

ACOG Response to the CAA

Subject: Economic Regulation of NERL: Illustrative proposals for modifying the Licence to support the implementation of a UK Airspace Design Service CAP 3063: ACOG Response

The CAA wishes to receive stakeholders' views on any aspects of the approach set out in CAP3063 regarding the proposed NERL Licence Conditions that will underpin the establishment of a UK Airspace Design Service phase 1. Whilst ACOG is not suitably qualified to comment on all of the proposals in CAP 3063, we have drawn on our collective experience to offer views where we deem it appropriate. The CAA sought views in particular on the following matters, the commentary on which is set out below each paragraph:

(a) our overall approach to establishing licence modifications for NERL that will enable it to successfully provide the Airspace Design Service;

The overall structure appears to be satisfactory in terms of the technical production of a regulatory Licence condition, but the key details on elements such as costs to be incurred (as the EGIS study authors note themselves) are not sufficiently robust for stakeholders to understand the extent of the investment likely to be required and whether the business case is therefore viable within the usual construct of a 10 year business plan. As an example, the planning assumption by EGIS that NERL could conduct two concurrent deployments out of four from 2025 to 2035 (para 4.10) appears to ACOG to be flawed under current plans and could lead to a significant inflator of costs (additional SMEs/simulation capability/systemisation processes to name but a few); this assumption would need to be tested with NERL in terms of the ability to roll out concurrent large airspace changes especially in the southeast. We note that the time period is 2025-mid 2035, representing a slippage of several years on the original plan. If this specific assumption is flawed there is a risk that the time horizon could shift even further to the right commensurate with a one deployment strategy as hitherto and could incur significant additional costs.

(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 finance-ability;

ACOG notes (para 1.7) that the administration of the Airspace Design Support Fund is subject to further policy development. We believe that it would be in the interests of the whole modernisation programme to "fast track" a funding proposition that would underpin the whole programme (not just the LTMA) and separate out a dependency on the UKADS1 proposal. Given our experience in the administration of the government COVID grant funding and as an entity one step removed from the UKADS, we would offer the thought that this task might sit better under the impartial and independent aegis of ACOG? Achieving an early funding solution across the national programme of change would as a minimum reduce the uncertainty that has evolved since the two-step, dual-track funding proposal was first mooted, thereby safeguarding and potentially increasing the momentum on key benefits delivery in the leading SctMA and MTMA clusters.

(c) the prospective obligation on NERL to perform the Airspace Design Service and the approach to setting the geographic scope of these activities;

We note the intention to create a single design for the LTMA with which we completely concur: we would caution that this should not equate to a single ACP (under the current CAP1616 process), which would prove, in our opinion, unwieldy or in extremis unmanageable, unless the CAP1616 was subject to fundamental change. For example, a series of ACPs linked by design and programme plan outcomes (as per the current plan) might still be more appropriate/manageable, if the CAP1616 process itself is not radically streamlined. Whilst we do not propose to offer an answer, we believe that some detailed regulatory thinking needs to be applied to this critical aspect of the Design Service and the respective crafting of the Licence.

(d) the prospective obligations on NERL with respect to its relations with third parties, including through the Advisory Board and working arrangements with partner organisations;

We note the proposals for the Advisory Board and the requirement for NERL to produce a strategic plan and (para 2.25) and for the Advisory Board to ensure that NERL produce that plan “on time”; experience shows that the clunkiness of CAP1616 in dealing with concurrent, multiple co-dependent ACPs and the regulatory resource required to administer the process have the distinct potential to hinder any “best endeavours” to produce a plan to cost, time and performance; not least the requirements for rework; re-consultation; legal challenge etc – to derisk this critical aspect of delivery, the fundamental regulatory approach needs further significant adjustment in our view.

(e) the approach to distinguishing between NERL’s new obligations and those relating to the Airspace Change Organising Group (“ACOG”);

We have responded separately to the Joint Consultation proposals and would note here (para 2.39) that limiting the geographic scope of ACOG outside of the LTMA in the short term as UKADS establishes itself may be premature; it may be better to keep options open and permit NERL to focus solely on the LTMA for now.

(f) any views on the consequential changes to NERL’s licence discussed in chapter 3 (Consequential modifications to the Licence);

No comment.

(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);

Noting that the cost assumptions are very heavily caveated at this stage, we reiterate our points in para (a) above; that the cost model is based on planning assumptions (para 4.10) that are at best optimistic in terms of NERL’s requirements to achieve what is required in terms of managing concurrent deployments and the extent and number of those deployments.

(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;

We suggest that the cost of transitional arrangements from airport sponsors in the LTMA to the ADS1 entity may be underestimated in both cost and time (unless there is a fundamental reconfiguration of the CAP1616 process to take this transition into account). For example, transfer of the sheer volume of data from airport sponsors to NERL in terms of existing design plans could take months to achieve and then verify per airport.

(i) whether the cost pass through approach for recovering costs related to the Airspace Design Service and the Airspace Design Support Fund is appropriate;

To derisk the delivery of non-LTMA clusters of the FASI programme we believe (see comment under para (b) above) that it is essential to apply the same funding support mechanism to eligible non-LTMA airports in the FASI programme as quickly as possible, including consideration of “claw-back” for airports currently invested in the FASI programme, such that planned delivery by the programme can be assured during 2025 in the ScTMA and MTMA clusters.

(j) whether these costs should be recovered from users in the year that they are incurred;

As per (i) above, we consider that an immediate/interim cost recovery or cost support mechanism is required to underpin successful rollout of the ScTMA and MTMA clusters on currently planned timelines. The two-step, dual-track approach to support funding that has been proposed has already created uncertainty in sponsors' plans and threatened schedules.

(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;

No comment.

(l) the illustrative charges set out in table 5.1 in chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges);

See paras a, g and h above

(m) any comments on illustrative drafting of the licence modifications set out in Appendix B and Appendix C

No comment.

Prepared by	Title	Date
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