

**Civil Aviation Authority**



# Proposed Methodology for the Certification and Designation of Air Navigation Service Providers required in accordance with European Legislation

## Proposed Methodology for the Certification and Designation of Air Navigation Service Providers required in accordance with European Legislation

### 1 Introduction

- 1.1 Air Navigation Service Providers (ANSPs) should be aware that due to Single European Sky (SES) Legislation<sup>1</sup> and subsequent regulations<sup>2</sup>, they will be required to obtain a certificate and be designated in order to provide air navigation services.
- 1.2 The Service Provision Regulation, which became law on 18 April 2004, requires that:
- The provision of all ANS within the Community be subject to certification by Member States, and
  - Member States **must** designate ATS providers, and **may** designate MET providers, with a valid certificate, to provide services on an exclusive basis within specific airspace blocks. CNS and AIS providers do not require designation.
- 1.3 The SES legislation thus introduces two tiers of regulation: the certificate, or entry ticket, which confirms the provider's technical, financial and business competence to provide a service, and the designation, which formally nominates an ANSP to provide services at a specified location, subject to any additional requirements appropriate to that location.
- 1.4 In support of the Service Provision Regulation, the Common Requirements Regulation is due to become law later in 2005 and requires that that *all ANSPs, be they ATS, Met, CNS or AIS providers, comply with certain requirements of general application as well as others specifically referable to the type of service they provide.*
- 1.5 In order to obtain a certificate necessary to provide air navigation services, ANSPs must comply with the Common Requirements by the mandated date. Once certificated, the ANSP will be able to offer its services anywhere in Europe, provided that it has not elected to seek a derogated certificate. No ANSP is wholly exempt from the Common Requirements although certain small providers who elect not to seek business outside of their home State may be eligible for derogation from some aspects of them.
- 1.6 ANSPs are strongly advised to familiarise themselves with the content of the Common Requirements, as soon as possible. The full text of the draft regulation can be located via the DfT website at the following link:  
[http://www.dft.gov.uk/stellent/groups/dft\\_control/documents/contentservertemplate/dft\\_index.hcst?n=12313&l=2](http://www.dft.gov.uk/stellent/groups/dft_control/documents/contentservertemplate/dft_index.hcst?n=12313&l=2)
- 1.7 The regulation will become law following its publication in the Official Journal European Commission (OJEC) later in 2005, and certification will become mandatory one year later. States may, in exceptional circumstances, postpone compliance with the Common Requirements for a further six months but the CAA considers it prudent to work towards the earlier deadline, of one year, in implementing the Common Requirements.

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<sup>1</sup> The four regulations comprising the Framework, Service Provision, Airspace and Interoperability Regulations; the Service Provision Regulation is Regulation (EC) No 550/2004.

<sup>2</sup> The draft Commission Regulation laying down common requirements for the provision of air navigation services approved by the SSC on 17 March 2005.

- 1.8 The CAA recognises that whilst SES legislation is intended to bring overall benefits to European ATM, the associated costs will inevitably be borne by industry. It is therefore the CAA's policy to minimise such costs by utilising existing structures, systems and processes wherever possible.
- The purpose of this document is to outline the CAA's proposals for how it will carry out the initial certification and designation of UK ANSPs in accordance with the Common Requirements and develop associated guidance material to facilitate compliance. It also outlines, in Appendix 2, the key CAA policy objectives and principles associated with certification and designation in accordance with the Common Requirements.
  - ANSPs are invited to comment on the proposals contained in this paper. All comments should be returned to the CAA by 29 July 2005. (see covering letter for contact details) The CAA will not respond to such comments individually, but will take account of views put forward by industry, wherever possible.

## **2 Background**

- 2.1 Although under existing arrangements, UK ANSPs are currently approved against relevant **safety** standards for the provision of Air Traffic Services under the relevant articles of the Air Navigation Order 2000 (the ANO), the Common Requirements will introduce new areas of regulatory oversight, at the certification stage, in the form of **economic, security** and **quality** requirements. 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. 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. Whilst derogation permits a 'modulation' of the Common Requirements for some ANSPs, many providers will now be required to provide a wide range of financial and other information in order to obtain, and retain, their certificate. An outline summary of the Common Requirements and of the available derogations is attached at Appendix 1.
- 2.2 Once certificated, ATS providers **must** obtain designation before they can provide any services. Designation is about the way that a service is provided and involves national or local requirements associated with the provision of services within specified airspace. States **must** ensure the provision of ATS on an exclusive basis within specific airspace blocks in the airspace under their responsibility by designating an ATS provider holding a valid certificate in the EC. Designation is a State function complementary to the certification process and will be carried out by the CAA on behalf of the UK.
- 2.3 Subject to certification in accordance with the Common Requirements, the CAA will designate existing ANSPs to continue to provide services at their current locations in the UK. Criteria and conditions for the designation of new ANSPs will be considered on a case-by-case basis. The Common Requirements set out the minimum criteria that permit a service provider to be considered for designation and there are very limited circumstances in which additional requirements can be added to the certification requirement. However, in the UK, it is proposed that the designation process, rather than additional certification conditions, will be used to ensure that the current high safety standards are maintained.

### **3 Proposed Approach**

3.1 The CAA recognises that implementation of the Common Requirements will impose costs on industry, both in the form of direct costs and in additional regulatory costs. The CAA's best estimate of those costs can be found in its provisional Impact Assessment on the following link:

[http://www.caa.co.uk/docs/1/DAP\\_EFPC\\_CRs\\_ProvImpAsst.pdf](http://www.caa.co.uk/docs/1/DAP_EFPC_CRs_ProvImpAsst.pdf)

The intention is, therefore, to implement the requirements in a manner which will be proportionate to the level of risk and which will minimise the burden to industry. Accordingly, the CAA will, wherever possible:

- Use its powers as NSA to derogate under the Common Requirements to the greatest extent possible. However, the NSA has no powers of derogation for larger providers or, in the case of smaller providers, on safety requirements;
- Adapt its existing regulatory practices to fit the Common Requirements and impose on the industry the minimum additional obligations necessary to comply with the Common Requirements and achieve the desired safety outputs; and
- Adopt a pragmatic and proportionate approach to implementing the Common Requirements based on the risk posed by the service(s) under consideration.

In line with this approach, the ways in which the CAA proposes to deal with the various elements of the Common Requirements will vary.

**The CAA would welcome the views of stakeholders on this risk-based approach to the application of the Common Requirements.**

### **3.2 ATS Safety**

The CAA's prime objective – endorsed by the Secretary of State - is to ensure that there is no dilution in UK safety standards and therefore, the basic structure of safety oversight will continue. Accordingly, the CAA is assessing whether a safety deficit exists between the levels achievable under the Common Requirements and those achieved through approval under ANO, in particular Articles 88 and 104. These provisions apply to both airport and en-route providers.

### **3.3 Economic Issues**

3.3.1 The Common Requirements introduce a range of business, financial and reporting requirements for ANS providers who, apart from NATS En-Route plc, have not previously been regulated in this way. Given that there is a contestable market for airport air navigation services and for airports generally in the UK, the CAA will wish to avoid, where possible, adopting an intrusive regulatory oversight role.

3.3.2 However as the NSA, the CAA must ensure that the business plans, annual plans, audited financial accounts and the annual report are produced and address each of the required elements of the Common Requirements. The CAA will be considering how best to fulfil its functions in a way that imposes as little additional regulatory burden as possible. The CAA has no wish to interfere with existing contractual relationships or to add unnecessary costs in a previously unregulated market. The CAA welcomes industry's views on how best to carry out its regulatory role; the extent to which it might need to adapt this role to take account of different scales

and types of service provider; and how it might draw or rely upon existing processes or systems to fulfil its requirements.

- 3.3.3 Given the market environment and the coverage of economic and financial elements foreseen at the certification stage, it seems unlikely that an overlay of further economic requirements will be needed at the designation stage.
- 3.3.4 The CAA will expect that all ANSPs hold appropriate liability insurance cover proportionate to their activities. Accordingly the CAA intends to consult with industry to establish appropriate criteria by which it can be satisfied that the provider has suitable arrangements in place to cover its activities.

**The CAA as a matter of policy does not plan to grant derogations from the requirements for ANSPs to hold liability and insurance cover.**

**The CAA would welcome the views of stakeholders on the proposed approach to regulation of the economic requirements of the certification process.**

### **3.4 MET Services**

States *may* designate a MET provider to supply all or part of MET data on an exclusive basis in all or part of the airspace under their responsibility, taking account of safety considerations. Given the exclusivity foreseen for designation of a MET provider in given airspace, it is for consideration whether a designation of the Met Office would be appropriate in a market where smaller MET services compete with the Met Office in relation to the same airspace.

**The CAA would welcome the views of stakeholders on the designation of MET providers.**

## **4 Compliance Questionnaire**

- 4.1 To minimise the regulatory burden on industry, it is proposed that ANSPs will be required to complete a questionnaire to assess their compliance with the Common Requirements and identify the measures and controls that have been implemented against each of the corresponding requirements. This will enable the CAA to assess the suitability of ANSPs for certification by reviewing responses, and where necessary auditing to verify compliance. To validate the integrity of this process a programme of sample audits will be carried out across a range of providers.
- 4.2 It should be noted that evidence referenced in the ANSPs responses will form the basis of a legal declaration of compliance and be used to generate audit data to develop a sector-wide risk-based audit programme, to facilitate ongoing regulatory oversight.
- 4.3 Industry feedback and experience gained from the implementation of Safety Management Systems by ATC providers, indicates the need for detailed guidance material including suitable examples. Appropriate guidance will be developed to support the full scope of Common Requirements to accompany the compliance questionnaire, although the precise format and media have yet to be determined.
- 4.4 The CAA anticipates that over 300 ANSPs will need to be certificated in accordance with the Common Requirements by the mandated date. In order to manage the demand and workload associated with verifying compliance of ANSPs, the CAA

intends to seek responses from specific categories of providers in advance of the mandated deadline. This will not require ANSPs to comply with new requirements in advance of the legal deadline, but will require ANSPs to specify planned measures, where these are not already in place.

**The CAA would welcome the views of stakeholders on the use of a compliance questionnaire and its associated guidance material.**

## **5 Benefits of Proposed Approach**

- 5.1 The proposed approach recognises that the UK has an established ATS industry currently regulated by the CAA and that it has a good safety record. The development of a compliance questionnaire and guidance will minimise the regulatory burden on industry whilst enabling the CAA to maintain a robust and effective means of verifying compliance with the Common Requirements by facilitating a risk based approach commensurate with the type and level of service provided by the ANSP.
- 5.2 It is considered that the approach of using a questionnaire will reduce the time and effort required by ANSPs in demonstrating their compliance and minimise the burden of regulatory oversight and associated costs to industry.
- 5.3 The proposed approach will also enable the CAA to manage the workload implications of the requirement to certificate compliant ANSPs by the mandated deadline and will help mitigate against a last minute rush by seeking responses from ANSPs in advance of the mandated deadline for certification.
- 5.4 These proposals are consistent with the pragmatic and proportionate approach to which the CAA has committed in its impact assessment and with the principles of regulatory inspection and enforcement set out in the recently published review by Philip Hampton: *Reducing administrative burdens: effective inspection and enforcement*.

**The CAA would welcome the views of stakeholders on the benefits of the proposed approach.**

## **6 Further information**

- 6.1 Further information in relation to the ANSP Certification and Designation Processes will be provided at a CAA / Industry Seminar to be held in September 2005\*. It is intended that the questionnaire will be available towards the end of August 2005, in advance of the conference.

\* **Note:** The seminar has been provisionally booked at the Royal Bath Hotel, Bournemouth on 14 September. Details will be made available, via the CAA website, in due course)

6.2 Additional Information can also be found on the following links:

CAA Website <http://www.caa.co.uk>

DfT Website [http://www.dft.gov.uk/stellent/groups/dft\\_control/documents/contentservertemplate/dft\\_index.hcst?n=12313&l=2](http://www.dft.gov.uk/stellent/groups/dft_control/documents/contentservertemplate/dft_index.hcst?n=12313&l=2)

EC website [http://europa.eu.int/comm/transport/air/legislation/index\\_en.htm](http://europa.eu.int/comm/transport/air/legislation/index_en.htm)

Further information will be updated on the fortnightly bulletin at the CAA website [http://www.caa.co.uk/docs/1/DAP\\_SES\\_INFORMATION\\_BULLETIN.pdf](http://www.caa.co.uk/docs/1/DAP_SES_INFORMATION_BULLETIN.pdf)

## **7. Summary of Key Points**

- New European legislation will require ANSP's to be certificated and designated in order to provide services probably from late 2006.
- ANSPs will be required to complete a questionnaire and may be subject to regulatory audit to determine their compliance with the new requirements.
- The questionnaire and selective / sample audit will form the basis for certification and designation by the CAA.
- It is intended that the compliance questionnaire and accompanying guidance will be made available to ANSPs by late August 2005.
- ANSPs currently approved in accordance with the relevant articles of the UK Air Navigation Order (e.g. Art 88 or 104) will be designated to provide services concurrently on being certificated in accordance with the Common Requirements.

## **Summary of Common Requirements**

### **1. Scope of the Common Requirements**

1.1 The Service Provision Regulation, which became law in April 2004, requires that:

- The provision of all ANS within the Community be subject to certification by Member States, and
- Member States designate an ATS provider with a valid certificate to provide ATS, on an exclusive basis, within specific airspace blocks.

Once certified, the ANSP is able to offer its services anywhere in Europe.

1.2 The Common Requirements set out detailed requirements for the certification of providers of Air Traffic Services (ATS), Meteorological Information (MET), Aeronautical Information Services (AIS) and Communications, Navigation and Surveillance services (CNS) to a set of common standards which cover:

- **Technical and operational competence and capability,**
- Organisational structure and management, including the production of a five-year business plan,
- Safety and Quality management,
- Security,
- Human resources,
- Financial strength,
- Liability and insurance cover,
- Service quality, and
- Reporting requirements.

1.3 ATS providers must also meet specific requirements on:

- Ownership,
- Non-discriminatory provision of services,
- Safety of services, and
- Working methods and operating procedures.

1.4 Under the Service Provision Regulation itself, additional conditions relating to the following **may** be attached to the certificate:

- Non-discriminatory access to services and the required level of performance of such services,
- Operational specification for particular services,
- Time by which services should be provided,
- Operating equipment to be used in particular services,
- Ring-fencing or restriction of operations of services other than ANS,
- Contracts or other arrangements/agreements between the ANSP and a third party,

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- Provision of information reasonably required for verifications of compliance,
- Any other legal conditions which are not specific to ANS, such as conditions relating to the revocation or suspension of the certificate.

1.5 The CAA does not intend to attach additional conditions to the certificates it issues. The certificate is, in essence, an entry ticket to the market and the CAA wishes to keep barriers to entry as low as possible within the framework of the Common Requirements.

## 2. Derogation from the Common Requirements

2.1 **No ANSP is wholly exempt from the Common Requirements** although small providers who elect not to seek business outside of their home State may be eligible for derogation from some aspects of them. ATS providers may seek a derogation if they provide services only with respect to one or more of the following:

- general aviation;
- aerial work;
- commercial air transport limited to aircraft with less than 10 tonnes of maximum take off mass or less than 20 seats;
- commercial air transport with less than 10,000 movements, counted as the sum of take-offs and landings, per year.

Other ANSPs may seek a derogation only if they have a gross annual turnover of 1,000,000 EUR or less in relation to the services provided.

2.2 The CAA, as National Supervisory Authority, may grant derogations only from the requirements of Annex I of the Common Requirements insofar as they relate to

- organisational structure and management
- the provision of a Quality Management System and of operations manuals
- the establishment of a Security Management System
- financial capacity and audit
- liability and insurance cover
- contingency planning, and
- reporting requirements.

2.3 The CAA may also grant derogations to providers of aerodrome flight information services who regularly operate not more than one working position at any aerodrome. These derogations may relate only to the following requirements of Annex II, part 3, but do not apply to the requirement for a Safety Management System itself:

- Safety management responsibility as well as external services and supplies
- Safety surveys
- Safety requirements for risk assessment and mitigation with regard to changes.

**CAA Single European Sky – ANSP Certification and Designation Implementation Policy**

**1. Objectives**

- To ensure that, in accordance with Government policy, existing UK levels of safety are not eroded;
- To ensure that existing UK ATS providers are certificated in accordance with the Service Provision and Common Requirements Regulations by the mandated date (due late 2006 / early 2007);
- To ensure that existing UK ATS providers are designated in accordance with the Service Provision Regulation by the mandated date (due late 2006 / early 2007);
- To ensure the Certification and Designation processes are co-ordinated effectively across the CAA;
- To minimise costs to industry arising from SES legislation by utilising existing structures, systems and processes wherever possible and by making the maximum use of NSA powers to derogate smaller providers under the Common Requirements; and
- To preserve, so far as possible the incentive-based regulation of NATS En-Route Plc (NERL).

**2. Principles**

- The CAA will apply the Service Provision and Common Requirements Regulations in a manner that is commensurate and proportionate to the aviation safety risk posed by the service(s) under consideration;
- Existing CAA organisational structures, regulatory processes and resources will be utilised wherever practicable;
- The CAA will focus regulatory activity at the point of service delivery;
- The requirements for ANSP certification are only those explicitly stated in the CRs;
- That existing UK national requirements and ESARRs not transposed directly into the CRs will fall outside the remit of the Certification process and will by default become the UK safety requirements for Designation of existing service providers;
- Where ESARRs have been amended or re-written as part of the transposition to the CRs, the CAA will implement the transposed version as it appears in the CRs for the purposes of certification;
- Certification will apply at corporate level (where appropriate), but Designation will apply at unit level;

- In general, CNS will be certificated as part of the bundle of services associated with ATS providers;
- For the purpose of certification, existing providers will, where relevant, be asked to confirm their compliance with relevant ICAO SARPs;
- Designation will address the issue of compliance with any relevant ICAO SARPs not covered by the CRs.