

# Decision to modify Condition 6 (regulatory accounting requirements) of NATS (En Route) plc air traffic service licence

CAP 1863



**Published by the Civil Aviation Authority, 2019**

Civil Aviation Authority  
Aviation House  
Beehive Ring Road  
Crawley  
West Sussex  
RH6 0YR

You can copy and use this text but please ensure you always use the most up to date version and use it in context so as not to be misleading, and credit the CAA

First published 2019

Enquiries regarding the content of this publication should be addressed to: [rod.gander@caa.co.uk](mailto:rod.gander@caa.co.uk)

The latest version of this document is available in electronic format at: [www.caa.co.uk](http://www.caa.co.uk)

## Background, reasons for and effects of our decision to modify NERL's licence

---

- 1.1 This document explains our decision to modify the air traffic services licence (the licence) held by NATS (En Route) plc (NERL) under section 11(1) of the Transport Act 2000 (the Act) as proposed in our consultation document CAP 1816. The modification changes the wording of the audit statement that NERL is required to procure when producing its annual regulatory accounts. The modification also formalises that we may require NERL's auditors to carry out Agreed Upon Procedures (AUPs) on aspects of its regulatory accounts. AUPs will be agreed between us, NERL and its auditors. We received no representations on our proposals in CAP 1816.
- 1.2 NERL consented to the modifications on 30 July 2019.
- 1.3 The reason why we have decided to modify NERL's licence is that guidance by the Institute of Chartered Accountants in England and Wales (ICAEW)<sup>1</sup> means that NERL's auditors are no longer able to provide the current audit statement, that requires them to state whether the regulatory accounts fairly present the financial performance of NERL's en route Eurocontrol and Oceanic businesses and NERL's financial position.
- 1.4 In its guidance ICAEW sets out that regulatory accounts are not prepared on the basis of a fair presentation financial reporting framework (such as IFRS and UK GAAP) and, therefore, do not necessarily represent a true and fair view of the financial performance or financial position of a company. This means that auditors are not be able to provide an opinion on a fairly presents or true and fair basis on NERL's regulatory accounts as required under Condition 6(6)(a) of NERL's licence before modification.
- 1.5 The modification removes the requirement for a fairly presents audit opinion from NERL's licence. As ICAEW guidance on the exact form of the audit opinion can change, we have not specified the exact wording of the audit opinion, but included provision that the opinion should be in a form required by professional bodies that prescribe the form of audit reports for regulatory accounts, and should reference compliance with the licence condition and the RAGs.
- 1.6 As the audit opinion that is required under the modified licence does not provide as strong assurance as that provided by a fairly presents audit opinion, we have added a requirement for NERL to make reasonable endeavours to agree with us

---

<sup>1</sup> Reporting to regulators on Regulatory Accounts (TECH 02/16 AAF).

and its auditors AUPs we may require. AUPs will be designed to provide factual findings in the regulatory accounts. They have to be relevant to the fulfilment of our duties under section 2 of the Act and proportionate to our concerns in respect of its fulfilment of those duties. The modification specifically mentions cost allocation between NERL's separate businesses and cross-subsidy as areas for which we may require AUPs. However, AUPs will not be limited to these areas, as long as they are reasonable, proportionate and relevant to our duties. We consider that the provision for AUPs would mitigate the loss of assurance from the loss of a fairly presents audit opinion, in that it would allow us to consider elements of NERL's business specific to its economic regulation that may not be scrutinised to the same extent in the audit of NERL's statutory accounts.

- 1.7 The effects of our decision are to enable NERL to obtain an audit opinion on its regulatory accounts that complies with its licence and to enable greater scrutiny to be given to aspects of NERL's business that are pertinent to NERL's business and may not be considered in such depth in its statutory accounts.
- 1.8 The modifications are at Appendix A and marked with red underline.

**APPENDIX A****Modifications to Condition 6**

---

**Condition 6**

---

## 6. The Licensee shall:

- (a) procure, in respect of the regulatory accounts prepared in accordance with paragraph 4 in respect of a regulatory year, a report by the Auditors addressed to the CAA which provides their opinion on those accounts. The opinion should be worded in the form required by those professional bodies accountable for prescribing the form of audit reports on regulatory accounts and should reference compliance with the Condition and the Regulatory Accounting Guidelines; [stating whether in their opinion those accounts have been properly prepared in accordance with this Condition and the Regulatory Accounting Guidelines and on that basis fairly present the financial performance of the UK Air Traffic Services Business and the En route (Oceanic) Business, and the financial position of the licensee;]
- (b) deliver to the CAA the Auditors' report referred to in sub-paragraph (a) and the regulatory accounts referred to in paragraph 4 as soon as reasonably practicable, and in any event not later than seven months after the end of the regulatory year to which they relate; and
- (c) arrange for copies of the regulatory accounts and Auditors' report referred to in sub-paragraphs (a) and (b), respectively, to be made publicly available.

7. The licensee shall also:

- (a) make reasonable endeavours to secure agreement between itself, the CAA and the Auditors on Agreed Upon Procedures which are designed to provide the CAA with factual findings, where, from time to time, the CAA reasonably considers such procedures are relevant to the fulfilment of its duties and proportionate to any concerns of the CAA in respect of its fulfilment of those duties, in each case relating to the following:
  - i. the appropriateness of any amounts referred to in paragraphs 5(b)(i) and 5(b)(ii) of this Condition;
  - ii. the Licensee's compliance with the prohibition of cross-subsidies in paragraph 1 of Condition 9; and
  - iii. any other aspect of the regulatory accounts on which the CAA reasonably considers it requires factual findings.
- (b) procure, as required from time to time by the CAA, in respect of the regulatory accounts prepared in accordance with paragraph 4, a report by the Auditors

addressed to the CAA which states that they have carried out Agreed Upon Procedures and which sets out their findings.

8. The regulatory year of the Licensee shall run from 1 January to 31 December unless otherwise agreed with the CAA.
9. In this Condition:

**“Regulatory Accounting Guidelines”**

means the guidelines drawn up in accordance with paragraph 2 of this Condition.

**“UK Air Traffic Services Business”**

means the Licensee’s business other than the En route (Oceanic) Business.

Agreed Upon Procedures

means procedures which are from time to time agreed between the CAA, the Auditors and the Licensee and which the Auditors carry out and report on factual findings.