). The Commission is responding to requests, including from the UK, for a level playing field across Europe. ANS provision within the Community will be subject to certification by Member States. ANSPs which comply with the CRs should receive a certificate in accordance with Article 7 of the Service Provision Regulation. By virtue of Article 7(5) of the regulation, States may allow military providers to operate without a certificate but if they do, as is expected to be the case in the UK, they must ensure maximum compliance with the CRs. Once an ANSP has received a certificate, it may offer its services anywhere in Europe and be designated to provide services in specific locations.

1.2.2 The UK ATM/ATS industry is unique amongst European States in that over 300 ANSPs are regulated by the CAA and there is competition for the market for the provision of ANS at airports. As the CRs were designed for the European industry model, where there may only be one ANSP under state

control, their application to the UK ATM/ATS industry is likely to be more onerous and demanding on resources both for the UK CAA and the ANSPs that it regulates.

- 1.2.3 Although UK ANSPs are currently approved against relevant **safety** standards for the provision of Air Traffic Services under Article 88 of the Air Navigation Order, the CRs introduce new areas of regulatory oversight in the form of **economic** and **security** requirements. Only NATS En Route Plc (NERL) is currently subject to economic regulation (under the Transport Act 2000) and the ANO requirements do not consider quality management systems, security management systems or financial controls in depth, other than where these may directly impact on the delivery of a safe service. Article 88 also only addresses ATC providers whereas the CRs cover all ATS providers as well as MET, AIS and CNS. CNS providers must meet all the safety requirements of ATS providers and both MET and AIS providers must show that they manage the safety of their services. Even with the available derogation, many providers will now be required to provide a wide range of financial and other information.

### **1.3. Risk Assessment**

- 1.3.1 The consequence of not implementing the proposed CRs is that the UK would not be in compliance with EU law. That law will take the form of a Commission Regulation directly applicable in the UK. Providers would therefore be operating illegally if they operated without certification to the CRs. The Commission could take Infraction proceedings against the UK.
- 1.3.2 The CRs are currently envisaged to come into force no later than January 2007. This is a tight timetable and, given the number of UK providers who are to be certified, it is possible that the CAA will not be able to meet the deadline in all cases. The risk to the UK of the CAA's not certifying ANSPs within the mandated timescale, is that the ANSPs would be unable to continue to provide services within the UK. Furthermore, UK ANSPs would also be unable to tender for European contracts. The CAA could face legal exposure if it failed to commit the resources necessary to enable otherwise qualified applicants to be certificated in the required timescale. As part of that resource commitment, the CAA will need to develop policies, processes and means of compliance for certification, informing and working with the industry so that providers can understand and work towards meeting the qualifying criteria.
- 1.3.3 Due to differences in the structure of the UK ANSP industry and the way in which it is regulated, the implementation of the CRs in the UK will carry specific risks which may disadvantage smaller ANSPs and could have an adverse impact on the UK's competitive market. The CAA will try to minimise such risks through maximum use of the derogation powers available to the National Supervisory Authority (NSA) and a proportionate approach to regulation.

## **2. Options and Benefits**

### **2.1. Options**

2.1.1. The Common Requirements will become EU Law and the UK has no option other than to implement them as published. However this still leaves a significant margin for discretion by the CAA, as the UK's NSA, as to how particular requirements are to be met and the general approach to regulatory oversight.

2.1.2. The CAA therefore considers that it is appropriate for the UK to implement these requirements in a manner consistent with its regulatory principles, which follow those of the Better Regulation Task Force (BRTF) and which minimise the burden to the UK ATS/ATM industry. In order to achieve this, the CAA will, wherever possible:

- Make the maximum use of its powers as NSA to derogate under the CRs. The NSA has no powers of derogation for larger providers or on safety requirements for the smaller ones but may relieve smaller providers who do not aspire to provide cross-border services from some of the financial and business requirements;
- Adapt its existing regulatory practices to fit the CRs and impose on the industry the minimum additional obligations necessary to comply with the CRs and achieve the desired safety outputs; and
- Adopt a pragmatic and proportionate approach to implementing the CRs based on the safety risk posed by the service(s) under consideration;

The costings in this provisional Impact Assessment are based on the regulatory approach described above. If this approach proves not to be an option, then the costs set out below may be expected to increase.

The CAA will initiate a dialogue with the industry and will aim to provide initial guidance on the proposed approach to regulation during the Summer of 2005.

2.1.3. Due to the potential regulatory burden and impact on the UK industry, the UK (with the CAA's support) should seek to maximise the available time for implementation of the CRs. This Impact Assessment is premised on the Commission's present assumption that the CRs will come into force in about two years time. This is loosely based around the notion of a few months delay in the publication of the CRs in the Official Journal of the European Commission (OJEC), after formal adoption of the Regulation. Under the Service Provision Regulation, the certification requirements enter into force 12 months after such publication. In exceptional circumstances, States may also postpone compliance with these requirements by six months.

### **2.2. Benefits**

2.2.1. The implementation of the CRs is intended to contribute towards harmonising the provision of air navigation services across Europe and thus towards a safer and more efficient provision of services in the EC. The introduction of Europe-wide certification paves the way for greater competition for the ANS market and offers opportunities for UK ANSPs to extend their operations into Europe.

2.2.2. As far as implementation of the measures is concerned, the UK may gain some benefit from the fact that there is already a framework for the regulation of ANSPs from the safety, economic and airspace viewpoint, and that some of the requirements are already regulated by the CAA in a structured way. Moreover, the industry is familiar with concept of regulation and used to formal inspections and audit. Other States in Europe are in still in the process of separating service provision and regulation, and will face the additional burden of establishing their NSAs at the same time as arranging the certification process

### **3. Costs**

#### **3.1. Economic**

##### **3.1.1. Costs to Industry**

The costs to the UK industry, excluding regulatory costs (see 3.1.3 below) are set out at Appendix A. **In total, the cost of introducing the CRs is estimated at £6.7 million** as follows:

(certification of)	
ATC, FIS and Air/Ground units:	£2.7 million
MET providers:	£2.1million
AIS providers:	£1.9 million

The cost to the industry of the economic regulatory aspects of certification (such as annual accounts and plans, and business plans) is harder to estimate as the extent to which the CRs represent new burdens for those affected will depend on the size and scale of their operations. All are expected to have audited annual accounts and many will have annual plans but these may not fully meet the CRs. The requirement for a five-year business plan is likely to be new for many ANSPs so would be an added cost.

##### **3.1.2. Non-derogated and derogated**

See Table at Appendix A

##### **3.1.3. Costs to CAA**

The costs to the CAA will be dependent on the category of service provided and the level of derogation to be applied but they are expected to be in the region of (£000):

	Total cost	Cost absorbed by CAA	Additional (regulatory) cost to industry
<b>SRG</b>	1,540	640	900
<b>DAP</b>	228	0	228
<b>ERG</b>	2	2	0
<b>TOTAL</b>	<b>1,770</b>	<b>42</b>	<b>1,128</b>

These figures assume that the CAA will carry out its regulatory duties as described in paragraph 2.2. The CAA will endeavour to absorb as much of the cost of implementing the CRs as it can by re-prioritising its work and diverting effort from existing regulatory tasks. The additional cost to SRG is

spread over approximately three years, after which it will reduce. The additional cost to industry is shown above and should be used for planning purposes.

**Legal** costs will relate to ascertaining the impact of the CR Regulation overall on UK law – particularly the ANO (Articles 88-91 and 104-105) but other legal instruments will need to be considered – e.g. licensing provisions of the Transport Act and the NERL Licence, appeal mechanisms under the CAA Regulations. The CAA will need to work with DfT on the necessary implementation measures, including sanctions for non-compliance which are a matter for national discretion under Article 9 of the Framework Regulation. We will also need to work within the CAA to assist in the development of principles for implementation and oversight of the CRs. Finally the work on the CRs will need to be closely aligned with development of processes and requirements for designation of ATS and Met providers, which may well involve an overlay of safety and other requirements to those found in the CRs.

#### **3.1.4. Costs to DfT regarding security.**

The CAA's remit for the **oversight** of security is primarily confined to data security and measures to prevent unauthorised access to infrastructure, apron control and runway incursion. The oversight of ANSP Security Management Systems will be delegated by the CAA to a recognised organisation.

#### **3.2. Environmental**

No environmental costs have been identified.

#### **3.3. Social**

The social cost of the CRs should be negligible, although there could be some cost to the UK's competitive market (see section 6, below). Some smaller providers may find the regulatory burden disproportionate and withdraw from the market. If this happens, however, the likelihood is that their operational staff would be taken on by the new provider (as happened, for example, when NATS won the contract to provide ATS at Luton Airport). The arrangements in the CRs, coupled with the Commission's proposals for a Common Licence for Air Traffic Controllers, will facilitate greater movement of controllers within the EC.

#### **4. Equity and Fairness**

- 4.1. The Common Requirements underpin the ANSP certification process that forms part of the Single European Sky (SES) initiative. The positive effects for the UK industry include: more efficient use of airspace, reduced delays and access to the European market for UK based ANSPs.
- 4.2. Notwithstanding these potential benefits, differences in the structure of the UK ANSP industry and the way in which it is regulated, will mean that the cost of implementation in the UK will potentially be greater than in other Member States. Equally, the CRs will provide access to the UK market by European ANSPs; this may be regarded by some as a disbenefit.

- 4.3. While it is recognised that any increase in the regulatory burden may impact the financial viability of certain providers, the CAA will endeavour to ensure that no one sector of the ANSP industry is disproportionately disadvantaged.

## **5. Consultation with small business: the Small Firms' Impact Test**

- 5.1. Small businesses are consulted on SES legislative developments through the European ATM Stakeholder Forum, chaired by DfT. Their views may be represented by their national organisations such as AOA and GATCO. At the European level, the Industry Consultation Body (ICB) has been established under the SES Framework Regulation to advise the Commission on all SES developments. The ICB is chaired by an industry representative. Issues on which the ICB's views will be sought include draft legislation and Implementing Rules. Individual companies may not attend the ICB but are represented by CANSO (ANSPs), ASD (ATM and aviation manufacturers), Airports Council International (Airports) and Aviation Meteorological Group (MET providers).
- 5.2. Delays to the drafting process and lack of clarity over the potential impact to specific categories of providers have hampered effective consultation with ANSPs. Where possible, however, information has been provided on the CAA website, and through a seminar which the CAA held with the industry in September 2004. It was noted at that time that the ICB had yet to convene. Until very recently, this lack of a consultation mechanism at the international level has precluded any direct participation by the UK industry in the development of the CRs.
- 5.3. The CAA is concerned that, as the final adopted version of the Common Requirements has yet to be published, the impact on small businesses could be greater than is currently anticipated. It will not be possible to conduct a small firms' impact test until the Common Requirements are published in their final form.

## **6. Competition Assessment**

- 6.1. ANSPs certificated against the CRs will be eligible to offer services anywhere in the Community, thus paving the way (albeit probably longer term) for competition for the market in ANS provision.
- 6.2. The increased regulatory costs associated with implementing and monitoring the CRs, and the potential impact of a charging threshold based on the number of movements at an airport, could result in some restructuring of the UK ANSP industry, to the detriment of competition. At a worst case:
- small companies could decide to withdraw altogether from the market;
  - companies which currently sit just below the derogation threshold might prefer to remain there rather than growing larger; and
  - potential new entrants to the market could be discouraged by the regulatory requirements.

**7. Enforcement and Sanctions**

- 7.1. As highlighted above, the CAA will need to be closely involved with DfT in the development of appropriate enforcement mechanisms and sanctions. These will ultimately be set out in new or existing statutory instruments. One aspect of this is mechanisms for the grant, variation, suspension and revocation of certificates, and any appeals arising from CAA decisions in this respect. Another is penalties by way of criminal sanctions, both in respect of substantive breaches of requirements and, for example offences such as providing false information. Any such mechanisms will have to be developed in the knowledge of the very close connection between the certification and designation processes, the latter falling outside the Common Requirements Regulation. They will also need to reflect issues as to the powers of a given NSA in relation to providers in that NSA's State as against those from abroad whose certification it may have accepted under mutual recognition, but over whom that provider's certifying NSA alone may have powers.

**8. Monitoring and Review**

- 8.1. The CAA will monitor the impact of the introduction of the CRs, through the Air Traffic Services Safety Regulation Advisory Committee (ATSSRAC), which is a consultative body representing all the providers of ANS. Since the CRs cover a wide range of CAA regulatory activities (safety, economic and airspace), the CAA is considering whether it should formally constitute an internal committee for certification purposes.

**9. Consultation**

- 9.1. The ANS industry has been consulted by the DfT through its Stakeholder Forum and by the CAA through an SES Seminar, the posting of a Discussion Paper on its website and an on-going informal dialogue. The CAA intends to maintain its consultation through these means as it prepares a regulatory statement for the industry and will give as much notice as possible of any increase in regulatory charges resulting from the implementation of the CRs.

**10. Summary and Recommendation**

- 10.1. The CRs have the potential to open up the market for ANS provision across Europe and offer greater opportunities for UK providers. In establishing a common system for ATS provision, however, the CRs increase the regulatory burden on providers and could have a detrimental effect on the UK's existing competitive market. In implementing the CRs as NSA, the CAA will strive to minimise changes to its current regulatory structures and the burden of new regulation on the industry. The CAA will do this by:
- Making the maximum use possible of its discretion to derogate smaller providers;
  - Adopting a pragmatic and proportionate approach to enforcement based on the safety risk posed by the service(s) under consideration;
  - Following the principles laid down by the BRTF; and
  - Using existing approval and certification processes to the maximum extent possible.
- 10.2. In the CAA's view, there is nothing in the CRs as they currently stand which should be opposed at SSC and nothing to be gained by seeking further changes to the CRs. While the UK argued for a higher derogation threshold, there was little or no support from other States. The UK would be isolated in SSC on any issue other than the timescale for implementation.
- 10.3. Due to the potential regulatory burden and impact on the UK industry, **it is recommended that** the UK should seek to maximise the available time for implementation. This could be achieved by delaying as long as possible the publication of the CRs in the Official Journal of the European Commission (OJEC). *It should be noted that one year following publication the CRs will automatically become EU law.*

**11. Declaration**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed** .....

Date

Minister's name, title, department

Contact point

## **SUMMARY OF CHANGES AFFECTING ANSPs**

The table below sets out the impact of the CRs on the various types of ANSP and on the CAA. In the case of MET and AIS providers, the estimated costs are based on a worst case.

- 1. Impact on ATC providers, Flight Information Service providers and Air/Ground units**
  - 1.1. There are indications that most ATC providers have taken into account some of the essential elements of Quality Management Systems (QMS) and Security Management Systems (SecMS), which are significant under SES legislation.
  - 1.2. It is also expected that approximately 32 of the 79 ATC providers will, due to lower annual aircraft movement rates, be eligible for derogation and so will not have to comply in full with some of the CRs (eg the production of a business plan or the installation of a QMS or SecMS). No ANSP is wholly exempt from the CRs. There are in addition approximately 24 Flight Information Service (FIS) units, of which probably 4 will be required to meet all the CRs, and also 119 Air Ground (A/G) units, all of which are expected to be eligible for derogation under the CRs.
  - 1.3. All 560 small sites in the UK (which include private grass strips) have been assumed to be beyond the scope of the CRs and are therefore excluded from the table below.
  - 1.4. The costs identified in the table relate only to 'best estimates' (about 70% level of certainty) to gain ANSP certification within the expected timescales.

**Total estimated start-up cost of the CRs for ATC, FIS & AG: £2.7million**  
**Total on-going costs per year: minor cost of upkeep of systems**

- 2. Impact on UK MET providers**
  - 2.1. The CAA regulates the UK Met Office against the requirements of Annex 3 of the Chicago Convention but, currently, does not otherwise regulate MET providers. There are around 110 suppliers of MET data in total in the UK, six of them (including the UK Met Office) are major suppliers.
  - 2.2. The CRs do not mandate a Safety Management System (SMS) for MET providers and smaller providers, who do not wish to offer their services elsewhere in Europe, may also be derogated from the requirements for a QMS, a SecMS and insurance cover. Because the CAA does not regulate these providers, it cannot be certain how many of them will be eligible for the derogation and which will opt for it.
  - 2.3. The cost estimate assumes that the small suppliers will be excluded from the most onerous requirements of the CRs and that the CAA will be able to exercise considerable discretion in certifying them.

- 2.4. The cost of implementing the QMS and SecMS has been estimated at approximately £25,000 per system, per site. The Met Office has both QMS and SecMS in place but it is assumed that the other five major providers do not. The cost of maintaining and managing these systems is assumed to be one person per unit, at an annual cost per provider of £50,000.
- 2.5. The cost of arranging liability insurance is likely to be in the region of £300,000 per year for each of the larger providers, although less for smaller ones. It is assumed that all six major suppliers will require insurance.
- 2.6. Ongoing costs of maintaining and managing these systems, once in place, is estimated at £300,000 per year.

**Total estimated start-up cost of the CRs for the six major MET suppliers: £2.1 million**

**Total on-going costs per year: £300,000 plus £1.8 million liability insurance.**

### **3. Impact on AIS providers**

- 3.1 AIS is not currently subject to regulation by the CAA. There are five or six major AIS suppliers and 12 known medium/small ones (possibly more than 20 smaller providers in total). The CRs do not mandate SMS for AIS providers and smaller providers may also be derogated from the requirements for a QMS, a SecMS and insurance cover. The likelihood is that the major suppliers will already have SMS, QMS and SecMS in place.
- 3.2 The cost estimate assumes that only the six major suppliers will be subject to the full requirements of the CRs; that most (but not all) of them have QMS and SecMS in place; that all six major providers will require insurance; and that the smaller ones will make maximum use of the derogation.
- 3.3 The cost of insurance is estimated at £300,000 per year per provider.

**Total estimated start-up cost for the six major AIS suppliers: £1.9 million**

**Total on-going costs per year: £1.8 million liability insurance plus minor costs for upkeep of systems.**

### **4. Impact on all ANSPs of economic regulatory requirements**

- 4.1 The main elements of the CRs that will impact on those ANSPs that are not exempted through the derogation are the requirements for:
- a **five year business plan** outlining its aims and goals as well as setting performance objectives;
  - an **annual plan** setting out any plans for infrastructure development, indicators of performance and an overview of the provider's expected short term financial position; and

- an **annual report** including its financial results, an assessment of the level and quality of service provided, the performance of the ANSP against its performance indicators, developments in infrastructure, information on consultation activities and information on its human resources policy.
- 4.2 The extent to which these will represent new burdens for those affected will depend on the size and scale of their operations. All are expected to have audited annual accounts, but it is not certain whether this meets the CRs' expectations of what the "annual report" should contain. Similarly, many will have annual plans of some sort, but again it may not quite meet all that is expected. The five-year business plan is less likely to exist already and so would be an obvious added cost.
- 4.3 It is assumed that those below the derogation threshold will not have to provide the CAA with any of the economic information.

## **5. CAA costs**

- 5.1 The CRs impose a number of duties on the NSA, primarily in the field of initial certification and compliance monitoring. In the case of MET and AIS, this is completely new work. It is very difficult to estimate the additional resources that might be needed by the CAA as there is still uncertainty over the extent of the derogations and NSA discretion.
- 5.2 Assuming the regulatory approach described, the current best estimate of CAA costs to meet NSA responsibilities is:

ATC/FIS/AG:	£	1,540,000
MET:	£	138,000
AIS:	£	90,000
ERG:	£	2,000

As Section 3 of the Impact Assessment indicates, this is **not** all additional cost: the additional cost to the CAA of introducing the CRs is in the region of £1.1 million. If, however, the sort of proportionate regulation described in section 2 is not an option, these costs may be expected to increase considerably. For example, ERG's costs alone could escalate to £150,000 per year.

**Provisional Impact Assessment for the Introduction of a Common Requirements Regulation for Air Navigation Service Providers in the UK**  
**Appendix A**

Type of ANSP service	NUMBER OF ORGANISATIONS			COST TO INDUSTRY (£000)	COST TO CAA (£000)		
	Total Number of each type of organisation	Number of Organisations eligible for derogation	Number of Organisations NOT eligible for derogation	Industry Costs to Achieve Certification	CAA costs Processing ANSP certification Application	CAA costs Technical Support Staff	CAA costs Production of guidance, self certification questionnaire
ATC	79	32		493	1,095		
			47	1,158			
FIS	24	20		246	59	264 (additional cost of £88K per year for three years )	75
			4	62			
A/G	119	119		733	47		
			0	N/A			
MET	110	104		negligible	138 (additional annual cost)		
			6	2,100			
AIS	25	20		negligible	90 (additional annual cost)		
			5	1,900			
ERG				N/A	2		
Totals	357	295	62	<b>Total industry: 6,692</b>	1,431	264	75 <b>Total CAA: 1,770</b>

## GLOSSARY OF TERMS

<i>Term</i>	<i>Definition</i>
<b>A/G</b>	<b>Air Ground Unit</b>
<b>AIS</b>	<b>Aeronautical Information Service</b>
<b>ANO</b>	<b>Air Navigation Order</b>
<b>ANSP</b>	<b>Air Navigation Services Provider</b>
<b>ANS</b>	<b>Air Navigation Services</b>
<b>AOA</b>	<b>Airport Operators Association</b>
<b>ASD</b>	<b>Aerospace and Defence Industries Association of Europe</b>
<b>ATM</b>	<b>Air Traffic Management</b>
<b>ATS</b>	<b>Air Traffic Services</b>
<b>ATSSD</b>	<b>Air Traffic Services and Standards Division</b>
<b>ATSSRAC</b>	<b>Air Traffic Services Safety Regulation Advisory Committee</b>
<b>BRTF</b>	<b>Better Regulation Task Force</b>
<b>CAA</b>	<b>Civil Aviation Authority</b>
<b>CANSO</b>	<b>Civil Air Navigation Services Organisation</b>
<b>CNS</b>	<b>Communication, Navigation Or Surveillance Services</b>
<b>CRs</b>	<b>Common Requirements For The Provision Of Air Navigation Services</b>
<b>DAP</b>	<b>CAA Directorate of Airspace Policy</b>
<b>DfT</b>	<b>Department for Transport</b>
<b>EC</b>	<b>European Commission</b>
<b>ERG</b>	<b>CAA Economic Regulation Group</b>
<b>EU</b>	<b>European Union</b>
<b>FIS</b>	<b>Flight Information Service</b>
<b>GATCO</b>	<b>Guild Of Air Traffic Control Officers</b>
<b>ICB</b>	<b>Industry Consultation Body</b>

<b>MET</b>	<b>Meteorological information</b>
<b>NATS</b>	<b>National Air Traffic Services Ltd</b>
<b>NERL</b>	<b>NATS En Route Plc</b>
<b>NSA</b>	<b>National Supervisory Authority</b>
<b>OJEC</b>	<b>Official Journal of the European Commission</b>
<b>QMS</b>	<b>Quality Management System</b>
<b>SecMS</b>	<b>Security Management System</b>
<b>SES</b>	<b>Single European Sky</b>
<b>SMS</b>	<b>Safety Management System</b>
<b>SRG</b>	<b>CAA Safety Regulation Group</b>
<b>SSC</b>	<b>Single Sky Committee</b>