

# Economic regulation of NERL: CAA Final proposals for modifying Licence to support implementation of UK Airspace Design Service (CAP3164)

NATS' response  
20 January 2026



**NATS**

## Summary

This document provides NATS (En Route) PLC's (NERL) response to the CAA's final proposals for changes to conditions in the NERL licence to support implementation of the UK Airspace Design Service.

We welcome the development of the CAA's proposals over the course of 2025, and the related development of the wider airspace policy and the processes for developing and consulting on airspace changes. Together these will provide the legal and regulatory context in which the UK Airspace Design Service, within NERL, will operate.

We consider that the proposed licence changes provide a reasonable basis for NERL to assume the UK Airspace Design Service function. They should enable NERL to manage the service efficiently and effectively, within tolerable risk limits and with appropriate financial compensation for risk. We remain concerned though that the enforcement risk associated with the Airspace Design Service, especially when compared against the financial terms offered, is disproportionate, notwithstanding the CAA's most recent changes to its proposals.

Our comments are by exception at this stage, highlighting those remaining areas where we consider the proposals could be improved through specific drafting changes.

## 1. Licence modifications

### Overall approach to the design of licence modifications and the nature of the obligation to be placed on NERL

We agree with the CAA proposals at 1.23-1.25.

We place particular store by the CAA's commitment to consider the impact of changes to scope and guidance, and to consider consulting NERL and other stakeholders "in the event that either: the strategic objectives set by the Secretary of State for the Airspace Design Service and Airspace Coordination Service; or the guidance as to how NERL will be required to deliver those services change in such a way as would involve a material change to NERL's resource requirements" (paragraph 1.21). This should provide an important protection for NERL, to enable it to adjust resourcing, costs and ultimately charges so that the planned Airspace Design and Coordination Services match both the scope and the required approach to delivery which will be set by DfT and CAA guidance.

NERL has submitted its comments separately to the parallel consultations on:

- > CAP3158: UKADS Guidance
- > CAP3159: UKACS Requirements, and
- > Air Navigation Directions & Air Navigation Guidance.

We agree with the proposed AND/ANG and (subject to minor modifications which we suggest) with CAP3159: UKACS Requirements. We have significant concerns with the drafting of CAP3158: UKADS Guidance, and have made suggestions for major modifications to improve this draft guidance.

### Enforcement issues

We welcome the two changes proposed by the CAA:

- > to amend the obligation on NERL to have due regard to and comply with the geographic scope and strategic objectives so that this requirement is on an "all reasonable endeavours" basis; and
- > to incorporate wording in Condition 5 to clarify that NERL will not be required to prioritise the Airspace Design Service over its Core Services (as defined in the Licence).

We note the CAA's exposition of its approach to the enforcement regime, penalties and safeguards for NERL (paragraphs 1.30-1.36) and its conclusion that it does "not see merit in creating a "special case" for regulation of the Airspace Design Service as our current approach, combined with the "checks and balances" described above should provide sufficient assurance to NERL in relation to its concerns" (paragraph 1.36). The CAA's explanation of the procedural constraints and the guiding influence of its duties provide a helpful reference for all stakeholders in considering the financial risk to NERL of any penalties arising from any CAA findings of licence breach in respect of Airspace Design Service activities. However, one of our main substantive concerns remains: the enforcement risk associated with the Airspace Design Service, especially when compared against the financial terms offered, is disproportionate.

It remains our strong view that: (i) termination rights based solely on breach of Airspace Design Service related matters should be confined to termination of the Airspace Design Service; and (ii) clarification is included in the Licence confirming that financial penalties based solely on breach of the Airspace Design Service are calculated only by reference to that service.

## Geographic scope

NERL previously raised concerns that if the geographic scope were changed simply by guidance and not licence change, then this could reduce the protections for NERL to secure the right level of resources for the Airspace Design Service to deliver effectively across its new scope.

Although the CAA retains its core proposal to change scope via guidance, we welcome the addition of the consultation step (“NERL be required to have due regard to any revised strategic objectives only after consultation”) and the requirement on the CAA to have explicit consideration of whether the change in scope was such as to warrant a Licence change instead / in addition.

## Administration of the Airspace Design Support Fund

We support the CAA’s proposed revised approach, that:

- > the DfT should determine the final eligibility criteria;
- > the DfT or CAA should decide whether the applications meet those eligibility criteria; and
- > NERL will be directed to distribute the funds.

This aligns closely with the approach for which we had advocated in previous consultations.

We would welcome further engagement with the CAA to understand better the CAA’s expectation with regard to NERL’s administration role.

## Role of ACOG

We support the CAA’s proposals to:

- > remove the Licence requirement on NERL to maintain ACOG
- > remove CAP2156a/b Airspace change masterplan - CAA acceptance criteria and assessment framework, respectively
- > introduce a relatively simple obligation to provide the Airspace Coordination Service (defined in terms of replacement guidance
- > introduce an obligation for NERL to have due regard to guidance from the CAA as to how to provide the service.

As noted above, we have responded separately to the CAA’s consultation on CAP3159: UKACS Requirements, which we support (subject to minor suggested amendments).

## Other topics

In the following topics, NERL agrees with the CAA’s final proposals with regard to Licence changes:

- > Matters the Airspace Design Service should take into account
- > Governance and the Advisory Board
- > Relationships with stakeholders

As noted above, though, we have significant concerns with the proposed content of the stakeholder engagement plan, part of the guidance to NERL to inform and influence its relationships with stakeholders.

## 2. Costs, form of charge control and proposed charges

### Duration of the price control

We agree with the proposal for a short two-year price control period, covering calendar years 2026 and 2027. We expect to make proposals for the longer term costs of the Airspace Design Service and the economic regulatory framework in which it will operate as part of the wider NR28 price control review for the whole of NERL.

### Costs of new airspace design services

We agree that the Charge should only reflect the incremental costs of providing the Airspace Design Service and administering the Airspace Design Support Fund for the remainder of NR23.

We are not yet in a position to provide an update to CAA's cost estimates, as we are still evaluating the likely scope of UKADS activities and some relevant policy consultations are yet to conclude. However, our current high-level assessment indicates that UKADS incremental costs in 2026 and 2027 are likely to be lower than CAA estimates. Given the CAA's proposed cost recovery framework, under which charges over time will reflect actual incremental costs incurred, we consider that the CAA's current estimates remain an adequate basis for setting Airspace Design Service charges for 2026 and 2027. However, if the pace of mobilisation is delayed, thereby dampening the level of expenditure, there is a remote possibility that the subsequent NR28 correction mechanism could result in a negative unit rate. To mitigate this risk, we would recommend the unit rate formulae include a nil *de minimis* limit, with unrebated amounts rolled into future year's unit rates.

We propose to determine incremental costs by way of detailed capture of costs incurred in the delivery of UKADS, relative to the NR23 baseline for airspace change capital investment and ACOG activities.

### Approach to cost recovery, incentives and early costs

We support the CAA's proposed cost pass-through approach during the remainder of NR23, with the introduction of a correction mechanism at NR28.

We note the CAA's proposal that it would consider carrying out an *ex post* assessment of costs if they are materially greater than estimated or if there is evidence of inappropriate cost allocation. In the event such costs were found to be demonstrably inefficient or inappropriately allocated, the CAA could disallow the recovery of such costs through changes to future allowances. We recognise the CAA's objectives here and the alignment with some of its statutory duties. We would encourage the CAA to adopt a proportionate approach to any cost assessment and subsequent disallowance and to provide adequate opportunity for NERL to present its own evidence and to be consulted. In deciding whether to act, the CAA should also bear in mind one of its other duties, 2(6) "The CAA must exercise its functions under this Chapter so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions".

### The profile of cost recovery over time and risk and return

We support the CAA's proposal to adopt an opex with margin approach for the 2026-27 price control. We will make proposals for the profile of cost recovery over time and the return on costs in our NR28 plan.

We note its proposal to apply an operating margin of 2% for the remainder of NR23, and welcome the development in its thinking over previous consultations on this topic. While we previously argued for a 3% margin, our assessment now is that with a reduced risk of licence breach and financial penalty, as a result of the CAA's changes to the test of licence compliance, and greater clarity around the scope and activities that the Airspace Design Service will undertake, a 2%

margin would be acceptable for the remainder of the NR23 period. We will revert with proposals in our NR28 business plan for the longer term economic regulation of the Airspace Design Service. Our current view is that arguments that we previously advanced, for the bulk of ADS costs to be capitalised in a regulatory asset base and recovered over 15 years, with a return on the capital invested, remain valid, and that the CAA’s counter-arguments of complexity versus short term convenience would not be relevant over this longer period.

In the supporting CAP3164a cost and charges spreadsheet model, we believe that the CAA’s calculations generate a charge based on operating cost mark-up rather than an operating margin. The differences between the two approaches are summarised below:

	operating cost mark-up	operating margin
costs	a	a
% mark up	$b = (c1 - a)/a$	
% margin		$b = (c2 - a)/c2$
charge	$c1 = a * (1 + b)$	$c2 = a/(1 - b)$

Since  $(1 + b) < 1/(1 - b)$  for any given input b in the range (0,1), then c1 is less than c2. So the CAA’s calculations show that the charge c1 (based on the opex mark-up formula) is too low compared to that proposed by the CAA, which is intended to be an opex margin. While this is relatively small in percentage terms (-0.04%) and absolutely (c£14k ) in the remainder of NR23, this error, if left uncorrected would compound over NR28 if this approach to charge setting were maintained. We recommend that the CAA align its policy intent and charges calculation around the opex margin approach.

### 3. Draft licence modifications

#### Condition 1: Interpretation and construction

*“Airspace Change Process” means the process and guidance which airspace change proposals (as that term is defined in section 1 of the Air Traffic Management and Unmanned Aircraft Act 2021) must follow, 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).*

**Comment:** The inclusion of *“and guidance”* in the definition of Airspace Change Process is superfluous and potentially confusing. Part B already adequately requires NERL to *“have due regard to guidance published by the CAA”* in the Licence condition.

*“Strategically Important Interdependent Airspace Change” means a proposal for an airspace change determined to be strategically important*

**Comment:** It is not clear from the drafting which body or bodies are empowered to determine whether an airspace change is Strategically Important, and what process if any they must follow before doing so.

#### Condition 18: Provision of the Airspace Design Service and related activities

##### Part A

4 ... to undertake the activities set out in section 98(1)(f) of the Act relating to the airspace in which the Licensee provides the UK En route Air Traffic Control Service which, if approved by the CAA in accordance with the Airspace Change Process, would deliver the objectives of the AMS.

**Comment:**

*“UK En route Air Traffic Control Service”:* Suggest clarify that UK En route Air Traffic Control Service includes Core and Specified Services

*“would deliver the objectives of the AMS”:* Is this additional qualifier necessary, given the subsequent specification that NERL must follow guidance in delivering the Airspace Design Service? Also, each individual Airspace Design Service activity would deliver only in part one or more of the AMS objectives, some of which will be delivered by other bodies, whereas the drafting implies a one to one match between current activities and achieving AMS outcomes.

##### Part D

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

**Comment:** As per Condition 2(7) of the current NERL licence, this requirement on Airspace Design Service should include an appropriate qualifier that is relevant and appropriate to NERL’s remit of Airspace Design Service and Airspace Coordination Service. We propose the following: *“after taking into account the need to maintain the most expeditious flow of air traffic as a whole without unreasonably delaying or diverting individual aircraft or such other criteria as the Licensee may apply from time to time with the approval of the CAA”*. This would more explicitly allow the Airspace Design Service to act in the interests of the whole network.