CAP2275:

Economic regulation of Heathrow Airport Limited: H7 Initial Proposals – Draft Licence Modifications

Heathrow's response

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1. Introduction

1.1. We welcome the opportunity to respond to the CAA's H7 Initial Proposals ("IPs") - draft Licence modifications. The Licence is the key component of the regulatory framework – its cornerstone. It is therefore essential that it appropriately reflects the requirements for a successful H7. To avoid undesirable outcomes and unintended consequences, it is key that the H7 Licence conditions are proportionate, targeted, and do not place an unreasonable or unrealistic burden on Heathrow to deliver.

1.2. In CAP2305, the CAA made recent changes to Heathrow's Licence, to take effect on 2 February 2022, specifically:

- replacing the whole of Condition 1 (price control condition);
- modifying Schedule 1 to ensure that rebates and bonuses can continue to be accrued; and
- removed/updated definitions relating to the regulatory year/period.

1.3. The CAA has stated that it intends to re-insert the adjustment mechanisms which it has decided to remove for the purpose of setting an interim price cap for 2022,[1] we are relying on that statement to ensure appropriate adjustment mechanisms are retained. The CAA has created a legitimate expectation that the adjustment mechanisms will be re-inserted, and in the event that the CAA intends to move away from that policy position we expect it to consult further, giving Heathrow a proper opportunity to respond.

1.4. As we noted in our response to the 2022 charges element of CAP2265, Heathrow provisionally accepted the notion of a holding cap for 2022 whilst reserving our right to fully evaluate the CAA's H7 Final Decision on the basis of the provisos set out in the following paragraph.

1.5. The provisos are:

- That in the event that the final decision for H7 (including following any appeal) specifies a maximum revenue yield per passenger (averaged across the period of the control) which is higher than £30.19[2], then an adjustment is made to H7 to make Heathrow whole for the difference. Heathrow understands that to be the CAA's intention.
- That Heathrow's provisional position on the idea of a holding cap for 2022 is entirely without prejudice to its position in H7 general.

Proposed H7 Licence Modifications – key concerns

1.6. The CAA's proposed definition of 'Regulatory Year' results in the Licence obligations having retrospective effect between 1 January 2022 and the time the H7 Licence properly comes in to force. This does not work in practice and in any event is not legally permissible given:

- the general position that retrospective actions by a regulator are not permitted unless specifically allowed for in statute; and

[1] The CAA will "re-insert updated versions of the adjustment terms (including formulae, definitions and tables) that allow HAL to account for and recover elements such as capex, the security factor, business rates and service quality bonuses in modifications we adopt to implement the final decision." (CAP2305)

[2] As set by the CAA in CAP2305

- there being no such provision in the Civil Aviation Act 2012 ("CAA12") allowing the CAA to do so.

1.7. It would therefore be irrational for the CAA to expect Heathrow to be required to meet standards retrospectively. Particularly in relation to governance processes or outcomes measures, during a period when those processes/measures etc. had not been decided upon and/or notified. Given the nature of the changes that would be needed that arise as a result of this issue, we have not included new drafting in the table below (see Section 4) or called out every area in which the drafting would need to be amended so as to address this. However, we request that the CAA amends the drafting throughout the Licence in order to ensure that the Licence does not have retrospective effect.

1.8. Further, we are concerned that there are key elements missing from this consultation, such as drafting for Traffic Risk Sharing and request that the CAA provides greater certainty on these fundamental elements as a priority.

1.9. The CAA has also failed to provide draft Licence modifications in a timely manner which has resulted in them not being provided as an integrated part of the CAA's IPs at the end of October. This lack of integration is evident within the CAA's proposals and results in it being highly challenging to provide a comprehensive response to the CAA's proposals.

1.10. The CAA has stated that it does not expect the proposed Licence modifications to be finalised until summer 2022, following its Final Proposals and Final Decision and Notice. We ask the CAA to take in to account the impact of this out of sequence timing when setting dates for commencement of provisions in the Licence.

1.11. The CAA has not considered the submissions previously made by Heathrow on this area. This is a grave omission and a serious breach of the CAA's duty of conscientious consideration[3] which requires that it take conscientious account of submission made to it.

1.12. Ahead of the CAA's Final Proposals, we ask that the CAA:

- provides draft wording for traffic risk sharing and reopener proposals as soon as possible;
- provides further opportunities for consultation and detailed feedback, particularly given the omissions that are prevalent in this consultation[4]; and
- confirms that it will take into consideration the proposals that Heathrow previously submitted. In particular, all of the proposals contained in the Licence submission made in August 2021.

1.13. The structure of this document is set out as follows:

- Section 2 of this response provides a high-level overview of key areas that the CAA has omitted from its consultation and details what the CAA can do to resolve these omissions.
- Section 3 provides more detail on points relating to the CAA's proposed changes to Section F and dispute resolution

[3] See for example R (Morris) v Newport City Council [2009] EWHC 3051 Admin

[4] For example, there is no proposed licence condition for the TRS mechanism, the lack of capex incentive reconciliation and outstanding issues with regards to OBR and price indexation

- Section 4 and 5 provide more detailed comments on specific proposals. Section 4 is in tabular form.
- Section 6 provides detail on the proposals that Heathrow previously submitted which have not been considered by the CAA.

1.14. Heathrow is committed to providing a timely response and avoiding duplication, to that extent, nothing should be taken from the fact that certain points raised in the table are not highlighted in Section 2 or built upon in Section 3.

2. The consultation omits drafting on several key policy areas

2.1. In CAP2275, the CAA notes that there are several areas requiring further consideration. This means there are gaps in the consultation in the following areas:

- Traffic Risk Sharing ("TRS");
- capex incentive reconciliation (and the CAA's intention to introduce a mechanism for adding additional capex to the H7 capex envelope);
- price indexation; and
- OBR - outstanding issues which are subject to change.

2.2. It is disappointing at this stage of the price control that we do not have, at a minimum, draft text to engage with for all of these key policy areas. As a result of these gaps, we are concerned that we have not been able to respond to proposals on the price control in the round. These omissions are so prevalent and of such a fundamental nature that we do not consider this consultation is truly effective. We therefore request that the CAA provides further opportunities for consultation and detailed feedback on the Licence proposals prior to implementation.

2.3. Our response to the CAA's IPs sets out our policy views on a number of these topics. We reiterate (in summary) some of these points below.

Traffic Risk Sharing

2.4. As we set out in our response to the CAA's IPs[5], the CAA should carefully consider its approach to implementing the TRS mechanism. Specifically, it is essential that TRS is properly implemented through Heathrow's Licence for the H7 period.

2.5. If the CAA does not codify its TRS mechanism (and other mechanisms such as a reopener condition) within Heathrow's Licence, there is no guarantee that in the future the CAA would enact any of its current policy decisions. As we noted in our response to CAP2265, it has been made clear through the CAA's process to review Heathrow's price control in 2020 and 2021 that the current solution of relying on the CAA's previous policy statements and the ability to modify the Licence through Section 22 CAA12 is not fit for purpose. The CAA's Q6 Notice granting the Licence noted the ability to reopen a price control as an important aspect of the regulatory framework, including "*the ability of a licensing regime to revisit the price control if key assumptions, such as traffic, are significantly worse than the forecast, could be a credit strength*"[6] However, Heathrow's application for a RAB adjustment and the CAA's response has demonstrated that there is a lack of certainty to this process and an absence of clear criteria for the CAA to use in its decision-making in response to such events, this means relying on documents outside of Heathrow's Licence has not been sufficient.

2.6. Without a Licence condition, stakeholders, including Heathrow, would have no recourse to challenge the CAA through an expert appeal route. A non-Licence implementation would therefore undermine any forward-looking risk mitigation put in place by the CAA by circumventing the checks and balances in the CAA12 – which apply to Licence conditions but not to subsidiary instruments - and would not provide sufficient certainty to enable investors to rely on the new mechanisms. We consider this important in the context of the CAA's financeability duty.

[5] Response to CAP2265 - Chapter 1. Overall Approach to Regulation; A23 Legal Annex
[6] p298, CAA Q6 Notice granting the Licence, February 2014.

2.7. We note the CAA's acknowledgements of the consumer benefits that the TRS mechanism would bring and the assumptions it has made on Heathrow's financeability and investors' expectations based on the TRS mechanism. Given this, it is Heathrow's position that the CAA has erred in law as it has failed to consider the necessity of implementing TRS mechanism through a licence condition which it is required to do under Section 18(1)(b) of CAA12.

2.8. As a matter of urgency, and ahead of the Final Proposals, we ask that the CAA provides draft wording setting out how TRS will be codified within the Licence. If it would assist the CAA, we are happy to propose drafting for an appropriate condition.

Capex incentive reconciliation and adding additional capex to the H7 envelope

2.9. In our response to CAP2265, we noted our disappointment with the insufficient detail provided on capex incentive reconciliation. In the absence of detail from the CAA on the reconciliation process and how Delivery Obligations will be assessed we have been unable to make an assessment of the CAA's H7 proposals in the round.

2.10. As a result of the relative lack of maturity of some elements of the CAA's proposed capital incentive arrangements, we believe that the earliest any proposals can be implemented is 2023, and this date is contingent on the Final Proposals providing the full detail on incentives and capex arrangements and the CAA allowing sufficient time for proper and lawful consultation on its proposals in this respect. However, if the CAA's policy is not fully developed with the appropriate detail, including regarding the CAA's proposed reconciliation process, then implementation timescales will need to be reassessed.

2.11. With regard to adding additional capex to the H7 envelope, it is Heathrow's position that the Development and Core mechanism already deals with this issue, and therefore any new mechanism would be redundant. The CAA appears to be intending to add unnecessary complexity and governance into an already well-functioning process and we request the CAA reconsiders its position on this.

Price indexation

2.12. Another key omission from the CAA's IPs is any express consultation on the matter of indexation for the price control. Published on 23 November 2021, CAP2275 outlines that a decision needs to be made on price indexation but does not set out the CAA's views on the considerations, benefits and impacts of the available approaches. However, in the meantime, on 22 December 2021, the CAA made modifications to Heathrow's Licence through CAP2305 which introduced CPI to uplift the 2020 price used by the CAA in consultation.

2.13. In doing so, the CAA has unilaterally imposed a major change in policy without any proper discussion or consultation. The existing Licence condition for uplifting Heathrow's charges is based on the prior year's April RPI inflation increase and therefore any move from this should be properly consulted upon.

2.14. In taking a decision to use CPI for its interim price cap while the CAP2275 consultation is ongoing, the CAA could be seen as prejudicing the outcome of this consultation. We are therefore deeply concerned by the CAA's lack of regard for proper and lawful consultation process in relation to such a major policy change.

2.15. We expect the CAA to ensure that a full and comprehensive consultation is undertaken in relation to the correct metric prior to making its final decision. This consultation should include, but not be limited to:

- what alternative metrics could be used (e.g., a sliding scale or blended measure);
- a detailed assessment of why a change is required; and
- an analysis of the benefits and disbenefits of the change.

Outstanding OBR Issues

2.16. The continued uncertainty around the CAA's proposed OBR measures has again hampered our ability to consider the CAA's H7 proposals in the round.

2.17. The CAA has set out substantial changes to Schedule 1 to incorporate OBR. However, there are still several areas called out as being subject to change for final proposals, and potentially in-period. These include:

- queueing times (security scanning and control posts);
- availability-based measures;
- timely delivery from departure baggage system
- airport departures management; and
- cleanliness QSM.

2.18. CAP2274 also confirms that the CAA is still considering "*whether there might be an argument for delaying the introduction of some (or all) of the new OBR measures, for example until the beginning of 2023, to allow for an orderly transition to the new arrangements*".

2.19. We want to engage further with the CAA on the practicalities of the precise date of introducing new OBR measures ahead of the implementation of the H7 Licence. We note that, for contractual reasons, the introduction of the new QSM survey in July 2022, to allow us to efficiently measure the suite of new OBR measures will mean that we will be unable to measure performance as set out in the Q6 licence against the measures which we have agreed to remove through H7. These are measures on Flight Information Display Screens and Departure Lounge Seating Availability.

2.20. We remain keen to engage with the CAA on the areas which have been omitted from this consultation and ask for the information to be provided at the earliest opportunity so that there is time for full and proper consultation on the matters.

3. We are concerned about the effects of the CAA's proposed changes to Section F

3.1. We expand upon some key points in relation to the CAA's proposed changes to Section F and dispute resolution in the following paragraphs.

Without justification, the CAA has made changes to Section F which disproportionately widens its remit

3.2. The CAA's proposed modifications to Section F, to expand its scope to 'governance' as well as 'consultation', risk creating a new role for the CAA in second guessing Heathrow's business decisions, something it does not have the statutory powers or capabilities to do. Under section 21(1)(e) CAA12 a licence condition can include a provision requiring Heathrow, as the relevant holder of the licence, to refer a matter to a specified person for approval or determination. However, this does not include (for obvious reasons) the Relevant Parties. It could open the CAA to gaming by the third parties nominated as Relevant Parties – a category which is broad and contains entities with business interests which often run counter to Heathrow's. Relevant Parties need merely disagree with any of Heathrow's plans for investment, capital projects, pricing (C2: Charges for other services) and the service quality regime, or the governance regime related to any of these, for Heathrow to risk a technical breach of its Licence (under proposed Condition F1.1(a)) by proceeding. This will greatly increase regulatory uncertainty to no obvious benefit.

3.3. The CAA's proposals on Condition F1.3 would require Heathrow to agree with Relevant Parties its protocols, handbooks and other arrangements that govern its obligations under Condition F1.1(a) and would expand the remit of the Licence such that a Licence breach will occur if Heathrow does not comply in full with each of those protocols. These are likely to be a diverse set of documents which are best created with pragmatic and cooperative working in mind. Co-opting them into the Licence in this way could cause a great deal of bureaucracy and proliferate disputes and litigation.

3.4. The proposed modifications to Section F are unprecedented by the standards of other UK sector regulatory regimes in their broad reach and, judging by the open drafting, give the CAA unfettered powers. These powers could circumvent the checks and balances in CAA12 that are designed to protect the licensee and prevent untargeted and disproportionate interventions from the regulator. The CAA is required under Section 1(4) CAA12 when performing its duties to ensure that regulatory activities are carried out in a way which is transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

3.5. For these reasons the proposed modifications to Section F should be abandoned in their entirety or amended on the basis of Heathrow's suggestions (as set out in Section 4 below).

Section F dispute resolution condition

3.6. The language of the proposed dispute resolution condition (Condition F1.8) is only slightly changed over the existing licence (Condition F1.7). The effect though is wider because of the much broader potential scope of disputes that might be referred to the CAA under the proposed modifications to other section F conditions, notably F1.1(a).

3.7. The effect would be highly adverse to the regulatory settlement obliging Heathrow to obtain agreement from Relevant Parties for a wide range of its business decisions and the CAA appointing itself as adjudicator over the inevitable disputes that will

arise. There is no justification for such a change which would be disproportionate to the needs of the regulatory regime. It would also, by paralysing decision making and increasing costs, act against the interests of passengers and those with an interest in cargo and so would be contrary to the CAA's primary duty under s1(1) CAA12.

3.8. In addition, the lack of any process around how the CAA might exercise the dispute resolution powers it is proposing to grant itself is a serious problem. This raises concerns about regulatory certainty, a key attribute of sector regulation in the UK that is crucial to investor confidence and central to the settlement for end users.

3.9. It is not at all clear that the CAA has the legal authority to grant itself dispute resolution powers under a licence which is intended to place obligations on Heathrow. Generally, a regulator's dispute resolution powers are effected in statute. This allows Parliament to decide upon the oversight regime as well as to define what is in scope and the procedures and protections that must be followed.

3.10. For example, Ofcom's role in determining disputes over the provision of network access by BT Group are established in statute by Section 185 of the Communications Act 2003. The scope of applicable disputes is carefully defined and Ofcom is required to establish a procedure for making referrals, which it does through documented guidance.

3.11. On a dispute being referred, Ofcom must consider whether it is appropriate for it to handle the dispute (Section 186) and, having decided to proceed, make its determination after no more than a further four months. This limits the potential for disputes to run and run over long periods. Ofcom's powers for resolving such disputes are limited to only those provided for under Section 190, protecting the licensee and improving regulatory certainty.

3.12. Section 173 of the Energy Act 2004 is typical of the oversight regimes, defined in statute, that accompany dispute resolution (or similar) powers (in this case Ofgem's role in determining modifications to the electricity industry's Connection and Use of System Code). The statute tightly defines the appeal right. While the CMA must grant permission to appeal the grounds under which it may refuse are limited.

3.13. By contrast, the proposed Condition F1.8 lacks a statutory basis and is vague in respect of its scope. It also lacks any oversight aside from the limited grounds available at judicial review. If Parliament had intended the CAA to have dispute resolution powers, it would have granted them in primary legislation. There is no basis for the CAA to grant itself those powers through the Licence.

3.14. The profound and unnecessary expansion of the role of 'Relevant Parties' envisaged by the CAA's proposed modifications to Section F should not go forward and the dispute resolution powers in proposed Condition F1.8 should be removed.

3.15. With respect to exclusions for service quality - we agree that the Covid-19 pandemic has highlighted some weaknesses in the current legal mechanisms available to Heathrow when there is an adverse impact on airport operations arising from events that are beyond its control. In Heathrow's view a force majeure mechanism may be the most appropriate way of dealing with such circumstances. This mechanism would enable Heathrow to inform the airlines should it need to apply exclusions for measures due to matters beyond its reasonable control. Since the Covid-19 pandemic these applications have generally been made under the existing exclusion reason (o) of the Licence, and we envisage that the force majeure mechanism would be the equivalent of this. An alternative would be to build into the existing exclusion (o) the right to refer to a third party for a decision.

3.16. Should the airlines not agree, the licensee would then be able to refer the matter to a third party to be decided. The third party would then investigate based on the submissions of Heathrow and the airlines and issue a declaration that there either had, or had not, been a force majeure event. This approach ensures that there is a failsafe mechanism should the airlines not agree with Heathrow's approach.

3.17. This would provide stakeholders with a resolution, whilst ensuring that any CAA role in the detailed operation of the mechanism is targeted and proportionate. Such an approach is also similar to the regimes used in telecoms for such issues.

3.18. The mechanism could be put into effect through a contract, avoiding the need for the CAA to seek to expand its role under the Licence.

4. Detailed response to the draft Licence modifications

4.1. In the table below we respond to the CAA's detailed proposals and include our own proposed drafting amendments where relevant. The first column of the table below reflects the numbering in CAP2275.

Table 1: Response to draft Licence modifications

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
A3.1(f): Delete the definition of Regulatory Period and in C2.5, C4.1, E1.3, E1.5(a) & (b), E2.2, E3.5, Schedule 1: 2.1(e), (f) & (j), 2.28(a) & (b), 3.2, 3.4, 3.4(a) & (b), 3.5, 3.7, 3.11, 3.13, 3.15, 4.2, 4.4, 4.5, 5.2(b), 6.2, 6.3(c) delete all references to the term throughout the licence in text, tables and formulae.	Please see our comments at paragraph 1.6 above. We note that the CAA implemented this change in its Notice of Licence Modifications decision document (CAP2305)[7] – but maintain our comments as above.	N/A
New A3.1(f): Include a new definition of H7	Please see our comments at paragraph 1.6 above.	N/A

[7] Published 22 December 2021

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
A3.1(g) Modify the definition of Regulatory Year and in C2.1, C2.2, C2.3, C3.7, C4.1, E1.3, E3.1, Schedule 1: 2.4, 3.4(a), 3.5, 3.11, 6.6 change references to "each" and/or "subsequent [number]" Regulatory Years to read "any" Regulatory Year	Please see our comments at paragraph 1.6 above. We note that the CAA implemented this change in its Notice of Licence Modifications decision document (CAP2305) – but maintain our comments as above.	N/A
C1.1 Modify the text, formula and definitions to reflect the starting year of the H7 price control and changes to adjustment terms.	N/A	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
C1.1 Modify the text, formula and definitions to reflect the starting year of the H7 price control and changes to adjustment terms. C1.2 Modify the text, formula and definitions to reflect the relevant years of the H7 price control and changes to adjustment terms.	We note the adjustment terms have been reinstated, with the exception of A_t – the cost pass-through for runway expansion costs. This removes a condition that may be required, possibly in some new form, rather than providing the new formulation as part of the consultation. We do not see there is any benefit in removing the adjustment mechanism for H7. As we noted in our response to CAP2265, the earliest we would be able to implement the CAA's capex incentive changes is 2023, subject to the CAA having provided full details on the proposed incentives and capex arrangements for full consultation. We will therefore need to consider the implications on the Development and Core mechanism for 2022. As we noted in our response to CAP2265, in relation to the Terminal Drop-Off Charge, the CAA's IPs do not provide justification for its proposed 65% sharing rate for over and under recovery against the forecast revenues in our H7 plan. The implementation of any additional sharing of this revenue could also risk a double count under our proposed TRS calibration which should be reviewed by the CAA ahead of its Final Proposals. We therefore propose the 65% sharing rate is removed.	N/A
C1.3 Modify the text and definitions to reflect the H7 period, to note that we have yet to confirm if we will use CPI or RPI, and include allowable health and safety costs in the definition of St−1.	We note the price index has not been confirmed – as previously mentioned, this requires a full consultation. See paragraphs 2.12 – 2.15, above. Several areas have "XX" in place of values – Heathrow cannot respond effectively to the consultation as a whole without these values and asks that the CAA provides the necessary detail as early as possible to enable a response.	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
C1.4 Modifications to include allowable health and safety costs in the term and to reflect that the deadband will need to be changed	We understand from the IPs that the security and/or health and safety deadband range is to be revised, but the precise value has not been included. With no values assigned in place of the existing ±£21m, Heathrow is unable to provide a full response in light of this. Our view is that ±£21m remains appropriate, as the existing allocation has not been utilised in Q6, a fact which mitigates the expanded scope of the condition. We note there are some omissions in drafting changes which should read security "and/or" health and safety throughout. For clarity, we suggest the Q_t definition is retained (following C1.5) rather than referring upwards to condition C1.2.	C1.4 "Reductions in cost from changes in security and/or health and safety standards are considered…." [We suggest this is retained, having been deleted in the CAA's drafting] Replace "XX" with ±£21m. "C_t-1 … to security and/or health and safety costs per passenger in Regulatory Year t-2". "EC_t-1 is the expected security and/or health and safety …". "C_t…compared to security and/or health and safety…".
C1.5 modifications to update the term to remove redundant terms and reflect requirements in the H7 price control.	N/A	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
C1.6 Modifications to clarify the requirements of the term and introduce a symmetrical arrangement for projects that are completed early. [Note – refers to new C1.7]	As outlined previously, it is unclear to what extent the CAA will include conditions relating to reconciliation or other capex incentive related modifications. While we can see some benefit in a symmetrical arrangement approach to trigger milestones, the Capital Investment Triggers Handbook has not been updated yet, and there are elements of the CAA's capex incentive proposals which have not yet been specified. It therefore seems inappropriate to refer to this handbook until these details have been resolved. We note the trigger payment associated with each trigger is "XX" – without values and the associated CPI/RPI consultation, Heathrow is unable to fully respond to the CAA's proposals.	N/A
C1.8 Modifications to reflect the change to outcome based regulation	N/A	N/A
C1.9 and C1.10 Modifications to clarify the adjustment mechanism and reflect that a new WACC will be set for the H7 price control.	Due to the ranges used in the IPs, we note the CAA's proposal for the WACC has not yet been specified, and CPI/RPI has also not been specified (see paragraphs 2.12 – 2.15 above). Heathrow cannot respond effectively regarding these elements until proposed values are included, and we note that both require full consultation.	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
C1.11 Modifications to clarify the adjustment mechanism and update it to reflect the H7 price control.	We note the price index has not been confirmed (see paragraphs 2.12 – 2.15 above). As previously explained, this requires a full consultation. As noted in our response to CAP2265, we do not consider the 80/20 pass through mechanism is appropriate for business rates. We maintain our request for a full pass through of business rates. We provide further details in our CAP2265 response.	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
New C1.12 and C1.13 to introduce an adjustment mechanism to allow for risks relating to the new terminal drop off charge.	<u>Removal of Category B cost pass-through</u> This removes a condition that may be required during the H7 period, albeit potentially in an updated form, rather than providing the new formulation as part of the consultation. We do not see any benefit in removing the adjustment mechanism for H7. If no such expansion costs are incurred there will be none to claim and if expansion costs are incurred there should be a mechanism to allow them to be recovered. We propose that the existing wording is reinstated. <u>Terminal Drop-Off Charge</u> As we noted in our response to CAP2265, the CAA's IPs do not provide justification for its proposed 65% sharing rate for over and under recovery against the forecast revenues in our H7 plan. The implementation of any additional sharing of this revenue could also risk a double count under our proposed TRS calibration which should be reviewed by the CAA ahead of its Final Proposals. We support the inclusion of a provision to adjust Heathrow's price control in the event that a change to legislation prevented Heathrow from levying a Terminal Drop-Off Charge. Such an event would reset the assumption on drop-off charge revenue to zero and allow Heathrow to recover the H7 projection of this revenue from airport charges. We consider it appropriate to broaden the adjustment for total non-recovery to include regulatory decisions as well as statutory change, and where there is agreement between Heathrow and the airlines or Heathrow and the CAA.	We consider the following to be appropriate inclusions in relation to the Terminal Drop-Off Charge: a) any legal or regulatory change materially affects the Terminal Drop-Off Charge, including changes to the duration of free car parking; (b) any legal or regulatory decision materially affects the Licensee's ability to enforce the Terminal Drop-Off Charge; or (c) otherwise agreed between the Licensee and the airlines or the Licensee and the CAA.

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
C1.14 and C1.15 Modifications to the commercial arrangements provisions to remove references to a specific agreement.	We do not consider the non-discrimination clause (C1.14(a)) is necessary as competition law already provides sufficient protection for airport users in respect of any potentially unlawful discrimination. The objective of the clause was to prevent any discrimination in respect of the narrow situation of rebates being paid during the iH7 period. As this is no longer applicable there is no need for this additional wording in the H7 Licence. We therefore request C1.14 is largely removed.	C1.14 Nothing in this Part C shall prevent the Licensee from entering into any Commercial Agreement. ~~Where the Licensee… Airport~~ C1.15 The Licensee's ability to enter into agreements or other arrangements in relation to any aspect of Airport Charges ~~and the obligations of the Licensee set out in Condition C1.14~~ are without prejudice to Licensee's obligations under Conditions C1.1 and C1.2, and the Airport Charges Regulations 2011 (2011 No. 2491).
C1.16 Modifications to update and clarify definitions, remove redundant definitions and add new definitions as relevant.	(d) As we noted in our response to CAP2265, the earliest we would be able to implement the CAA's capex incentive changes is 2023, subject to the CAA having provided full details on the proposed incentives and capex arrangements for full consultation. This will clearly impact the Capital Investment Triggers Handbook. (m) We request that the CAA explains why it has made this change. (p) We expect this revaluation date to be 2023. (s) We consider that our definition of Terminal Drop-Off Charge which was previously submitted is clearer.	(s) Terminal Drop-Off Charge ~~is a charge levied by the Licensee for allowing vehicle access to the forecourt of a passenger terminal for a limited time~~ means the per vehicle charge for accessing the Departure Terminal Drop-Off Area, as set by the Licensee from time to time.

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
C2.1 and new C2.2 and C2.3 Modifications to clarify the process for CAA intervention.	C2.1: we do not agree with the CAA's requirement that Heathrow publishes its cost allocation methodology. We do not consider it appropriate or necessary that this information is publicly available. We propose to revert to the previous wording which required Heathrow to inform the CAA. This will ensure the CAA receives the necessary information without the disclosure going further than is required or proportionate. C2.2: The CAA's new clause C2.2 consists of an absolute obligation on Heathrow to accept the "outcomes specified" in the notice. Given the very broad nature of this clause we request that the CAA confirms in the new condition that no amendment to the cost allocation system will prevent Heathrow from recovering its costs in full. The CAA has also specified that Heathrow should amend its cost allocation system if directed by the CAA, allocating between 15 November to 31 December to do so. This timing is likely insufficient, depending on the changes required. We request the CAA provides sufficient justification as to why this change is needed and how it will ensure Heathrow is not prejudiced by this timeline. Any CAA intervention should be proportionate and clearly defined, which it is not as currently drafted.	C2.1: By 30 September in each Regulatory Year, the Licensee shall ~~publish~~ inform the CAA of the methodology it uses to allocate the costs it incurs in the provision of the Specified Facilities ("the cost allocation methodology"). C2.2 The CAA may, by ~~notice published~~ no later than 15 November in any Regulatory Year and following a reasonable period of consultation, require the Licensee to amend the cost allocation methodology referred to in Condition C2.1 in the manner, or to achieve the outcomes specified in the notice, provided that such amendments will not result in the Licensee failing to recover all costs within the Regulatory Year. ~~C2.3 Where the CAA has required the Licensee to amend the cost allocation system under Condition C2.2, the Licensee must make the changes specified in the notice before the start of the next Regulatory Year.~~

C2.2 (renumbered) Modifications to provide clarity and better reflect the current processes [Note – refers to new C2.4 – C2.5]	Without providing a clear and justifiable rationale for doing so, the CAA has created a disproportionate requirement on Heathrow. The CAA's proposed wording is for Heathrow to set out cost information "*to a sufficient degree of detail to enable the CAA and users of the Specified Facilities to verify that the charges that the Licensee proposes to apply to the Specified Activity are derived in accordance with the proper application of the cost allocation methodology*." This requirement extends beyond the information provision currently in place, to a provision which would require a subjective verification of proper allocation from potentially all users of Specified Facilities. This change could lead to significantly increased governance and correspondence, as well as cost and resource impacts. Should the terms be used, "Pricing principles" and "proper allocation" need to be defined. For the avoidance of doubt, we remain committed to providing transparent information on ORCs to users and we are of the view that the existing wording achieves this. As above, the CAA has specified that Heathrow should amend its cost allocation system if directed by the CAA, allocating between 15 November to 31 December to do so. We think this is likely insufficient time, and the CAA has not provided sufficient justification as to why this change is needed.	C2.4 By 30 September in each Regulatory Year, the Licensee shall provide to the CAA ~~and users of the Specified Facilities~~ statements of ~~the~~ actual costs ~~it has incurred~~ and revenues ~~it has generated~~ in respect of each of the Specified Facilities for the preceding Regulatory Year ~~in a form, and to a sufficient degree of detail to enable the CAA and users of the Specified Facilities to verify that the charges that the Licensee proposes to apply to the Specified Activity are derived in accordance with the proper application of the cost allocation methodology~~. The Licensee shall provide a copy of actual costs and revenues statements to any Users of the Specified Facilities that request it. Where appropriate the Licensee may redact confidential information of the actual costs and revenues statements and provide the requesting User of the Specified Facilities with a non-confidential version of the statements. C2.5 By 31 December in each Regulatory Year the Licensee shall provide to the CAA and to users of the Specified Facilities a statement of the principles for each item to be charged in the next Regulatory Year

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
		including the assumptions and relevant cost information demonstrating that the charges derive from the application of the pricing principles. [(a) and (b) have been deleted and consolidated above]
C2.4 (renumbered) Modifications to provide clarity and better reflect the current processes [Note – refers to new C2.6]	The CAA's revised drafting creates a situation whereby Heathrow would be subject to a highly subjective Licence condition. This is clearly unsatisfactory. We therefore request that the drafting reverts to a requirement to provide "full background information" which ensures the CAA and users receive an appropriate amount of information whilst placing a clear obligation on Heathrow.	C2.6 Where charges for the Specified Facilities are not established in relation to cost the Licensee shall provide to the CAA and to users of the Specified Facilities a statement of the principles on the basis of which the charges have been set with full background information as to the calculation of such charges including statements of any comparables used. [(a) and (b) have been deleted and consolidated above]

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
C2.5 and C2.6 (renumbered) Modifications to provide clarity and better reflect the current processes [Note – refers to new C2.7 – C2.8]	The CAA has doubled the regulatory burden without reasonable justification. Instead of either requiring Heathrow to produce a report detailing differences between actuals and CAA forecast or differences between actuals and prior year, the CAA is now asking for both. We do not consider there is any material benefit in the CAA forecast variance report, as we have outlined to the CAA previously (see Annex 1) and therefore request that new C2.7 is removed.	C2.7 Where in respect of any Regulatory Year actual revenue from any of the Specified Facilities differs from actual revenue from in the preceding Regulatory Year, the Licensee shall provide to the CAA and to users of the Specified Facilities detailed reasons for the differences. [C2.7 and C2.8 have been consolidated into a new C2.7 as above]

New C2.9 to C2.13 Modifications to New C2.9 to C2.13 Modifications to include a new "self-modification" mechanism	C2.12 and C2.13 appear to conflict. We propose that C2.12 is retained and C2.13 is amended to refer only to amending the list of Specified Facilities in C2.14. This allows the CAA to vary the list of Specified Facilities given in C2.14 (renumbered) either through agreement between Heathrow and the AOC or by determination where there is no agreement. This is a further extension of the CAA's powers to make determinations and to modify Heathrow's Licence following a request from the AOC, even without Heathrow's consent. We consider this is inappropriate as self-modification of a Licence condition under s21(4) CAA 12 does not benefit from the right to appeal to the CMA under ss24 or 25 CAA12. Including a condition in Heathrow's Licence which allows a third party to request modifications of that Licence which Heathrow cannot appeal is clearly unacceptable.	C2.9 The CAA may by notice modify the list of Specified Facilities in this Condition C2 in accordance with the process set out in Section 22 CAA12 where there is written agreement from the Licensee and the AOC on the nature of the modification to be made. C2.10 Where the Licensee and the AOC cannot reach agreement, the Licensee may request that the CAA determines the modification in accordance with Section 21(1)(e) CAA12. C2.11 Where a request has been made under Condition C2.10, the CAA as the relevant specified person may by notice determine the modifications, following a reasonable period of consultation, not exceeding 30 days. C2.12: The modifications that can be made under Conditions C2.9 and C2.11 shall be limited to any modifications to the list of Specified Facilities in Condition C2.14. C2.13: Modifications can be made to ~~this Condition C2~~ the list of Specified Facilities in Condition C2.14 under

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
		Conditions C2.9 and C2.11 at any time.
C2.7 (renumbered) Modifications to remove some Specified Facilities from the list and clarify others. New C2.15 New definition of users of Specified Facilities included for clarity. [Note – refers to new C2.14 – C2.15]	In C2.15, the broad definition of 'users of Specified Facilities' puts a disproportionate regulatory burden on Heathrow. The wording "or their representatives" should be removed as it is too wide and does not provide for certainty as to who the parties to be consulted are. Should the CAA wish to retain the representative wording, this should be clarified as to its scope and that it could only be with representatives who have been formally notified to Heathrow via a robust system which ensures Heathrow has sufficient notice to comply with the Licence condition requirements. As noted in our response to CAP2265, we disagree with the CAA's proposals for keeping bus and coach within ORCs and continue to believe that moving charges for bus and coach services from ORCs to a commercial charging basis is the right approach.	C2.14 "… ~~facilities for bus and coach operators~~" C2.15 In this Condition C2 users of Specified Facilities are any person that the Licensee charges directly for use of the Specified Facilities ~~including, but not~~ which is limited to, airlines, suppliers of ground-handling services, retailers, hotels, coach and bus operators, taxi drivers and hire car operators. ~~or their representatives.~~
D1 Title: Modify the terminology used to reflect the OBR framework.	N/A	N/A
D1.1: Modify the terminology used to reflect the OBR framework.	N/A	N/A
D1.2 Modify condition to improve signposting and new structure of Schedule 1.	N/A	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
D1.3 Modify condition to clarify and improve accuracy	N/A	N/A
D1.4 Modify to reflect that the OBR framework includes financially and reputationally incentivised measures	N/A	N/A
D1.5 Modify the terminology used to reflect the OBR framework.	N/A	N/A
D1.6 Modify condition to improve accuracy and readability	N/A	N/A
D1.9 Modify scope of condition to allow stakeholders to agree wider changes to the OBR framework than are currently allowed	N/A	N/A
D1.11 Modify the terminology used to reflect that the OBR framework relies on other surveys than QSM.	N/A	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
D2.14 Modifications to clarify the obligation.	The modifications are unnecessary - "*reasonable endeavours*" has a specific legal meaning which places far too high a burden upon Heathrow. The wording "*reasonable steps*" remains appropriate and ensures Heathrow is fully accountable through the process.	Revert to "reasonable steps"
D2.16 Modifications to reflect legislative changes and add clarity.	N/A	N/A
E2.1 modifications to the certificate of adequacy of resources to require separate certificates for financial and operational resources.	As noted in our response to CAP2139, we do not consider this change to be necessary. We maintain our position that the CAA should only intervene in cases where action is needed and that the interventions in relation to Heathrow's financial resilience provisions are not required and will not deliver consumer benefit. In light of this we request the drafting is maintained as per Heathrow's current Licence.	E2.1 The Licensee shall at all times act in a manner calculated to secure that it has available to it sufficient resources including (without limitation) financial, management~~, operational~~ and staff resources, to enable it to provide airport operation services at the Airport ~~and do so in accordance with this Licence~~.

E2.2 Modifications to the text of the certificates to relate specifically to financial resources	As noted above, we do not consider the changes relating to the sufficiency of resources to be necessary, but we have provided alternative drafting should the CAA choose to proceed with its proposals. We disagree with the inclusion of the wording "*With effect from 1 January 2022*" this would result in the clause having retrospective effect which, as set out above, would be an unacceptable burden to place on Heathrow and *ultra vires*. We do not consider that the additional text - "*to do so in accordance with licence obligations*" – is acceptable in the context of the sufficiency of resources conditions. This drafting would require directors to certify future compliance with the Licence for two years, however, the CAA has powers to modify the Licence such that the directors cannot know in advance whether they will continue to be compliant at all times in the future. It is therefore unreasonable to expect the directors of Heathrow to certify compliance with these potentially unknown obligations. Should the CAA wish to maintain some form of statement which refers to the Licence conditions then it should relate to the Licence conditions in force at the time of the declaration. We note the CAA has not adopted an 18-month time horizon, and instead proposes two years for the sufficiency of resources certificates. In CAP2265 the CAA argues *"if an annual certificate were provided covering only 12 or 18 months, the CAA would have very little forward visibility towards the end of those 12 months."* As we noted in our response to CAP2265, there may be an element of spurious precision the further out the time horizon is set, particularly in considering unforecastable major shocks such as Covid-19. The CAA also states, *"It is clear from this that the ongoing obligation to inform the CAA would be significantly and inappropriately diluted if this 24-month period were to be shortened*." The CAA refers to the condition which requires Heathrow to inform the CAA where the directors become	E2.2 ~~With effect from [1 January 2022], the~~ The Licensee shall submit a certificate addressed to the CAA, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted within four months of the end of the relevant Regulatory Year and shall include a statement of the factors which the directors of the Licensee have taken into account in preparing that certificate. Each certificate shall be in one of the following forms: (a) Financial Resources Certificate 1 "After making enquiries based on systems and processes established by the Licensee appropriate to the purpose, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it, after taking into account in particular (but without limitation): (i) any dividend or other distribution which might reasonably be expected to be declared or paid; (ii) any amounts of principal and interest due under any loan facilities; and

	aware of any change in circumstances which causes them to no longer have the reasonable expectation declared in the most recent certificate. It is not clear to us how reducing the time horizon would inappropriately dilute condition 2.3 (current numbering). Heathrow is obliged to inform the CAA of a change in circumstances and would need to do regardless of the time horizon. We ask the CAA to explain this further and maintain our view that 18 months is a more appropriate time horizon for these certificates.	(iii) any actual or contingent risks which could reasonably be material to their consideration sufficient financial resources and financial facilities to ~~(i)~~ enable the Licensee to provide airport operation services at London Heathrow Airport of which the Licensee is aware or could reasonably be expected to make itself aware~~; and (ii) do so in accordance with the licence obligations to which~~ it is or will be subject for a period of two years from the date of this certificate." (b) Financial Resources Certificate 2 "After making enquiries based on systems and processes established by the Licensee appropriate to the purpose, the directors of the Licensee have a reasonable expectation, subject to what is said below, that the Licensee will have available to it, after taking into account in particular (but without limitation): (i) any dividend or other distribution which might reasonably be expected to be declared or paid; (ii) any amounts of principal and interest due under any loan facilities;

		(iii) and any actual or contingent risks which could reasonably be material to their consideration, sufficient financial resources and financial facilities to~~: (i)~~ enable the Licensee to provide airport operation services at London Heathrow Airport of which the Licensee is aware or could reasonably be expected to make itself aware~~; and (ii) do so in accordance with the licence obligations~~ to which it is or will be subject for a period of two years from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to provide airport operation services at London Heathrow Airport for that period…" (c) Financial Resources Certificate 3 "In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient financial resources and financial facilities to~~: (i)~~ provide airport operation services at London Heathrow Airport of which the Licensee is aware or of which it could reasonably be expected to make itself aware~~; and (ii) or do so in accordance with the licence obligations~~ to which it is or will be ~~is~~

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
		subject for a period of two years from the date of this certificate."

New E2.3 to introduce a requirement for separate certificates for operational resources	As set out above, it is not acceptable to include "*With effect from 1 January 2022.*" We do not consider that the additional text - "*to do so in accordance with licence obligations*" – is acceptable in the context of the sufficiency of resources conditions. This drafting would require directors to certify future compliance with the Licence for two years, however, the CAA has powers to modify the Licence such that the directors cannot know in advance whether they will continue to be compliant at all times in the future. It is therefore unreasonable to expect the directors of Heathrow to certify compliance with these potentially unknown obligations. Should the CAA wish to maintain some form of statement which refers to the Licence conditions then it should relate to the Licence conditions in force at the time of the declaration. We remain of the view that there is no clear benefit in splitting the current certificate into separate financial and operational certificates, but we have suggested amended drafting should the CAA proceed with this proposal.	E2.3 ~~With effect from [1 January 2022], t~~The Licensee shall submit a certificate addressed to the CAA, approved by a resolution of the board of directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted within four months of the end of the relevant Regulatory Year. Each certificate shall be in one of the following forms: (a) Operational Resources Certificate 1 "After making enquiries based on systems and processes established by the Licensee appropriate to the purpose, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it sufficient operational resources, including (without limitation) management, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, to~~: (i)~~ enable the Licensee to provide airport operation services at London Heathrow Airport of which the Licensee is aware or could reasonably be expected to make itself aware~~; and (ii) do so in accordance with the licence~~

		~~obligations to which~~ it is or will be subject for a period of two years from the date of this certificate." (b) Operational Resources Certificate 2 "After making enquiries based on systems and processes established by the Licensee appropriate to the purpose, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it sufficient operational resources, including (without limitation) management, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, to~~: (i)~~ enable the Licensee to provide airport operation services at London Heathrow Airport of which the Licensee is aware or could reasonably be expected to make itself aware~~; and (ii) do so in accordance with the licence obligations to which~~ it is or will be subject for a period of two years from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the expectation set out above…"

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
		(c) Operational Resources Certificate 3 "In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient operational resources, including (without limitation) management, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights to~~: (i)~~ enable the Licensee to provide airport operation services at London Heathrow Airport of which the Licensee is aware or could reasonably be expected to make itself aware~~; and (ii) do so in accordance with the licence obligations to which~~ it is or will be subject for a period of two years from the date of this certificate."

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
New Condition E2.6 to clarify the information HAL must provide to the CAA if it submits a Financial or Operational Resources Certificate 2. [Note – refers to new E2.4 – E2.8]	We welcome the CAA taking on some of our feedback to CAP2139 with respect to the sufficiency of resources obligations. The scenarios of a 'low', 'central', and 'high' case is more targeted than the range of traffic scenarios originally proposed by the CAA. Nonetheless, we note that pre-Covid, we would produce one forecast and the ranges contained in the 2020 and 2021 certificates have only been produced to address current circumstances. We currently have no plans to continue producing a range of scenarios once demand returns to a more stable state. We also maintain that there is a legitimate question which remains to be answered over the CAA's role in requesting and assessing scenarios. We ask the CAA to confirm how it plans to assess these scenarios and what the consequences are if the CAA disagreed with the scenarios presented.	N/A

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
E2.7 Modifications to the Ultimate holding company undertakings [Note – refers to new E2.10 – E2.13]	We welcome the CAA removing the potential of an annual ultimate controller obligation, following our feedback to CAP2139. We understand the CAA wishes to ensure that the relevant directors are aware of the nature and extent of the ultimate controller undertaking, so it can be discharged effectively. We maintain our previously stated position that any additional obligations are unnecessary as they bring no benefit to consumers. We invite the CAA to consider if they are truly proportionate and necessary. E2.13 If the CAA proceeds with its proposal, we contend that 30 days is a more reasonable timeframe than one week and ask for the CAA to make this modification.	N/A
E2.12 Modifications to the definitions of Permitted Business and ultimate holding company [Note – refers to new E2.16]	We note that the CAA has used both “ultimate controller” and “ultimate holding company” as interchangeable terms. For clarity we request that the CAA standardises on a single term.	N/A

F1 – renamed to reflect insertion of governance requirements F1.1 modified to include requirements for governance arrangements, in addition to consultation arrangements, for capital investment, charges for other services and service quality. The Terminal drop-off charge is added to the list of other services and activities that are subject to the existing consultation requirements.	We do not consider that the revised Condition F fulfils the principles of targeted and proportionate regulation. It could lead to several unintended consequences. The added requirement that Heathrow must "*agree*" arrangements with Relevant Parties is unnecessarily onerous and gives third parties undue influence over Heathrow's business. A process of proper consultation is more than adequate to ensure third parties are fully engaged whilst Heathrow remains able to effectively manage its business. The requirement for Heathrow to agree with Relevant Parties on these items is unlikely to be practical in all instances and could be abused by third parties withholding agreement for tactical reasons. The insertion of "*for a period of no less than 28 days*" has been done without further explanation from the CAA. There may be situations where Heathrow and the airline community would like to make a decision in a shorter window of time, and we should be free to do so. Consulting Relevant Parties for "*any proposed changes*" is disproportionate. We cannot see a clear reason for the inclusion of Terminal Drop-Off Charge, and in any case the current drafting does not capture the CAA's proposal of setting a requirement for Heathrow to notify airlines and the CAA of any increases of the charge beyond 10% of the baseline levels, but not to require Heathrow to formally agree any charge increase in advance with the CAA or airlines. Instead, as currently drafted, it could be interpreted that Heathrow would need to consult on any proposed changes, even within the 10% allowance. We suggest removing "*policies and proposals for any other airport operation service it provides*" – this is both broad and redundant as relevant services will be discussed through our established governance groups.	The Licensee shall: (a) develop, consult and ~~agree~~ seek agreement with Relevant Parties regarding governance and consultation arrangements (including such protocols and handbooks as are appropriate) that establish clear rules, processes and information requirements to allow Relevant Parties to scrutinise~~, agree~~ and/or, where relevant, challenge and propose amendments to: (i) the Licensee's proposals for future investment in the short, medium and long term that have the potential to affect those Relevant Parties; (ii) the Licensee's proposals for the development and delivery of key capital projects identified in its future investment proposals in Condition F1.1(a)(i); (iii) the Licensee's charges that are subject to Condition C2; (iv) the service quality regime in Condition D1, including the Statement of Measures,

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
		Targets and Incentives in Schedule 1 of this Licence (b) consult Relevant Parties for a reasonable period ~~of no less than 28 days~~ on, as a minimum, any proposed changes to its: (i) traffic forecasts; (ii) operational resilience activities in Condition D2; (iii) ~~Terminal Drop-off charge; and~~ (iv) proposals for future investment that have the potential to affect those parties ~~policies and proposals for any other airport operation service it provides~~; so that those parties have sufficient information to take an informed view of the proposed changes.

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
New F1.2 requiring HAL to provide stakeholders with details of decisions made following consultation and giving the CAA powers to make directions to ensure compliance with the governance and consultation requirements	Under F1.2 the CAA "*may make such direction as it considers is necessary … to secure the Licensee's compliance*". This provides the CAA with wide discretionary powers to intervene, absent any market or price control review. The CAA already has more than adequate powers contained within the CAA12 to ensure Heathrow's compliance with the Licence. Those powers have appropriate checks and balances to ensure they are properly used. The CAA's proposed expansion of its power with the inclusion of this clause contains no such checks and would amount to an abuse of power. We do not consider this is a proportionate or targeted approach and request it is removed. Should the CAA seek to maintain this amendment we request that full reasoning is provided as we cannot find an adequate justification within the CAA's IPs for this level of intervention. The proposed drafting under F1.2(b) is too vague as to be effectively implemented by Heathrow. For example, at what point is a representation made and not withdrawn, must it be in writing? Does a period of time have to elapse? We have suggested amendments to address these issues.	F1.2 Before making any changes following a consultation referred to in Condition F1.1, the Licensee must provide to the Relevant Parties and the CAA a report setting out: (a) the revisions originally proposed; (b) a summary of ~~any~~ representations made in writing and not expressly withdrawn; and (c) details of how it has taken those representations into account, including any revisions to the proposed changes as a result of such representations. ~~Where the CAA does not consider that the revisions proposed meet the requirements of Condition F1.1, the CAA may make such direction as it considers is necessary in order to secure the Licensee's compliance with Condition F1.1 and the Licensee shall comply with such direction.~~

F1.3 to F1.7 clarifications to the provisions relating to developing and agreeing protocols, specifically requiring compliance with those protocols and giving the CAA the powers to make directions to HAL to update them [Note – includes F1.8]	The inclusion of 1 October 2022 as an effective date is not reasonable given the amount of uncertainty inherent in the H7 process. Instead, we propose that Heathrow completes this within five months of the H7 Licence coming in to force. The exception to this could be capital incentive related protocols - as we noted in our response to CAP2265, the earliest we would be able to implement the CAA's capex incentive changes is 2023, subject to the CAA having provided full details on the proposed incentives and capex arrangements for full consultation. The introduction of a requirement to "agree" with Relevant Parties is unnecessarily onerous and problematic – as explained above. As also explained elsewhere, the expanded definition of "Relevant Parties" is overly broad and results in an obligation which Heathrow cannot reasonably comply with. The new proposals add a compliance obligation (F1.3) on Heathrow to adhere to the governance protocols, with the consequence of a Licence infringement. This creates a one-sided and disproportionate obligation on Heathrow in respect of a process which is intended to encapsulate mutual consultation and therefore, by its nature, periodic disagreement.	F1.3 The Licensee shall within five months of the commencement of this Licence ~~by 1 October 2022~~ consult on, ~~agree~~ seek agreement on, and make available to Relevant Parties and the CAA, one or more protocols, handbooks or other arrangements setting out how it will satisfy the obligations in Condition F1.1(a)~~, and thereafter shall comply with them~~. … F1.6 In compliance with Condition F1.3, the Licensee may use any protocol, handbook or other arrangement that meets the requirements of Condition F1.1(a) and is ~~already agreed with Relevant Parties~~ in force as at 1 January 2022, subject to any revisions required under Condition F1.7. F1.7 The Licensee shall, in consultation with Relevant Parties, review the protocols, handbooks or other arrangements it has in place to meet the requirements of Condition F1.1(a) from time to time and ~~or if directed by the CAA by notice to do so and, with the agreement of the Relevant Parties,~~ update them as necessary.

Licence Condition and proposed modification (per the table rows in CAP2275)	Heathrow response	Proposed amendment (if applicable)
		F1.8 Where the Licensee cannot reach agreement with the Relevant Parties under Conditions F1.1(a), F1.3 or F1.7, it may refer the matter to the CAA for determination and following such a referral the CAA may, by notice, make a determination ~~in relation to that issue~~ on the matter so referred. F1.9 In this Condition F1, Relevant Parties means those stakeholders the Licensee reasonably considers ~~that need~~ to be necessary to be consulted for each protocol, including any groups or boards already established for the purpose of developing protocols ~~and in place at the date this Licence was granted~~.
Schedule 1		
The implementation of OBR requires a number of detailed modifications to HAL's licence.	We comment on these proposals in detail in the next section of our response.	N/A

5. Detailed response to the CAA's Schedule 1 Proposals

5.1. Our response to CAP2265 details our views on the CAA's proposed policy positions for H7 and provides an overview of our views on the CAA's approach to targets, bonuses and rebates. Our response to CAP2274 provides our detailed views on the CAA's proposed targets and a view of how rebates and bonuses should be structured for H7.

5.2. As noted above, the CAA has set out substantial changes to Schedule 1 to incorporate OBR. However, there are still several areas called out as being subject to change for final proposals, and potentially in-period. The continued uncertainty around the CAA's proposed OBR measures has hampered our ability to consider the CAA's H7 proposals in the round.

5.3. We therefore limit this response to the technical points arising from the CAA's proposed drafting of Schedule 1 in CAP2275.

5.4. In paragraph 3.8 of Schedule 1, the CAA states the data needs to be 'weighted by the number of passengers across the Airport'. Given that Surface Access is only used by Direct passengers and not Connecting passengers it would be inaccurate to apply this weighting. This should be changed to state 'weighted by the number of passengers using each mode of transport to access the airport.' In the same paragraph 'πr is the number of passengers in quarter r' needs amending to 'πr is the number of passengers using each mode of transport in quarter r'

5.5. In paragraph 3.10 of Schedule 1, the CAA states the data needs to be 'weighted by the number of passengers across the Airport'. Given that the passengers using the reduced mobility (PRS/PRM) service is only a proportion of total passengers it would be inaccurate to apply a weighting based on all passengers. This paragraph should be changed to align with the wider requirement for reporting to the CAA on PRS/PRM and state 'of the number of users of passenger with reduced mobility (PRS/PRM) service interviewed.' In the same paragraph 'πr is the number of passengers in quarter r' needs amending to 'πr is the number of passengers using the reduced mobility (PRS/PRM) service in a month r'

5.6. In paragraph 3.21 of Schedule 1, the CAA states that 'The Licensee shall capture queue times for all vehicles transiting through vehicular control posts. As discussed with the Airline Community in response to their concerns about a per vehicle measure, current technology does not allow us to measure the queue time for every vehicle. Therefore, this paragraph should be updated to state 'The Licensee shall make its best effort to capture queue times for all vehicles transiting through vehicular control posts'

5.7. In paragraph 3.23 of Schedule 1, we suggest that the following wording is changed from 'D is the time a passenger enters the queue for immigration' to provide greater clarity and align with the wording used in paragraph 3.16, so would change to be 'D is the elapsed time between passengers passing a defined queue entry point and reaching a manned immigration desk or electronic immigration gate'.

5.8. Measure R14 throughout Schedule 1 needs to be renamed to be '% of UK population within 3 hours (and one interchange) of Heathrow by Public Transport'.

5.9. In paragraph 3.40 of Schedule 1, [redacted] We suggest it is amended to refer to "operational systems".

5.10. In paragraph 7.3(b) of Schedule 1. Some of the new measures proposed (e.g. reduction of Heathrow's Carbon Footprint and Percentage of UK population within 3 hours) require the publication of external data (including the Final CAA Passenger Survey data) to finalise the annual reported figures. Heathrow has no way of guaranteeing that this 3rd party data will be published within two months of the end of the relevant regulatory year. As a result we propose changing this wording to state 'in line with publishing the regulatory accounts for the relevant Regulatory Year'

5.11. In Table 8 of Schedule 1. R15 Passenger Injuries is reported Monthly at a Heathrow Total level so the Terminal column needs blanking out for this measure. This is because the data includes injuries that can occur within non-terminal areas of Heathrow e.g. Central Bus Station.

5.12. Under 'General Matters', we note the following. In A3.3, the CAA appears to introduce new governance arrangements to cover service quality exclusion discussions. We suggest this is removed and note our concerns with Section F as set out previously. We believe the amendment to exclusions for "availability-based measures" is incorrect – the exclusions apply to the whole range of measures.

5.13. In the event of the force majeure mechanism relating to service quality exclusions, we would need to address any rebate payment delay while the third-party is consulting. It is Heathrow's position that any rebate should not be paid until a decision has been made on the exclusion.

6. The CAA has not considered several proposals which Heathrow previously submitted

6.1. Heathrow submitted several proposals to the CAA in August 2021 (Annex 1). While some of these have overlapped with the CAA's IPs and the Licence modifications set out in CAP2275, several proposals have also been ignored without apparent due consideration or analysis. This is concerning and we ask the CAA to comment on our proposals in full, ideally ahead of Final Proposals, so that we have clarity on the CAA's thinking.

6.2. A summary of our proposals that have not been addressed is set out below:

Table 2 - Previously submitted Licence proposals

Summary of proposals	Detail
Continuity of service plan	Reduce the frequency of submitting the Continuity of Service Plan from 12 months to 24 months. As we noted in our response to CAP2139, with the exception of Covid-related changes, there are typically only minor updates to make on an annual basis, which do not justify the burden associated with Board-related governance and approval on such a frequent basis. We believe we can ensure that there is coverage of the few changes that are made on an annual basis, such as those related to movements in job roles / key contacts, by methods such as keeping live versions of documents on our systems that the Continuity of Service Plan can refer to.

Summary of proposals	Detail
Service quality exclusions	Modify the list of exclusions in the Licence to incorporate lessons from Q6 and iH7. The proposed additions are set out below: - *where staff sickness from Covid-19 or other diseases requires widescale or mandated self-isolation, or otherwise prohibits normal operations;* - *to implement short-notice (one month or less from notification to implementation) changes such as regulations, including but not limited to social distancing and quarantine, imposed by Government or any competent body. A minimum exclusion period of two weeks shall be granted;* - *all measures except for Wi-Fi Performance, Cleanliness and Wayfinding during industrial action taken either by staff of the Licensee, an airline, or third party which would materially impact the Licensee;* - *any measures in the regime impacted by a supply chain failure, including where parts or specialist resources have been impacted by factors outside of the Licensee's control;* - *any measures where the service targets limit the Licensee's ability to serve more passengers or prioritise the best interests of passengers, to be jointly agreed with the AOC or with the CAA;* - *security measures or the track transit system in circumstances where the security lane or track transit system is open beyond scheduled flights; and* - *where an airline or supply chain acting on behalf of an airline / the AOC (including without limitation any airline's agent or sub-contractor) has impacted the forecasted presentation of demand, beyond the scope of reasonable variation.*
Service quality rebate set-off clause	Introduce a clause to entitle Heathrow to set off any rebate amount due to an airline if an airline has failed to pay any charges payable to the Heathrow. *3.4A In the event of an airline failing to pay any charges payable to the Licensee (or any of its related entities) when due, the Licensee shall be entitled to set off any amount so due against any SQRB rebate due to the airline.*

6.3. In addition to the exclusions set out above, thought should be given to the measurement periods for asset availability across the airport. Currently, asset availability must be maintained during the hours set out within the Licence regardless of whether the asset is required during these hours. A more targeted and proportionate approach would be to ensure that performance against the asset availability target is only measured when the asset is required for passenger or airline use. This would allow increased time for maintenance and help to avoid disruption for passengers when the asset is required. We propose further engagement with the CAA to explore whether this is implemented through an exclusion or changes to the measurement period.

6.4. In addition to the above, and as noted previously, the CAA has not provided drafting relating to risk sharing or a reopener condition, both of which we previously submitted.

6.5. In its IPs, the CAA indicated that it was not inclined to include an expansion framework trigger Licence condition. As outlined in our response to CAP2265, we request that the CAA reconsiders this position and provides detailed drafting for stakeholders to engage with.

6.6. As noted in Section 4, we maintain that an 18-month time horizon for the Certificate of Adequacy of Resources is the optimal approach.

6.7. We expect the CAA to make a decision on all of the above proposals, at the Final Proposals stage at the latest, and set out its rationale if it does not agree with them.