

Economic Regulation of NERL: Initial proposals for modifying the Licence to support the implementation of a UK Airspace Design Service

CAP 3121

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About this document

On the 2 June 2025, the Government announced that it has decided to proceed with the creation of a UK Airspace Design Service and Airspace Design Support Fund, to be provided by NATS (En Route) plc (“NERL”).¹

This consultation sets out the CAA’s initial proposals for modifications to the air traffic services licence held by NERL under the Transport Act 2000, to implement a UK Airspace Design Service. It builds upon the illustrative licence modifications in the CAA’s November 2024 Consultation,² which complemented the CAA and DfT Joint Consultation³ on proposals for creating a UK Airspace Design Service.

This document explains how our approach has evolved since the November 2024 Consultation. It complements the “Consultation Response Document”,⁴ published alongside the Government announcement, which sets out the decisions taken by the CAA and DfT in the light of the Joint Consultation. It also reflects the policy papers on key issues, published alongside the Consultation Response Document on 2 June 2025.⁵

This document covers the:

- broad approach to the licence modifications that would give NERL responsibility for the UK Airspace Design Service and administering the Airspace Design Support Fund;
- likely scale of the costs that NERL would incur in providing these services; and
- charging arrangements that would allow NERL to recover these costs.

Once we have considered responses to this consultation, we expect to issue a statutory consultation setting out our final proposals later in 2025, before making any modifications to NERL’s licence, consistent with our duties under the Transport Act 2000.

¹ [DfT press release](#): Redesigned flight paths to deliver quicker, quieter flights and boost growth; and [Written Statement](#) to Parliament from the Department for Transport and Mike Kane MP.

² CAP 3063: the “November 2024 Consultation”, available at www.caa.co.uk/CAP3063. Responses received are available at [UKADS – licence proposals | UK Civil Aviation Authority](#).

³ CAP 3029: the “Joint Consultation”, available at www.caa.co.uk/CAP3029

⁴ CAP 3106: the “Consultation Response Document”, available at www.caa.co.uk/CAP3106

⁵ [UKADS policy paper 25-2: Governance and engagement](#), [UKADS policy paper 25-3: Airspace Design Support Fund](#), and [UKADS policy paper 25-4: Future of ACOG](#)

Introduction and summary

Background

1. In October 2024, the Department for Transport (“DfT”) and the UK Civil Aviation Authority (“CAA”), as co-sponsors of airspace modernisation, published a joint consultation (the “Joint Consultation”)⁶ on a proposal to establish a single entity for modernising the design of UK airspace. The CAA published a complementary consultation in November 2024 (“the November 2024 Consultation”)⁷ that set out illustrative modifications to the air traffic services licence (“Licence”) held by NATS (En Route) plc (“NERL”)⁸ that could be used to implement the aspects of the proposals set out in the Joint Consultation that are relevant to the economic regulation of NERL.
2. The Joint Consultation⁹ said that, in order to allow NERL to provide the Airspace Design Service, legislative changes would also be needed, in addition to modifications to the Licence. Alongside proposals for the Airspace Design Service, the Joint Consultation also proposed to reform the funding of airspace change proposals across the whole of the UK by creating a new Airspace Design Charge (“the Charge”) to be levied on airspace users. This Charge would:
 - allow the recovery of the efficient costs of NERL in providing the Airspace Design Service, and
 - support the creation of a new Airspace Design Support Fund, administered by NERL, to provide financial support for the sponsors of eligible UK airport airspace change proposals that are outside the scope of the Airspace Design Service.
3. The Government has announced¹⁰ that it has decided to proceed with the creation of the Airspace Design Service and the Airspace Design Support Fund.¹¹ The key elements of this are that:
 - NERL will be tasked with providing the Airspace Design Service;

⁶ CAP 3029: the Joint Consultation, available at www.caa.co.uk/CAP3029

⁷ CAP 3063: the November 2024 Consultation, available at www.caa.co.uk/CAP3063

⁸ The Licence is published on the [NERL licence webpage](#).

⁹ See the Joint Consultation at paragraph 8.13.

¹⁰ [Written Statement](#) to Parliament from the Department for Transport and Mike Kane MP.

¹¹ CAP 3106: the “Consultation Response Document”, available at www.caa.co.uk/CAP3106

- the Airspace Design Service will initially focus on modernising the complex airspace around London, including airspace change required for any Heathrow third runway; and
 - a new Airspace Design Support Fund will be set up to help meet relevant costs of airspace design that support modernisation in other parts of the UK.
4. Alongside the Government announcement and publication of the Consultation Response Document on 2 June 2025, the following policy papers were also published:
- Governance and engagement paper (“the Governance Paper”)¹²
 - Airspace Design Support Fund paper (“the Support Fund Paper”);¹³ and
 - Future of the Airspace Change Organising Group (“ACOG”) paper (“the ACOG Paper”).¹⁴
5. In formulating our initial proposals, we have taken account of the views of respondents to the November 2024 Consultation,¹⁵ along with the recent announcement, Comment Response Document and policy papers.
6. As explained in the Joint Consultation, the November 2024 Consultation and further below, we consider the changes we outline would be in the interests of the users of air traffic services. Once we have considered responses to this consultation, we expect to issue a final statutory consultation later in 2025, before making any modifications to NERL’s licence, consistent with our duties under the Transport Act 2000.

Summary

7. This consultation sets out our initial proposals for the modifications to the Licence to support implementation of the Airspace Design Service in the manner set out in the Government’s announcement. We have developed these initial proposals in the light of the responses to both the Joint Consultation and the November 2024 Consultation.
8. We intend to create high-level obligations on NERL to:

¹² [UKADS policy paper 25-2: Governance and engagement](#)

¹³ [UKADS policy paper 25-3: Airspace Design Support Fund](#)

¹⁴ [UKADS policy paper 25-4: Future of ACOG](#)

¹⁵ Responses to the November 2024 Consultation are available at [UKADS – licence proposals | UK Civil Aviation Authority](#)

- provide the Airspace Design Service, the purpose of which would be to combine relevant airspace change proposals such that the outcome is a single design and single airspace change proposal that prioritises maintaining a high standard of safety and secures system-wide benefits and overall network optimisation, while giving due consideration to local circumstances and environmental impacts; and
- administer the Airspace Design Support Fund. Throughout this document, when we refer to the costs of administering the Airspace Design Support Fund, we refer both to NERL's costs of administering these arrangements and the funds that may be distributed to eligible airports outside the London Terminal Control Area ("LTMA") that meet the relevant criteria.

9. NERL's approach to implementing these obligations would then be informed by strategic priorities (including in relation to the geographic area covered by the Airspace Design Service) and guidance from the CAA and DfT as well as stakeholders' views. It would also be required to create an Advisory Board with appropriate terms of reference and membership to act as a forum for stakeholders to engage with, and have oversight and visibility of, the work of the Airspace Design Service at a strategic level. We would also require NERL to ensure that the Airspace Design Service carries out its work transparently and in a non-discriminatory manner.
10. These initial proposals have been informed by the use of cost estimates provided by Egis in its medium scenario.¹⁶ The combined estimated cost of providing the Airspace Design Service and the Airspace Design Support Fund is expected to be around £19.4 million per year over ten years (2024 prices). For the remainder of the NR23 period (2025 to 2027) costs are expected to be in the region of £52 million (2024 prices) in total. There remains uncertainty about the level of these costs, but in the medium term we currently expect the recovery of these costs from users to be the equivalent of around two per cent of the level of NERL's en route charges.
11. We propose that the regulated charge for these services should only reflect the incremental costs of NERL providing the Airspace Design Service and administering the Airspace Design Support Fund, and not the costs already reflected in the NR23 price control decision and associated allowances for NERL's other existing airspace projects.
12. In terms of the new charge control, our initial proposals are that:

¹⁶ The "Egis report", discussed more in Chapter 4 (Costs of new airspace design services) and available at www.caa.co.uk/CAP3063A

- a cost pass-through approach to the Airspace Design Service and Airspace Design Support Fund costs is likely to be appropriate given the uncertainty about the level of these costs in the short term;
- the initial price control period should be relatively short and aligned with the remainder of the NR23 period (2025 to 2027);
- NERL should be compensated for managing the risks associated with these new activities. Options for this include capitalising costs into a Regulatory Asset Base (“RAB”), which would then earn a return; or by allowing for an operating margin. For the remainder of the NR23 period, our preferred approach is to use an operating margin approach, but we welcome the views of stakeholders on these matters and will consider further in formulating our final proposals;
- there will be a correction mechanism at NR28 that will ensure that NERL recovers its costs over time and any over-recovery of costs is returned to users;
- the costs that NERL should be able to recover will include appropriate and efficiently incurred early costs of setting up the Airspace Design Service and the Airspace Design Support Fund;
- the Charge should initially be payable by airspace users in receipt of en route air traffic services in the UK Flight Information Region on a “per service unit basis” and NERL should decide how the Charge will be collected from users; and
- we will review our approach to the cost pass-through arrangements, the treatment of risk and reward for the activities and other incentives at the NR28 price control review.

13. We also propose to make consequential amendments to the Licence in relation to matters such as financial ring fencing, regulatory accounting and resilience planning to ensure that these requirements in the Licence appropriately take account of the new activities to be undertaken by NERL.

Statutory changes required to facilitate the creation of the Airspace Design Service

14. As part of the process of setting up the Airspace Design Service, changes to the TA00 are required to give an appropriate statutory underpinning to the proposed arrangements. The first of these is to bring the activity of airspace design within the scope of the definition of “air traffic services” in section 98(1) TA00. This is needed so that:
- this activity can be authorised by the Licence;

- charges can be levied for this activity under section 73 TA00; and
 - other parties would be excluded from providing these services unless they benefit from an exemption (such as airports).¹⁷
15. To implement this, the Secretary of State, using the power set out in section 98(2) TA00, has laid before Parliament an order to extend the meaning of “air traffic services” in section 98(1) TA00.¹⁸ Such an order would bring making, and developing with a view to making, airspace change proposals for UK airspace within the scope of air traffic services.
16. The Secretary of State has also laid a regulation before Parliament, using the power in section 11(4) TA00, to prescribe terms in NERL’s licence so that those terms could then be modified by the Secretary of State under section 11(3) TA00.¹⁹
17. If these statutory instruments successfully pass through the Parliamentary process, then subsequently:
- the Secretary of State intends to modify the terms of the Licence to authorise NERL to carry out the Airspace Design Service; and
 - the CAA intends to modify the conditions of the Licence to require NERL to carry out the Airspace Design Service and address funding arrangements;
- in each case using the processes set out in TA00.
18. This consultation addresses the second of these two categories of changes to the Licence (that is, the modifications the CAA intends to make) to require NERL to provide the Airspace Design Service and to address the funding arrangements for its delivery.

Structure of this consultation

19. The proposed modifications set out in these initial proposals cover the same areas as those set out in the November 2024 Consultation:

¹⁷ Extending the scope of air traffic services would bring the airspace design services within the prohibition on the conduct of air traffic services set out in section 3 TA00. This change would also have the impact of extending the CAA’s “concurrent” competition law jurisdiction to the same extent.

¹⁸ See: [SI 2025/629 - Transport Act 2000 \(Air Traffic Services\) \(Amendment\) Order 2025 - Statutory Instruments - UK Parliament](#)

¹⁹ Published in draft as [The Transport Act 2000 \(Air Traffic Services\) \(Prescribed Terms\) Regulations 2025](#)

- creating an obligation for NERL to provide the Airspace Design Service, administer the Airspace Design Support Fund and deliver residual activities currently carried out by ACOG;
- establishing arrangements to allow NERL to recover the costs of providing the Airspace Design Service and the Airspace Design Support Fund; and
- making consequential changes to address the knock-on impact of these proposals for existing Licence conditions.

20. The details of our initial proposals in relation to these matters are addressed in the following chapters:

- Chapter 1 (The design of licence modifications to implement the Airspace Design Service) sets out how our high-level approach to designing modifications to the Licence has developed since the November 2024 Consultation and how such modifications would discharge our duties under the TA00;
- Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service) sets out our initial proposals for modifications that would create obligations on NERL to create and operate the Airspace Design Service, as well as setting out arrangements for governance, the administration of the Airspace Design Support Fund and delivery of residual activities currently carried out by ACOG;
- Chapter 3 (Consequential modifications to the Licence) addresses how the impact of creating the Airspace Design Service within NERL could affect other obligations in NERL's licence in relation to the financial ringfence, regulatory accounting, resilience planning, governance and cross-subsidies;
- Chapter 4 (Costs of new airspace design services) provides stakeholders with a view of the likely overall costs of establishing and providing the Airspace Design Service, as well as of providing and administering the Airspace Design Support Fund, as envisaged in the Consultation Response Document;
- Chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges) sets out options, and our initial proposals, for the control and design mechanisms that would apply to the new Charge. Based on those and a projection of costs, it also sets out illustrative charges to help stakeholders understand the potential magnitude of the new Charge;
- Appendix A sets out a summary of our duties under the TA00;

- Appendix B and Appendix C set out draft modifications to the Licence that would implement these initial proposals; and
- Appendix D sets out a glossary of terms used in this consultation.

Our duties under the TA00

21. The approach we adopted to the development of these initial proposals is fully aligned with our primary duty to maintain a high standard of safety in the provision of air traffic services. Any airspace design developed by NERL would need approval through the Airspace Change Process²⁰ and so would be subject to a safety assessment.
22. These initial proposals should also further the interests of customers and consumers²¹ through the delivery of the Airspace Modernisation Strategy and the vision is to deliver quicker, quieter and cleaner journeys and more capacity for the benefit of those who use and are affected by UK airspace.²²
23. It appears that the costs of these proposals will be both relatively uncertain and of low materiality, and the delivery of airspace modernisation will be of significant importance to consumers. Bearing this in mind, we consider that, for the remainder of the NR23 period, our duty in respect of economy and efficiency is best served by cost pass-through arrangements and, when taken together with allowing NERL to earn a return commensurate with the limited risks, this should also support NERL in financing these activities.

Next steps and views invited

24. We welcome stakeholders' views on all aspects of the matters discussed in this document.
25. This consultation will run for 6 weeks. Please e-mail responses to economicregulation@caa.co.uk by no later than 24 July 2025.
26. We expect to publish responses on our website as soon as practicable after the consultation period ends. Any material that is regarded as confidential should be clearly marked as such and included in a separate annex. We have powers and duties with respect to the disclosure of information under Schedule 9 of the TA00

²⁰ This is currently set out in the CAA's publication "Airspace Change Process" (www.caa.co.uk/CAP1616). In this document, we refer to this and any changes to it as part of the implementation of the Airspace Design Service as the "Airspace Change Process".

²¹ We use the term "customers and consumers" as shorthand to refer to the interests of owners and operators of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them (see section 2(2) TA00).

²² See the [Written Statement](#) to Parliament from the Department for Transport and Mike Kane MP.

and the Freedom of Information Act 2000 and it may be necessary to disclose information consistent with these requirements.

27. Having considered the responses to this consultation and any related policy development, final proposals for modification of the Licence would be subject to statutory consultation as required by the TA00. The timing of further consultation will be informed by the timetable for the associated policy areas referred to in this consultation and progress of statutory changes to the TA00. Currently, we are aiming to publish final proposals in autumn 2025, with a view to making a final decision on these matters in a timely manner towards the end of the year.
28. Any questions related to this consultation should be sent to matt.claydon@caa.co.uk.

Chapter 1

The design of licence modifications to implement the Airspace Design Service

Introduction

- 1.1 This chapter sets out our overall approach to modifying the Licence to support the appointment of NERL as provider of the Airspace Design Service. This chapter sets out:
- summaries of what we said in the November 2024 Consultation and stakeholders' views; and
 - how our approach has evolved, including in the light of the comments we received from stakeholders on our earlier consultation.

Summary of the November 2024 Consultation

- 1.2 In the November 2024 Consultation, we said that licence obligations would be likely to be both the simplest and most effective approach to requiring NERL to provide the Airspace Design Service. We set out an approach based on obligations that would, so far as is practicable, be relatively high level to give NERL reasonable freedom to decide how it should best comply with them alongside the responsibility of compliance. We noted that implementation would also require changes elsewhere, including the Airspace Change Process.
- 1.3 Our approach sought to avoid detailed licence obligations that could quickly become outdated and hinder effective implementation, with flexibility being supported through directions or guidance from the CAA and/or Secretary of State. We said that this approach could also manage the risk of stakeholders using licence enforcement tools to challenge the substance of designs proposed by NERL as this could undermine the Airspace Change Process.
- 1.4 We identified changes to create a new obligation to require NERL to provide the Airspace Design Service and administer the Airspace Design Support Fund, including the matters that NERL would be required to consider in performing that role, an obligation to act transparently and without favouring any groups or individuals, and to address relationships with third parties.
- 1.5 We also said that consequential amendments would be needed to both NERL's existing role in relation to ACOG and other existing provisions, including those that make up the "financial ring fence".

Responses to the November 2024 Consultation

- 1.6 NERL agreed that our approach is aligned with the CAA's primary duty to maintain a high standard of safety in the provision of air traffic services and that the proposals would likely be in airlines' and passengers' interests through the more effective delivery of the Airspace Modernisation Strategy.
- 1.7 It also agreed with the areas in which licence modifications would be needed, but was concerned that the CAA's policy on cost recovery could make it unduly difficult for NERL to finance its activities. It was concerned about the enforcement risks that it would take on through undertaking the new role and wanted the CAA to take a tailored approach to enforcement in relation to the Airspace Design Service.
- 1.8 ScottishPower observed that the arrangements should recognise the importance of the consumer and wanted more clarity in the respective roles of NERL and NATS Services Limited ("NSL", which is a commercial service company within the wider NATS group).
- 1.9 Heathrow Airport Ltd ("HAL"), Airports UK and Luton Airport supported the overall approach, but Luton Airport expressed concerns over delivery in the stated timescales.
- 1.10 Looking at the proposed approach in the round, IATA questioned whether the creation of a "new service" was truly necessary or whether it would suffice to make NERL the project/program manager of LTMA modernisation by some less complex mechanism.
- 1.11 Several respondents questioned the approach to bringing together individual existing proposals into the work of the Airspace Design Service, including how work undertaken prior to a proposal becoming the responsibility of the Airspace Design Service should be dealt with. They wanted to see more detail in these areas. Some stakeholders also wanted more consideration of the issues around airspace design moving to become a separate service in the future.

Our views

- 1.12 This consultation addresses changes needed to the Licence required to support the creation of the Airspace Design Service by NERL. Matters relating to any future position where this service would be provided by a separate body are, therefore, out of scope of this consultation.
- 1.13 We considered our duties under TA00 in detail when we were developing the November 2024 Consultation and have considered them afresh for these initial proposals.

- 1.14 Our view remains that these changes would have no negative impact on standards of safety in the provision of air traffic services as any change to airspace design will need to be designed in accordance with the Airspace Change Process and will be subject to a decision on the merits (including safety) of the proposed change.
- 1.15 As for the other matters we are required to consider, our view is that these proposals are in the interests of the full range of customers and consumers that we are required to consider under TA00,²³ not least because we consider that one of the main aims of the appointment of NERL as Airspace Design Service provider is to simplify the Airspace Change Process so that modernisation of airspace can proceed in a timely manner.
- 1.16 We note IATA's points about whether the creation of obligations on NERL to provide these services is strictly necessary. On balance we consider that our approach will best ensure the delivery of the Airspace Design Service and that the relatively high level obligations should be both proportionate and effective. We also remain of the view that having a single body responsible for both the Airspace Design Service and Airspace Design Support Fund will best promote a coordinated and appropriate set of arrangements.
- 1.17 On NERL's concerns over the risk of enforcement of the proposed new obligations, we have considered the impact of it undertaking the Airspace Design Service in the broader context of our general approach to enforcement. This approach is:
- expressly subject to prioritisation; and
 - founded on a "stepped" approach that, in the first instance, seeks to resolve issues informally.
- 1.18 Our current view is that, unless a very clear deficiency arose in setting up the Airspace Design Service, it seems unlikely that formal enforcement activity would be appropriate over concerns about NERL's approach. Even if the CAA was to launch enforcement activity and found a breach after a rigorous process, our approach would need to be proportionate given our duties, including in relation to NERL's financeability.
- 1.19 For the avoidance of doubt, we cannot envisage any credible scenario whereby delivery issues in relation to the Airspace Design Service would require us to take regulatory steps that would compromise NERL's core air traffic services, for example, by termination of the Licence.

²³ "Operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them": see TA00, s2(2)(a)

- 1.20 As a result, we do not see merit in creating a “special case” to cover our regulation of NERL’s conduct in providing the Airspace Design Service. Our current approach, when combined with the “checks and balances” already in both our policies and the broader legal framework, provide sufficient comfort that the concerns NERL set out should not be overplayed.
- 1.21 We note IATA’s concerns about inefficient costs and business separation, but consider that the approach we are proposing will address these concerns in a proportionate manner. These matters are dealt with in more detail in Chapter 3 (Consequential modifications to the Licence) and Chapter 4 (Costs of new airspace design services). As for the next steps, this consultation, together with the consultations that are planned to be issued later in the year in relation to the Airspace Change Process, address these concerns.
- 1.22 As for HAL’s comments, we address issues in relation to the proposed Advisory Board, the matters that the Airspace Design Service should consider in carrying out its functions and role of airports in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service).
- 1.23 On ScottishPower’s desire for clarity over the respective roles of NERL and NSL:
- NERL’s role is focussed on its core activities subject to economic regulation such as en route and oceanic air traffic services: this will be extended to cover the Airspace Design Service; while
 - NSL’s role is to undertake commercial activities, such as airport control tower activities and will not be changed by the developments discussed in this consultation.
- 1.24 We note stakeholders’ desire for detail on how airspace change proposals will move to become the responsibility of NERL and how the Airspace Design Service will be expected to undertake its role. As discussed further in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service), these matters will be addressed in guidance to be consulted on in relation to the Airspace Change Process. As part of this, specific guidance for the “onboarding” process for specific proposals to transition to the Airspace Design Service is being developed that will address key roles and responsibilities between the Airspace Design Service and partners, for example, in relation to the accountability of airport partners for controller training, equipment updates and modification and local issues. Guidance will also address environmental issues. As these matters will be addressed in the Airspace Change Process and associated guidance, it would not be appropriate to address them through the arrangements for the economic regulation of NERL. That said, we note that centralising the design of airspace changes should facilitate more consistent and higher quality environmental assessments. Further discussion on these matters is set out in the Consultation Response Document.

1.25 Bearing all of the above in mind, we propose to retain the high-level approach to licence modifications as envisaged in the November 2024 Consultation:

- licence obligations will be the simplest and most effective approach to requiring NERL to provide the Airspace Design Service;
- obligations will, so far as is practicable, be relatively high level to give NERL reasonable freedom to decide how it should best comply with them alongside the responsibility of compliance;
- these obligations will require NERL to provide the Airspace Design Service and administer the Airspace Design Support Fund, and will include the matters that NERL will be required to consider in performing that role (including obligations to act transparently and without favouring any groups or individuals); and
- consequential changes will be necessary, including to NERL's obligations with respect to ACOG.

Chapter 2

Licence modifications to implement the creation of the Airspace Design Service

Introduction

- 2.1 This chapter sets out our initial proposals for how the obligations for NERL to undertake the Airspace Design Service could be implemented by changes to the Licence.
- 2.2 This chapter covers the:
- definition of NERL's role in providing the Airspace Design Service;
 - geographical scope of the Airspace Design Service;
 - obligations on NERL in respect of providing the Airspace Design Service;
 - matters NERL would need to take account of in providing the Airspace Design Service;
 - the proposed role and composition of the Advisory Board;
 - relationships with stakeholders; and
 - key questions for consultation.
- 2.3 Drafts of the modifications that we consider could be appropriate to implement these initial proposals are set out in Appendix B.

Summary of the November 2024 Consultation

- 2.4 In line with the approach set out in the Joint Consultation, the November 2024 Consultation set out indicative proposals for how NERL's proposed new role as Airspace Design Service provider could be implemented so that it would "hold the pen" on a single design for airspace change within the geographic area it would be responsible for (initially the LTMA).
- 2.5 In doing so, the Airspace Design Service would:

- combine relevant airspace change proposals such that the outcome is a single design and single airspace change proposal that prioritises maintaining a high standard of safety and secures system-wide benefits and overall network optimisation, while giving due consideration to local circumstances and environmental impacts; and²⁴
- be required to sponsor the single proposal through the Airspace Change Process.²⁵

2.6 To implement this, the November 2024 Consultation set out indicative text for a definition of the Airspace Design Service that was separate from the existing activities covered by the Licence. This underpinned a relatively simple new provision requiring NERL to undertake the Airspace Design Service in a way that pursued the objectives of airspace modernisation, addressed strategic priorities set, and guidance provided, by the DfT and CAA as co-sponsors of airspace modernisation, as well as addressing other matters such as how the views of stakeholders should be taken into account and practical constraints.

2.7 Following the approach set out in the Joint Consultation, the illustrative text provided for the geographical scope of the Airspace Design Service that could be widened or amended over time without amending the Licence.

2.8 The illustrative drafting also covered governance, including through obligations to address:

- securing that the Airspace Design Service acts in a non-discriminatory manner in the best interests of the UK network;
- the creation of an Advisory Board of broad composition that would meet regularly to provide advice, transparency, oversight and scrutiny; and
- how to achieve a clear division of responsibilities and lines of communication between the Airspace Design Service and any “partner”, being any airports or air navigation service providers whose airspace falls within the LTMA.

2.9 At the time of the November 2024 Consultation, policy was still under development for:

- changes to the Airspace Change Process;
- arrangements for the administration of the Airspace Design Support Fund; and

²⁴ See the Joint Consultation at paragraphs 5.9, 5.19 to 5.21 and 7.19ff

²⁵ *Ibid* at paragraph 6.8-6.10

- the role of ACOG, albeit the November 2024 Consultation indicated that one way of addressing this could be by limiting the geographic scope of ACOG to areas where NERL's role as the Airspace Design Service provider does not apply.

Overall approach and definition of the Airspace Design Service

Stakeholders' views

- 2.10 NERL expressed concerns about the description of the role of the Airspace Design Service as being to amalgamate all existing proposals in the London and Southeast cluster, proposing a more central coordinating role with respect to consultation activities. It agreed that consultation and engagement must involve both the Airspace Design Service provider and the airports working together as airports have built, and invested heavily in maintaining, extensive stakeholder relationships that have intrinsic value and should not be lost. As such, it considered that working together with them must be carefully coordinated.
- 2.11 Having said that, NERL was clear that the Airspace Design Service must have accountability for consultation and engagement, setting the framework for consultation and ensuring that airports are appropriately engaged and following the requirements set out in that framework. It suggested that the framework needed to be more directive than is suggested in the consultation document. It considered that, without such central direction, multiple airports leading their own independent stakeholder engagement and consultation would:
- likely lead to inconsistencies and confusion for stakeholders; and
 - give an effective veto to each individual airport, for instance if it were unwilling to engage and consult on designs that it may not fully support.
- 2.12 NERL opposed the proposed transition arrangements for current airspace change proposals as they assumed continuation within the current Airspace Change Process and airspace masterplan framework which it considered would not support the timely and effective delivery of airspace modernisation in the London cluster. It argued for an alternative regulatory model, underpinned by secondary legislation, to enable effective delivery.
- 2.13 NERL said that amalgamation could invalidate sponsors' previous work as the airspace design would require a single Statement of Need and set of Design Principles. At present, individual sponsors had developed their options based upon their own bespoke Statement of Need and design principles, so their options could be invalid under an amalgamated airspace change proposal.
- 2.14 HAL was also concerned about how specific proposals currently under development would transition into the work of the Airspace Design Service. It considered that NERL should be pragmatic and utilise completed work from in-

scope airspace change proposals, particularly Design Principles and current options that had been developed based on deep community engagement and wider understanding. HAL considered that commitments made to stakeholders, identified local circumstances, and future stages of airspace change proposals should not be a 'non-negotiable' in such transition and would be key to the success of any airspace change proposal.

- 2.15 It questioned the proposal to merge existing airspace change proposals into a single airspace change proposal. It noted that there was limited detail on how this would be delivered, and both creating and then managing the single cluster would be complex and challenging.
- 2.16 HAL also proposed small changes to the drafting, to provide for the CAA and DfT to be able to issue guidance to the Airspace Design Service and to acknowledge that the CAA and DfT could each have a role in approving airspace changes.
- 2.17 Airports UK and Farnborough Airport supported the overall approach of the November 2024 Consultation but wanted the Airspace Design Service to have a clear role to support transparency and accountability and provide protection from the Government using the Airspace Design Service as a means of pursuing other policy goals.
- 2.18 IATA made similar comments, also:
 - emphasising the need to clarify the responsibility for safety during the whole life of the procedure, including implementation; and
 - considering that a neutral entity might be needed to judge environmental, economic and safety cases and ensure NERL's neutrality.
- 2.19 Luton Airport supported some flexibility to allow other aerodromes to seek airspace design services from NERL if it did not lead to resource strain for the Airspace Design Service and CAA.
- 2.20 Future Flight Challenge ("FFC") wanted a clear mechanism for deciding whether an airspace change proposal within the area covered by the Airspace Design Service should be brought forward by the Airspace Design Service or another organisation.

Our views

- 2.21 The Governance Paper sets out the proposed approach that NERL, as the Airspace Design Service provider, will be empowered to act as a 'guiding mind' to coordinate and deliver holistic airspace design for a geographic area containing multiple major airports and ensure the requirements of different stakeholders are managed effectively. The key decisions on whether an airspace change proceeds through different stages of the Airspace Change Process will continue to be taken by the CAA, or the Secretary of State for Transport if an

airspace change proposal is “called in”. We also note that the Secretary of State has powers (delegable to the CAA) under the Air Traffic Management and Unmanned Aircraft Act 2021 to direct a partner to carry out specific work to progress an airspace change proposal, or to cooperate with the Airspace Design Service in preparing or taking steps to prepare an airspace change proposal. Overall, we consider the wider framework is sufficiently directive and note that in any case the conditions in NERL’s licence cannot by themselves give NERL powers to direct third parties.

- 2.22 Bearing the above in mind, we continue to consider the licence conditions requiring NERL to provide the Airspace Design Service should be high level, so far as reasonably practicable. These licence conditions should provide a clear mechanism for setting the scope of what is required of NERL and that any changes in this scope should be subject to an appropriate process, as discussed below.
- 2.23 As a result, and as discussed further below, we do not consider it appropriate for the Licence to address questions of whether the output of the Airspace Design Service should be to create one or more designs for UK airspace, or to deal with safety, transitional arrangements, relations with stakeholders or the respective responsibilities of NERL and airports. Rather, we propose that these matters should be addressed through:
- the Airspace Change Process and any associated guidance on it issued by the CAA, as well as the priorities and design principles set out by the DfT and CAA in the airspace regulatory framework, including the Air Navigation Directions and Air Navigation Guidance;
 - arrangements that NERL puts in place with stakeholders; and
 - the transitional arrangements to be consulted on later this year by the CAA that will need to be put in place for the Airspace Design Service to assume responsibility for particular airspace change proposals in the Airspace Change Process.

Geographic Scope of the Airspace Design Service

Stakeholders’ views

- 2.24 NERL agreed with the initial geographic scope being the LTMA, but did not agree that it would be appropriate to allow for changes to the geographic scope of the Airspace Design Service to be made without amending the Licence. It considered that such changes could be significant in either geographic scope and/or the nature of the airspace involved (for example, lower airspace with potential for integrated operations including uncrewed aircraft, military danger areas).

- 2.25 It said the resource and risk management implications of such changes could be significant and noted that changes in scope should be fairly and transparently achieved through a consultation on a licence modification, providing NERL with a right of appeal.
- 2.26 HAL and Farnborough Airport also supported the geographic scope, but wanted to see that any change would not prejudice delivery of airspace change in the LTMA region, as well as having questions about specific matters relating to the airspace change process.
- 2.27 By contrast, ScottishPower argued that there would be merit in rolling the Airspace Design Service out in less complex airspace as proof of concept, such as the Scottish Terminal Manoeuvring Area.
- 2.28 IATA was concerned that, although it understood the importance and priority on LTMA, limiting NERL's obligations to that geographical area might impact not only the development of projects outside the area but the whole "holistic national approach" intended by this initiative.

Our views

- 2.29 We note the concerns that have been raised about a licence modification that would enable the co-sponsors to change the geographic area covered by the Airspace Design Service, particularly those comments about resourcing and ensuring that there is an appropriate process associated with any such changes.
- 2.30 We also note the importance of the wider context in relation to these matters, including the recent announcements in relation to the expansion of Heathrow. Given that we are not, at this stage, able to predict the precise scope or timing of the design work needed to underpin any such expansion, it appears that there remains significant merit in including a mechanism that would allow for change in geographic scope in the licence modifications creating the Airspace Design Service.
- 2.31 In doing so, we have considered the following options:
- Option 1 - setting the geographic scope on the face of the Licence: This approach would require the CAA to use the statutory process set out in TA00 to modify the Licence to change the geographic scope of the Airspace Design Service. Our analysis of this approach indicates that it has:
- the advantage that it is well understood by stakeholders and the regime under TA00 provides NERL, airlines and London airports (but not other airports) a means of challenging any decision by way of appeal to the Competition and Markets Authority ("CMA"); and
 - the disadvantages that

- (i) the statutory licence modification process in TA00 is time consuming, likely taking three to four months from publishing the statutory consultation to the decision taking effect, and longer if informal consultation is undertaken, while an appeal would add a further six months or more; and
- (ii) other stakeholders' ability to appeal is excluded and they would only be able to challenge any decision by way of judicial review, if it is available to them.

Option 2 – creating a “self-modification” process, as contemplated by section 7(6A) TA00: TA00 provides that a Licence condition may include provision for its own modification if certain circumstances are met.²⁶ Our analysis of this approach indicates that it has:

- the advantage that it would enable a process to be used that potentially could be swifter than under section 11A TA00; but
- such a process could be complex to devise, and the underlying condition would also be subject to appeal rights to the CMA at the point it was introduced. Depending on the design of the condition, parties might still be able to challenge changes to the geographic scope by judicial review.

Option 3 – providing for the Secretary of State or CAA to modify the scope by a direction: TA00 provides that a licence may include provision requiring the licence holder to comply with any requirements imposed at any time (by directions or otherwise) by a person with respect to any matter specified, or of a description specified, in the licence.^{27,28} Our analysis of this approach indicates that it has:

- the advantages of flexibility and provides a means of reacting in a timely manner to changing circumstances;
- the disadvantages of reduced consultation with stakeholders, albeit that this could be mitigated by a requirement that any such direction only be binding if it had been subject to prior consultation; and

²⁶ These are that the condition must specify or describe:
 (a) the circumstances in which it may be modified,
 (b) the types of modification that may be made, and
 (c) the period or periods in which it may be modified.

²⁷ See section 7(2)(b) TA00

²⁸ These are that the condition must specify or describe:
 (a) the circumstances in which it may be modified,
 (b) the types of modification that may be made, and
 (c) the period or periods in which it may be modified.

- a reduction in the procedural protections for the licensee, although any direction would have the potential to be subject to challenge by way of judicial review.

Option 4 – providing for NERL to provide the Airspace Design Service for the whole of the UK, but, in doing so, requiring it to deliver strategic objectives set by the CAA or Secretary of State which could prioritise sponsoring airspace change proposals in particular geographic areas, such as the LTMA region: This approach would have the same statutory underpinning as Option 3 and would have the same advantages and disadvantages. This approach could also have the potential to:

- allow some simplification of the obligations on NERL, so facilitating compliance, as the geographic scope of the Airspace Design Service would not be derived from a separate obligation, but be “rolled up” into the strategic objectives that NERL would be required to have regard to;
- provide greater flexibility to NERL in the precise nature of the work undertaken by the Airspace Design Service while still addressing the relationship between the initial geographic scope of the Airspace Design Service and the need for an approach that covers the whole of the United Kingdom;
- any strategic objectives set would be subject to a requirement to consult and would have the potential to be subject to challenge by way of judicial review.

2.32 There would be advantages of Option 4 in terms of flexibility and agility. In the event that changes to the Airspace Design Service were needed that would involve a material change to NERL’s resource requirements, we would need to consider the impact of these changes and, in accordance with our duties, where appropriate, consult on modifications to the Licence to address these issues. Requiring consultation with stakeholders would also appear to provide appropriate procedural protections for NERL and wider stakeholders. Taken together with the advantages of flexibility and agility, these considerations mean that Option 4 is our preferred approach and the basis for these initial proposals.

2.33 As discussed above, questions about who can bring forward an airspace change proposal and the approach to transitioning particular proposals to the Airspace Design Service are for the Airspace Change Process to address, not the Licence.

2.34 Licence drafting that would implement these initial proposals, if adopted, is set out in Appendix B after paragraph B14 (see new condition X at paragraph 7).

Nature of the obligation

Stakeholders' views

- 2.35 NERL agreed with the overall approach that any licence obligations should, so far as practicable, be high level to give it the freedom as well as the responsibility to comply as with other obligations. It agreed that a relatively simple obligation should be set out in a new provision in the Licence, reflecting the objectives identified in the Joint Consultation. A regulatory process, defined by the CAA operating within Air Navigation Orders, should set out what the Airspace Design Service needed to do to deliver an airspace change, and so this level of detail need not be included in the Licence.
- 2.36 NERL agreed that obligations could be complemented by guidance/directions from the CAA or Secretary of State as this would provide flexibility. That said, NERL was clear that any material changes in scope and resource requirements should be implemented through licence modifications, so there would be a clear consultation process and a means of appeal.
- 2.37 NERL was concerned that the CAA's description of the Airspace Design Service as assessor/combiner/sponsor was too restrictive and unlikely to enable the Airspace Design Service to construct a more holistic, integrated design of airspace structures across the LTMA region. To deliver that outcome, the Airspace Design Service would need to be tasked with developing its own proposals, informed, but not constrained, by prior design work produced by previous airport sponsors of individual airspace change proposals.
- 2.38 NERL was also concerned that the proposed drafting potentially confused the respective roles and responsibilities of the Airspace Design Service and third parties.
- 2.39 HAL suggested that the obligation creating the Airspace Design Service should make clear that any consultation by the CAA or Secretary of State should include airports and Ministry of Defence ("MoD"). It also suggested clarifications to ensure that it is clear when NERL is required to take into account any guidance given to it, and that the Secretary of State could have a role in approving airspace change proposals.
- 2.40 IATA was concerned that any obligation in relation to resourcing needed to be reconciled with the (at least in principle) temporary nature of NERL's role.
- 2.41 FFC was concerned that there might be some inconsistency between the wording of the Joint Consultation and the November 2024 Consultation: there needed to be clarity on whether there were restrictions to the intended design and number of airspace change proposals that result, or whether the Airspace Design Service would be given the freedom to choose how it creates the design.

Our views

2.42 We note that NERL agrees with the broad thrust of the approach set out in the November 2024 Consultation. We also note the risks of inconsistency raised by FFC and consider that the drafting of the obligations on NERL should be focussed on requiring NERL to produce an airspace change proposal that is suitable for consideration by the CAA or Secretary of State, in accordance with the requirements of the Airspace Change Process as it will apply to the Airspace Design Service.

2.43 Under this approach, the Airspace Change Process set out in CAP 1616 will continue to form the basis of the framework for the development and approval of airspace changes, addressing requirements on safety, environmental, economic and operational assessment. We note the Consultation Response Document sets out the intention to consult on a package of changes to improve the effectiveness and proportionality of the CAA Airspace Change Process. Additionally, to deal with the specific circumstances of the Airspace Design Service and its relationships with multiple partners, the CAA will consult on the publication of a new guidance document applicable only to airspace change proposals sponsored by NERL as the Airspace Design Service provider. Together these steps will provide specific streamlined guidance for both the Airspace Design Service and the wider aviation community as to how airspace changes falling within the scope of the Airspace Design Service will be taken forward.

2.44 The DfT is also reviewing the airspace regulatory framework, including the Air Navigation Guidance, to streamline and remove duplication from the requirements upon which the Airspace Change Process is based. This work is being undertaken at pace and is potentially far reaching. It is subject to ministerial agreement, will require a consultation and will ultimately be reflected in the CAA's Airspace Change Process.

2.45 Taking into account the Air Navigation Guidance and Airspace Change Process activities discussed above, we have simplified the draft condition included in the November 2024 Consultation and removed the specific obligations in relation to:

- programme management;
- designing flight instrument procedures, carrying out economic and environmental assessments and developing aeronautical information; and
- post-implementation review

as these requirements will be set out in or governed by the Airspace Change Process.

- 2.46 We also note IATA's comment about the potentially transitory nature of the Airspace Design Service in NERL's hands, and have adjusted the drafting of the obligation to maintain assets, personnel, systems and other parts of the business to refer specifically to the need for them to support the delivery of the Airspace Design Service so that it is clear that, should NERL cease to provide the service, the obligation will not have any ongoing impact on NERL.
- 2.47 Our initial proposal is, therefore, to create a simplified obligation on NERL to provide the Airspace Design Service. We consider that this would be an appropriate means of requiring NERL to deliver the Airspace Design Service as envisaged in the Consultation Response Document, namely to:
- combine relevant airspace change proposals such that the outcome is a single design and single airspace change proposal that prioritises maintaining a high standard of safety and secures system-wide benefits and overall network optimisation, while giving due consideration to local circumstances and environmental impacts; and
 - be required to sponsor the single proposal through the Airspace Change Process.²⁹
- 2.48 In providing the Airspace Design Service, NERL will be required to use its best endeavours to achieve strategic objectives set by the CAA. The strategic objectives will be set after consultation with NERL and other relevant parties, including airports and the MoD.
- 2.49 As noted above, in the event that changes to the Airspace Design Service were needed that would involve a material change to NERL's resource requirements, we would need to consider the impact of these changes and, in accordance with our duties, where appropriate, consult on modifications to the Licence to address them.
- 2.50 Licence drafting that would implement these initial proposals, if adopted, is set out in Appendix B after paragraph B14 (see new condition X at paragraphs 1, 3, 6, 10 and 11).

Matters NERL would need to take into account

Stakeholders' views

- 2.51 NERL said that the factors identified in the November 2024 Consultation for the Airspace Design Service to take into account looked relevant, built upon current practice and were simply expressed in the illustrative Licence modifications. In terms of the Airspace Design Service's ability to make medium-term plans for

²⁹ See "Remit for the UKADS including ACP consultation – outcome" on page 60 and "Transition arrangements – outcome" on page 69 of the Consultation Response Document

resource allocation, NERL considered it helpful that any guidance given by the CAA or Secretary of State to inform prioritisation would only be effective after a formal consultation process.

- 2.52 HAL was keen to ensure that stakeholder and environmental impacts would be appropriately considered alongside the importance of the Air Navigation Guidance 2017. It suggested that, in providing the Airspace Design Service, NERL should be pragmatic and utilise completed work from in-scope airspace change proposals, particularly design principles and current options which had been developed through community engagement and wider understanding. Commitments made to stakeholders and identified local circumstances should form the starting point for further work by the Airspace Design Service, and would be the key to the success of the relevant airspace change proposals and maintain momentum by avoiding the need to redo large parts of the Airspace Change Process. To address this, HAL took the view that NERL should be under a specific obligation to consult airports that previously sponsored the relevant airspace change proposals, and through that consultation, explain how NERL has taken account of the local aspects of possible designs for UK airspace. This would also increase transparency and improve governance standards.
- 2.53 To avoid confusion, HAL considered that “local circumstances” should not be included, but NERL should be explicitly required to have regard to Government and CAA policy and guidance, including that contained in the Air Navigation Guidance and Airspace Change Process and report to the CAA (copied to the Advisory Board) on how it had done so.

Our views

- 2.54 We agree that the matters NERL should be required to take into account should enable it to plan its work effectively. Central to this will be requirements for NERL to have regard to the Air Navigation Guidance, the Airspace Change Process, strategic objectives set by the CAA or Secretary of State and any other guidance issued by the CAA or DfT.
- 2.55 In relation to HAL’s concerns over what the Airspace Design Service should take into account, the Governance Paper states that the CAA and DfT, as co-sponsors, may provide guidance to the Airspace Design Service, for example in the event of a new policy or a change in government priorities that could affect the Airspace Design Service’s work, or at the request of the Airspace Design Service. In this light, we consider that it would not be appropriate for the licence modifications to include requirements for NERL to take into account specific elements covered in the detail of the Airspace Change Process or associated guidance, such as design principles or local circumstances. Rather, the Licence should refer to these higher-level materials.

- 2.56 As noted above, if changes to the Airspace Design Service were needed that would involve a material change to NERL's resource requirements, we would need to consider the impact of these changes and, in accordance with our duties, where appropriate, consult on modifications to the Licence to address them.
- 2.57 The licence drafting set out after paragraph B14 of Appendix B has been designed to reflect these matters (see new condition X at paragraphs, 7, 8 and 9).

Governance, the Advisory Board and reporting

Stakeholders' views

- 2.58 NERL supported the creation of an Advisory Board and its remit as a way to mitigate potential conflicts of interest. It also suggested ways of clarifying the approach.
- 2.59 HAL agreed with the need for an Advisory Board. It said that the Advisory Board should operate transparently, include representatives of key parties, and contain significant operational and airspace change knowledge. The relevant obligations should be set out in the Licence.
- 2.60 ScottishPower and Farnborough Airport made similar comments, with the latter taking the view that all partner airports should have a seat on the Advisory Board.
- 2.61 Airports UK considered that that the Advisory Board should be established by the CAA to enhance independence and transparency and hold the Airspace Design Service to account. By contrast, Luton Airport and FFC, while supporting the creation of the Advisory Board, expressed concerns over NERL's ability to identify suitable subject matter experts with no broader conflict of interest.
- 2.62 The MoD requested membership of the Advisory Board and was keen to ensure that priorities for airspace change proposals would be executed without unreasonably favouring particular stakeholders.
- 2.63 IATA wanted more details on the composition of the Advisory Board and other governance matters. It considered that governance must include commercial airlines or their representatives.

Our views

- 2.64 The Governance Paper clarifies the aim of the Advisory Board as being to:
- provide a degree of independent and stakeholder oversight;
 - act as a mechanism for key stakeholders to engage with the Airspace Design Service at a strategic level; and

- enable the Airspace Design Service to test, and work issues through with, a smaller group of stakeholders, reducing future risks to delivery.

- 2.65 The Governance Paper sets out that the Advisory Board would have no role in decision-making, but will provide visibility and ensure that the Airspace Design Service is approaching matters in the right way.
- 2.66 In line with the Governance Paper, the Licence would require the Airspace Design Service to set the structure, membership and to publish terms of reference for the Advisory Board, subject to consulting the co-sponsors on these matters. The co-sponsors would not have a veto on this structure but may wish to attend the Advisory Board as observers.
- 2.67 The Governance Paper sets out that it would be for the Airspace Design Service and NERL Board to determine the appropriate internal governance arrangements for the Airspace Design Service, albeit that we expect that they should take account of stakeholders' views in doing so and carefully consider the membership of the Advisory Board. As co-sponsors of the Airspace Modernisation Strategy ("AMS"), DfT and CAA will manage the practical relationship with the Airspace Design Service, including reporting, through the existing AMS governance arrangements, such as the DfT/CAA Joint Airspace Modernisation Programme Board structure.
- 2.68 The licence drafting set out after paragraph B14 of Appendix B has been designed to reflect these matters (see new condition X at paragraphs 13 and 14).

Relationships with stakeholders

Stakeholders' views

- 2.69 NERL said that it should be given accountability and funding, with scope to work closely with airports to deliver consultation and engagement activities locally. In its view, the Airspace Design Service should set the framework for consultation and ensure that airports are appropriately engaged and following the requirements set out in that framework. So, the framework needs to be more directive than currently suggested.
- 2.70 HAL took the view that, where they wished to, and had the capacity, airports should retain a more active role in the airspace change proposals for which they were currently the 'sponsor', particularly design activities, consultation and engagement, and environmental assessments. It said the precise scope of the airport's role should be defined clearly in the onboarding plan and partnership arrangements be developed as part of the transition process, and that in situations where airports were taking that more active role, it would be confusing and unhelpful to simply label them as one partner amongst many. Instead, HAL said it would be more appropriate to define them as 'requirements-sponsors', 'delivery sponsor' or similar. It wanted the Licence to address these points,

requiring NERL to use 'best endeavours' to agree written ways of working with airports as this would increase the cooperation and understanding between the parties and be beneficial to both NERL and the party with which it is entering an agreement.

- 2.71 Farnborough Airport said it would expect to be involved in regular contact, as it currently was with ACOG, and that it did not want this to be lost.
- 2.72 Airports UK said that transparency, impartiality and accountability were critical to the success of the Airspace Design Service: stakeholders should have confidence in effective engagement between NERL and the co-sponsors, timely delivery of NERL's plans and robust oversight, reporting and assurance mechanisms. It also wanted further clarity on how policy changes or shifting government priorities would be dealt with and how partner organisations would be informed.
- 2.73 IATA said there was a lack of clarity in the proposals.

Our views

- 2.74 As discussed above, the Governance Paper makes clear that NERL, as the Airspace Design Service provider, will be empowered to act as a 'guiding mind' to design and deliver holistic airspace for a geographic area containing multiple major airports, manage trade-offs, and ensure the requirements of different stakeholders are managed effectively to deliver the best overall outcome for the UK. As such, it should have the opportunity and ability to build its own relationships with stakeholders and resolve issues with them directly, without the need for intervention. The Airspace Design Service will not be required to adopt any pre-existing airspace change plans or proposals in its deliverables.
- 2.75 The Airspace Change Process includes a requirement to consult with those affected about airspace change. So, it will need to work closely with airspace change partners.³⁰
- 2.76 We consider that a combination of the licence modifications discussed in this consultation, together with the changes to be brought forward to the Airspace Change Process, will empower NERL to deliver airspace change. In addition, the DfT and the CAA have various tools available to support the progression of airspace design work including through the Airspace Change Process and

³⁰ Here, "airspace change partners" refers to existing sponsors of airspace change proposals, who will become partners of the Airspace Design Service once operational. Initially this will be airports in the LTMA who are part of the Future Airspace Strategy Implementation Programme.

powers afforded to the Secretary of State (and delegable to the CAA) under the Air Traffic Management and Unmanned Aircraft Act 2021.

- 2.77 The CAA intends to set out, in the proposed guidance document to be consulted on later this year, the respective roles in the arrangements between the Airspace Design Service and its partners. It is likely that the Airspace Design Service and airspace change partners would be encouraged to enter into partnership arrangements, setting out high level key roles and responsibilities, including accountability of airspace change partners for controller training, equipment updates and modification. This consultation will provide partners with an opportunity to inform the Airspace Design Service of any limitations they may have.
- 2.78 When onboarding a particular airspace change proposal into the Airspace Design Service, the Airspace Design Service will review the airspace change partner's airport design considerations, which may include airport design requirements, local design considerations and commitments. If the Airspace Design Service accepts these, they would be progressed in the airspace change proposal as "Local Design Requirements".
- 2.79 NERL, as the Airspace Design Service provider, would then establish constructive relationships with partners which may be formalised through partnership arrangements, but the overall design and delivery accountability will remain with the Airspace Design Service.
- 2.80 As well as the approach outlined above, there are legal powers available to compel cooperation with the Airspace Design Service should they be needed. These might apply, for example, if the existing sponsor of an airspace change refused to cooperate with the Airspace Design Service. If the Airspace Design Service were unable to resolve the issue with the airspace change partner, several mechanisms are available as noted in the Governance Paper. If these mechanisms did not resolve the matter, the Secretary of State has powers available under the Air Traffic Management and Unmanned Aircraft Act 2021 , which can also be delegated to the CAA, to direct any person involved in airspace change to deliver or cooperate in the delivery of an airspace change.
- 2.81 The CAA (or Secretary of State, if the decision is "called in") will remain the regulatory decision maker for airspace change. Once an airspace change sponsored by NERL as the Airspace Design Service provider has been approved by the CAA, airports and air navigation service providers will be required to implement those aspects of the airspace design change that are within their control.
- 2.82 In this light, it appears that relatively little modification is needed to the Licence to meet the concerns of stakeholders and to implement these arrangements, save for the requirement for the Airspace Design Service to have regard to guidance

from the CAA or DfT and a relatively high-level obligation on NERL to use reasonable endeavours to enter into appropriate arrangements. This is reflected in the drafting of the proposed licence modifications set out in Appendix B after paragraph B14 (see new condition X at paragraphs 16 and 17).

Administration of the Airspace Design Support Fund

Stakeholders' views

- 2.83 While the November 2024 Consultation contained only a placeholder on these matters that noted further policy development would be required, stakeholders did provide some comments.
- 2.84 NERL was concerned that administration of the Airspace Design Support Fund would not fit well with its current or proposed activities and could be better fulfilled by a public body such as the CAA or the DfT. Specifically, the allocation of a limited fund between different bids would involve policy judgements about their respective merits, their alignment with the priorities set out in the Airspace Modernisation Strategy and the degree of financial support each bid might merit.
- 2.85 HAL noted that the Airspace Design Support Fund would be important to ensure that airspace modernisation was achievable and delivered in the timeframes expected. It said that the Airspace Design Service should be focussed on delivering airspace modernisation in the LTMA by 2030, rather than developing its ability to administer third party funding. HAL wanted more information on how the fund would work in practice.
- 2.86 To ensure a reasonable weighting to any funding for airspace modernisation activities, HAL said that the Airspace Design Support Fund should mirror the core requirements of the Airspace Design Service for sponsors. Alternatively, airports in the LTMA should be able to apply for support funding for activities that fell outside of the main responsibility of the Airspace Design Service.
- 2.87 IATA said there was also a lack of clarity on why the Airspace Design Service, should administer the Airspace Design Support Fund for projects outside the LTMA region. It noted areas in which there was need to indicate how the fund would work, including eligibility/access to the fund, procedures, the need for reserves and how the fund would be established (through prefunding or otherwise).

Our views

- 2.88 The Support Fund Paper sets out that a fund will be established alongside the establishment of the Airspace Design Service, to be administered by NERL. The Airspace Design Support Fund would only be available to UK commercial airports that are served by airline operators required to pay the Charge, do not

fall within the scope of the Airspace Design Service; and are taking forward an airspace change proposal meeting specified criteria.

- 2.89 Those airports would be able to apply for reimbursement of the costs of airspace change proposals to support the Airspace Modernisation Strategy³¹ that had, as a minimum, successfully completed the Stage 2 Gateway of the Airspace Change Process (with limited exceptions).
- 2.90 The Support Fund Paper sets out more detail on the proposed operation of the Airspace Design Support Fund itself.
- 2.91 Consistent with its wider role, the Advisory Board, if it forms part of the terms of reference NERL that will be required to agree with the co-sponsors (discussed above), could also be used to provide assurance that processes were being followed effectively and fairly, but not be involved in specific funding decisions.
- 2.92 Detailed guidance will be published to implement the approach set out in the Support Fund Paper.
- 2.93 We consider that the obligation for NERL to administer the Airspace Design Support Fund can be stated at a high level in the Licence and refer to the detailed rules to be published by the CAA. This drafting is set out in Appendix B after paragraph B14 (see new condition X at paragraph 5).

The role and scope of ACOG

Stakeholders' views

- 2.94 NERL supported both:
- the Airspace Design Service assuming the programmatic and coordination functions from ACOG for the London cluster; and
 - ACOG retaining its current functions for clusters that were not delivered by the Airspace Design Service.

It considered that a simple Licence amendment could limit the geographic scope of ACOG to areas where NERL's role as the Airspace Design Service provider did not apply. It also considered that the UK Airspace Masterplan was no longer required for clusters that were delivered by the Airspace Design Service.

- 2.95 HAL said that once an airspace change proposal had been transferred to the Airspace Design Service, ACOG's role with regard to it should cease. HAL thought providing ACOG with residual responsibilities would simply lead to a lack of clarity about roles, responsibilities and accountability, which might delay

³¹ The Fund would not fund airspace change proposals required for Future of Flight or General Aviation activities.

airspace change proposals. It also considered the transfer and production of a masterplan for the LTMA to the Airspace Design Service would require careful consideration, including whether a masterplan was required at all once the Airspace Design Service took responsibility for the coordination of airspace change proposals in the LTMA.

- 2.96 ScottishPower said that, based on experience of Scotland's TMA, it would be sensible for the Airspace Design Service to take over responsibility from ACOG over time. It proposed a steering committee to facilitate ACOG aligning itself with the Airspace Design Service.
- 2.97 Airports UK, FFC and HAL echoed the need for appropriate structures to coordinate the work of the Airspace Design Service and ACOG. HAL went on to say that there should be an agreed approach to calculating benefits and prioritising deployments, with a clear dispute resolution and escalation process in place for when issues could not be resolved.
- 2.98 Farnborough Airport agreed with the CAA's proposed approach.
- 2.99 FFC stressed the need for the transition to the Airspace Design Service to be well managed and a need to ensure a consistent approach between the Airspace Design Service and ACOG, including through the sharing of best practice.

Our views

- 2.100 The ACOG Paper sets out the DfT and the CAA's policy position on the future of ACOG once the Airspace Design Service has been established. The ACOG Paper notes that as the UK Airspace Masterplan has evolved, the scope of the coordination activity required from ACOG has reduced. Further, as NERL begins to set up the Airspace Design Service later in 2025, there would be no ongoing role for ACOG in the LTMA.³²
- 2.101 In addition, the CAA has committed to consult by September 2025 on improvements to the effectiveness and proportionality of processes for changing airspace, to simplify and make progress more quickly.³³ This includes the regulatory framework for the airspace masterplan. In this light, the ACOG Paper:
- noted that the CAA will consult on the regulatory framework for the airspace masterplan; and

³² See the Joint Consultation at paragraph 5.11

³³ See the Letter from the office of the Chief Executive to the Prime Minister, January 2025, available at www.caa.co.uk/CAP3085A.

- proposed that, if changes to that framework are made, the conduct of tasks that are currently carried out by ACOG should be subsumed within the part of NERL providing the Airspace Design Service.

- 2.102 Given that the Airspace Design Service is not, at this stage, expected to take over sponsorship of airspace change proposals in relation to non-LTMA clusters in the near future, some of the functions currently carried out by ACOG will continue to be required. The ACOG Paper noted that those processes would cover the coordination of fewer, less complex clusters that are at different stages of development and, so, will require different levels of coordination support. As a result, it is expected that the scope and scale of the tasks currently performed by ACOG will have reduced by the end of 2025.
- 2.103 On this basis, NERL's current licence obligation to deliver ACOG's functions would:
- reduce in area to exclude the London cluster;
 - be scoped to only providing those residual tasks that demonstrably add value; and
 - no longer be required to be provided by a separate impartial unit (that is, ACOG) so that NERL can resource these residual tasks within the part of the business providing the Airspace Design Service.
- 2.104 This transition would simplify oversight, facilitate knowledge and skills transfer between ACOG and the Airspace Design Service and improve efficiency of resource utilisation. It would potentially help to pave the way for extending the scope of the Airspace Design Service to other clusters while ensuring that those other clusters continue to receive the support they need from processes that have been shown to add value, if required. In due course we intend to engage further with NERL on how the transition to these new arrangements can work best in practice.
- 2.105 On this basis, the existing obligations in the Licence (Condition 10a) would be deleted in their entirety and replaced by provisions in a new condition relating to the Airspace Design Service to capture the current ACOG activities that would continue. As noted above, the Governance Paper sets out the position that the DfT and CAA will manage the practical relationship with the Airspace Design Service, including reporting, through the existing governance arrangements for the Airspace Modernisation Strategy, such as the DfT/CAA Joint Airspace Modernisation Programme Board structure. As such, the reporting arrangements set out in Condition 10a will not be reproduced.
- 2.106 Simplified drafting that could implement this approach is set out in Appendix B after paragraph B14 (see new Condition X at paragraph 4).

Chapter 3

Consequential modifications to the Licence

Introduction

- 3.1 This chapter sets out our initial proposals for consequential modifications to the Licence that would be required if NERL were to provide the Airspace Design Service. These modifications would be needed to keep appropriate separation between the Airspace Design Service and NERL's other activities.
- 3.2 The November 2024 Consultation set out potential changes that could be made to conditions of the Licence. We suggested that:
- Condition 5 (Availability of resources and financial ringfencing), which protects the interests of consumers by securing that regulated revenues are applied to regulated activities, could be extended to cover funds raised from regulated charges for the Airspace Design Service. We said that much of this could be achieved by amending the definition of "Permitted Purpose" in Condition 1 (Interpretation and construction) to cover the Airspace Design Service, but specific changes might also be needed to ensure appropriate ringfencing from the other activities undertaken by NERL. We also said that revenues associated with the Airspace Design Service should not be included in the calculation of the "*de minimis* cap" which is designed to ensure that any non-regulated activities undertaken by NERL do not reach a scale that could become a distraction from the regulated activities carried out by NERL;
 - Condition 6 (Regulatory accounting requirements) which requires NERL to provide accounting information in relation to each of its regulated activities as well as for its overall business, could be extended to include an obligation to provide separate accounting information for the Airspace Design Service;
 - Condition 7 (Requirement to maintain an intervention plan) could be extended to cover the Airspace Design Service;
 - Condition 8 (Requirement for mandated independent directors and corporate governance) could be extended to require directors who would be independent not only of NERL, but also other parties' interests on airspace changes, such as airports; and

- Condition 9 (Prohibition of Cross-Subsidy) could be extended to prohibit cross-subsidies to or from the Airspace Design Service by including the Airspace Design Service in the definition of “Separate Business” in Condition 1 (Interpretation and construction).

3.3 This chapter sets out stakeholders’ views on these matters, our views in response as well as our initial proposals. Draft modifications to implement these initial proposals are set out in Appendix B.

Condition 5 (Availability of resources and financial ringfencing)

Stakeholders’ views

- 3.4 NERL was concerned that there would be a risk that it might be obliged on occasion to prioritise availability of resources to the Airspace Design Service over safety or operational activities. It suggested additional text be added to make clear that NERL would not be required to prioritise resources in favour of the Airspace Design Service to the detriment of the En route (UK) Business, the En route (Oceanic) Business or any *de minimis* activities.
- 3.5 NERL did not agree that revenue associated with the Airspace Design Service should be excluded from the calculation of the *de minimis* cap. It considered that the purpose of the 4.5% threshold was aimed at establishing a level above which unregulated activity, not related to its Core and Specified Services, might become a distraction to NERL. So, if NERL’s activities expanded in proportion to the Airspace Design Service revenue, NERL should be able to cope with higher levels of commercial activity (in absolute terms) as it became a larger organisation.
- 3.6 It was also concerned that the illustrative drafting assumed that there would be no transactions between the Airspace Design Service and either of the Oceanic and UK En route services. NERL disagreed with this assumption on the grounds that, in the interests of efficiency and to access skills, there would be some sharing of resources with the UK En route service and, less so, the Oceanic service, for example in the use of simulator facilities.
- 3.7 NERL agreed that the Airspace Design Service should be structured as an additional service under the Licence and that this approach would accord with both its obligations under section 8 TA00 and customer expectations that NERL had an overriding obligation to deliver a safe service and reasonable levels of operational service.
- 3.8 ScottishPower, Luton Airport and FFC considered it important that the revenues associated with the Airspace Design Service be ringfenced rather than being treated as *de minimis*.

- 3.9 ScottishPower expressed concern over the relationship between NERL and NSL and considered that the business separation arrangements between NERL and NSL were not functioning to provide the clarity of separation required. It wanted clear guidance so that both NERL and NSL could be held to account.
- 3.10 IATA also expressed a concern over cost efficiency and wanted more detailed separation of the Airspace Design Service from NERL, including separate budgeting and accounts. It wanted more clarity on the steps towards the Airspace Design Service becoming a separate service provider, as did FFC.

Our views

- 3.11 We do not consider that the proposed new condition that would require NERL to maintain appropriate resources to provide the Airspace Design Service would oblige it to prioritise availability of resources to the Airspace Design Service over safety or operational activities. However, we agree that there may be a need for transactions between the Airspace Design Service and either of the En Route or Oceanic businesses and that the Licence should provide for such arrangements. The drafting set out in Appendix B reflects this.
- 3.12 We do not consider that the arguments NERL has put forward mean that it would be appropriate or in the interests of customers and consumers for the revenues from the Airspace Design Business to be included in the calculation of the *de minimis* cap on unregulated activities undertaken by NERL. Rather, we consider that the interests of customers and consumers in not extending NERL's ability to carry out activities to a level that could become a distraction to it, outweighs NERL's concerns. We also consider that an approach that would have the effect of making it more likely that significant activities would need to be undertaken by NSL, appropriately supports the limitation of NERL's activities to those authorised by the Licence and, so, to an extent, addresses the concerns raised by ScottishPower.
- 3.13 In the light of the discussion in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service) we have changed our approach to the definition of each "Permitted Purpose" and "Separate Business" set out in the November 2024 Consultation, to reflect our proposal that the separate part of NERL that we propose will provide the Airspace Design Service will also both administer the Airspace Design Support Fund and carry out the residual activities currently carried out by ACOG. We propose to implement this by extending the definition of "Permitted Purpose" to include these activities, and to adjust the definition of "Separate Business" so that these activities (taken together) constitute a "Separate Business" within NERL.
- 3.14 We consider that taking this approach enables the rest of the consequential amendments to be implemented as simply as possible. Where we consider that it

is necessary to refer to the provision of the Airspace Design Service and these other activities individually, we propose to do so.

- 3.15 We have set out proposed drafting to implement these initial proposals in Appendix B at paragraphs (see particularly the discussion at paragraphs B10 B11 and B23).

Condition 6 (Regulatory accounting requirements) and Condition 7 (Requirement to maintain an intervention plan)

Stakeholders' views

- 3.16 We received fewer comments on these conditions. FFC wanted any increase in the scope of charges to be covered by appropriate regulatory accounting rules. ScottishPower also wanted more information on the regulatory accounting information provided to the CAA.
- 3.17 NERL, FFC and ScottishPower all supported inclusion of the Airspace Design Service in the intervention plan, ScottishPower taking the view that the inclusion of the Airspace Design Service in the definition of "En route Businesses" would achieve this end without further amendments.

Our views

- 3.18 As set out in the November 2024 Consultation, we consider that the regulatory accounts should enable the assessment of the financial position of each of the En Route Business, the Oceanic Business and the Airspace Design Service as separate businesses and to give clarity on the amounts charged or apportioned between them.
- 3.19 To ensure that this is done appropriately, NERL would be required to prepare, in consultation with the CAA, Regulatory Accounting Guidelines ("RAGs") that it will be required to follow in the preparation of its accounts. Those RAGs would, among other things, state the basis on which sums are charged to or from (or apportioned between) the Airspace Design Service and other associated activities from the other regulated activities of NERL. This would help ensure appropriate transparency in the accounting records of each of these businesses. As for clarity on the accounting information provided to the CAA, this is provided by NERL publishing its regulatory accounts on its website.³⁴
- 3.20 We agree that the Airspace Design Service should be included within the intervention plan and consider that the approach we set out in the November 2024 Consultation is consistent with this objective.

³⁴ For example, see NERL's regulatory accounts for 2023 at: <https://www.nats.aero/wp-content/uploads/2024/06/2023-NERL-Regulatory-Accounts.pdf>

- 3.21 We have set out proposed drafting to implement these initial proposals in Appendix B at paragraphs B23 and B24.

Condition 8 (Requirement for mandated independent directors and corporate governance)

Stakeholders' views

- 3.22 NERL considered that the extensive oversight and accountability to the Advisory Board that the CAA had proposed, in combination with the existing requirements for independent directors, would be sufficient to ensure effective delivery by the Airspace Design Service. It considered that widening the rules could prevent the appointment of independent directors who had relevant and recent experience of airlines or airports and who would, therefore, be likely to add more value from that experience than might be risked by their limited ability to influence the activity of the Airspace Design Service.
- 3.23 NERL continued to support the existing waiver of the requirement for independent directors on the grounds that the partnership directors appointed by the DfT demonstrated sufficient independence.
- 3.24 Luton Airport supported inclusion of the Airspace Design Service within the scope of Condition 8 to alleviate some of its concerns, considering it important that no director be affiliated with an airline or airport. It considered it proportionate for independence to be identified by reference to someone not having been employed as a director or employee of an airport operator/airline or associate of any such group in last 12 months.
- 3.25 FFC raised a concern that the need to maintain the independence of each of ACOG, the Advisory Board and NERL's board might raise challenges over finding appropriate members for each with the most relevant subject matter experts.

Our views

- 3.26 Having considered the wider arrangements to ensure that the Airspace Design Service delivers in the interests of the UK aviation system as a whole, we consider that the proposed arrangements to manage the challenges that the Airspace Design Service will inevitably face in dealing with the competing interests of airports will be adequately addressed by these wider arrangements. In particular:
- in the first instance, by clear obligations setting out in the Licence what the Airspace Design Service is to achieve;
 - secondly, as airspace change proposals are developed, by the role and work of the Advisory Board; and

- thirdly, once those proposals are submitted, the decision-making role of the CAA/Secretary of State in accordance with the Airspace Change Process.

- 3.27 As a result, we do not consider that it would be proportionate to add an additional requirement into the Licence in relation to independent directors over and above those already set out in Condition 8. Indeed, as noted by both NERL and FFC, we consider that doing so may in fact undermine effective oversight by rendering it more difficult to find suitably qualified candidates. This approach would also have the effect of preserving the current ability for NERL to benefit from a consent in relation to its partnership directors.
- 3.28 As a result, our initial proposal is that no amendment should be made to Condition 8.

Condition 9 (Prohibition of cross-subsidy)

Stakeholders' views

- 3.29 NERL agreed that it would be appropriate to designate the Airspace Design Service as a separate business and, therefore, subject to a prohibition of cross-subsidy in the same manner as the Oceanic and En Route services are prevented from cross-subsidising each other. This would not, however, prevent the efficient sharing of resources across the three business areas. To that end, it supported changes to the definition of "Separate Business" in Condition 1 (Definitions and Interpretation).
- 3.30 Prospect generally welcomed the approach set out in the November 2024 Consultation. It said that the CAA should recognise that there might be personnel who provide services to both the En Route and Airspace Design Service, but this should not lead to staff being "siphoned" to the Airspace Design Service resulting in a lack of operational staffing: both activities must be properly funded to allow for proper and realistic resourcing.

Our views

- 3.31 We note NERL's agreement with our approach and consider that it is consistent with comments in relation to Condition 5 set out above that there may be a need for some transactions between the separate businesses of NERL, for example, in relation to the use of simulators. Provided that any such transactions are accounted for on a fair and reasonable basis, we do not consider that such transactions would give rise to any cross-subsidy. However, NERL will need to ensure that the regulatory accounting guidelines required under Condition 6 are updated so that they are sufficiently robust to capture these transactions effectively.

- 3.32 We also note Prospect's comments about the need for adequate resourcing and consider that this is similar to NERL's comment in relation to Condition 5 that NERL should not be required to jeopardise resourcing of the core operational businesses in favour of the Airspace Design Service. We consider that the drafting that we have proposed to address that comment discussed above in relation to Condition 5 is sufficient to alleviate any residual doubts in this area.
- 3.33 Bearing the above in mind our initial proposals are:
- to include the Airspace Design Service, the administration of the Airspace Design Support Fund and the residual activities of ACOG within the scope of the prohibition on cross-subsidies set out in Condition 9; and
 - that this should be achieved by amending the definition of "Separate Business" in Condition 1 (Definitions and Interpretation).
- 3.34 The effect of this would be that the prohibition on cross-subsidies in Condition 9 would apply between each of:
- the En route (UK) Business;
 - the En route (Oceanic) Business; and
 - the provision of the Airspace Design Service, administration of the Airspace Design Support Fund and the residual activities of ACOG
 - taken separately from one another and from any other business of the Licensee.
- 3.35 We have set out proposed drafting to implement these initial proposals in Appendix B at paragraphs B10 and B11.

Chapter 4

Costs of new airspace design services

Introduction

- 4.1 This chapter provides information on the likely costs of establishing and providing the Airspace Design Service, as well as the likely costs of administering the Airspace Design Support Fund. We set out below:
- a summary of what we said in the November 2024 Consultation in relation to the costs of the Airspace Design Service and the Airspace Design Support Fund;
 - a summary of stakeholders' views on these matters; and
 - our views in the light of those comments, and initial proposals.

Summary of the November 2024 Consultation

- 4.2 In the November 2024 Consultation, we noted that NERL is already responsible for certain airspace design and modernisation projects, funded through the NR23 decision.³⁵ Our NR23 decision included £540 million (2020 prices) of capital expenditure allowances, of which approximately £83 million related to airspace. This figure relates to the airspace activities that NERL is already responsible for, and we said that these costs would continue to be funded by existing arrangements for at least the remainder of NR23. Therefore, we considered that the costs to be funded by the Charge during the NR23 period should not include NERL's existing NR23 capital expenditure allowances for airspace design and activities. That is, the new costs to be funded by the new Charge should be separate and incremental to those allowed for in NR23.

Cost estimates of providing the Airspace Design Service and the Airspace Design Support Fund

- 4.3 To support our November 2024 Consultation, we appointed Egis to help identify and estimate the incremental costs of NERL providing the Airspace Design Service and of capitalising the Airspace Design Support Fund. Egis engaged with NERL and 13 airports falling within the scope of the airspace change masterplan, to seek to understand how the costs and resources that they deployed related to airspace change proposals currently and to collect data on

³⁵ The CAA conducts periodic price control reviews and sets determined costs, charges and service quality incentives for NERL's regulated activities. The latest review and decision, referred to as "[NR23](#)" covers the period January 2023 to December 2027.

key cost assumptions for the future. NERL and those airports were clear that the information provided was highly indicative given timing constraints in data collection, and Egis highlighted that its modelling reflected the uncertainties inherent at this early stage.

- 4.4 The key assumptions used by Egis are set out in its report³⁶ and in paragraphs 4.10 and 4.14 of the November 2024 Consultation. Egis looked at three different scenarios in its analysis (with different scopes of activity and therefore costs) and applied three different levels of “optimism bias” to its estimates (called low, medium and high, with uplifts of 0%, 15% and 25% respectively) to reflect the confidence in assumptions and the inherent challenges of benchmarking efficient airspace change costs.

Cost projections for the Airspace Design Service

- 4.5 Egis suggested the annual total cost of the Airspace Design Service was likely to range between about £10 million and £16 million per year (2024 prices). The total projected cost of the Airspace Design Service for a period of 10 years would, therefore, range between £100 million and £161 million in total, with 85% of costs expected to relate to staff expenses. The remaining costs would likely be associated with office space, software and additional simulation facilities. For the remainder of the NR23 period (assumed to be two and a half years, from mid-2025 to the end of 2027), these costs were estimated to total between £26 million and £42 million in 2024 prices.

Cost projections for the Airspace Design Support Fund

- 4.6 Egis estimated that the total cost of the Airspace Design Support Fund in 2024 prices for a period of 10 years would be between £59 million and £80 million, depending on the level of airport participation. For the remainder of the NR23 period, these costs were estimated to total between £16 million to £23 million.

Combined cost projections between £16-24 million annually, in 2024 prices

- 4.7 Table 4.1 below shows the estimated combined costs of the Airspace Design Service and the Airspace Design Support Fund for low, medium and high scenarios, based on Egis’ analysis, over NR23 and a 10-year horizon.

³⁶ CAP 3063A, Developing illustrative policy and costs to implement a new airspace design service and charge, available at www.caa.co.uk/CAP3063A. This report was supplementary to the November 2024 Consultation

Table 4.1: Estimated combined costs of the Airspace Design Service and the Airspace Design Support fund by cost scenario, 2024 prices

Calculation period	Low	Medium	High
NR23 total	£42.2m	£52.1m	£65.2m
10-year total	£158.9m	£193.7m	£240.9m
10-year annual average	£15.9m	£19.4m	£24.1m

Source: Egis report, available at www.caa.co.uk/CAP3063A

- 4.8 In the November 2024 Consultation, we used Egis' medium scenario (highlighted in the table above) to illustrate the magnitude of costs that would need to be recovered by the new Charge. The costs for both the provision of the Airspace Design Service and the Airspace Design Support Fund were around £19.4 million per year or £194 million over a period of 10 years (in 2024 prices). For the remainder of the NR23 period (assumed to be 2½ years, from mid-2025 to the end of 2027), the estimated combined costs of providing the Airspace Design Service and administering the Airspace Design Support Fund, also in the Egis medium scenario, were approximately £52 million.

Stakeholders' views

Stakeholders' views on NR23 allowances

- 4.9 Stakeholders generally supported separating the costs to be funded by the Charge from the capital expenditure already allowed under NR23, but made a number of additional comments:
- ScottishPower said that governance and clear boundaries would be required to ensure appropriate division of assets between NERL's existing airspace design activities and the Airspace Design Service.
 - Prospect said it seemed fair to separate the costs from the NR23 allowances, provided there was no duplication of workload between NERL and the Airspace Design Service.
 - IATA sought clarity on whether the resource estimates for the Airspace Design Service and the administration of the Airspace Design Support Fund were already part of NERL's staff, to ensure there was no double counting of costs already approved under NR23.
- 4.10 More generally, Airports UK, HAL and Prospect said transparency around the Charge was important given the uncertainty around costs. Airports UK emphasised the need for accountability in cost management. HAL said the costs should be reviewed on a regular basis with all interested parties. IATA sought

clarity on whether there was overlap between NERL's existing projects related to the LTMA region and what Egis had modelled.

Stakeholders' views on cost projections

- 4.11 Nine of the 11 respondents commented on the cost estimates for providing the Airspace Design Service, most:
- recognising the inherent uncertainty in the exercise; and
 - indicating that the costs of providing the Airspace Design Service and the Airspace Design Support Fund would likely be higher than those modelled.
- 4.12 NERL said some of the modelling assumptions were inconsistent with its own view of the scope of the Airspace Design Service. Consequently, it said the estimates should only be treated as an "order of magnitude". The key issues it had with the assumptions, which might have an impact on estimated costs, related to the ability to manage a maximum of two concurrent developments, having to follow the Airspace Change Process, optimism in the timing of the Airspace Design Service becoming operational and the model including less staff and expert resource than NERL thinks would likely be needed for the Airspace Design Service.
- 4.13 ACOG said the cost estimates were based on optimistic planning assumptions. Specifically, ACOG pointed to the assumption that NERL could manage two developments concurrently and considered that additional resources would likely be required (for example, subject matter expertise, simulation capability and systemisation processes) to be able to do this. It said that the assumption needed to be tested with NERL further to assess its ability to roll out concurrent large airspace changes. ACOG also said that the cost of transitional arrangements (that is, moving individual airspace change proposals to the Airspace Design Service, including the necessary associated large-scale data migration) might have been underestimated.
- 4.14 HAL said the modelling could underestimate the scale of work and spending required to deliver the programme successfully. HAL also sought clarity on the modelling assumptions and suggested a new cost estimate should be produced more aligned to delivering airspace modernisation in the LTMA region by 2030. HAL said that:
- the assumption of four deployments in 10 years was inconsistent with the purpose of the Airspace Design Service of providing focused and fast outcomes;

- a maximum of two deployments being handled at any one time did not align with an obligation on the Airspace Design Service to produce a coherent design for the LTMA region; and
- additional funding and resource would be required to meet an expedited timeframe because it would bring forward costs in time, but noted this might also reduce overall expenditure by reducing the length of the funding period.

- 4.15 Luton Airport said that some of the expenditure required for a large airport was understated.
- 4.16 Farnborough Airport said the cost estimates were reasonable but noted no airport involved in the Airspace Modernisation Strategy had gone through the most expensive elements of the Airspace Change Process and that the cost estimates did not appear to include key contingencies (e.g. for Judicial Review of any decision, re-working after consultation, or for any modifications required after post-implementation review).
- 4.17 FFC said that the scope of the modelling contradicts the short- and medium-term scope of the Airspace Design Service described in the Joint Consultation, so suggested either that the medium-term activities must occur after 2035 (which it said was inconsistent with purpose of the Airspace Design Service), or the modelling was missing a significant part of the costs of the Airspace Design Service.

Stakeholders' views regarding the Airspace Design Support Fund

- 4.18 Responses relating to the scope and management of the Airspace Design Support Fund are addressed in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service). There were limited stakeholder responses specifically related to the estimated costs of the Airspace Design Support Fund, but NERL, HAL, IATA and Airports UK highlighted that uncertainty on the functioning and scope of the Airspace Design Support Fund would influence the overall level of estimated costs.

Our views

- 4.19 We remain of the view that, for the remainder of NR23, the new Charge should reflect the incremental costs of NERL providing the Airspace Design Service and administering the Airspace Design Support Fund and should not include costs already reflected in the NR23 price control decision and associated allowances for airspace design projects. In the short term at least, we consider that this approach avoids the need to re-open the NR23 decision and will provide transparency on the additional costs of providing the Airspace Design Service and the Airspace Design Support Fund. Once the Airspace Design Service is operational, and within the wider context of NR28, we can consider whether

there may be benefits in grouping together the costs of the Airspace Design Service and the Airspace Design Support Fund with those of NERL's wider airspace design activities.

- 4.20 While we note stakeholders' views that the cost estimates for the Airspace Design Service may turn out to be higher than those modelled by Egis, no respondents provided detailed or better-evidenced estimates of costs. Looking forwards there are also factors that may help reduce costs and uncertainty:
- as noted in the Consultation Response Document, the CAA and DfT have committed to consult on reforms to the Airspace Change Process and the Air Navigation Guidance; this will likely help manage the medium to longer-term costs of Airspace Design Service and the Airspace Design Support Fund; and
 - as discussed in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service), the Support Fund Paper sets out more detail on the scope of the Airspace Design Support Fund.
- 4.21 Bearing all the above factors in mind we have decided to retain for now the Egis estimates of costs from its medium cost scenario for our work in establishing regulatory arrangements for the NR23 period.
- 4.22 Given further information and guidance provided by the DfT and CAA to NERL on governance arrangements for the Airspace Design Service and Airspace Design Support Fund, we expect NERL will be able to provide more information in response to this consultation on the expected costs of establishing and maintaining the Airspace Design Service and administering the Airspace Design Support Fund in the short to medium term.
- 4.23 While this should help in estimating the level of costs in the short-term there is likely to remain greater uncertainty about longer-term costs, in part because these will likely be affected by decisions on the pace of airspace modernisation.

Initial proposals

- 4.24 In the light of the discussion above, our initial proposals are that:
- the new Charge should only reflect the incremental costs of NERL providing the Airspace Design Service and administering the Airspace Design Support Fund; and
 - for these initial proposals we are using the Egis (medium) scenario in table 4.1 to inform our decisions on the initial charges that would apply for the remainder of the NR23 period.
- 4.25 Given the uncertainty associated with the forecasts of costs we intend to adopt a flexible approach to cost recovery as discussed further in Chapter 5 (Form of

control, other regulatory mechanisms, and illustrative charges). We also expect NERL to provide further information on expected costs in response to this consultation.

Chapter 5

Form of control, other regulatory mechanisms and illustrative charges

Introduction

- 5.1 The Consultation Response Document said NERL should be able to recover the costs of providing the Airspace Design Service and the Airspace Design Support Fund through charges to the users of its services. To deliver these policies it will be necessary to make changes to NERL's licence to:
- allow it to recover costs; and
 - regulate how charges would be determined.
- 5.2 These new charge control arrangements would be similar to the arrangements that are currently in place for the UK en route (Eurocontrol) charge, the London Approach Service charge and the Oceanic charge.
- 5.3 As previously noted, the level of cost required to meet the efficient costs of the Airspace Design Service and the Airspace Design Support Fund is uncertain and we have taken account of this uncertainty in designing the arrangements discussed in this chapter.
- 5.4 This chapter sets out a summary of stakeholder responses to our earlier consultation, our latest views and initial proposals for each of the following:
- options for cost recovery, incentives, and early costs;
 - the duration of the price control;
 - the profile of cost recovery over time and balance of risk and reward;
 - charge design; and
 - illustrative charges.

Options for cost recovery, incentives and early costs

Summary of November 2024 Consultation

- 5.5 The November 2024 Consultation outlined three ways NERL could recover its costs for the provision of the Airspace Design Service and the administration of the Airspace Design Support Fund:

- a cost pass-through approach, where the costs incurred in providing the Airspace Design Service and administering the Airspace Design Support Fund would be recovered from airspace users that pay the Charge;
- a fixed allowance approach, where the cost borne by airspace users for the Airspace Design Service and the Airspace Design Support Fund would be fixed for a set period, and NERL therefore would bear the risk of overspends but also benefit from any underspends and efficiencies; and
- hybrid approaches of the above, which could include a cost risk-sharing approach or a mix of pass-through and fixed-allowance approaches.

5.6 We said that a cost pass-through approach was likely to be the most effective in supporting the delivery of the Airspace Design Service for the first few years of its operation because of the initial uncertainty about the level of costs. However, we also noted that in the medium term, and when costs were more certain, there might be advantages in introducing a fixed-cost allowance or a hybrid approach to strengthen the cost efficiency incentives on NERL.

5.7 In relation to the costs of the Airspace Design Support Fund we said that these costs should be passed through fully to airspace users through the Charge. This was because NERL would only be responsible for administering the Airspace Design Support Fund and not responsible for delivering the airspace modernisation work the Airspace Design Support Fund is intended to enable.

5.8 We also said that:

- the charge control should include a correction factor to true-up for differences between expected and actual revenue in any given year n and consistent with the operation of NERL's main price control any such differences should be recovered in year $n+2$;
- Consumer Prices Index ("CPI") inflation adjustments would need to be considered when designing cost recovery mechanisms; and
- it would be challenging to develop formal delivery incentives for NERL, given initial uncertainties about the scope of work and potential costs of the Airspace Design Service.

Stakeholders' views

Cost pass-through

5.9 NERL, HAL and Prospect agreed with the cost pass-through approach, all citing the uncertainty and scale of undertakings for the Airspace Design Service as reasons for support (at least in the short term).

- 5.10 NERL agreed with the inclusion of a correction factor, but noted the factor itself would require adjustment for inflation to make sure NERL was able to recover additional costs in full.
- 5.11 HAL said the cost pass-through approach was likely to be significantly easier and cheaper for the CAA to administer than other, more complex incentive structures. However, it also noted that delivery incentives could be introduced in the longer term to ensure NERL was motivated to be efficient.
- 5.12 IATA said it did not see why the Airspace Design Service should be treated differently from NERL's other services, which did not enjoy full cost recovery (that is, cost pass-through). Furthermore, IATA said care must be taken to avoid applying inflation adjustments on planned costs, when such inflationary adjustment may not be necessary or appropriate.
- 5.13 ScottishPower said the cost pass-through approach was sensible but noted that it could disincentivise NERL from operating the Airspace Design Service efficiently, since there would be no motivation to keep costs low.

Specific delivery incentives

- 5.14 NERL considered that the wider legislative and regulatory framework provided numerous levers to keep NERL accountable for the delivery of the Airspace Design Service, and that additional financial delivery incentives would not helpfully add to its focus on meeting stakeholder delivery expectations. It also said such incentives could have adverse unexpected consequences and be difficult to establish in the early years of the Airspace Design Service.
- 5.15 HAL said that formal delivery incentives might be useful in the future if it became clear the Airspace Design Service was inefficient or ineffective, and that there would likely be more precise and effective tools than, for example, providing the Airspace Design Service with a fixed cost allowance.

Our views

- 5.16 We remain of the view that the flexibility of a cost pass-through approach will, in the face of uncertainty about the scale of costs, give NERL the required certainty in the short term regarding the recovery of costs, to enable it to set up the Airspace Design Service.
- 5.17 The Consultation Response Document provides for the possibility that the geographical scope of the Airspace Design Service could change to incorporate additional airports. The mechanism in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service) sets out how any changes in scope would be implemented, but it will also be necessary for the approach to treatment of costs for the Airspace Design Service and the Airspace Design Support Fund to reflect any such changes in scope. At this stage, we

consider a cost pass-through approach would support the necessary flexibility in costs and charges.

- 5.18 A disadvantage of this approach is that NERL may have incentives to allocate costs to the Airspace Design Service rather than its wider business functions. We are clear that only costs clearly related to the provision of the Airspace Design Service and the administration of the Airspace Design Support Fund should be recoverable through the Charge. NERL will be required to report these costs separately in its regulatory accounts.
- 5.19 There are already some incentives within the current legislative and regulatory framework to incentivise NERL to be effective and efficient, and we can consider the case for introducing further delivery incentives and different mechanisms in future price control reviews (including making use of fixed allowances or hybrid approaches), particularly if there is evidence of underperformance emerging.
- 5.20 To implement the cost pass-through, we intend to make a correction for the difference between the actual cost that should be recovered from charges and the actual revenue recovered (which may be affected by issues such as differences between the forecast and actual levels of traffic). The mechanism for this correction will be included in NR28 with adjustments for CPI inflation and the allowed return (to reflect NERL's financing costs). We propose to use the 3% CPI-real return discussed below under the RAB-based approach.
- 5.21 Finally, the implementation of the Airspace Design Service is crucial for advancing airspace modernisation, and there is considerable interest from both the government and industry in expediting its progress. We have discussed these matters with DfT and NERL, and we consider that NERL should be able to recover appropriate and efficiently incurred early costs of standing up the Airspace Design Service, that is, costs incurred in advance of formal licence modifications coming into effect. We consider that the benefits to customers and consumers of enabling NERL to establish the Airspace Design Service as soon as possible are likely to outweigh any potential risks of doing so, especially considering the materiality of the expected costs in the short-term.

Initial proposals

- 5.22 Our initial proposals in relation to costs and incentives include:
- a cost pass-through approach to the Airspace Design Service and Airspace Design Support Fund costs;
 - the additional costs to NERL of providing these services should be identified by NERL in its separate accounts and the recovery of these costs should not involve any cross-subsidy of NERL's other activities;

- a correction mechanism in NR28 to implement the cost pass-through arrangement during NR23; and
- allowing NERL to recover appropriate and efficient early costs of setting up the Airspace Design Service and the Airspace Design Support Fund, that is, costs which were incurred ahead of completing the statutory processes to modify the Licence.

The duration of the price control

Summary of the November 2024 Consultation

5.23 The November 2024 Consultation considered two broad options:

- short initial control aligned with the current NR23 period; or
- longer initial control, such as five years (consistent with common regulatory practice in setting price controls) or until the end of the NR28 period.

5.24 We said that a short initial control, aligned with the remainder of the NR23 period, would be the most appropriate and effective in supporting the delivery of the Airspace Design Service. It would allow NERL to establish quickly the Airspace Design Service and benefit from a flexible regulatory regime. It would also facilitate the gathering of further information on the likely costs and timescales for delivery of the Airspace Design Service, which could then be considered in developing the regulatory arrangements that would apply from NR28.

Stakeholders' views

5.25 NERL, HAL, Prospect, Farnborough Airport and ScottishPower all agreed that a short initial control, aligned with the current NR23 period, would be appropriate.

5.26 ScottishPower qualified its position by saying it saw merit in the control period for the Airspace Design Service being independent of the rest of NERL (that is, separate from the NR28 control) to ensure distinction of funds and service, but it recognised this could be difficult.

5.27 IATA was of the view that if NERL remained the provider of the Airspace Design Service during NR28, for simplicity the price control for the Airspace Design Service should be aligned with the price control for NERL's other services.

Our views

5.28 Our view is that a short initial control period, aligned with the NR23 period, will provide the benefit of flexibility and given current uncertainty around costs, an opportunity to discover further information on costs and operations of the Airspace Design Service, ahead of setting a longer control. It would also allow us

to consider the relationship between the Airspace Design Service and the Airspace Design Support Fund with NERL's other airspace design activities as part of the NR28 price review.

Initial proposals

- 5.29 Our initial proposal is to have a short initial control period aligned with the NR23 period.

The profile of cost recovery over time and risk and return

- 5.30 In designing the new Charge, it is important to consider the profile of cost recovery, that is, how quickly should costs be recovered from airspace users. It is also important to consider what level of return (if any) NERL should be allowed to earn for undertaking the additional Airspace Design Service and Airspace Design Support Fund activities.

Summary of the November 2024 Consultation

- 5.31 The November 2024 Consultation set out three broad options:
- an **opex** approach: where all costs associated with providing the Airspace Design Service and the Airspace Design Support Fund would be treated as opex. Costs would be recovered through the Charge in the period the service was provided (apart from any corrections in year n+2). This would be a relatively simple approach to put in place.
 - a **capex** approach: where all costs associated with providing the Airspace Design Service would be treated as capex. Costs would be added into a RAB, earn a regulated return and be depreciated through charges over an extended period. This approach would allow the smoothing of any relatively lumpy costs over time, so that charges were more consistent over the period, and may better match the profile of cost recovery with the profile of the benefits from airspace changes.
 - a **mixed** approach: where some of the costs of providing the Airspace Design Service would be treated as opex and recovered through in-period charges, and some costs would be treated as capex, added into a RAB, earn a regulated return and be depreciated through charges over an extended period.
- 5.32 For context, for NERL's main UK and Oceanic en route air traffic services businesses, some costs are treated as capex and added to a RAB and other costs are treated as opex and recovered in the period they are incurred.
- 5.33 We considered it would be appropriate to treat all Airspace Design Service costs as opex and recover them in the period they were incurred, in part because the Egis cost estimates were not particularly lumpy over time and because adding

the costs to a RAB would lead to higher average charges for users in the longer term.

- 5.34 We said the costs of the Airspace Design Support Fund should be treated as if they were opex and recovered in the period incurred. This was because NERL would simply be administering the Airspace Design Support Fund and allocating funding to third parties that met eligibility criteria. We recognised that there might be some administration and financing costs involved but expected these to be low and recoverable through the new Charge.

Stakeholders' views

- 5.35 NERL disagreed that all costs should be treated as opex. It said this approach would:
- not be in the interests of airlines and passengers, and would mean that current airlines and passengers would be paying all the costs of airspace modernisation for the LTMA region in advance of receiving its benefits;
 - depart from the current practice of capitalising costs for airspace activities. For example, in NERL's Swanwick Airspace Improvement Project Airspace Deployment 6, the total costs of £6.8 million were categorised as 60% capex and 40% opex;
 - lead to higher average charges, in net present value ("NPV") terms, for users than if the costs were instead capitalised, because the users (commercial airlines) have relatively high discount rates;
 - leave NERL's shareholders bearing a high degree of unremunerated new risks (including potential reputational and enforcement risks); and
 - was contrary to the CAA's statutory duty to enable NERL to finance its regulated activities without undue difficulty. Not remunerating NERL's shareholders for the additional risks NERL would be taking on for providing the Airspace Design Service could cause shareholders to reconsider their willingness to invest in NERL in the long term.
- 5.36 NERL said that a large part of the costs incurred for providing the Airspace Design Service should be capitalised in a separate RAB, on which it should be allowed to earn a return.
- 5.37 ScottishPower considered that the Airspace Design Service must not be a 'for profit' enterprise, that cost recovery must be fair, transparent and served to users with adequate notice and, therefore, that it might not always be possible to recover costs in the year they were incurred.
- 5.38 IATA said that costs should be recovered in a similar way as for other services, where current period charges were based on cost forecasts and then any under

or overspend (once actual costs were realised) could be recovered in a future period through an adjustment mechanism.

Further analysis and our views

- 5.39 We agree that NERL should be appropriately remunerated for risks, but we also note that the incremental increase in the risks that NERL will face in delivering the Airspace Design Service and as administrator of the Airspace Design Support Fund appear relatively modest.
- 5.40 Nonetheless, we recognise that a simple cost pass-through mechanism (as proposed in the November 2024 Consultation) may not adequately compensate NERL for these risks.
- 5.41 There are several ways NERL could be appropriately remunerated, each with its own advantages and disadvantages that need to be considered in the round. The novel nature of the Airspace Design Service and the Airspace Design Support Fund means it remains challenging to determine how best to calibrate the appropriate level of return.
- 5.42 We reconsider below the opex, cost pass-through approach set out in the November 2024 Consultation (referred to below as “opex only”) alongside two additional approaches:
- **“opex only”**: a simple cost pass-through, where costs are passed through to users in the period they are incurred (apart from any corrections in year n+2). This approach would not provide any return to NERL in the short-term for taking on the risks associated with providing the Airspace Design Service and the Airspace Design Support Fund. However, the overall balance of risk and reward faced by NERL would be reconsidered during the NR28 review and, therefore, the position where NERL would not be able to earn any return on these activities would not be an enduring position.
 - **“opex with margin”**: this has the same mechanics as the “opex only” approach, except for the addition of an operating margin. The operating margin would be a markup applied to all costs, intended to remunerate NERL for the additional risk it faces in taking on the additional functions of the Airspace Design Service and the Airspace Design Support Fund;

- **“RAB-based”³⁷**: an approach which would allow NERL to capitalise all Airspace Design Service and Airspace Design Support Fund costs expected for the remainder of NR23. The difference between actual and forecast costs would be logged for addition to, or subtraction from, the RAB in a manner similar to main price control arrangements.

High-level assessment of different approaches

- 5.43 An “opex only”, simple cost pass-through approach could provide an interim solution for a short initial control period and still allow for a fuller assessment of the balance of risk and reward to NERL in the NR28 review. However, we also recognise that even with cost pass-through there may be some additional risks to NERL in undertaking this new activity, such as in relation to working capital, management time, reputation and the risk of breach of licence obligations. This implies it would be appropriate to provide some level of return in the short term and then undertake a fuller assessment of risks at NR28. We therefore do not propose to consider the “opex only” approach further.
- 5.44 For an “opex with margin” approach, we need to determine an appropriate level for the operating margin to reflect the level of risk. This approach would be relatively simple to implement, though it would mean costs are recovered from current airspace users rather than recovered over a longer period of time and more in line with when the benefits that will emerge from airspace modernisation are realised.
- 5.45 A “RAB-based” approach would provide NERL with a return and could also support the profiling of costs over time. This might better align the payment of the Charge, with the realisation of the benefits from airspace modernisation. In addition, because costs would be depreciated over an extended period, it could enable the recovery of early costs, particularly if the process to establish a new Charge is not completed by the start of 2026. However, a “RAB-based” approach also introduces additional regulatory complexity (through creating a third RAB for NERL) and could take some time to unwind in future, if we choose to adopt a different approach at NR28.
- 5.46 We would expect to reassess the case for a RAB at NR28 when we have further information on the costs, risks and the appropriate approach to balancing risk and reward. Therefore, capitalising these costs now to form a RAB would not necessarily mean that we would adopt the same approach at NR28.
- 5.47 On NERL’s point about discount rates and lower charges under a RAB model, we agree that there is some merit in considering modelled charges on an NPV basis. However, we note that consumers ultimately pay to use air traffic services

³⁷ This is broadly similar to the capex approach considered in the November 2024 consultation, but further developed, considered and illustrated.

and so, using a lower social discount rate (which represents society's time preference of consumption) rather than the typically higher discount rates applicable to commercial airlines (which represents an airline's opportunity cost of capital, and is fundamentally different to the social discount rate) means that charges to consumers may be higher over the longer term under a RAB based model.

Appropriate level for an operating margin

- 5.48 To determine an appropriate level for any operating margin in the "opex with margin" approach, we have considered available precedents as they might apply in the context of the Airspace Design Service and the Airspace Design Support Fund.
- 5.49 Regulatory decisions in other UK sectors provide some precedents for allowing a return for roles that may be similar in nature to that which NERL would be undertaking. In its 2017 final determination³⁸ on the System Operator for Northern Ireland ("SONI") v Northern Ireland Authority for Utility Regulation ("NIAUR"), the CMA allowed a margin of 0.5% of revenues to compensate SONI for its role in revenue collection and management on behalf of electricity system users and, therefore, the cash flow and liquidity risks that could arise. This arrangement may be considered to have parallels with NERL administering the Airspace Design Support Fund in terms of risk exposure and as a separate activity to its core business (and its Airspace Design Service responsibilities). Providing the Airspace Design Service is likely to have a higher level of risk than just administering the Airspace Design Support Fund. Therefore, it may be reasonable to consider an operating margin of 0.5% as the bottom end of a range for the combination of the Airspace Design Service and the Airspace Design Support Fund.
- 5.50 Ofwat allows the remuneration of the financing costs of the retail control³⁹ with a retail margin, which aligns with its status as an asset-light control. In its PR24 determination, Ofwat allowed a retail margin of 1.5% (increased from 1% in PR19).⁴⁰ We understand the water retail margin reflects some element of cost risk, which would not be applicable in the context of the Airspace Design Service and is therefore likely to be too high. The margin for the Airspace Design Service

³⁸ See [SONI Limited v NIAUR: Final determination](#) at paragraphs 2.38–2.40 for description of revenue collection activities, and 12.114–12.157 for determination on revenue collection risk.

³⁹ Ofwat's retail price controls govern the prices (and service standards) for retail water and wastewater services in England and Wales and relate to the services provided to end-user households and businesses, such as customer service, billing and complaints. It is an asset-light activity, by comparison to the wholesale price control which deals with core infrastructure and services.

⁴⁰ See [PR24 final determinations: Aligning risk and return](#) at page 29

and the Airspace Design Support Fund might more appropriately be at least 0.5% but below 1.5%.

- 5.51 In considering the two precedents outlined above, the limitations of each, as well as the novelty and uncertainty surrounding the Airspace Design Service and the Airspace Design Support Fund, we consider that it would be appropriate to allow a 1% operating margin (the midpoint of 0.5% and 1.5%) for the combination of the Airspace Design Service and the Airspace Design Support Fund.

Appropriate level for a return on a RAB

- 5.52 In the case of a “RAB-based” approach, costs would be capitalised and added to a new CPI-indexed Airspace Design Service RAB, on which NERL would be able to earn a return. There are limited comparators to inform how best to determine what level of return would be appropriate for the Airspace Design Service and the Airspace Design Support Fund.
- 5.53 We consider that an appropriate level of return should be lower than NERL’s NR23 Weighted Average Cost of Capital (“WACC”) (that is, 4.1% CPI-real – converted from 3.19% RPI-real⁴¹ in the NR23 decision), but higher than the risk-free rate (2.28% CPI-real⁴²). That is because NERL is likely to be exposed to a lower level of systematic risk in providing the Airspace Design Service and administering the Airspace Design Support Fund when compared with its wider activities, given our proposal regarding cost pass-through.
- 5.54 It is not clear that it would be proportionate or practicable to complete a bottom-up estimate of the WACC for Airspace Design Service activities for the remainder of the NR23 period. Instead, we consider a 3% CPI-real return to be appropriate, as it is close to the mid-point of the NR23 WACC and risk-free rate range above and, as shown in table 5.4 below, on an NPV basis, this approach would yield a level of charges broadly similar to the “opex with margin” model with a 1% return.

Initial proposals

- 5.55 As noted in paragraph 23 of the Introduction and summary of this document, it appears that the costs of these proposals will be both relatively uncertain and of low materiality, while the delivery of airspace modernisation will be of significant importance to consumers. Bearing this in mind, we consider that, for the remainder of the NR23 period, our duty in respect of economy and efficiency is best served by cost pass-through arrangements, and when taken together with allowing NERL to earn a return commensurate with the limited risks, this should also support NERL in financing these activities.

⁴¹ Where RPI is the Retail Prices Index.

⁴² Bank of England yield curves: one-month trailing average for 10-year government bonds based on the spot curve (May 2025).

- 5.56 Based on the currently available information, we consider there are two approaches to return that are consistent with this approach:
- the “opex with margin” approach, with the operating margin set at 1%; or
 - the “RAB-based” approach, with a regulated return set at 3% CPI-real.
- 5.57 Either could appropriately remunerate NERL for providing the Airspace Design Service and administering the Airspace Design Support Fund in a flexible and pragmatic way for the remainder of the current price control period. Our preferred approach is to implement the “opex with margin” approach and to set the operating margin at 1%, while we consider further as part of NR28 whether a RAB-based approach would be proportionate and in customers’ and consumers’ interests. Nonetheless, we welcome the views of stakeholders on both these options and the broader question of how best to remunerate NERL for carrying out the activities associated with the Airspace Design Service. We will reflect further on these matters in formulating our final proposals.
- 5.58 Any under-recovery or over-recovery of actual costs, such as through delays in implementing charging arrangements, and differences between forecast and actual costs and traffic, would be dealt with by the correction mechanism. We would reconsider this approach as part of the NR28 review.
- 5.59 We illustrate both proposals below under the Illustrative charges section.

Charge design

Summary of the November 2024 Consultation

- 5.60 The November 2024 Consultation said that commercial airlines and their customers are the airspace users that would benefit most from the airspace modernisation to be enabled by the Airspace Design Service, at least in the medium-term, and should pay the Charge. However, in the future the scope of the Airspace Design Service might evolve, and it might be necessary to expand the scope of users that pay the Charge to maintain consistency with the “user pays” principle.
- 5.61 We suggested that the most effective way to capture the beneficiaries of modernised airspace design would be to levy the Charge on airspace users that receive en route air traffic services in the UK, since most commercial airspace users operate within the en route structure either within or over the UK. We proposed that all airlines flying from, to and over the UK should pay the Charge because:
- airports in the UK (other than in the London TMA Region) would be able to access the Airspace Design Support Fund; and

- improvements to UK airspace would also likely benefit operations in upper airspace and in the future the Charge may also be used to fund airspace change proposals in upper airspace.

5.62 We said it should be for NERL to decide how best to collect the Charge, in consultation with airspace users. We noted that NERL may have the ability and systems to recover the Charge directly from airspace users, but also encouraged NERL to consider third-party arrangements if it would be efficient to do so.

5.63 We illustrated both a charge per flight and a charge per service unit,⁴³ but considered that a charge based on service units would be more appropriate because:

- it would be more proportionate, accounting for the use of airspace and the airspace users' ability to pay by explicitly considering the size of aircraft, including its weight, number of passengers and payload; and
- a service unit approach was already familiar to prospective payers of the Charge, as the UK en route charge uses the same basis.

Stakeholders' views

Users who the Charge is levied on

5.64 NERL agreed the costs of the Airspace Design Service should be recovered through a new charge, paid by users of UK Flight Information Region en route airspace. It also agreed the definition of users paying the Charge for the Airspace Design Service should include aircraft overflying the UK, as well as those landing, both within the LTMA region and across the rest of the UK.

5.65 IATA said other airspace users (including new entrants) might have airspace design requirements and, therefore, should be subject to charges too, not just commercial and business aviation users.

5.66 The MoD queried whether users of airspace would be expected to pay the Charge even if they did not use the Airspace Design Service.

Collection of charges

5.67 NERL said separating the Charge from existing en route charges would provide maximum transparency to users for the costs of delivering the Airspace Design Service and the Airspace Design Support Fund. It said the separation might give

⁴³ A service unit is a unit used for charging purposes based on the multiplication of an aircraft's [weight factor](#) by the distance factor (between the aerodrome of departure within, or the point of entry into, the airspace of the State and the aerodrome of arrival, or the point of exit from, that airspace). Service units is the measure of traffic volume used to determine the UK en route charge.

rise to additional administration costs, compared to if the Charge was bundled in with the existing en route charge.

- 5.68 Prospect said it had no material concern about how charges were collected. It said it might be prudent for clarity and accountability purposes to keep charging mechanisms (in practice, the Charge and existing en route charges) separate.

Charging basis

- 5.69 NERL agreed the Charge should be on a “per service unit” basis. It said airlines, the Eurocontrol Central Route Charging Office (“CRCO”) and NERL were all used to charging systems based on service units. However, it recognised there might be some additional administration costs and risks involved with charging in this way compared to a per flight basis because:

- billed amounts would likely be high volume but low value, and NERL would have to bear the risk associated with a high number of small debtor balances;
- any new charge would need to be integrated with invoicing systems and in compliance with upcoming e-invoicing directives from the EU, and would require additional effort for NERL and users; and
- NERL did not maintain a database of aircraft maximum take-off weights (“MTOW”) and, therefore, would need to outsource all billing to the Eurocontrol CRCO through a commercial contract or build its own database/billing systems.

- 5.70 NERL said outsourcing all billing to the Eurocontrol CRCO would likely be the simplest way to implement the Charge and limit administrative burden.

Our views

- 5.71 Our view remains that the Charge should be payable by airspace users in receipt of en route air traffic services in the UK Flight Information Region. This is consistent with the approach outlined in the Consultation Response Document. We consider this is a suitable approach because the initial focus of the work of the Airspace Design Service and any airspace change proposals enabled by the Airspace Design Support Fund will be on re-designing the airspace to be used by commercial airlines.
- 5.72 If the scope of the Airspace Design Service evolves in the future, then it may be appropriate and/or necessary to expand the scope of entities that pay the Charge to include other categories of users, including in the context of emerging technologies and new users of airspace.
- 5.73 We remain of the view that NERL should ultimately decide how the Charge should be collected, including by working with Eurocontrol’s CRCO. We agree

with stakeholders that the Charge being separate to the UK en route charge brings extra clarity and transparency.

- 5.74 We consider that a “per service unit” basis for charging is appropriate, reflective of users’ airspace usage and ability to pay and because it is well understood by stakeholders.

Initial proposals

- 5.75 Our initial proposal is that:
- the Charge should initially be payable by airspace users in receipt of en route air traffic services in the UK Flight Information Region;
 - NERL should decide how the Charge will be collected from users; and
 - the Charge should be on a “per service unit” basis.

Illustrative charges

Summary of the November 2024 Consultation

- 5.76 The November 2024 Consultation provided illustrative charges based on the Egis (medium) cost estimates. We noted that if a cost pass-through approach was adopted, the final charges paid by airspace users would depend on actual costs incurred by NERL, rather the initial cost forecasts.
- 5.77 We showed the potential average charge both on a per flight and “per service unit” basis and assumed costs would be treated as opex and all would be recovered in period (apart from any corrections).
- 5.78 The 2024 UK en route unit rate was £75.21. Focusing on the NR23 period, the average charge for the new airspace design services was £2.02, equivalent to approximately 2.5% of the 2024 UK en route charge.
- 5.79 We also provided an illustrative draft licence condition introducing a new charge control condition in Appendix C of the November 2024 Consultation.

Stakeholders’ views

- 5.80 Few stakeholders responded directly to the illustrative charges set out in the November 2024 Consultation.
- 5.81 NERL noted the CAA’s estimates of the potential charges on both the per flight and “per service unit” basis. It also said the charging mechanism for the Charge remained a point of ongoing discussion and it did not agree to the basic cost reimbursement structure and formulae in Appendix C of the November 2024 Consultation.

- 5.82 ACOG referred to its previous comments on the cost estimates being optimistic and too low.
- 5.83 Farnborough Airport said that the charges seemed reasonable given the information available.
- 5.84 IATA said that if additional (not planned in NR23) costs were to be recovered in the corresponding years $n+2$, then they might have a significant impact on the unit rates. IATA also queried whether any corresponding reductions in airport charges had been estimated.

Additional analysis of illustrative charges

- 5.85 The regulatory approaches for the new Charge discussed above include “opex with margin” and “RAB-based”. Both approaches reflect our view that it is appropriate for NERL to be remunerated for the additional (non-cost-related) risks of taking forward the new economic activities of providing the Airspace Design Service and administering the Airspace Design Support Fund.
- 5.86 Since the November 2024 Consultation, we have updated illustrative calculations for the most recent STATFOR traffic forecasts (Spring 2025) and for the forecasts for CPI in the March 2025 Office for Budget Responsibility forecasts. As discussed in Chapter 4 (Costs of new airspace design services), we have used the Egis model (medium scenario) as our central cost projection. We have published the spreadsheet that models our illustrative calculations alongside this consultation.⁴⁴
- 5.87 Table 5.1 shows the inputs and assumptions we used to model the Charge and other variables that help put to put the Charge in context. The assumptions include:
- the cost and service unit forecasts used;
 - the operating margin applied;
 - the rate of return allowed on a CPI-indexed RAB; and
 - the depreciation profile.

⁴⁴ CAP 3121A, the “UKADS Financial Model”, available at www.caa.co.uk/CAP3121A

Table 5.1: Key inputs and assumptions to model illustrative charges

Variable	NR23	10-years
Estimated total cost of providing the Airspace Design Service and the Airspace Design Support Fund (2024 prices)	£52 million	£194 million
Total service units (TSUs) forecast (000s) ⁴⁵	25,398	136,230
Flights forecast (000s) (used for charge per flight illustration only)	5,104	26,759
Percentage difference between TSUs and CSUs (based on 2024 data)	1.24%	1.24%
Operating Margin	1%	1%
WACC (CPI-real; “RAB-based” only)	3%	3%
Flat depreciation period (“RAB-based” only)	10 years	10 years
Average number of passengers per flight (used for Charge per pax illustration only) ⁴⁶	130	130
2024 UK en route rate ⁴⁷	£75.21	£75.21

5.88 Table 5.2 and Table 5.3 show the average charge per service unit that both models would yield over the NR23 period, but also, more speculatively, over a 10-year horizon. It is worth noting that, although the “RAB-based” model yields lower average charges over the projection period, it also accumulates a RAB which would need to be depreciated (that is, paid for by users) over subsequent years.

5.89 We also show the average charge on a “per flight” basis, on a “per passenger” basis, and as a proportion of the 2024 UK en route charge to help stakeholders better understand the magnitude of these charges, although only the charge per service unit is being proposed. Under the Eurocontrol Principles, “Determined Unit Costs” (charges) are required to be expressed using Total Service Units (“TSUs”), which include both civil and military flights. However, as it is proposed that military and other exempt flight service units do not pay the Charge (nor do they pay the en route charge), NERL can only receive revenue from Chargeable

⁴⁵ CAA analysis of EUROCONTROL’s [STATFOR Spring 2025 Forecasts](#)

⁴⁶ CAA analysis of EUROCONTROL’s [Standard Inputs for Economic Analyses](#) – section 13

⁴⁷ Eurocontrol Route Charges System, [Information to users \(No.2024/01\)](#). Conversion based on EUR/GBP rate of 0.861581.

Service Units (“CSUs”). As per our normal approach for setting the en route charge, we increased determined costs (and hence charges) by the percentage difference between TSUs and CSUs – 1.24%, using 2024 data.⁴⁸

Table 5.2: Outputs of “opex with margin” model

Variable (2024 prices)	NR23	10-years
Charge per Service Unit	£2.10	£1.45
Charge per flight	£10.43	£7.40
Charge per passenger	£0.08	£0.06
Charge as % of 2024 UK en route charge	2.79%	1.93%
Forecast closing RAB	N/A, £0	N/A, £0

Source: the UKADS Financial Model, available at www.caa.co.uk/CAP3121A

Table 5.3: Outputs of “RAB-based” model

Variable (2024 prices)	NR23	10-years
Charge per Service Unit	£0.44	£0.96
Charge per flight	£2.20	£4.89
Charge per passenger	£0.02	£0.04
Charge as % of 2024 UK en route charge	0.59%	1.28%
Forecast closing RAB	£43 million	£88 million

Source: the UKADS Financial Model, available at www.caa.co.uk/CAP3121A

5.90 In Table 5.4, we compare both models with an NPV calculation of charges over the ten-year period using the social discount rate of 3.5%.⁴⁹ For the “RAB-based” model illustration, we also include in this calculation the closing RAB balance as a terminal value for the NPV calculation. This shows that with the parameters proposed, the “RAB-based” approach has a slightly higher NPV than the “opex with margin” approach.

⁴⁸ CAA analysis of STATFOR Spring 2025 forecasts and CRCO data.

⁴⁹ The 3.5% social discount rate comes from the HMT [Green Book](#).

Table 5.4: Net present value of expected charge revenues, 2024 prices

Model	10-years
Opex with margin	£168.2 million
RAB-based (incl. closing RAB)	£170.0 million

Source: the UKADS Financial Model, available at www.caa.co.uk/CAP3121A

Note: Charges and closing RAB (terminal value) have been discounted at a rate of 3.5%.

- 5.91 Ultimately, the charges that will be paid by airspace users will depend on the actual costs of providing the Airspace Design Service and capitalising the Airspace Design Support Fund, rather than the cost projections included in Chapter 4 (Costs of new airspace design services). Also, the outputs of the models are sensitive to the proposed approaches to provide NERL with an appropriate return (that is, the proposed operating margin, and allowed return and depreciation profile on the RAB).

Summary of initial proposals and key issues for consultation

- 5.92 The main aspects of our initial proposal and key issues for consultation on the form of control and charges include:
- our conclusion that a cost pass-through approach to the Airspace Design Service and Airspace Design Support Fund costs remains appropriate;
 - the initial price control period should be relatively short and aligned with the remainder of the NR23 period;
 - NERL should be compensated for managing the risks associated with these activities, either through capitalising costs and adding to a RAB (which would then earn a return) or an opex margin, with our preferred approach being the use of an opex margin for the remainder of the NR23 period; and
 - the Charge should initially be payable by airspace users in receipt of en route air traffic services in the UK Flight Information Region on a “per service unit basis” and NERL should decide how the Charge will be collected from users.
- 5.93 We would also welcome the views of stakeholders on the illustrative calculations of charges set out above.

APPENDIX A

Our statutory duties

- A1 Chapter I of the TA00 provides for the economic regulation of air traffic services.⁵⁰ NERL is currently the only licence holder under the TA00. In making decisions as to how NERL is regulated, the CAA is bound by the requirements of the TA00. The CAA's 'primary duty' is set out in subsection 2(1) TA00 as follows:
- “The CAA must exercise its functions under this Chapter so as to maintain a high standard of safety in the provision of air traffic services; and that duty is to have priority over the application of subsections (2) to (5).”*
- A2 The CAA must also exercise its Chapter I TA00 functions in the manner it thinks best calculated to discharge its 'secondary duties' (over which the primary duty has priority), set out in subsections 2(2) to 2(5) TA00, namely:
- to further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them (referred to as “customers and consumers”);⁵¹
 - to promote efficiency and economy on the part of licence holders;
 - to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences. We interpret this as referring to financeability of the notionally financed company;
 - to take account of any international obligations of the UK notified to the CAA by the Secretary of State (whatever the time or purpose of the notification) (see further below);
 - to take account of any guidance on environmental objectives given to the CAA by the Secretary of State. It should be noted that no such guidance has been given to the CAA by the Secretary of State;
- A3 Subsection 2(5) TA00 provides that if, in a particular case, there is a conflict in the application of the secondary duties noted above, the CAA must, in relation to

⁵⁰ See section 98 TA00 for the definition of “air traffic services”: [Transport Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/32/section/98)

⁵¹ In doing so, the only interests the CAA can consider are those regarding the range, availability, continuity, cost and quality of air traffic services. Where the CAA thinks it appropriate, it may further customers' and consumers' interests by promoting competition in the provision of air traffic services.

that case, apply them in the manner it thinks reasonable having regard to them as a whole.

A4 Subsection 2(6) TA00 provides that the CAA must exercise its functions under Chapter I of the TA00 so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions.

A5 The TA00 also places duties on NERL as a licence holder. It must:⁵²

- secure that a safe system for the provision of authorised air traffic services in respect of a licensed area is provided, developed and maintained;⁵³
- take all reasonable steps to secure that the system is also efficient and coordinated;
- take all reasonable steps to secure that the demand for authorised air traffic services in respect of a licensed area is met; and
- have regard, in providing, developing and maintaining the system, to the demands which are likely to be placed on it in the future.

UK's International Obligations (section 2(2)(d) TA00)

A6 Section 2(2)(d) TA00 requires the CAA to take account of the UK's international obligations which have been notified to the CAA by the Secretary of State. These include:

- Article 15 of the Chicago Convention 1944;
- the Eurocontrol Multilateral Agreement relating to Route Charges 1981 (the Multilateral Agreement);
- air services agreements and provisions relating to the imposition of charges on airlines for the provision of air traffic services in agreements between the UK and third countries; and
- agreements between the UK and Republic of Ireland on parts of the Atlantic Ocean.

⁵² See section 8 TA00: [Transport Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁵³ Subsection 8(4) TA00 explains that, for the purposes of subsection 8(1)(a), “a system for the provision of services is safe if (and only if) in providing the services the person who provides them complies with such requirements as are imposed by Air Navigation Orders with regard to their provision.”

APPENDIX B

Initial proposals: Draft licence modifications

- B1** This Appendix sets out our initial proposals for modifications to the Licence to support the initial proposals set out in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service) and Chapter 3 (Consequential modifications to the Licence). The draft modifications set out in this Appendix remain subject to policy development in the light of the responses to this consultation and any parallel policy development on the Airspace Change Process and the successful passage through the Parliamentary process of the statutory instruments discussed in the Introduction and summary.
- B2** Any modifications to the Licence would be subject to further consultation prior to implementation in accordance with the requirements of TA00. We welcome stakeholders' comments on both the substance and drafting of these proposed draft modifications.
- B3** These draft modifications are set out in the order that they appear in the Licence. References to Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service) and Chapter 3 (Consequential modifications to the Licence) are provided to indicate where the relevant supporting materials on these initial proposals are to be found.

Initial proposals for modifications to Condition 1 (Interpretation and construction)

New definitions

- B4** As discussed at Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service) and Chapter 3 (Consequential modifications to the Licence), the draft modifications set out below are designed to:
- create NERL's obligations to provide the Airspace Design Service; and
 - address any consequential modifications required to other conditions
- of the Licence should these initial proposals be implemented.

Definitions to support the obligation to provide the Airspace Design Service

- B5** We propose to insert a new condition in the Licence requiring NERL to provide the Airspace Design Service. This would need to be supported by a definition of the "Airspace Design Service", together with subsidiary definitions of "Airspace Change Process" and "AMS" (to refer to the Airspace Modernisation Strategy). Drafts of these definitions are set out below. In the light of the changes to section

98 TA00 discussed, in the Introduction and summary, we consider that appropriate references to TA00 can make this material simpler.

B6 We consider that it is essential that the drafting of relevant terms within the Licence is consistent with the drafting of TA00. As a result, we propose to define the Airspace Design Service by reference to TA00 to ensure that these provisions are aligned.

B7 To that end, our initial proposal is to define the Airspace Design Service as follows:

“Airspace Design Service” means carrying out the activities set out in section 98(1)(f) of the Act.

B8 We would need to define “Airspace Change Process” and continue to consider that the approach set out in the November 2024 Consultation could be appropriate for this as follows:

“Airspace Change Process” means the procedures for dealing with airspace change proposals (as that term is defined in section 1 of the Air Traffic Management and Unmanned Aircraft Act 2021) developed from time to time by the CAA in accordance with directions given under section 66 of the Act (air navigation directions given by the Secretary of State to the CAA).

B9 To ensure the consistency of drafting with other provisions, we propose to replace the definition of “Airspace Modernisation Strategy” used in the November 2024 Consultation with a simpler definition of “AMS” which points directly at where that expression is defined in The Civil Aviation Authority (Air Navigation) Directions 2023⁵⁴ as follows:

“AMS” shall bear the same meaning as it does in The Civil Aviation Authority (Air Navigation) Directions 2023 (as amended from time to time).

Definitions to support consequential modifications to the Licence

B10 As discussed in Chapter 3 (Consequential modifications to the Licence), to support these initial proposals for consequential modifications that might be needed to:

- the financial ringfence in Condition 5 (Availability of Resources and Financial Ringfencing); and

⁵⁴ The Civil Aviation Authority (Air Navigation) Directions 2023 at paragraph 2 provides that: “AMS” means the UK’s Airspace Modernisation Strategy being a coordinated strategy for the use of all UK airspace for air navigation up to 2040”. See: <https://www.caa.co.uk/media/lzrl3drs/caa-air-navigation-directions-2023.pdf>

- Condition 9 (Prohibition of cross-subsidies),

the definitions of “Permitted Purpose” and “Separate Business” in Condition 1 (Interpretation and construction) would need be modified (new text marked in underline/strikeout).

- B11 These differ from the definitions set out in the November 2024 Consultation, being updated to account for the proposals that NERL will carry out the residual tasks of ACOG and administer the Airspace Design Support Fund. We propose that the definition of “Permitted Purpose” should cover all three of these activities, including through reference to the relevant paragraphs of the new condition on the Airspace Design Service discussed below. If this approach were to be adopted, no further amendment would be required to Condition 9 (Prohibition of cross-subsidies) to include the Airspace Design Service and these related activities.

Proposed draft modified definitions

“**Permitted Purpose**” means the purpose of all or any of the following:

the En route (UK) Business, the En route (Oceanic) Business, the Airspace Design Service and the activities required by Conditions [X.5] and [X.6], or any business or activity within the limits of Condition 5.9 to 5.12; and without prejudice to the generality of paragraph (a) or (b), any payment or transaction lawfully made or undertaken by the Licensee for a purpose within sub-paragraphs (i) to (vii) of paragraph 19(b) of Condition 5“

“**Separate Business**” means each of

- (i) the En route (UK) Business;
- (ii) ~~and~~ the En route (Oceanic) Business; and
- (iii) the provision of the Airspace Design Service, and the activities required by Conditions [X.5] and [X.6].

taken separately from one another and from any other business of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any such business of the Licensee (and of any other affiliate or related undertaking) so as to form a single Separate Business.

New Provisions: Obligation to provide the Airspace Design Service

- B12 As discussed in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service), our initial proposal is to insert a new condition in the Licence to: require NERL to provide the Airspace Design Service, the

residual functions currently carried out by ACOG and administer the Airspace Design Support Fund; address how NERL should be required to carry out that activity; and provide for governance and the role of the Advisory Board; create obligations on relationships with stakeholders, including requirements to act in a non-discriminatory manner.

- B13 The drafting set out below has been prepared in the light of the illustrative proposals published in the November 2024 Consultation, stakeholders' comments on those proposals and the matters discussed in Chapter 2 (Licence modifications to implement the creation of the Airspace Design Service).
- B14 Our initial proposal is that the condition should be drafted as set out below. We welcome stakeholders' views on the drafting of this new condition.

Proposed draft new provision

Condition [X]: Provision of the Airspace Design Service and related activities

1. The purpose (the "Purpose") is to prepare and submit proposals for permanent changes to the design of UK airspace to the CAA that, if approved by the CAA in accordance with the Airspace Change Process, would deliver the objectives of the AMS.
2. This Condition sets out:
 - (a) in Part A, the Licensee's obligations in relation to the Purpose and related activities;
 - (b) in Part B, the Licensee's obligations on how it shall deliver the Airspace Design Service;
 - (c) in Part C, the arrangements for an Advisory Board to assist the Licensee in providing the Airspace Design Service; and
 - (d) in Part D, obligations in respect of interested parties.

Part A: requirement to provide the Airspace Design Service and related activities

3. The Licensee shall provide the Airspace Design Service to deliver the Purpose set out in paragraph 1 of this condition.
4. The Licensee shall undertake the activities needed to support the process and requirements set out in Airspace change masterplan – CAA acceptance criteria (CAP2156a) and Airspace change masterplan – assessment framework (CAP2156b), as amended, revised or replaced by the CAA from time to time.
5. The Licensee shall administer an airspace design support fund in accordance with any relevant written guidance issued by the CAA for the purpose from time to time.

6. The Licensee shall develop and maintain its assets, personnel, systems and other parts of the business so as to be able to comply with its obligations to provide the Airspace Design Service and comply with its obligations pursuant to paragraphs 4 and 5 of this Condition.

Part B: The Licensee's obligations on how it shall deliver the Airspace Design Service and related activities

7. The Licensee shall use its best endeavours to have regard to, and comply with, any written guidance and/or strategic objectives issued by the [CAA and/or Secretary of State] including in relation to the geographic area in relation to which it shall provide the Airspace Design Service.
8. The Licensee shall not be required to comply with any guidance and/or strategic objectives issued by the [CAA and/or Secretary of State] unless the [CAA and/or Secretary of State as the case may be] has first consulted the Licensee and any other relevant parties, including airlines, airports and the Ministry of Defence on that guidance or any revision of it (whether or not such consultation commenced prior to this condition coming into effect).
9. In delivering the Airspace Design Service, the Licensee shall have due regard to:
 - (a) the Airspace Change Process and any guidance issued by the CAA in relation to it;
 - (b) any Air Navigation Directions made under sections 66(1), 68 and 104(2) of the Act;
 - (c) any prioritisation principles that the CAA is required to produce by any Air Navigation Directions from time to time in force;
 - (d) the views of the Advisory Board that the Licensee is required to maintain in accordance with paragraph [13] of this condition; and
 - (e) the views expressed by respondents to consultations on specific proposals for changes to UK airspace, whether or not that consultation is undertaken by the Licensee or other party in accordance with any written ways of working agreed pursuant to paragraph [17] of this condition.
10. The Licensee shall create a strategic delivery plan for the Airspace Design Service, setting out its plans to deliver the airspace changes in the geographical area that it is responsible for, including its approach, assumptions, milestones, timescales and appropriate risk management allowances.
11. The Licensee shall keep the strategic delivery plan it produces under paragraph [10] of this condition under review and update it from time to time to reflect changes to and progress in delivering its strategic delivery plan.

Part C: Governance arrangements for the Airspace Design Service

12. The Licensee shall inform the CAA and Secretary of State of the appointment of
 - (a) the Head of the Airspace Design Service; and
 - (b) material changes to the operation of the Airspace Design Service.
13. The Licensee shall appoint an Advisory Board to act as a forum for stakeholders to engage with, and have oversight and visibility of, the work of the Airspace Design Service at a strategic level.
14. The Licensee shall develop a structure, terms of reference and membership for the Advisory Board it is required to appoint under paragraph [13] of this condition and shall consult with the CAA and Secretary of State on these matters prior to appointing the Advisory Board.
15. The Licensee shall ensure that the Advisory Board meets regularly and sufficiently frequently to enable it to discharge the matters set out in the terms of reference it is required to have under paragraph [14] of this condition.

Part D: obligations in respect of other parties

16. The Licensee shall, in carrying out the Airspace Design Service, act transparently and not unduly prefer or discriminate against any person or class of persons after taking into account the Purpose.
17. The Licensee shall use reasonable endeavours to agree written ways of working with any party promoting permanent changes to UK airspace in the geographic area set out in any strategic objectives for the Airspace Design Service set in accordance with paragraph [7] of this condition. Any such written ways of working should take account of any written guidance on the arrangements for the transition of airspace change proposals to become the responsibility of the Licensee in accordance with the Airspace Change Process.

Consequential modifications to Condition 5 (Availability of resources and financial ringfencing)

- | | |
|-----|---|
| B15 | The initial proposals for the draft consequential amendments to Condition 5 (Availability of resources and financial ringfencing) set out below have been prepared on the basis of the proposed modifications to the definition of “Permitted Purpose” in Condition 1 (Interpretation and construction) to include the Airspace Design Service discussed above. |
| B16 | <p>As discussed in the November 2024 Consultation, we consider that adopting this approach would mean that no further modification would be needed to the existing requirements on NERL in relation to:</p> <ul style="list-style-type: none"> ▪ the requirement to have sufficient resources available in paragraph 2; |

- the obligation to provide compliance certificates in relation to financial resources in paragraphs 3 and 4;
- the obligation to provide compliance certificates in relation to operational resources in paragraph 5 and 6;
- the obligations in relation to amendments to the finance documents in paragraph 14;
- the restrictions on the disposal of assets and indebtedness in paragraphs 15 to 20;
- the requirement for an ultimate controller undertaking in paragraphs 21 to 22;
- the obligation to maintain an investment grade credit rating in paragraph 23;
- the restrictions on financial indebtedness in paragraphs 24 to 28; or
- the interpretation of the condition in paragraph 29.

B17 Furthermore, no modification would be required to the following provisions in any event:

- the text of the required compliance certificates in relation to certain conditions in paragraphs 7 and 8; or
- the obligation to provide certificates to the CAA in relation to dividends in paragraphs 8A to 8E.

B18 Given that our initial proposal is that the new condition set out above will require NERL to provide not only the Airspace Design Service, but also conduct residual activities of ACOG (paragraph 4 of the new condition) and administer the Airspace Design Support Fund (paragraph 5 of the new condition), we propose to refer to each of these requirements separately in the drafting below to ensure that the consequential amendments to the Licence adequately reflect the requirements on NERL.

B19 The provisions that would not need to be modified have not been reproduced below.

B20 In the light of NERL's comments on the November 2024 Consultation, our initial proposal is that a change should also be made to paragraph 12(a)(iii) of this condition, to reflect that there may need to be transactions between the Airspace Design Service and the En route and Oceanic businesses.

B21 We welcome stakeholders' views on these draft conditions.

Draft modified Condition

1. The objectives of this Condition are to set out measures which, inter alia:

- (a) require the Licensee to act in a manner calculated to secure that it has available to it sufficient resources to perform its Licence obligations and that it informs the CAA about the resources available to it and its compliance with certain conditions of this Licence;
- (b) limit the scope of activities which the Licensee undertakes which are outside the En route (UK) Business, ~~and~~ the En route (Oceanic) Business, the provision of the Airspace Design Service and the activities required by Conditions [X.4] and [X.5];
- (c) create an effective financial ring-fence around the En route (UK) Business, ~~and~~ the En route (Oceanic) Business, the provision of the Airspace Design Service and the activities required by Conditions [X.4] and [X.5] and promote transparency;
- (d) require the Licensee to make the CAA aware of any material steps proposed to be taken under the Finance Documents;
- (e) require the Licensee to notify the CAA on the occurrence of certain events which might prejudice the licensees' financial stability;
- (f) control the disposal of relevant assets, and place certain restrictions on the ability of the Licensee to incur debt;
- (g) require the ultimate holding company to undertake not to act, or cause any subsidiary to act, in such a way as to cause the Licensee to breach the Licence;
- (h) prohibit the Licensee from entering into any agreement or arrangement with any affiliate or related undertaking except on an arm's length basis and on normal commercial terms unless otherwise permitted;
- (i) require the Licensee to use all reasonable endeavours to maintain at all times an investment grade issuer credit rating; and
- (j) establish a financial gearing target and cap.
- (k) This paragraph 1 provides a descriptive summary of the provisions which follow in this Condition. This paragraph 1 is not part of the Condition nor is it intended to add to the provisions which follow and, for the purposes of interpretation, it is the detailed provisions which prevail.

[...]

Restriction on Activity and Financial Ring-Fencing

2. Save as required under this Licence or as provided by paragraphs 11 and 12 below, neither the Licensee nor any related undertaking of the Licensee shall conduct any business or carry on any activity other than the En route (UK)

Business, ~~and~~ the En route (Oceanic) Business, the provision of the Airspace Design Service and the activities required by Conditions [X.4] and [X.5].

3. The Licensee shall not without the written consent of the CAA acquire shares in any undertaking except:

- (a) in any body corporate which was a subsidiary of the Licensee prior to the date of this Licence coming into effect;
- (b) in a body corporate which conducts business only for a Permitted Purpose; or
- (c) acquired in order to avoid dilution of a shareholding in a body corporate in which the Licensee holds shares in conformity with this Licence.

If the Licensee does so acquire shares, it shall do so subject to the provisions of paragraph 2.

4. Nothing in paragraph 9 of this Condition shall prevent:

- (a) any affiliate or related undertaking of the Licensee from conducting any businesses or carrying on any activity;
- (b) the Licensee from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistent with the provisions of this Licence;
- (c) the Licensee from performing the supervisory or management functions of a holding company in respect of any subsidiary; or
- (d) the Licensee from carrying on any business or conducting any activity to which the CAA has given its consent in writing.

5. Nothing in paragraph 9 of this Condition shall prevent the Licensee conducting any business complying with the following limitations:

- (a) the business consists of all or any of:
 - (i) the collection of route charges on behalf of other air traffic service providers pursuant to an international agreement;
 - (ii) activities required by any contract with the CAA or with the Crown related to services required by the Licence;
 - (iii) transactions which
 - (aa) the En route (UK) Business; ~~and~~
 - (bb) the En route (Oceanic) Business; ~~and~~

(cc) the Airspace Design Service and activities required by Conditions [X.4] and [X.5]

make with each other;

- (iv) transactions with its affiliates which comply with paragraph 19;
- (v) the provision of air traffic services in conjunction with other air traffic service providers in a Functional Airspace Block established in accordance with Regulation (EC) No.551/2004 of 10 March 2004 on the organisation and use of airspace in the single European sky (as amended) or established in substantially similar arrangements but not associated with the single European sky; and
- (vi) any other business not otherwise permitted pursuant to any of paragraphs 11 and 12(a)(i) to (v) inclusive of this Condition and which is a Connected Business, provided the turnover of such business when aggregated with that of any related undertaking of the Licensee does not in any regulatory year of the Licensee exceed four and a half per cent of the aggregate turnover of the En route Businesses;
- (b) the aggregate amount of all investments by the Licensee in the businesses described in sub-paragraph 12(a)(vi) above does not at any time exceed one per cent of the share of capital in issue, share premium and consolidated reserves of the Licensee as shown by its most recent audited historic cost financial statements then available.

[...]

Consequential modifications to Condition 6: Regulatory accounting requirements

- | | |
|-----|---|
| B22 | Our initial proposal is that the provision of the Airspace Design Service and the activities in relation to the residual activities of ACOG and the administration of the Airspace Design Support Fund required by Conditions [X.4] and [X.5] (taken together) would be a distinct activity within NERL that would need to be accounted for separately. Such an approach would help to secure the CAA's ability to engage in appropriate monitoring of NERL's activities as a whole and would support the approach to the financing of NERL's activities set out in Chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges). |
| B23 | We welcome stakeholders' views on these issues. |

Proposed draft modified Condition

6. This Condition applies for the purpose of making available, in a form and to a standard reasonably satisfactory to the CAA, such regulatory accounting information as will, in furtherance of the requirements of this Licence:
 - (a) enable the CAA and the public to assess the financial position of the Licensee and the financial performance of:
 - (i) the UK Air Traffic Services Business; ~~and~~
 - (ii) the En Route (Oceanic) Business; and
 - (iii) the provision of the Airspace Design Service and the activities required by Conditions [X.4] and [X.5]

on a consistent basis, distinct from each other and its affiliate or related undertakings;
 - (b) assist the CAA to assess the Licensee's compliance with this Licence;
 - (c) assist the CAA and the public to assess performance against the assumptions underlying the current price control; and
 - (d) inform future price control reviews.
7. The Licensee shall draw up in consultation with the CAA, and implement in a form approved by the CAA (such approval not to be unreasonably withheld or delayed), guidelines governing the format and content of such regulatory accounts and the basis on which they are to be prepared so as to fulfil the purpose set out in paragraph 1 as from time to time amended by the Licensee with the approval of the CAA.
8. The Licensee shall keep, shall procure that any affiliate keeps and, so far as it is able, procure that any related undertaking keeps the accounting records which each is required by the Companies Act 2006 to keep in such form as is necessary to enable the Licensee to comply with this Condition and the Regulatory Accounting Guidelines.
9. The Licensee shall prepare on a consistent basis from the accounting records referred to in paragraph 3, in respect of the regulatory year commencing on 1 January 2020 and each subsequent regulatory year, regulatory accounts in conformity with the Regulatory Accounting Guidelines for the time being in force and identifying separately the amounts attributable to:
 - (i) the UK Air Traffic Services Business; ~~and~~
 - (ii) the En Route (Oceanic) Business;

(iii) the provision of the Airspace Design Service and the activities required by Conditions [X.4] and [X.5]; and

(iv) the Licensee as a whole

in accordance with this Condition and the Regulatory Accounting Guidelines.

10. The Regulatory Accounting Guidelines prepared pursuant to paragraph 2 shall, without limitation:

(a) provide that, except so far as the CAA reasonably considers necessary, the regulatory accounts shall be prepared in accordance with applicable law and International Financial Reporting Standards (IFRS) as adopted by the EU from time to time; and

(b) state the accounting policies to be adopted, including the basis on which any amount has been either:

(i) charged from or to:

(aa) the En route (UK) Business; and

(bb) the En route (Oceanic) Business; and

(cc) the Airspace Design Service and activities required by Conditions [X.4] and [X.5]

together with a description of the basis of that charge; or

(ii) determined by apportionment or allocation between:

(aa) the En route (UK) Business; and

(bb) the En route (Oceanic) Business; and

(cc) the Airspace Design Service and activities required by Conditions [X.4] and [X.5].

(c) explain the basis on which incurred costs have been apportioned or allocated to services provided to New Users, specifying in particular which services have been provided and, where possible, to which types of New User.

11. 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 Regulatory Accounting Guidelines;

- (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.

12. 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 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.

13. The regulatory year of the Licensee shall run from 1 January to 31 December unless otherwise agreed with the CAA.

14. 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, the Airspace Design Service and the activities required by Conditions [X.4] and [X.5].

“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.

“New Users” means a User who:

- is or is in the process of applying to be an “unmanned aircraft system operator” or “UAS operator” carrying out “UAS operations” as defined in UK Regulation (EU) 2019/947;
- is the holder of or is in the process of applying for an “operator licence” or a “spaceport licence” as defined in the Space Industry Act 2018;
- is the owner of a “spacecraft” or a “carrier aircraft” as defined in the Space Industry Act 2018; or
- is any other User who owns, operates, or is in the process of applying for the relevant approvals to own or operate, a novel type of aircraft for which the Licensee has not previously provided air traffic services and who wishes to use such services.

Consequential modifications to Condition 7: Requirement to maintain an intervention plan

B24 As discussed in Chapter 3 (Consequential modifications to the Licence), our initial proposal is that it is appropriate to extend the scope of the intervention plan to cover the new activities to be undertaken by NERL. We propose to effect this in the manner set out below.

Proposed draft modified Condition

1. The Licensee shall prepare by 1 April 2016, or within 6 months of this condition coming into effect in this Licence, whichever is the later and, thereafter, maintain an intervention plan fulfilling the criteria set out in paragraph 3.
2. The requirement for the information described in paragraph 3 will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can readily be obtained, and those documents or records are either maintained by the Licensee itself or are available to the Licensee at all times under a legal or contractual right.
3. For the purposes of this condition, an intervention plan shall be a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow any person appointed under an air traffic administration order (within the meaning in Chapter I of the Act) in respect of the Licensee readily to obtain the information they could reasonably be expected to require in order for that person efficiently to carry out

his functions and to remain compliant with the Act and this Licence. The form of the intervention plan shall, as a minimum, contain information on:

- (a) the financial assets, resources and facilities of the Licensee;
- (b) the non-financial assets, rights and resources of the Licensee, including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the Licensee, including contingent and contractual liabilities with counterparty and maturity information;
- (d) the tax affairs of the Licensee;
- (e) the personnel of the Licensee and any personnel employed by any affiliate or related undertaking of the Licensee who are engaged in operating any aspect of the Permitted Purpose activities of the Licensee;
- (f) any pension schemes of which those personnel referred to in subparagraph (e) are members and which are sponsored or administered by the Licensee or any affiliate or related company of the Licensee;
- (g) any mortgages, charges, or other forms of security over the Licensee's assets; the systems and processes by which the Licensee carries on the En route Businesses and the Airspace Design Service and activities required by Conditions [X.4] and [X.5] with information on any significant contractual arrangements, including those that impose obligations on the Licensee.
- (h) any arrangements under which the Licensee has delegated any part of the En route Businesses, the Airspace Design Service or activities required by Conditions [X.4] and [X.5] to any affiliate of the Licensee;
- (i) any contractual rights to receive cash or other financial assets from any affiliate of the Licensee or any other person;
- (j) any contractual obligations to deliver cash or other financial assets to any affiliate of the Licensee; and
- (k) the Licensee's arrangements and procedures for ensuring compliance with legislative requirements relating to the provision of air traffic services and with its obligations under this Licence, including the conditions set out in Part III of this Licence.

4. The form, scope and level of detail of the intervention plan prepared in accordance with paragraph 1 shall be approved by the CAA (such approval not to be unreasonably withheld or delayed).

5. The Licensee shall keep the intervention plan under review at all times and, at least annually, shall review the appropriateness of the intervention plan and submit to the CAA a Compliance Certificate within four months of the end of the Licensee's financial year in the following form:

"The Licensee has reviewed its intervention plan as required by condition 7 of its Licence. In the opinion of the directors of the Licensee, the intervention plan is fit for purpose and complies with the Licensee's obligations under that condition."

APPENDIX C

Proposed draft licence condition introducing a new Airspace Design Charge

- C1 This Appendix sets out our initial proposal for modifying the licence by introducing the draft licence condition below to support the initial proposals set out in Chapter 5 (Form of control, other regulatory mechanisms, and illustrative charges). This draft condition would control the new Airspace Design Charge and enable NERL to recover the costs of providing the Airspace Design Service and administering the Airspace Design Support Fund. Our initial proposal is to include a correction mechanism at NR28, which means the Charge control condition can be relatively simple for the remainder of the NR23 period. That correction mechanism is described in paragraph 5.20.

Proposed draft new provision

Condition 21b: Control of Airspace Design Charge

- Without prejudice to Condition 25 (Suspension and Modification of Charge Control Conditions), for each year t beginning on 1 January 2026 and 2027, the maximum permitted average Airspace Design Charge (MaxADC_t) shall be calculated as follows:

$$\text{MaxADC}_t = \frac{\text{DCAD}_t}{\text{ForecastTSU}_t}$$

where:

- MaxADC_t is the maximum permitted average Airspace Design Charge in year t in current year prices. It is a charge per service unit⁵⁵ to airspace users to recover the costs of delivering the Airspace Design Service and administering the Airspace Design Support Fund pursuant to the Licensee's obligations in Conditions [X.3] and [X.5].

⁵⁵ A service unit is a unit used for charging purposes based on the multiplication of an aircraft's weight factor (the square root of the result obtained by dividing the maximum take-off weight (in metric tons) of the aircraft by 50) by the distance factor (the distance in km (divided by 100), between the aerodrome of departure within, or the point of entry into, the airspace of the State and the aerodrome of arrival, or the point of exit from, that airspace. From the distances to be taken into account, 20 km is deducted for each take-off and landing on the territory of a member state). Service units is the measure of traffic volume used to determine the UK en route charge.

- (b) $DCAD_t$ is the forecast determined cost of providing the Airspace Design Service and administering the Airspace Design Support Fund, expressed in current year prices for relevant year t , as follows:

If “opex with margin” model is implemented:

Year t	£-nominal
2026	28,051,000
2027	28,609,000

or, if “RAB-based” model is implemented:

Year t	£-nominal
2026	5,926,000
2027	6,044,000

- (c) $ForecastTSU_t$ is the forecast Total Service Units for relevant year t , as follows:

Year t	$ForecastTSU_t$
2026	12,580,000
2027	12,818,000

APPENDIX D

Glossary

Abbreviation/term	Description
ACOG	Airspace Change Organising Group
Air Navigation Guidance	Air Navigation Guidance 2017
AMS	Airspace Modernisation Strategy
CAA, "we", "us", "our"	Civil Aviation Authority
Capex	Capital expenditure
CMA	Competition and Markets Authority
Consultation Response Document	Airspace modernisation: Outcome of the consultation on a UK Airspace Design Service www.caa.co.uk/CAP3106 .
CPI	Consumer Prices Index, a measure of inflation
CRCO	Central Route Charging Office
CSUs	Chargeable Service Units
DfT	Department for Transport
Egis report	CAP 3063A
Farnborough Airport	Farnborough Airport Ltd
FASI	Future Airspace Strategy Implementation, part of the Airspace Modernisation Strategy
FFC	Future Flight Challenge, UK Research and Innovation
HAL	Heathrow Airport Ltd
IATA	International Air Transport Association, the airline trade group
Joint Consultation	Airspace modernisation: Consultation on a UK Airspace Design Service www.caa.co.uk/CAP3029 .
Licence	Air traffic services licence of NATS (En Route) plc
LTMA	London Terminal Control Area

Luton Airport	London Luton Airport Operations Ltd
MTOW	Maximum take-off weights
NERL	NATS (En Route) plc
NIAUR	Northern Ireland Authority for Utility Regulation
November 2024 Consultation	Economic Regulation of NERL: Illustrative proposals for modifying the Licence to support the implementation of a UK Airspace Design Service www.caa.co.uk/CAP3063 .
NPV	Net present value
NR23	The NERL price control for the period 2023-2027
NR28	The NERL price control, expected to take effect from 2028
NSL	NATS Services Limited
Opex	Operating expenditure
RAB	Regulatory Asset Base
RAGs	Regulatory Accounting Guidelines
ScottishPower	ScottishPower Renewables
SONI	System Operator Northern Ireland
TA00	Transport Act 2000
the ACOG Paper	UK Airspace Design Service: Future of the Airspace Change Organising Group, Policy paper UKADS 25/4
the Charge	Airspace Design Charge
the Governance Paper	UK Airspace Design Service: Governance and engagement, Policy paper UKADS 25/2
the Support Fund Paper	UK Airspace Design Service: Airspace Design Support Fund, Policy paper UKADS 25/3
TSUs	Total Service Units
WACC	Weighted average cost of capital