

Explanatory note: draft airspace modernisation condition for NERL licence

1. This note provides an overview of the draft airspace modernisation condition for the NERL licence. It sets out the background to the draft condition, the objective in proposing the condition and outlines the supporting rationale for specific provisions. To inform stakeholder engagement on the development of the condition, initial draft text for the condition is proposed in an Annex.

Background

Airspace Modernisation Strategy

2. The CAA's Airspace Modernisation Strategy (AMS) is designed to modernise the use of UK airspace to provide greater capacity for airlines to add new flights and reduce flight delays while continuing to improve safety standards. The aim is to prepare and maintain a coordinated strategy and plan for the use of UK airspace for air navigation up to 2040. The AMS was published as [CAP 1711](#) in December 2018. The Government has set out its support and objectives for the modernisation of UK airspace in its Green Paper¹ published in December 2018 in preparation for its forthcoming Aviation Strategy. Prior to this, in October 2017, the Government tasked the CAA with a key oversight role for airspace modernisation.

RP3

3. In the development of our programme of work to deliver the performance plan for RP3 (2020 to 2024), we have highlighted our expectation that NERL will have a key role to play in the coordination and implementation of UK airspace modernisation. As the monopoly provider of air traffic services for UK en route and approach, at certain London airports, airspace modernisation is a fundamental requirement of its current licensed activities. NERL is also the largest single source of relevant airspace design expertise in the UK.
4. In our RP3 business plan [guidance](#) to NERL we asked it to set out how it would develop a coordinated and sequenced masterplan of UK airspace changes between 2020 and 2040.

Airspace masterplan development

5. Alongside the RP3 programme, the AMS co-sponsors (the DfT and the CAA) have worked closely with NERL and other stakeholders to progress the development of an airspace masterplan. In 2018, on request of the DfT, NERL produced a feasibility study on the development of the necessary airspace architecture for modernisation; and in November 2018, the AMS co-sponsors wrote to NERL commissioning it to create a single coordinated UK airspace design and implementation masterplan for airspace changes up to 2040, with the first phase focussing on the necessary changes in Southern England (the 'South East

¹ The Green Paper also consults on some specific new government policies to support modernisation. <https://www.gov.uk/government/consultations/a-new-aviation-strategy-for-the-uk-call-for-evidence>

masterplan’). To support the development of the masterplan, NERL was also commissioned to establish a programme management function, referred to as the Airspace Change Organising Group (ACOG), to lead the implementation of the FASI North and FASI South airspace change programmes. The DfT published NERL’s feasibility study, and the CAA’s assurance of it, alongside the Aviation Strategy Green paper in December 2018. The commission requirements were replicated in the published AMS.

Objective of licence condition

6. NERL has proactively engaged and supported the development of the AMS and associated airspace modernisation activities over the last 18 months, and before that played a leading role in the development and implementation of the UK Future Airspace Strategy. There is no suggestion that without a licence condition, NERL would not continue its proactive approach.
7. However, as the AMS moves into implementation, it is important to formally and explicitly set out expectations of NERL in respect of airspace modernisation. This will help NERL to understand what the AMS co-sponsors expect of it and provide a basis for formal commissioning of supporting activities. At the same time it will help clarify how and where it is accountable for delivery. Not only will this provide formal mechanisms and powers to support CAA’s oversight of airspace modernisation, but it will also clearly signal and set out NERL’s responsibilities to other stakeholders.
8. It is noted that the Government intends to bring forward primary legislation, subject to the availability of time on the legislative agenda, to create additional mechanisms to support the implementation of airspace design changes in support of the AMS, which it is expected would complement the licence condition. This legislation could also create a new role for NERL in taking forward ACPs on behalf of airports, where directed to do so by the Secretary of State or a delegated authority.

Rationale for provisions

9. Initial draft text for the airspace modernisation licence condition is proposed in an Annex. The table below sets out the rationale for the main provisions contained in the draft text.

Provision	Para(s)	Rationale
ACOG	1	<ul style="list-style-type: none"> - Provides a regulatory basis for NERL to establish the ACOG, and therefore include efficient costs in its determined costs. - Establishes NERL’s leading role in chairing the ACOG Steering Committee and appointing key staff members. In

		effect NERL will be setting up, financing and managing ACOG.
UK Airspace Change Masterplan	2, 3	<ul style="list-style-type: none"> - Creates the obligation to produce, and accountability to create and maintain, on NERL for a masterplan for the UK starting with Southern England, and then the rest of the UK, in accordance with the commissioning letter and guidance issued by the AMS co-sponsors. - Sets out key criteria for the UK Airspace Change masterplan (consultation, reference to AMS, take account of guidance, reference to commissioning letter).
Assessment and acceptance	4	<ul style="list-style-type: none"> - Provides formal role for CAA in assessing and accepting the masterplan, without creating conflict with ACP decision making role. - We have said we will assess and accept the masterplan as the masterplan will be one means by which we meet our function to have a strategy and plan (Direction 3(e)). The Directions (5(1)) require us to make airspace change decisions in accordance with that plan. - DfT will simultaneously assess whether the plan meets the DfT's commissioning requirements so we will consult with DfT when deciding whether to accept the masterplan; thereby acceptance will be a parallel CAA/DfT decision. - We considered whether to use the 'form, scope and level of detail' approach we use for some deliverables elsewhere in the licence. However, given its importance to AMS we consider that we shall need to assess and accept its content, rather than only the quality of NERL's output/consultation.
Feedback	5, 6	<ul style="list-style-type: none"> - Places an obligation on NERL to actively respond to feedback from the CAA, through both its assessment and acceptance role (para 4), but also more generally in relation to the CAA Delivery and Monitoring Oversight (DMO) team's oversight of the AMS. - Also places an obligation on NERL to periodically update the masterplan when requested by the CAA. This is so that the CAA can require that at all times there is a plan

		for NERL and third parties to align individual airspace changes to .
NERL sponsored ACP	7, 8	<ul style="list-style-type: none"> - Places an obligation on NERL to deliver ACPs for which it is responsible as airspace change sponsor, including ACPs which it is directed to do under the proposed legislation that is being considered by the DfT. - We have not set out in the draft condition who would direct NERL to propose an airspace change. In practice it is very likely to be the CAA and DfT depending on who legal powers are attributed to. - Provides a basis for NERL to choose to sponsor or support other airspace changes to support of delivery of the AMS, subject to agreement with the AMS co-sponsors.
Reporting	9	<ul style="list-style-type: none"> - Places an obligation on NERL to report on progress against the masterplan, which would provide key information to DMO in its oversight function. - Does not specify form of reporting, such that existing arrangements or arrangements agreed between ACOG and DMO might meet the obligation
Other AMS activities	10	<ul style="list-style-type: none"> - Places an obligation on NERL to take forward other activities identified in AMS that are required by legislation.

Annex – Airspace modernisation licence condition – draft for discussion

1. The licensee must establish and manage an Airspace Change Organising Group (ACOG) by [insert date]. The ACOG shall be comprised of a Steering Committee chaired by NERL, with members drawn from industry bodies responsible for delivering relevant initiatives and at least two independent members. The ACOG shall manage and coordinate the delivery of airspace modernisation in Northern England and Scotland by 2021 and Southern England by 2024.
2. The licensee must create and maintain a single coordinated implementation plan for airspace changes in the UK (or airspace change masterplan) up to 2040. The first phase, focussing on airspace changes in Southern England, must be delivered by [insert date]. The UK masterplan must be delivered by [insert date].
3. The masterplan must:
 - a. be prepared in consultation with ACOG and using ACOG's skills and resources when appropriate;
 - b. deliver airspace modernisation as described in the Airspace Modernisation Strategy (CAP 1711) published by the CAA in accordance with Direction 3(e) of the Civil Aviation Authority (Air Navigation) Directions 2017;
 - c. take into account any guidance produced by the Secretary of State or CAA as co-sponsors of the Airspace Modernisation Strategy;
 - d. meet the criteria set out in paragraph 6 of the Department for Transport and CAA's joint letter to the licensee of 2 November 2018;
 - e. take account of the information provided by and expertise of the airport operators and other ANSPs in the relevant part of the managed area; and
 - f. take account of the views of the entities listed as representatives of a stakeholder group, or as a conduit to them, identified in the Airspace Modernisation governance annex to the Airspace Modernisation Strategy.
4. The masterplan shall be subject to assessment and acceptance by the CAA.
5. The licensee shall make any changes to the masterplan as are reasonably proposed by the CAA in order to comply with and meet the objectives of the Airspace Modernisation Strategy

6. The licensee shall periodically update the masterplan as reasonably requested by the CAA.
7. The licensee shall prepare and submit, to the CAA, the airspace change proposals relevant to airspace it is licenced to provide services in as set out in the masterplan, or any change to airspace design it is otherwise directed to prepare and submit.
8. Subject to coordination with relevant stakeholders and the agreement of the CAA, the licensee may develop and propose to the CAA, or provided related support to, airspace change proposals proposed by other bodies set out in the masterplan.
9. The licensee shall provide a report, using ACOG's skills and resources when appropriate, to the CAA on progress against the masterplan and related activities, on at least an annual basis.
10. The licensee shall take forward other activities identified in the AMS that are required in legislation and for which it is accountable.