



‘Enhanced Engagement’ Terms of Reference:

Assessment of how well HAL is engaging with and responding to the airline community on its plans for capacity expansion at Heathrow and whether this engagement is appropriately reflecting consumers’ interests.

Introduction

In accordance with the Secretary of State’s (SoS) power under Section 16(1) of the Civil Aviation Act 1982, the SoS and Department for Transport (DfT) require the Civil Aviation Authority (CAA) to provide advice in connection with the duty of the SoS to develop civil aviation. This phase of engagement will be known as **‘Enhanced Engagement’** and subsequent advice will comprise of:

- Views from the CAA on how well, in the CAA’s opinion, Heathrow Airport Limited (HAL) has engaged with and responded to the airline community on its plans for capacity expansion at Heathrow airport; and
- Views on whether this engagement is appropriately reflecting the interests of consumers as per the CAA’s general duty under the Civil Aviation Act 2012 to further the interests of users of air transport services (defined as current and future passengers and cargo owners).

These Terms of Reference outline the principles that will govern this arrangement.

Background

In October 2016, the Government announced that its preferred location for the expansion of airport capacity in the South East of England was the Heathrow Northwest runway. Shortly afterwards the SoS requested, under Section 16 of the Civil Aviation Act 1982, that the CAA review and advise him on how well HAL is engaging with and responding to the airline community on the appropriate scope, design and costing of the new runway and capacity at Heathrow Airport.

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The engagement process began in December 2016 and gathered momentum during 2017 and early 2018. Throughout the process the CAA maintained regular involvement, observing and reporting on the format and quality of engagement as well as making recommendations on how the process could be improved. The CAA delivered quarterly reports to the SoS with a final report on this phase of the expansion process delivered in April 2018¹.

A key recommendation in this report was that there should be an extension of the CAA's role in advising and reporting to the SoS on progress made with regard to airport-airline engagement and as such a continuation of the de facto oversight role by the SoS while respecting the independence of the CAA. This successor process should be sufficiently agile and focused to support airport-airline engagement and protect the interests of consumers through the CAA's next review of HAL's price control² including the period during which HAL prepares its application for development consent.

The future Enhanced Engagement process will run concurrently with, and complement, the CAA's existing regulatory price control process. The CAA's price control process includes the development of a future regulatory licence and determination of the associated price control. The CAA will continue to monitor the quality and outputs of expansion related engagement through the lens of its statutory duties to further the interests of consumers as part of its regulatory price control process, including the assessment of HAL's business plan. Any reports or advice the CAA provides to the DfT/SoS as part of Enhanced Engagement arrangements, regarding progress with HAL/airline engagement will be viewed through this lens. The CAA will describe and comment on the views of stakeholders at key decision making gateways during the capacity expansion process.

DfT will continue to closely monitor the costs of any emerging scheme through the Enhanced Engagement reporting arrangements set out below. This will include maintaining pressure on industry to continue to work together to deliver the SoS's cost ambition to keep airport charges close to current levels which he made in October 2016. DfT also expects to see continued progress on the benchmarking of HAL's plans and costs by independent experts which the CAA will advise on as part of the Enhanced Engagement reporting arrangement. Enhanced Engagement will operate alongside other consultations that may be required under the Planning Act 2008.

¹ See the link below for the CAA's Section 16 reports <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Heathrow-price-control-review-H7/>

² See the link below for the CAA's latest information on HAL's price control <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Heathrow-price-control-review-H7/>

Objectives

The SoS's primary objective for this follow-on work is to understand how well HAL is engaging with and responding to the airline community on its plans for capacity expansion at Heathrow airport and whether this engagement is appropriately reflecting the interests of consumers. The key principles of Enhanced Engagement to achieve this objective, upon which the CAA should report to DfT, will include a need to:

- a. strive to deliver the SoS's cost ambition which he made in October 2016 to keep airport charges close to current levels in real terms;
- b. focus on value for money, including through benchmarking and the use of expert independent advice such as the enhanced role of the Independent Fund Surveyor;
- c. be inclusive of all airlines, including both airlines currently operating at Heathrow as well as potential new entrants, including the provision of accessible and appropriately tailored information;
- d. require all parties to be prepared to engage in good faith with third parties that come forward with credible alternative commercial or delivery arrangements;
- e. ensure the process is proportionate and sufficiently well-resourced without placing excessive burdens on airlines, HAL or other stakeholders;
- f. deliver high quality engagement with no decline in the current quality and intensity of engagement, building on it where necessary;
- g. be flexible to adapt to any future changes in the programme; and
- h. ensure that the process includes an appropriate gateway or gateways for airlines to have a formal opportunity to express their commercial views on whether sufficient comfort is available on overall scheme affordability.

Access to Specialist Advice

During the period of Enhanced Engagement, the DfT may, with the explicit agreement of the CAA, commission separate advice from the CAA's specialist advisors, to undertake work on the DfT's behalf. Any piece of work will be specific to the expansion process and the scope of any such work will be defined and agreed with the CAA in advance of any commission.

In addition, the CAA will be able to access DfT officials and advisors at the DfT's discretion where both parties agree that those officials/advisors could add value to the CAA's activities but without detracting from the CAA's independence.

Administrative Matters

Reporting and Monitoring

The CAA will provide the DfT with periodic updates on the progress of HAL-airline engagement. The format and timing of such updates will be agreed from time to time between the CAA and the DfT. As a minimum, there will be regular monthly project management meetings to keep the DfT updated on the progress of engagement.

DfT will request reports from the CAA at key project milestones or reports focusing on any particular issues which have come to light. The timing and format of such reports will be agreed between the CAA and the DfT. These reports will be published and the SoS will consider the information received from the CAA to see if further action is required.

Timescales

This section 16 commission does not prejudge any decision with regard to the potential designation of an Airports National Policy Statement. Any decision on designation remains subject to the consideration of consultation responses and Parliamentary recommendations.

This commission will come to an end if a decision is made not to designate an Airports National Policy Statement which maintains the Government's preference for a new Northwest Runway at Heathrow. The commission will also come to an end if it becomes clear that HAL are no longer taking the project forward.

Otherwise the commission will continue up to the point at which HAL submit their application for development consent (if the project goes forward). The DfT reserves the right to modify the length of the commission. Any extension will be discussed between the DfT and the CAA.

Budgeting, Invoicing and Payment

In accordance with section 16(4) of the Civil Aviation Act 1982, the CAA will be entitled to recover from the SoS expenses reasonably incurred by the CAA in providing the advice specified in this terms of reference. The CAA should keep a record of the expenses it incurs in the provision of this advice and support. For CAA staff, expenses will be based on day rates and pro-rated as appropriate; day rates for different bands of CAA staff will be set out in the budget once reviewed and confirmed.

In recovering such expenses, the CAA should provide the DfT with draft invoices on a quarterly basis at a minimum. The CAA should be prepared to provide any such information as the DfT may reasonably require in order to determine that expenses have been reasonably and efficiently incurred. This

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information might include, for example, timesheets detailing time spent by CAA staff on the project or, in the case of external specialist advice, invoices detailing expenditure actually incurred by the CAA. Once the DfT has approved the draft invoices, the CAA should submit final invoices to the appropriate Shared Services Centre for processing: DfT will provide the requisite details in due course.

Should DfT require the use of the CAA's contracted specialist advisors, as referenced above, payment of such work will be made in full by the DfT to the CAA. The DfT will require sight of the invoice of work in advance of payments to complete our records.

Changes to Terms of Reference

DfT may, in discussion with the CAA, amend and/or change these terms of reference from time to time, as appropriate in order to meet the SoS's requirements. The CAA will provide an update on the impact any such changes may have on time and/or cost of delivery of the advice.

DfT reserves the right to terminate this commission at any time and will reimburse the CAA for any expenses reasonably incurred in carrying out work prior to termination.