

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

CAP 3164

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## About this document

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This document sets out the CAA's final proposals for:

- the regulatory arrangements necessary to require NATS (En Route) plc ("NERL") to create a UK Airspace Design Service ("Airspace Design Service"), UK Airspace Coordination Service ("Airspace Coordination Service") and administer an Airspace Design Support Fund;
- the creation of an Airspace Design Charge so that NERL can recover the associated costs of these activities; and
- the modifications we propose to make to NERL's economic licence (the "Licence") to implement these proposals.

As required under section 11A of the Transport Act 2000 ("TA00"), these final proposals include a notice that sets out the modifications we propose to make to NERL's licence, including how in arriving at these final proposals we have considered and given effect to our duties.

Publishing final proposals provides further opportunity for stakeholders to share their views on the matters within the scope of this consultation and for us to take account of those views when making our final decision on any modifications to the Licence.

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# Introduction and summary

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## The policy context of the Airspace Design Service

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1. In June 2025, the Government announced its intention to reform the approach to modernising UK airspace design by introducing a UK Airspace Design Service.<sup>1</sup> It said NATS (En Route) plc (“NERL”) would provide the UK Airspace Design Service, as a single ‘guiding mind’ to coordinate and sponsor airspace change proposals in UK airspace, to deliver the holistic modernised airspace design envisaged by the Airspace Modernisation Strategy. To create the obligation for NERL to provide the UK Airspace Design Service, changes would need to be made to NERL’s air traffic services licence (the “Licence”).<sup>2</sup> The Government also confirmed that NERL would continue to provide a coordination service for those strategically important interdependent airspace change proposals that are outside the scope of the UK Airspace Design Service (but that those airspace change proposals would continue to be sponsored by their existing change sponsor).
2. The Department for Transport (“DfT”) and CAA consulted on the concept of the UK Airspace Design Service in the autumn of 2024. Since then, there has been a series of consultations by the CAA and the DfT, either together as the “co-sponsors” or individually, on different aspects of the Airspace Change Process and broader airspace policy and the regulatory framework, all of which set out how airspace should be used, managed and changed/modernised in the UK.<sup>3</sup> CAP 3156,<sup>4</sup> published in September 2025 (and updated in November 2025), provides the most current and comprehensive view of the suite of changes that have been made, or are being proposed through consultation,<sup>5</sup> to enable the successful implementation of the Airspace Design Service (as defined in the Licence). We recommend that CAP 3156 is read alongside this consultation for broader context.

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<sup>1</sup> The Government’s [announcement on 2 June 2025](#)

<sup>2</sup> Air traffic services licence granted to NERL by the Secretary of State under section 6 of the Transport Act 2000 (“TA00”). The current version of the Licence is published at [Air traffic services licence for NATS \(En Route\) plc](#).

<sup>3</sup> A comprehensive list of (and links to) the relevant consultations, as well as supplementary policy information, can be found at [www.caa.co.uk/ukads](http://www.caa.co.uk/ukads)

<sup>4</sup> CAP 3156: “Modernising the way we do airspace design: information relevant to the CAA autumn 2025 consultations concerning airspace design”, available at [www.caa.co.uk/CAP3156](http://www.caa.co.uk/CAP3156)

<sup>5</sup> Annex A of CAP 3156 also provides a helpful visualisation of the different parts of the regulatory framework, including what would be directly connected to NERL’s air traffic services licence.

3. These final proposals are specifically about modifications to the conditions of the Licence, which are one part of the suite of changes required to create:
  - the legal obligation for NERL to provide the Airspace Design Service, Airspace Coordination Service and administer<sup>6</sup> the Airspace Design Support Fund; and
  - specify the new Airspace Design Charge (the “Charge”) to be levied on airspace users, to allow NERL to recover the costs of providing these services.
4. These proposed modifications follow on from changes made by the Secretary of State to TA00 to:
  - include the development and making of airspace change proposals to the CAA within the scope of the activities comprising “air traffic services” that require authorisation under Part I of TA00;<sup>7</sup> and
  - permit the Secretary of State to modify the “Terms” of the Licence to specify how NERL is authorised to carry out these activities.<sup>8,9</sup>
5. This consultation addresses the “conditions” applicable to NERL under the Licence. These proposed conditions go beyond the authorisation set out in the Terms of the Licence to specify what NERL is to be *required* (rather than simply authorised) to do and provide for NERL to recover appropriate revenues to meet the costs of these new obligations. It also addresses the consequential amendments that we need to make to the Licence to accommodate these changes.
6. As well as specifying “what” NERL is to be required to do, the modifications to the Licence that we propose to make set out “how” NERL is to carry out these activities. In short, we propose that NERL will be required to:
  - provide the “Airspace Design Service” and the “Airspace Coordination Service” having due regard to the strategic objectives set by the Secretary of State and guidance published by the CAA; and
  - administer the Airspace Design Support Fund as directed by the CAA or Secretary of State.

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<sup>6</sup> To be clear, this includes funding the Airspace Design Support Fund.

<sup>7</sup> Using the powers set out under section 98(2) TA00, the Secretary of State made the Transport Act 2000 (Air Traffic Services) (Amendment) Order 2025 which amended section 98(1) TA00

<sup>8</sup> Made by the Secretary of State with powers under section 11(4) TA00 to make the Transport Act 2000 (Air Traffic Services) (Prescribed Terms) Regulations 2025

<sup>9</sup> For more information on the decision, see [UK airspace design service: modifications to NERL licence terms – government response - GOV.UK](#)

7. This consultation incorporates the statutory notice under section 11A TA00 of the CAA's intention to modify the Licence to incorporate the modifications outlined above and set out in Appendix B.
8. NERL should have due regard to the strategic objectives issued by the Secretary of State as to how and where it should prioritise its efforts for the Airspace Design Service.<sup>10</sup>
9. The DfT is also consulting on changes to the Air Navigation Directions and Air Navigation Guidance,<sup>11</sup> and the CAA is separately consulting on two guidance documents:
  - requirements and guidance on the new coordination service to be provided by NERL (in place of the service currently provided by NERL through the Airspace Change Organising Group ("ACOG"));<sup>12</sup> and
  - the CAA's general guidance setting out detail on the things NERL should do and consider in providing the Airspace Design Service and Airspace Coordination Service.<sup>13</sup>

## Our duties and the consultation process so far

10. The CAA's economic regulation of NERL as a provider of air traffic services is conducted under Part I TA00. Section 2 TA00 states that we have a "primary" duty to maintain a high standard of safety in the provision of air traffic services. This must take priority over all our other duties. Further details of these duties are set out in Appendix A.<sup>14</sup>
11. This document is the third we have published regarding proposals to modify the conditions of the Licence to implement a UK Airspace Design Service. It follows on from our "Illustrative Proposals" published in November 2024<sup>15</sup> and "Initial Proposals" published in June 2025.<sup>16</sup> These final proposals have been

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<sup>10</sup> See [UKADS and UKACS licence obligations: strategic objectives - GOV.UK](#)

<sup>11</sup> See [Changes to the air navigation directions and air navigation guidance - GOV.UK](#)

<sup>12</sup> Currently subject to consultation by the CAA. See [Consultation on the requirements for a UK Airspace Coordination Service and associated guidance - Civil Aviation Authority - Citizen Space](#) and [www.caa.co.uk/CAP3159](http://www.caa.co.uk/CAP3159)

<sup>13</sup> Currently subject to consultation by the CAA. See [Consultation on draft guidance for the UK Airspace Design and Coordination Services - Civil Aviation Authority - Citizen Space](#) and [www.caa.co.uk/CAP3158](http://www.caa.co.uk/CAP3158)

<sup>14</sup> We have also considered the "public sector equality duty" under the Equality Act 2010. Given their nature in relation to how airspace changes are to be developed, we do not consider that the subject matter of these final proposals raises issues under that duty.

<sup>15</sup> CAP 3063: "Economic Regulation of NERL: Illustrative proposals for modifying the Licence to support the implementation of a UK Airspace Design Service", available at [www.caa.co.uk/CAP3063](http://www.caa.co.uk/CAP3063)

<sup>16</sup> The "Initial Proposals", CAP 3121: "Economic Regulation of NERL: Initial Proposals for modifying the



developed in the light of stakeholders' responses to the previous consultations and as the wider policy relating to airspace modernisation has matured.

## Summary of our final proposals to modify the Licence

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12. The key elements of our proposed modifications to the Licence to implement the changes necessary to require NERL to provide the Airspace Design Service define the tasks that NERL will be required to undertake in providing the Airspace Design Service, providing the Airspace Coordination Service, and administering the Airspace Design Support Fund.
13. In line with our Initial Proposals, we propose to require NERL to provide each of these services using relatively high-level obligations, accompanied by requirements for NERL to have due regard to strategic objectives set by the Secretary of State, direction from the DfT or CAA as to how to administer the Airspace Design Support Fund and guidance issued by the CAA. NERL will also be required to have due regard to Government policy in the form of the Air Navigation Directions, statutory guidance under TA00, any airports national policy statement under the Planning Act 2008 and the airspace modernisation strategy.
14. Our proposals also require NERL to establish and maintain appropriate governance arrangements, including an "Advisory Board" to provide transparency and act as a forum for exchanging views and information, and obtaining advice from stakeholders. Alongside this, there are proposed requirements for NERL to have a stakeholder engagement plan and strategic delivery plan, backed by targeted obligations in respect of information provision. We also propose transparency and non-discrimination obligations on NERL in the provision of these activities.
15. As discussed in the Initial Proposals we propose to remove the current obligations in the Licence that require NERL to carry out coordination of airspace changes through ACOG. We consider that the coordination activities currently undertaken by ACOG can be reduced and that the obligations that NERL currently has can be removed from the Licence, save for provision relating to NERL's "business as usual" airspace change activities in relation to en route airspace (which are addressed alongside the new services discussed above) and a requirement to undertake the residual activities currently undertaken by ACOG and subject to consultation as discussed above.
16. Given the changes to NERL's activities outlined above, we also propose to make consequential amendments, particularly to the financial resilience and

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Licence to support the implementation of a UK Airspace Design Service", available at [www.caa.co.uk/CAP3121](http://www.caa.co.uk/CAP3121)

ringfencing and accounting conditions in the Licence, to address the impact of these changes.

17. These matters are discussed in detail in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service) and Appendix B.

## Summary of our final proposals regarding costs, form of charge control and proposed charges

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18. We set out below a summary of the key aspects of our final proposals in relation to costs, form of charge control and proposed charges.

### Short initial price control, aligned with the remainder of the NR23 period

19. The final proposals should be viewed in the context that we are proposing a short initial price control, aligned with the remainder of the NR23<sup>17</sup> period (the remainder of 2025 and all of 2026 and 2027).
20. The overall policy for airspace design has continued to evolve since we published the Initial Proposals, and there remains some uncertainty about the long-term arrangements for, and the costs of, new services, given the novelty of the new tasks. We consider a short initial control will provide reasonable assurance to NERL that it will be able to recover the efficient costs of establishing the Airspace Design Service and form an appropriate bridge to the NR28<sup>18</sup> price control review, where issues around incentives for efficiency and delivery can be further explored and developed.
21. We consider that the benefits to consumers of this package of proposals, primarily by enabling NERL to establish the Airspace Design Service as soon as is practicable, are likely to outweigh the costs and any potential risks of doing so, especially considering the materiality of the expected costs in the short term. We will review the suitability of these arrangements at NR28 when we have better evidence of how these activities work in practice, and within the context of NERL's wider regulatory framework.

### Estimated combined costs of £31.6 million (2024 prices) for the remainder of NR23

22. Our revised estimate of the combined costs of the Airspace Design Service and Airspace Design Support Fund for the remainder of the NR23 period is £31.6 million, in 2024 prices, down from £52.1 million in our Initial Proposals. We continue to use the medium scenario cost estimates provided by Egis<sup>19</sup> as the

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<sup>17</sup> The regulatory period for 2023 to 2027 for the economic regulation of NERL.

<sup>18</sup> The regulatory period for 2028 to 2032 for the economic regulation of NERL.

<sup>19</sup> CAP 3063A: "Developing illustrative policy and costs to implement a new airspace design service and charge", produced by Egis for the CAA and available at [www.caa.co.uk/CAP3063A](http://www.caa.co.uk/CAP3063A)

basis for the costs of the Airspace Design Service for 2026 and 2027, but have made some downward adjustments to reflect:

- lower cost estimates for the Airspace Design Service (£500,000 in 2024 prices), based on NERL's assessment of the incremental early costs it expected to incur by the end of 2025; and
- lower forecast disbursements for the Airspace Design Support Fund, for the remainder of NR23 (£7 million in 2024 prices), reflecting the updated Airspace Design Support Fund rules and eligibility criteria, published in draft by the DfT.<sup>20</sup>

23. The revised cost estimates do not include an allowance for the Airspace Coordination Service, because we envisage that the ACOG allowance in the NR23 decision will cover the costs of the Airspace Coordination Service for the remainder of the control period, including any costs of the winding down of ACOG itself and transformation. We also do not intend to re-open the NR23 decision to disallow ACOG costs.
24. Combined with changes that will allow for a 2% margin on cost recovery (discussed below), this means the average charge per service unit across the NR23 period is now £1.25, compared with £2.10 in our Initial Proposals (both in 2024 prices). For illustrative purposes, this remains a small proportion of the 2024 en route rate (approximately 2%).

### **Cost pass-through approach with a correction mechanism at NR28**

25. Reflecting the uncertainty around costs, our final proposals are:
- to adopt a cost pass-through approach, so that NERL can recover the actual costs of providing the Airspace Design Service and administering the Airspace Design Support Fund. This includes any costs that are appropriate and efficiently incurred in advance of formal licence modifications coming into effect;
  - for a correction mechanism as part of the NR28 price control to deal with any under- or over-recoveries arising from any differences between forecast and actual costs or traffic levels during the remainder of NR23; and
  - to extend the prohibition on cross subsidy in the Licence to these activities, place an obligation on NERL to report the incremental costs of the activities in its regulatory accounts, and, if it were proportionate to do so, we have the option of conducting an *ex post* review of the efficiency of NERL's costs. Taken together these arrangements should provide assurance to users and stakeholders that the recovery of costs will be appropriate and reasonable.

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<sup>20</sup> See [Draft UK Airspace Design Support Fund: Rules and eligibility criteria](#)

### **Adopting an opex with margin approach, with a 2% margin**

26. Our final proposal is to introduce an “opex with margin” approach, under which costs would mostly be recovered in the period in which they were incurred and to allow NERL to earn a margin on costs for providing the new services. We consider this would be more appropriate than capitalising costs within a separate Regulatory Asset Base (“RAB”) in the context of the short initial control, providing both simplicity and flexibility.
27. We continue to consider it to be appropriate for NERL to earn a margin, but have increased our proposed margin from 1% (in our Initial Proposals) to 2% because we consider that our previous proposal did not fully account for the costs of NERL’s working capital requirements.
28. We intend to review these arrangements at NR28 when we will have better information on how the new services will be delivered in practice and further assess risk and reward, including in the context of NERL’s wider regulatory arrangements.

### **Who will pay the Charge, on what basis and how it is collected**

29. Our final proposal is that the Charge is levied on users in receipt of en route air traffic services in UK airspace. This would mean military and certain other categories of traffic would not pay the Charge. Our proposal is that the Charge should be levied on a “per service unit” basis, as it is well understood by stakeholders as a means of reflecting users’ airspace usage and ability to pay. NERL should, in consultation with airspace users, decide the most efficient and effective way of collecting the Charge.
30. We consider this to be a proportionate and pragmatic approach because it will reasonably target the main beneficiaries of the airspace modernisation being planned, while also being a well-established mechanism for charging which is understood by stakeholders and therefore can be implemented quickly. We note that users overflying (and not landing in or taking off from) the UK will still likely benefit from lower-level airspace changes. We also recognise that over time charging arrangements may need to evolve to continue to reflect the user pays principle, should the scope of the Airspace Design Service evolve to accommodate the needs of new users.

### **What is not in scope of this consultation**

31. We are not seeking views on any of the following:
  - specific airspace change proposals, past or present;

- views on technical or operational concepts about how aircraft will fly or other aspects of airspace design; whether potential designs are technically feasible will be a regulatory decision to be made in accordance with the CAA's airspace change process under CAP 1616;
- the CAA's airspace change process in CAP 1616 itself which is subject to a separate consultation by the CAA;<sup>21</sup>
- Government policy;
- the strategic objectives for the Airspace Design Service;
- the Airspace Coordination Service, which is subject to separate consultation as indicated above;
- the rules and eligibility criteria for the Airspace Design Support Fund, published in draft by DfT;
- the CAA's draft requirements and guidance on the new coordination service to be provided by NERL (in place of the service currently provided by NERL through ACOG), which is subject to separate consultation as indicated above;
- the CAA's draft general guidance setting out detail on the things NERL should do and consider in providing the Airspace Design Service and Airspace Coordination Service, which is subject to separate consultation as indicated above; and
- the DfT's consultation on amendments to the Air Navigation Guidance and the Air Navigation Directions.

32. Stakeholders are encouraged to submit any written comments on those other materials in response to the relevant consultations, where applicable. Where we receive responses to this consultation, the CAA will only take into account those elements of the responses that address the matters covered by this consultation.

## Next steps and views invited

33. We welcome stakeholders' views on all aspects of the matters discussed in this consultation.
34. As discussed in the notice under section 11A TA00 set out in Appendix B, stakeholders have a period of 6 weeks from the date on which this consultation is published to submit their representations. Please e-mail responses to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk) by no later than 20 January 2026.

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<sup>21</sup> For more information, see [Consultation on the airspace change process - Civil Aviation Authority - Citizen Space](#) and [www.caa.co.uk/CAP3157](http://www.caa.co.uk/CAP3157)

35. 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 TA00 and the Freedom of Information Act 2000 and it may be necessary to disclose information consistent with these requirements.
36. After considering the responses we receive to these final proposals, we will publish our decision on the modifications we will make to the Licence. We currently intend to publish that decision in March 2026. If we need to make changes to our approach, such that it would differ significantly from the final proposals set out in this document, then we will need to consult further.
37. NERL and certain airlines and airports may apply to the Competition and Markets Authority (“CMA”) for permission to appeal the CAA’s final decision on these matters, as provided for under section 19A TA00.
38. Any questions related to this consultation should be sent to [matt.claydon@caa.co.uk](mailto:matt.claydon@caa.co.uk).

## Structure of the remainder of this document

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39. The structure of the remainder of this document is as follows:
- Chapter 1 details the proposed licence modifications necessary to implement the creation of the Airspace Design Service, provide the “residual” and “business as usual” activities currently provided by NERL and ACOG, and administer the Airspace Design Support Fund;
  - Chapter 2 discusses the estimated combined costs of the Airspace Design Service and the Airspace Design Support Fund, the design of the Airspace Design Charge and how it will be used to recover NERL’s costs and the proposed level of charges to users, including how it will be implemented through the Licence;
  - Appendix A sets out a summary of our duties;
  - Appendix B sets out the notice under section 11A TA00 of our intention to modify the Licence; and
  - Appendix C provides further information on a correction mechanism to be introduced at NR28, implementing the proposed cost pass-through arrangement;
  - Appendix D includes a list of abbreviations used in this document

## Chapter 1

# Licence modifications to implement the creation of the Airspace Design Service

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## Introduction

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- 1.1 This chapter addresses the issues covered by chapters 1 to 3 of the Initial Proposals, namely the design of the licence modifications to:
- implement the Airspace Design Service and carry out the Airspace Coordination Service;
  - make consequential changes to NERL's obligations in relation to its current airspace design activities for en route airspace; and
  - administer the Airspace Design Support Fund.
- 1.2 It has the following structure:
- overall approach to the design of the licence modifications;
  - enforcement issues;
  - geographic scope of the Airspace Design Service;
  - matters the Airspace Design Service should take into account;
  - governance and the Advisory Board;
  - relationships with stakeholders;
  - administration of the Airspace Design Support Fund;
  - the role of ACOG; and
  - consequential licence modifications.
- 1.3 This chapter should be read in conjunction with the detailed material on the text of the licence modifications that we propose to make. This is set out in the notice at Appendix B.

## Overall approach to the design of licence modifications and the nature of the obligation to be placed on NERL

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### Initial Proposals

- 1.4 The approach taken in the Initial Proposals was for the drafting of the obligations on NERL to be focussed on requiring NERL to produce an airspace change



proposal to deliver the objectives of the Airspace Modernisation Strategy that would be suitable for consideration by the CAA or Secretary of State, in accordance with the requirements of the Airspace Change Process. The Airspace Change Process set out in CAP 1616 would continue to form the basis of the framework for the development and approval of airspace changes.

- 1.5 The Initial Proposals reiterated our view that the approach we proposed to adopt would meet our statutory duties under TA00 because it:
- would have no negative impact on standards of safety in the provision of air traffic services, as any change to airspace design would need to be designed and approved in accordance with the Airspace Change Process; and
  - would be in the interests of the full range of customers and consumers that we are required to consider under TA00, not least because we considered that one of the main aims of the appointment of NERL as Airspace Design Service provider was to simplify the modernisation of airspace so that it could proceed in a timely manner.
- 1.6 To implement this, we considered that relatively high-level licence modifications would be appropriate to ensure delivery of the Airspace Design Service in a proportionate and effective way.

## Stakeholders' views

- 1.7 Stakeholders supported the overall approach of placing formal obligations on NERL to deliver the Airspace Design Service supplemented by guidance, but wanted more detail, transparency and stakeholder engagement so that the Airspace Design Service would maintain industry confidence. ACOG supported NERL being required to deliver both the Airspace Design Service and administer the Airspace Design Support Fund. Manchester Airports Group ("MAG") wanted to see a date for delivery to aid transparency and resourcing.
- 1.8 British Airways was concerned that an apparent shift towards flexibility and away from statutory consultation requirements for changes in the scope, obligations and/or strategic priorities of the Airspace Design Service risked diminishing the role of stakeholder consultation and the appropriate provision of safeguards for consumers and stakeholders. It said further consideration was needed in establishing a prioritisation process and a roadmap on how to sequence the airspace change clusters.
- 1.9 easyJet supported the use of high-level obligations to provide flexibility but specifically wanted to see more detail on whether the Airspace Design Service would be required to deliver a single design or multiple design options, transitional arrangements, how the progress of non-LTMA airspace change would work and the extent of stakeholder management obligations.



- 1.10 Prospect said there would be merit in requiring NERL to report on how prior commitments (such as agreed design principles) had been integrated or adjusted in a final airspace change proposal, to increase transparency and operational continuity and manage stakeholders' expectations. It also wanted the CAA to be clearer on when licence modifications would be needed to address material changes to the resource requirements.
- 1.11 NERL said that the draft obligation was too specific in its reference to combining relevant airspace change proposals, saying "combining" would only be relevant to low level changes proposed by airports in the LTMA who were part of the Future Airspace Strategy Implementation programme,<sup>22</sup> whereas the scope of the Airspace Design Service had now been redefined to be UK-wide, subject to direction on priorities by co-sponsors. It suggested an alternative obligation requiring it to "design airspace in accordance with the co-sponsors strategic direction" and "sponsor airspace change proposals through the CAA's Airspace Change Process".

## Our views

- 1.12 We continue to consider that high-level obligations, supported by more detail in materials published by the CAA and DfT that specify the detail of how NERL should deliver the obligations placed on it, provides appropriate clarity and addresses NERL's concerns above. This approach also creates flexibility and an appropriate focus on the tasks required of NERL being defined by reference to airspace change processes generally, and anchored to the Airspace Change Process set out in CAP 1616.
- 1.13 To effect this, we consider that it is appropriate to set clear, but high-level obligations for NERL to deliver both the new airspace design activities and those activities of ACOG that we consider should continue as discussed below. We propose that these will be introduced by the obligations for NERL to:
- provide the "Airspace Design Service" (covering the new activities to be undertaken by NERL);
  - provide the "Airspace Coordination Service", covering those activities NERL would continue to provide for strategically important, interdependent airspace change proposals where the Airspace Design Service is not being provided and which would continue to be sponsored by the airport or air navigation service provider concerned; and

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<sup>22</sup> For more information, see [Airspace modernisation - GOV.UK](#)

- administer an “Airspace Design Support Fund” which aims to provide support for eligible airspace change sponsors progressing airspace change proposals at airports where NERL is not progressing an airspace change proposal through the Airspace Design Service.<sup>23</sup>

1.14 NERL would also be required to continue to carry out the airspace change activities in en route airspace, as currently required by paragraph 6 of Condition 10a (Airspace Modernisation).

1.15 We consider that:

- high-level obligations in the Licence supported by more detail in materials published by the CAA and DfT provides both appropriate detail and transparency; and
- consultations held to date on each individual element provide appropriate opportunity for stakeholder engagement on the development of these materials.

1.16 For future stakeholder engagement, we propose that consultation on changes to the materials to which NERL is to have due regard, coupled with our proposals for the Advisory Board and strategic delivery plan, will ensure appropriate transparency and engagement on an ongoing basis. We also note that transitional arrangements have already been addressed by the CAA’s onboarding process which sets out how existing airspace change proposals within the London cluster will be transferred to the Airspace Design Service.<sup>24</sup>

1.17 We do not consider that it would be appropriate for NERL to be required to deliver its airspace change proposals by a specific date. However, we propose that NERL should be required to maintain a strategic delivery plan to set out how it proposes to achieve this end. Consistent with our approach of seeking to introduce relatively high-level obligations into the Licence, we consider that this can be best achieved through a licence modification that requires NERL to develop and publish a strategic delivery plan that sets out its plans:

- to deliver airspace changes through the Airspace Design Service; and
- for the airspace changes it is responsible for coordinating through the Airspace Coordination Service (that is, the “residual” activities of ACOG discussed below).

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<sup>23</sup> The rules and eligibility criteria that would govern the Airspace Design Support Fund are currently published in draft by the DfT. See [UK Airspace Design Support Fund rules and eligibility criteria - GOV.UK](#)

<sup>24</sup> See CAP 3129: “Onboarding Process for the UK Airspace Design Service (UKADS) Provider for the London TMA Region”, available at [www.caa.co.uk/CAP3129](http://www.caa.co.uk/CAP3129)

- 1.18 NERL should develop the strategic delivery plan in a way that should be sufficient for stakeholders, including the CAA and Secretary of State, to understand matters on which such delivery depends as well as relevant dependencies and NERL's plans for technology replacement and upgrade.
- 1.19 In creating and revising the strategic delivery plan NERL will be required to have due regard to guidance published by the CAA. A draft of that guidance is, at the date of publication, open for consultation,<sup>25</sup> and we encourage stakeholders to respond to that consultation.

### Resourcing issues

- 1.20 We consider that it is for NERL to determine the best way to organise its resources to enable it to deliver its airspace design activities in an efficient and effective way. The approach to cost recovery and incentives for efficiency are dealt with in chapter 2 (Costs, form of charge control and proposed charges).
- 1.21 We recognise concerns raised in relation to changes to the scope and nature of the obligations that NERL would need to deliver against. Our position remains that, in the event that either:
- the strategic objectives set by the Secretary of State for the Airspace Design Service and Airspace Coordination Service;<sup>26</sup> or
  - the guidance as to how NERL will be required to deliver those services
- change in such a way as 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. This is discussed further below.
- 1.22 Where appropriate, we can consider these issues further in light of experience, including as part of the NR28 review.

### Final Proposals

- 1.23 Our final proposal remains to create relatively high-level obligations in the Licence which are supplemented by materials referred to in the Licence which will provide the detail needed to enable NERL to know what it is required to deliver and how it should go about its activities. This approach creates a proportionate and effective set of obligations on NERL to provide the Airspace Design Service, administer the Airspace Design Support Fund and carry out

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<sup>25</sup> See [Airspace Modernisation: Consultation on draft guidance for the UK Airspace Design and Coordination Services](#)

<sup>26</sup> Subject to the outcome of our process on modifications to the Licence, NERL shall have regard to the strategic objectives when providing the Airspace Design Service. See [UKADS and UKACS licence obligations: strategic objectives - GOV.UK](#)

through the Airspace Coordination Service the residual activities currently carried out by ACOG.

- 1.24 To provide stakeholders with appropriate information on NERL's plans for delivery, we propose that a specific obligation be placed on NERL to develop and publish a strategic delivery plan, with due regard to guidance issued by the CAA.
- 1.25 This approach is reflected in the drafting of the licence modifications we are proposing and further explanation is set out in the Notice at Appendix B.

## Enforcement issues

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### Initial Proposals

- 1.26 The Initial Proposals addressed concerns previously expressed by NERL over the risk of enforcement of the proposed new obligations.<sup>27</sup>

### Stakeholders' views

- 1.27 NERL continued to express concerns over the risk of enforcement and argue for a clear distinction between NERL's regulated and unregulated services in relation to enforcement action. It remained concerned that:
- not separating out the Airspace Design Service created risk for it of losing the whole licence because of breach of obligations in relation to the Airspace Design Service;
  - there was an unacceptably wide discretion for the CAA in its approach to enforcement;
  - any financial penalties associated with breach should only relate to the Airspace Design Service, not the whole regulated business;
  - the Initial Proposals set a high standard for compliance ("best endeavours") which was unacceptably high and that a standard of "reasonable endeavours" would be more appropriate; and
  - the inclusion of the Airspace Design Service within the definition of "Permitted Purpose" would give it equal importance with the UK En Route and Oceanic services, creating a risk that NERL would be obliged on occasion to prioritise resources for the Airspace Design Service over safety or operational matters.
- 1.28 NERL also argued that an approach that more clearly separated the Airspace Design Service and existing services would allow the CAA to regulate NERL proportionately, reducing uncertainty and avoiding risk.

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<sup>27</sup> See NERL's response to our Illustrative Proposals, published [here](#)

- 1.29 Prospect said that NERL's core air traffic services would not be compromised by the CAA's approach, but that the CAA underestimated the fragility of NERL's current staffing levels and had not engaged with its resourcing and ability to execute the Airspace Design Service functions.

## Our views

### The enforcement regime, penalties and safeguards for NERL

- 1.30 We note NERL's concerns over the revocation of the Licence. However, the CAA does not have the power to revoke the Licence. This power is held only by the Secretary of State in the context of the duties under TA00, including a primary duty to maintain a high standard of safety.
- 1.31 In relation to NERL's concerns over enforcement more generally, mechanisms set out in TA00 do not create unbounded or excessive discretion for the CAA, or any corresponding risk for NERL.
- 1.32 The CAA's published guidance on enforcement explains that action is expressly subject to prioritisation and founded on a "stepped" approach that, in the first instance, seeks to resolve issues informally.
- 1.33 TA00 sets procedural steps that the CAA must follow (issuing contravention notices and enforcement orders) which provide opportunities for NERL to respond to any matters raised. The CAA can only impose a penalty where it has determined that a breach has taken place and gone through a further process that allows NERL to make representations about the proposed penalty before it can be imposed. In all cases, the amount of any penalty must be both appropriate and proportionate to the contravention.
- 1.34 Any decision to impose a penalty must also be made in line with the CAA's duties, including to secure that NERL would not find it unduly difficult to finance its authorised activities and be calculated in accordance with the CAA's Statement on Penalties.<sup>28</sup> In any event, NERL could appeal any penalty decision to the Competition Appeal Tribunal.
- 1.35 Our view also remains (as expressed in the Initial Proposals) 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. So, 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.

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<sup>28</sup> CAP 2983: "Statement of Policy on Penalties under Chapter 1 of Transport Act 2000", available at [www.caa.co.uk/CAP2983](http://www.caa.co.uk/CAP2983)

- 1.36 As a result, we do not see merit in creating a “special case” for regulation of the Airspace Design Service as our current approach, combined with the “checks and balances” described above should provide sufficient assurance to NERL in relation to its concerns.

### **The intensity of the obligation on NERL: “best” or “reasonable” endeavours**

- 1.37 Having reflected on NERL’s comments that the use of a “best endeavours” obligation appears to set too high a standard, we have reconsidered this point. Given that guidance issued by the CAA and/or strategic objectives issued by the Secretary of State will require interpretation by NERL, an approach based on “best endeavours” appears to be too rigid.
- 1.38 As such, we agree that the standard for this obligation should be one of reasonableness but consider that it would be appropriate to set it as requiring NERL to take “all reasonable” endeavours. We consider that this approach provides the appropriate balance between the importance of delivery and the need for NERL to be able to respond in an appropriate way.

### **Concerns over prioritising the Airspace Design Service**

- 1.39 As for NERL’s concern that including the new activities within the scope of the “Permitted Purpose” would require it to favour the Airspace Design Service over the En Route or Oceanic business, we propose to include wording in paragraph 2 of Condition 5 of the Licence to provide clarity on this point.
- 1.40 Such wording is not as wide as that proposed by NERL, as that wording arguably would enable NERL to prioritise its *de minimis* business activities (as defined in the licence) over the Airspace Design Business<sup>29</sup>. However, we consider that the condition should make clear that NERL would not be required to take any action that would cause it to prioritise the availability of its resources in favour of the Airspace Design Business over the Core Services (that is, the UK En route Air Traffic Control Service, Oceanic En route Air Traffic Control Service, Advisory Control Service and London Approach Service). We consider that this clarification is consistent with our primary duty in respect of safety along with NERL’s duties under section 8 TA00. This is discussed in more detail in the notices set out at Appendix B.
- 1.41 Matters relating to the resourcing of the Airspace Design Service are dealt with in chapter 2 (Costs, form of charge control and proposed charges).

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<sup>29</sup> To be defined as (i) the Airspace Design Service, (ii) the “business as usual” airspace change work that NERL carries out in en route airspace, (iii) the Airspace Coordination Service and (iv) the administration of the Airspace Design Support Fund taken as a whole. See the definitions of these terms set out in Appendix B for more detail.

## Final Proposals

- 1.42 We are making two important changes to the obligations suggested in our Initial Proposals to ensure that the licence creates reasonable and proportionate obligations on NERL, namely to:
- amend the obligation on NERL to have due regard to and comply with the geographic scope and strategic objectives so that this requirement is on an “all reasonable endeavours” basis; and
  - incorporate wording in Condition 5 to clarify that NERL will not be required to prioritise the Airspace Design Service over its Core Services (as defined in the Licence).

## Geographic scope

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### Initial Proposals

- 1.43 The Initial Proposals set out four potential approaches for setting the geographic scope of the Airspace Design Service. These were:
- Option 1 – setting the geographic scope on the face of the Licence;
  - Option 2 – creating a “self-modification” process, as contemplated by section 7(6A) TA00;
  - Option 3 – providing for the Secretary of State or CAA to modify the scope by a direction; and/or
  - Option 4 – setting the scope of the Airspace Design Service for the whole of the UK, but in doing so, requiring NERL 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.
- 1.44 The Initial Proposals identified Option 4 as our preferred approach, given its advantages in terms of flexibility and agility coupled with procedural protections for stakeholders through consultation prior to any change to the geographic scope. We also noted that, 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 where appropriate, consult on modifications to the Licence and changes to NERL’s price control arrangements to address these issues.

## Stakeholders’ views

- 1.45 British Airways preferred Option 1, taking the view that the scope of the Airspace Design Service should only change once it had been deemed appropriate through consultation with stakeholders, so providing greater certainty and minimising risk. That said, it also considered that it could be appropriate for the



whole of the UK to be presented as the geographic scope on the face of the Licence, but with well-defined obligations to ensure that a single design for the LTMA and implementation remained the focus for delivery. IATA also supported Option 1, on similar grounds.

- 1.46 The Ministry of Defence (“MoD”) preferred Option 4, recognising its position as a key stakeholder in the AMS.
- 1.47 MAG supported Option 4, but was concerned that it could further strengthen NERL's monopoly, highlighting the need for transparent governance and stakeholder engagement. While it supported the approach of addressing the LTMA first, it was concerned that prioritising the LTMA could restrict progress in other clusters, losing the opportunity to gain experience and learning that could inform subsequent work in the LTMA. It also said that it was important that stakeholder needs and expectations would flow through into delivery.
- 1.48 easyJet wanted clarity and was concerned that the four options for geographic prioritisation could lead to markedly different cost benefit profiles and timelines. It remained of the view that modernising the LTMA must be the primary focus of the Airspace Design Service and that only once the LTMA was done should the focus turn to other airspace changes. It said that if Option 4 was to be adopted, any direction by the Secretary of State should explicitly designate the LTMA as the initial and default area of work. It wanted further detail on the rationale for additional consultation on the geographic scope, its expected duration and how it would be integrated with the overall modernisation timeline.
- 1.49 Prospect also supported Option 4 but said that any geographic extension must not prejudice delivery of the design for the LTMA, which it said was at risk if the Airspace Design Service was not adequately resourced.
- 1.50 NERL said that any material change to the geographic scope of the Airspace Design Service should be made by a licence change with its associated consultation and appeal rights. It was not convinced that Option 4 would offer appropriate protection through consultation, especially as change to the geographic scope could have implications for resources and risk appetite. It did not consider that using the Licence to set the geographic scope would adversely affect the timing of delivery by the Airspace Design Service.

## Our views

- 1.51 Since the Initial Proposals, the scope of the Airspace Design Service has been clarified to cover strategically important interdependent airspace changes in UK airspace. However, it is recognised that it is not practicable for NERL to undertake the delivery of this work throughout UK airspace from the outset. To address this, in consultation with DfT we have developed an approach that would use the strategic objectives to recognise the fact that while the geographic scope



of the Airspace Design Service should be UK-wide, NERL's approach to delivery should focus at the outset on the LTMA region, while providing the residual activities formerly provided by ACOG elsewhere.

1.52 To this end, the Secretary of State has issued a document to set out the strategic objectives, which NERL shall, subject to the modifications discussed in this consultation becoming effective, have due regard to in providing the Airspace Design Service and the Airspace Coordination Service, including indicating the areas of strategically important interdependent airspace change proposals in UK airspace which the Secretary of State considers that NERL should prioritise.<sup>30</sup> That document makes clear that the strategic priorities are for NERL to:

- Priority 1: provide the Airspace Design Service in relation to the following delivery focus area(s) to implement the relevant deployments by 2035 – delivery of the London Terminal Control Area (TMA) region airspace changes; and
- Priority 2: provide the Airspace Coordination Service, save where NERL is providing the Airspace Design Service – in delivering the Airspace Coordination Service, NERL should prioritise what it considers will achieve the most significant system-wide benefits and contributions to airspace modernisation.

1.53 We consider that this approach addresses stakeholders' concerns outlined above, both in relation to the importance of modernising airspace in the LTMA region, but also seeking to ensure that progress in modernising airspace outside the LTMA region is maintained.

### **Procedural protections relating to changes to the strategic objectives and CAA guidance**

1.54 We understand the need for appropriate procedural protections for NERL and other stakeholders in relation to how changes to the strategic objectives are managed, but do not consider that the use of the licence modification procedure set out in TA00 is appropriate, not least as that procedure does not put all stakeholders in the same position.

1.55 We propose to make clear that NERL would be required to have due regard to any change to the strategic objectives only after appropriate consultation with stakeholders on that change and after the CAA has issued a statement on whether it would be appropriate for it to consider amending the Licence to take account of the changes made. Where appropriate, this would allow for proper consideration of resourcing issues and coordination with our price control review work. We consider that this reflects the importance of this issue and provides

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<sup>30</sup> See [UKADS and UKACS licence obligations: strategic objectives](#)

appropriate procedural safeguards for NERL and other stakeholders prior to any change.

- 1.56 We also note that NERL has appeal rights to any price control licence modification, and as part of this process can make representations to the CMA in respect of the allowances for its costs that have been calculated as part of the price control review.

## Final Proposals

- 1.57 We propose to address the geographic scope of each of the Airspace Design Service and the Airspace Coordination Service by including an obligation in the Licence for NERL to “have due regard” to the strategic objectives set by the Secretary of State. Those deal with the geographic scope of each of those services through the priorities set out above.
- 1.58 To ensure suitable procedural protections for stakeholders, we propose that NERL be required to have due regard to any revised strategic objectives only after consultation and once the CAA has published a statement as to whether it would be appropriate for it to modify the Licence in the light of the proposed revisions. These modifications are set out in Appendix B.

## Matters the Airspace Design Service should take into account

### Initial Proposals

- 1.59 It is important that NERL can both plan its work effectively and respond to changing circumstances and priorities. To facilitate this, the Initial Proposals stated that NERL would be required to have due 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.

### Stakeholders' views

- 1.60 NERL agreed with the Initial Proposals, while MAG wanted to ensure Design Principles were still included, as these had been informed by stakeholder engagement. MAG also considered that there might also be an expectation among stakeholders that their past input would be taken into account in any ensuing process, and not doing so might increase the risk of legal challenge.

### Our views

- 1.61 We consider that the matters that NERL will be required to take into account in providing the Airspace Design Service are important in supporting NERL's understanding of how it is to deliver against the proposed obligations in the Licence.

1.62 These obligations are also important as the “link” between Government policy and the expectations on NERL. Rather than having a wider reference to NERL being required to have regard to “Government policy” (which would be hard for NERL to be confident of identifying without more detail), we consider that it is appropriate to set out the matters we require NERL to have regard to in more detail. So, in addition to the matters set out above, we propose to require NERL also to have due regard to:

- any Air Navigation Directions;
- Government guidance made under TA00;
- any national policy statement relating to airports designated under the Planning Act 2008; and
- the Airspace Modernisation Strategy and any prioritisation principles that the CAA is required to produce by any Air Navigation Directions from time to time in force.

1.63 We also propose NERL to have due regard to the strategic delivery plan it would be required to develop and publish (discussed above).

1.64 To promote good governance and ensure that NERL takes appropriate account of the views of stakeholders as its work develops, we also consider that it is important for it to have due regard to the views of the Advisory Board (discussed below).

## Final Proposals

1.65 We propose to set out in the Licence a list of the Government policy and other matters that NERL is to have due regard to in carrying out the Airspace Design Service and the Airspace Coordination Service. These modifications, together with the text of the proposed modifications themselves, are discussed in more detail in Appendix B.

## Governance and the Advisory Board

### Initial Proposals

1.66 Referring to the Governance Paper<sup>31</sup>, the Initial Proposals provided for the CAA and Secretary of State to be kept up to date with management appointments and changes to the operation of the new activities. It also set out arrangements for the appointment of an Advisory Board to provide visibility and stakeholder input and oversight, and that it would be for the Airspace Design Service and NERL Board to build on these arrangements and determine the appropriate internal

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<sup>31</sup> See [UKADS policy paper 25-2: Governance and engagement](#)

governance arrangements. There would also be reporting arrangements to the CAA and DfT as co-sponsors of airspace modernisation.

## Stakeholders' views

- 1.67 NERL agreed with the approach in the Initial Proposals.
- 1.68 British Airways welcomed the proposals for an Advisory Board and supported it being established through guidance. It considered that experience from the existing ACOG Steering Committee should be used in the design of the Advisory Board, on which airlines should be represented. easyJet also supported establishing an Advisory Board with balanced representation, including airlines, and encouraged an explicit commitment to this.
- 1.69 GATCO was concerned that NERL would be responsible for constituting the Advisory Board with only light touch regulation by co-sponsors. It also expressed interest in membership of the Advisory Board, as did the MoD, while Prospect argued that the Advisory Board should include operational expertise.
- 1.70 Virgin and IATA were concerned that the governance arrangements did not go far enough. IATA considered that airlines should be consulted on the strategic delivery plan and was also concerned as to how success would be measured, wanting greater detail on how delivery would be tracked and implementation measured.
- 1.71 Virgin said the governance framework should embed airline representation in the core strategic processes, including a formal review or approval role for the Advisory Board. It considered that the Advisory Board must be empowered to shape, and not simply observe, NERL's work programme to give users confidence and support long-term credibility.
- 1.72 Prospect argued for a formal performance review framework to be introduced from NR28, reviewing further than just costs. It also wanted the licence modifications to deal with conflicts of interest between NERL's en route and airspace design responsibilities as well as dispute resolution processes.

## Our views

- 1.73 It is important that NERL is required to engage effectively with stakeholders in the conduct of the new activities it will undertake, but that the engagement required should be balanced with the need to ensure that NERL has both the freedom and the responsibility to deliver. Putting in place strict governance arrangements that would require NERL to seek the agreement of stakeholders at particular staging points in its work would likely hamper these aims.
- 1.74 Furthermore, governance arrangements that have the effect of giving stakeholders a direct or indirect power of veto over the approach to be adopted

by NERL would likely undermine NERL's ability to act in an impartial and objective way.

- 1.75 Bearing the above in mind, we remain of the view that the Advisory Board should be a forum that enables NERL to exchange views, ideas and information with, and obtain advice from, stakeholders, but not be a decision-making body. Given the importance of airspace changes across the UK, we consider that the scope of the Advisory Board should extend to both the Airspace Design Service and the Airspace Coordination Service in order to assist NERL in contributing to the objectives of the Airspace Modernisation Strategy. However, ultimately, NERL should be responsible for the approach it takes to delivery. The Advisory Board would not be the appropriate forum to discuss the specifics of any airspace change proposal sponsored or coordinated by NERL as the Airspace Design Service or Airspace Coordination Service provider, as these fall under the Airspace Change Process.
- 1.76 We recognise that the Advisory Board should have appropriate terms of reference and membership to ensure its robustness and that it should meet sufficiently frequently to be effective. To effect this, we propose that NERL be required to have due regard to guidance published by the CAA and that guidance should set out more detail of what is expected of NERL in relation to:
- the structure, membership and terms of reference for the Advisory Board; and
  - escalating matters to the CAA and DfT.
- 1.77 We also expect that NERL will consult the CAA and Secretary of State before appointing the Advisory Board.
- 1.78 The draft guidance on these matters is currently open for consultation<sup>32</sup> and we encourage stakeholders to respond to that consultation.
- 1.79 Similarly, we consider that it is for NERL to appoint appropriate leadership for the new activities, but we consider that NERL should be required to inform the CAA and DfT when the head of the Airspace Design Business is appointed and of any material changes to that business.
- 1.80 We also consider that NERL should be required to provide the CAA and DfT with appropriate information for the purposes of monitoring progress in modernising airspace and propose a targeted provision in the Licence to provide for this reporting.

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<sup>32</sup> See [Airspace Modernisation: Consultation on draft guidance for the UK Airspace Design and Coordination Services](#)

## Final Proposals

- 1.81 We propose that NERL be required to:
- inform the CAA and Secretary of State as soon as practicable of appointments to the role of head of the Airspace Design Business and any material changes to the operation of that business;
  - appoint an Advisory Board to act as a forum to exchange views, ideas and information with, and obtain advice from, stakeholders;
  - develop a structure, terms of reference and membership for the Advisory Board, consulting the CAA and Secretary of State on them; and
  - ensure that the Advisory Board meets regularly and frequently enough to be effective.
- 1.82 We also propose that a targeted information provision be included in the Licence to facilitate monitoring.
- 1.83 These matters, together with the text of the proposed modifications themselves, are set out in more detail in Appendix B.

## Relationships with stakeholders

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### Initial Proposals

- 1.84 The Initial Proposals adopted the approach set out in the Governance Paper that NERL, as the Airspace Design Service provider, would be empowered to act as a 'guiding mind' to design and deliver holistic airspace, 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;
  - would not be required to adopt any pre-existing airspace change plans or proposals in its deliverables.

### Stakeholders' views

- 1.85 British Airways wanted to see the CAA's guidance on these matters and for that guidance to:
- set clear roles, responsibilities and accountabilities;
  - provide for mitigations or redress mechanisms to deal with badly managed engagement;
  - define the funding of engagement activities to avoid duplication and inefficiency, especially if the activities were to vary between airports; and

- clarify how the administration of funding for engagement activities would be delivered and reported for activities within the scope of the Airspace Design Service.

- 1.86 In this context, British Airways suggested that a set of requirements mirroring the administration of the Airspace Design Support Fund might be suitable.
- 1.87 MAG said that the Initial Proposals did not adequately explain the respective roles of partner airports and NERL or clearly explain how NERL would act as a "guiding mind". It considered that an approach heavily weighted toward empowering the Airspace Design Service could risk existing LTMA airports' input being reduced, to the detriment of the process and outcomes. Noting NERL's limited experience in public consultation and knowledge of local stakeholders, it said NERL should be expected to work collaboratively with airports on all aspects, including airspace design and environmental assessment, and that airports who wished to do so should retain the lead in engaging and consulting local stakeholders. It considered that airports whose airspace interacts with airspace change proposals should be given suitable prominence in such engagement and consultations.
- 1.88 NERL agreed with the Initial Proposals in principle, but noted that entering into appropriate arrangements would rely on reasonable cooperation of existing airspace change proposal sponsors and other stakeholders. It would work with co-sponsors to ensure the governance arrangements were appropriate.

## Our views

- 1.89 It is important that NERL devises an appropriate approach to engaging with key stakeholders and that this should be articulated in a published approach to its ways of working, to support transparency and allow stakeholders to understand its approach. Nonetheless, the details of what the stakeholder engagement plan should contain are too specific for inclusion in a relatively high-level set of licence modifications such as we consider are appropriate to support implementation of these proposals.
- 1.90 The detail of what NERL will be required to produce will be set out in the guidance that NERL will be required to have regard to in its conduct of the Airspace Design Service and the Airspace Coordination Service. As noted above, draft guidance on these matters is currently open for consultation<sup>33</sup> and we encourage stakeholders to respond to that consultation.
- 1.91 Further, as indicated in the Initial Proposals, we consider that it is important that a clear and specific non-discrimination obligation is placed on NERL,

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<sup>33</sup> See [Airspace Modernisation: Consultation on draft guidance for the UK Airspace Design and Coordination Services](#)



accompanied by an obligation to act transparently. Given that we propose that NERL will be required to administer the Airspace Design Support Fund, as directed by the Secretary of State or CAA, we do not consider that there is scope for NERL to discriminate in relation to this activity and, so, this obligation should not extend to it.

## Final Proposals

- 1.92 In this light, we propose to place on NERL high-level obligations to:
- act transparently and not unduly prefer or discriminate against any person or class of persons in carrying out the Airspace Design Service and Airspace Coordination Service;
  - develop and publish a stakeholder engagement plan that sets out written ways of working for its approach to engaging with key stakeholders with an interest in how the Licensee is providing the Airspace Design Service and Airspace Coordination Service.
- 1.93 These matters, together with the text of the proposed modifications themselves, are discussed in more detail in Appendix B.

## Administration of the Airspace Design Support Fund

### Initial Proposals

- 1.94 The Initial Proposals included a proposed high-level licence obligation for NERL to administer the Airspace Design Support Fund, which then would refer to the detailed rules to be published by the CAA. We noted that the terms of reference of the Advisory Board could also be used to provide additional oversight over these matters.

### Stakeholders' views

- 1.95 NERL considered that the CAA or DfT should administer the Airspace Design Support Fund, as it was a new activity that would not leverage or complement any of its existing activities.
- 1.96 Noting NERL's previously stated concerns over being tasked with administering the Airspace Design Support Fund, easyJet wanted more justification for why NERL should administer it, while British Airways considered that either the CAA or DfT would be better positioned to fulfil this role and that it might become a distraction for NERL. British Airways also noted that the references to the need for an escalation route in the Support Fund Paper<sup>34</sup> highlighted the potential challenges for NERL in administering the Airspace Design Support Fund, while

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<sup>34</sup> See [UKADS policy paper 25-3: Airspace Design Support Fund](#)



the co-sponsors had more expertise in making contentious decisions. IATA also said the CAA, not NERL, should administer the Airspace Design Support Fund, as NERL's focus should be on delivery. Virgin made similar comments, noting that it wanted more clarity.

- 1.97 By contrast, MAG supported administration by NERL and said it was vital that it is set up quickly, so momentum built in clusters outside the LTMA region was not lost or hindered. GATCO felt that NERL being the administrator could lead to some proposals being more favoured than others.
- 1.98 Denham Aerodrome had a concern that, as written in CAP 3106, it appeared now to fall outside eligibility criteria for funding any potential restart of its airspace change proposal and said this had not been made clear in prior stakeholder engagement. It noted that some of its clients pay en route charges, so it was not clear why it is excluded. Farnborough was also concerned about its eligibility for the Fund.

## Our views

- 1.99 In the light of the above comments and following further work between the CAA and DfT, we now consider a revised approach appropriate. This is that:
- the DfT should determine the final eligibility criteria;
  - the DfT or CAA should decide whether the applications meet those eligibility criteria; and
  - NERL will be directed to distribute the funds.
- 1.100 The document, "Draft UK Airspace Design Support Fund: Rules and Eligibility Criteria", has been published as draft written guidance for the eligibility and processes relating to the Support Fund.<sup>35</sup> We are also in the process of conducting a subsidy control assessment.
- 1.101 On this basis, the CAA or DfT would take on the role of decision-maker for the Airspace Design Support Fund and would direct NERL to distribute the grant funding to the relevant sponsor. To support this, the Licence modification places a simple obligation on NERL to administer the Airspace Design Support Fund as directed by the CAA or DfT.
- 1.102 We are of the view that these revised arrangements will ensure an appropriate approach to the governance of funding and provide sufficient flexibility to allow for the appropriate support for airspace change clusters outside of the LTMA.
- 1.103 As for the questions about eligibility of particular airports, we note that the Draft UK Airspace Design Support Fund: Rules and Eligibility Criteria document

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<sup>35</sup> See [Draft UK airspace design support fund: rules and eligibility criteria](#)

published by the DfT is designed to provide support for eligible airspace change sponsors progressing airspace change proposals at airports where NERL is not progressing an airspace change proposal as the provider of the Airspace Design Service. Paragraph 15 of those draft rules propose both a threshold for eligibility of 450,000 passenger movements per year, but also the possibility of the DfT allowing eligibility on an exceptional basis.

## Final Proposals

- 1.104 We propose to modify the Licence to include a new obligation on NERL to administer the Airspace Design Support Fund as directed by the CAA or DfT. These matters, together with the text of the proposed modifications themselves, are discussed in more detail in Appendix B.

## Role of ACOG

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### Initial Proposals

- 1.105 The Initial Proposals referred to the ACOG Paper<sup>36</sup> which set out the co-sponsors' policy position on the future of ACOG once the Airspace Design Service had been established. In the light of the proposed reduced role for ACOG, the Initial Proposals proposed to delete the current Condition 10a of the Licence and subsume the role within the part of NERL providing the Airspace Design Service.

### Stakeholders' views

- 1.106 British Airways supported the Airspace Design Service taking over responsibility for functions provided by ACOG for the LTMA, but for non-LTMA clusters said this needed to be balanced by providing clear definition of priorities and obligations to be undertaken by the Airspace Design Service to avoid diverging or conflicting actions, that could delay the LTMA.
- 1.107 IATA queried why the requirement for ACOG would be removed from the Licence, given its ongoing role outside the LTMA. It also considered that this would have consequences for the geographic scope and obligations to be placed on the Airspace Design Service.
- 1.108 NERL supported removing Condition 10a from the Licence and said that aligning oversight meetings between the Airspace Design Service and the co-sponsors' Airspace Modernisation Programme Board should support timely information sharing and reduce duplication of effort. It emphasised that any new obligation in the Licence should not override the collaborative process envisaged in the

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<sup>36</sup> See [UKADS policy paper 25-4: Future of the Airspace Change Organising Group](#)

governance model and reporting requirements should be agreed through normal engagement used to enable delivery and not be overly prescriptive.

- 1.109 MAG broadly agreed with this approach, but wanted to know how this and the transition would work in practice, and how requirements for a cluster-wide masterplan would be interpreted and then the plan delivered. It also said that it would be important that NERL's coordination role was balanced, and that the needs and priorities of airport sponsors continued to be given proper consideration.
- 1.110 ACOG said that it would be engaging with NERL to deal with the change in approach proposed.

## Our views

- 1.111 Since the publication of the Initial Proposals, we have published<sup>37</sup> the proposed detail of the residual functions of ACOG that we consider should be continued in parallel with the operation of the Airspace Design Service. In summary, we are proposing to replace the existing requirements in relation to airspace coordination set out in CAP 2156a/b with new requirements and guidance setting out the detail of the Airspace Coordination Service. This would implement a new set of requirements on NERL, which would:
- end the current requirement for a masterplan and associated procedures;
  - introduce an agile airspace change monitoring requirement;
  - continue to require the production of a cumulative assessment and the outputs of a safety strategy; and
  - make the decision-making process clearer for stakeholders and sponsors by aligning the timing of these value-adding outputs with the CAA's Airspace Change Process decisions.
- 1.112 Draft requirements for the Airspace Coordination Service and associated guidance are currently open for consultation<sup>38</sup> and we encourage stakeholders to respond to that consultation.
- 1.113 Given the proposal for the detail of the Airspace Coordination Service to be set out in a new document that will replace the existing CAP2156a/b,<sup>39</sup> we consider that NERL's obligations in relation to this activity can be introduced into the

<sup>37</sup> Consultation on the requirements for the UK Airspace Coordination Service and associated guidance: See <https://consultations.caa.co.uk/policy-development/draft-ukacs-requirements>

<sup>38</sup> See [Airspace Modernisation: Consultation on the requirements for the UK Airspace Coordination Service and associated guidance](#)

<sup>39</sup> Consultation on the requirements for the UK Airspace Coordination Service and associated guidance: See <https://consultations.caa.co.uk/policy-development/draft-ukacs-requirements>

Licence through a relatively simple obligation to provide the Airspace Coordination Service (defined in terms of the requirements and guidance that we propose to replace CAP2156a/b), coupled with an obligation for NERL to have due regard to guidance from the CAA as to how to provide the service.<sup>40</sup>

- 1.114 Further consideration of NERL's current obligations in Condition 10a has also led us to consider that NERL's current obligation in relation to "business as usual" airspace changes in en route airspace should be retained for clarity.

## Final Proposals

- 1.115 We propose to modify the Licence to include:
- a new obligation on NERL to provide the Airspace Coordination Service; and
  - a recast obligation in relation to airspace changes in en route airspace to work alongside the other obligations that we propose to insert in the Licence.
- 1.116 These matters, together with the text of the proposed modifications themselves, are discussed in more detail in Appendix B.

## Consequential modifications to the Licence

### Introduction

- 1.117 The Initial Proposals set out proposals for changes to those other conditions of the Licence that would be needed to address issues such as the need to keep appropriate separation between the Airspace Design Service and NERL's other activities. These proposals affected the following conditions of the Licence:
- Condition 5 (Availability of resources and financial ringfencing), which seeks to secure the appropriate resourcing of regulated activities. We proposed using extended definitions of NERL's "Permitted Purpose" and "Separate Business" so that the Airspace Design Service, administration of the Airspace Design Support Fund and residual activities of ACOG would be appropriately resourced and kept separate from NERL's other regulated activities.

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<sup>40</sup> As noted above, this guidance, which covers both the Airspace design Service and the Airspace Coordination Service is currently open for consultation and we encourage stakeholder to respond to that consultation. See [Airspace Modernisation: Consultation on draft guidance for the UK Airspace Design and Coordination Services](#)

- 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. We proposed that this condition be modified to include an obligation to provide separate accounting information for the Airspace Design Service, administration of the Airspace Design Support Fund and residual activities of ACOG. In this context, NERL would be required to update the Regulatory Accounting Guidelines that it used in the preparation of its accounts.
- Condition 7 (Requirement to maintain an intervention plan). We proposed that this condition be modified to extend the requirement for an intervention plan to cover the Airspace Design Service; and
- Condition 9 (Prohibition of Cross-Subsidy). We proposed that the amendment of the definition of “Permitted Purpose” referred to above would appropriately extend the prohibition on cross-subsidies to or from the Airspace Design Service, administration of the Airspace Design Support Fund and residual activities of ACOG and the other activities of NERL.

1.118 The Initial Proposals also addressed stakeholders’ comments in relation to Condition 8 (Requirement for mandated independent directors and corporate governance). We said that it would not be appropriate for us to extend this condition to require the appointment of directors who would be independent not only of NERL, but also independent of the interests of other parties’, such as airports.

## Stakeholders’ views

- 1.119 Stakeholders generally supported the approach set out in the Initial Proposals, with the following specific points raised:
- ACOG considered it essential for there to be proper delineation of responsibilities between NERL and its commercial arms to avoid conflicts of interest, and that the governance model should act to safeguard the transparency and impartiality of the Airspace Design Service;
  - MAG was concerned that the Initial Proposals had not reflected its concern over NERL’s lack of specialist resource and the risks to quality that subcontractors could bring;
  - as discussed above, NERL was concerned that the Initial Proposals would create a risk that NERL would be obliged on occasion to prioritise resources for the Airspace Design Service over safety or operational matters and suggested wording be inserted in Condition 5 to address this; and

- MAG had concerns over governance and the risk that NERL might show bias or perceived bias, and visible involvement of stakeholders would be important to address this risk.

## Our views

- 1.120 We consider that the effect of Condition 5, in creating a ring-fence around NERL's activities already ensures that there is appropriate separation between NERL and the commercial activities of its group companies which are carried out by a separate company, NSL. As such, we do not propose to make any further amendments to address this point.
- 1.121 Similarly, we consider that the obligations in:
- the new condition for NERL to 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
  - Condition 5 that requires NERL to have sufficient resources more generally appropriately support NERL in providing appropriate resources to deliver the Airspace Design Service.
- 1.122 As discussed above, we propose to address NERL's concerns about prioritisation across its activities by adding additional wording into Condition 5 that makes it clear that the Licence does not require NERL to prioritise the Airspace Design Business over the En Route or Oceanic businesses.
- 1.123 As for the risk of actual or perceived bias, we consider the combination of:
- the requirement in the new condition to implement the Airspace Design Business that NERL shall, in carrying out the Airspace Design Business, act transparently and not unduly prefer or discriminate against any person or class of persons; together with
  - the business separation obligations placed on NERL by Condition 5 of the licence
- provide sufficiently robust rules to address this issue and no further amendments are needed.

## Final Proposals

- 1.124 We do not consider that it is necessary to make any other consequential modifications to the Licence other than the additional wording to be placed in Condition 5 to clarify that NERL will not be expected to prioritise the Airspace Design Business over the Core Services. This approach is set out in the drafting of the modifications we propose in the notice at Appendix B.

## Chapter 2

# Costs, form of charge control and proposed charges

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## Introduction

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- 2.1 The Consultation Response Document<sup>41</sup> said NERL should be able to recover the costs of providing the Airspace Design Service and administering the Airspace Design Support Fund by levying a charge on airspace users. Changes to NERL's Licence are necessary to establish the Charge and allow NERL to recover the associated revenues.
- 2.2 This chapter provides a summary of what we said in our Initial Proposals, stakeholders' views on our Initial Proposals, and provides our final proposals for each of the following:
- the duration of the price control;
  - the costs of new airspace design services;
  - the approach to cost recovery, incentives and early costs;
  - the profile of cost recovery over time and the balance of risk and reward; and
  - the design of the Charge.
- 2.3 We then set out the proposed maximum average charges for 2026 and 2027.

## Duration of the price control

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### Initial Proposals

- 2.4 We said that having a short initial control aligned with the remainder of the NR23 period would be the most appropriate and effective way of supporting the delivery of the Airspace Design Service. We said this would:
- provide some flexibility given the uncertainty around costs;
  - allow the gathering of further information on likely costs and delivery for the Airspace Design Service ahead of setting a longer control;
  - provide the opportunity to consider in more detail the relationship between the Airspace Design Service and NERL's other regulated businesses as part of the NR28 review.

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<sup>41</sup> CAP 3106: "Airspace modernisation: Outcome of the consultation on a UK Airspace Design Service", available at [www.caa.co.uk/CAP3106](http://www.caa.co.uk/CAP3106)



## Stakeholders' views

- 2.5 easyJet and NERL agreed with having a short initial control period. Virgin said it supported aligning the control with NERL's other regulatory control periods for consistency. Virgin also recommended maintaining a stable charging framework through NR28, and to revisit major structural changes once the Airspace Design Service had an established track record and clearer scope.

## Our views

- 2.6 Our statement on the NR28 price review of 30 September 2025<sup>42</sup> proposed that the NR28 period starts from January 2028, noting the final decision itself would likely be later in that year, and it would therefore be necessary to implement interim arrangements based on the initial proposals for NR28. This approach remains consistent with a short initial control period for the Airspace Design Service.

## Final Proposals

- 2.7 Our final proposal is to establish a short initial control period aligned with the remainder of the NR23 period as this is the most appropriate and effective way of supporting the timely launch of the Airspace Design Service and the Airspace Design Support Fund.

## Costs of new airspace design services

### Initial Proposals

- 2.8 We said that, for the remainder of the NR23 period, the Charge should reflect only the incremental costs of providing the Airspace Design Service and administering the Airspace Design Support Fund,<sup>43</sup> and that the cost estimates used to set the Charge should not include any allowances for airspace design projects already reflected in our NR23 decision on NERL's price control. This approach would mean it would not be necessary to re-open the NR23 decision and would provide transparency to stakeholders on the additional incremental costs.
- 2.9 To set the Charge for the remainder of the NR23 period, we proposed to use the medium scenario cost estimates provided by Egis, a consultancy firm we commissioned to estimate costs for the provision of the Airspace Design Service and the Airspace Design Support Fund.<sup>44</sup> We considered that the Egis medium

<sup>42</sup> CAP 3174: "Update and consultation on the timetable and approach to Constructive Engagement for the next NATS (En Route) plc (NERL) price control review (NR28)", available at [www.caa.co.uk/CAP3174](http://www.caa.co.uk/CAP3174)

<sup>43</sup> To be clear, this also includes the costs of funding the Airspace Design Support Fund.

<sup>44</sup> See table 4.1 in [CAP 3121](#) for a summary, or CAP 3063A: "Developing illustrative policy and costs to



scenario provided an indication of the likely costs of delivering the tasks in the medium- to longer-term, recognising the level of uncertainty around the scale of those costs.

- 2.10 In 2024 prices, for the remainder of the NR23 period (the second half of 2025, 2026 and 2027), the combined costs of the Airspace Design Service and Airspace Design Support Fund were estimated to be around £52.1 million (£31.6 million for the Airspace Design Service and £20.5 million for the Airspace Design Support Fund). These costs were also estimated to average around £20 million annually over a 10-year period (also in 2024 prices).
- 2.11 We anticipated that NERL would be able to provide better information on the likely costs in its response to the Initial Proposals.

## Stakeholders' views

- 2.12 ACOG, NERL and Prospect agreed the Charge should only reflect the incremental costs of providing the Airspace Design Service and administering the Airspace Design Support Fund. More generally, MAG supported the proposed funding approach.
- 2.13 Virgin said Airspace Design Service costs should be ringfenced to ensure the Charge only recovered the incremental costs, and that clear definitions of what tasks would fall under the Airspace Design Service should be published to avoid cost shifting.
- 2.14 NERL cautioned against placing too much weight on the Egis cost estimates, given the ongoing uncertainty around scope. It said it could not provide better-detailed estimates of costs as part of its response, but suggested it could do so once other consultations, including on CAP 1616 and the Air Navigation Directions and Air Navigation Guidance, were complete. It also sought any insights from the CAA on potential demand for the Airspace Design Support Fund in the short and medium term. Subsequently, NERL has said that it expected the incremental costs of the Airspace Design Service in 2025 would be approximately £500,000. For the Airspace Design Support Fund, for 2025, it considered it would be unnecessary to provide an allowance because, given the passage of time, it did not expect to disburse any funds in year. However, if any costs were to be claimed in relation to 2025, they would likely be relatively small.
- 2.15 Airlines highlighted the ongoing uncertainty around scope of the tasks and, therefore, the impact on potential costs and therefore charges to users. They asked for a better-defined scope of activities for the Airspace Design Service in the final proposals, given the other consultations mentioned above, to avoid the

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implement a new airspace design service and charge", available at [www.caa.co.uk/CAP3063A](http://www.caa.co.uk/CAP3063A) for more detail on what is included in the cost estimates.

risk of cost duplication and to be able to comment on other aspects of the proposed regulatory model. easyJet and IATA both noted that they anticipated that most of the estimated costs would be staff related. Further:

- easyJet highlighted the potential for material escalation of those costs given a tight, specialised, labour pool to draw from and the urgency of airspace modernisation. It asked for a breakdown of NERL's expected incremental overheads and an indication of how these costs would be controlled; and
- IATA expected the expert resources required would already be employed by NERL but would just be redeployed to Airspace Design Service activities. It said any of the costs already within NERL's cost base should be removed from estimates for setting the Charge, to ensure no double counting.

2.16 British Airways and IATA both said it would be necessary to account transparently for the funding for ACOG already provided under the NR23 decision. The MoD asked whether ACOG would be funded through the Airspace Design Support Fund in the future.

2.17 Virgin expressed concern about the ongoing uncertainty around costs and said the Egis medium scenario estimates should be treated as an upper bound until better estimates were provided. It said any material increases or proposals to extend charging beyond what had been outlined to date must lead to a new consultation with airlines. It also said that Government loans or grants could potentially be alternatives to offset some of the costs of the Airspace Design Service and the Airspace Design Support Fund, given modernised airspace would have wider public and environmental benefits.

## Our views

2.18 We remain of the view that the Charge should only cover the incremental costs of providing the Airspace Design Service and administering the Airspace Design Support Fund because it avoids the need to re-open the NR23 decision while also providing transparency to stakeholders on the additional relevant costs. Our other proposals on extending the financial ringfencing condition of NERL's licence (Condition 9) and requiring NERL to report incremental costs separately in its regulatory accounts (Condition 6) discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service) will help provide the necessary transparency and accountability.

2.19 As the residual roles of ACOG will be taken over by NERL in its provision of the Airspace Coordination Service, we do not propose to provide additional funding for the Airspace Coordination Service nor to re-open the NR23 decision to disallow ACOG costs. We anticipate the allowance for ACOG in the NR23 decision will cover the costs of the Airspace Coordination Service for the remainder of the control period, including any costs of the winding down of

ACOG. In the future, the Airspace Coordination Service will be a function of NERL that will be funded in the same way as the Airspace Design Service, not through the Airspace Design Support Fund.

2.20 Since our Initial Proposals, we have revised downwards our view of estimated costs for the remainder of the NR23 period (from £52.1 million to £31.6 million in 2024 prices) to reflect:

- NERL's lower expected expenditure in providing the Airspace Design Service in 2025 (£7 million less than in Initial Proposals) – see paragraph 2.14; and
- a lower estimate for the Airspace Design Support Fund over the remainder of NR23 (£13.5 million less than in Initial Proposals).

2.21 The proposed forecast costs are shown in Table 2.1 below.

**Table 2.1: Forecast incremental Airspace Design Service and Airspace Design Support Fund costs for the remainder of NR23, 2024 prices**

	2025	2026	2027	Total NR23
<b>Airspace Design Service</b>	£0.5m	£8.8m	£15.3m	£24.6m
<b>Airspace Design Support Fund</b>	£0m	£3.5m	£3.5m	£7.0m
<b>Total</b>	<b>£0.5m</b>	<b>£12.3m</b>	<b>£18.8m</b>	<b>£31.6m</b>

2.22 On 13 November 2025, the DfT published draft Airspace Design Support Fund rules,<sup>45</sup> which set out proposed eligibility criteria for applications to the Support Fund and proposed a £1 million maximum amount for eligible costs of each eligible airspace change sponsor. Taking account of those proposed rules and the best intelligence available to DfT and CAA airspace experts on the likely uptake of the Airspace Design Support Fund, we consider that £7 million in total would be a reasonable estimate for disbursements over 2026 and 2027.

2.23 In support of that assessment, we have considered further the number of airspace change proposals likely to be eligible to make a claim against the Airspace Design Support Fund during 2026 and 2027. This necessarily involved a degree of judgement, as the number and cost of eligible applications that will be made during this period is uncertain. However, the view taken reflects:

<sup>45</sup> See [Draft UK Airspace Design Support Fund: Rules and eligibility criteria](#). This replaced [UKADS policy paper 25-3: Airspace Design Support Fund](#).

- the fact that proposals must be sufficiently advanced (i.e. have passed Gateway 2 of CAP 1616) for costs to be eligible for funding. This has informed an assessment that approximately eight airspace change proposals are thought to be sufficiently advanced to support an eligible application for support in 2026 and 2027;
- the further information available since Egis first estimated likely take-up and costs, including how the Airspace Design Support Fund's rules and eligibility have evolved since. The key changes are that it is envisaged that there will now be an absolute cap of £1 million per sponsor for eligible and that the Airspace Design Support Fund will only ordinarily apply to airports serving more than 450,000 passengers a year; and
- that we no longer make allowance for applications made in 2025, given the passage of time.

However, we note that if actual disbursements differ from these estimates, they will be trued-up by the correction mechanism proposed below.

- 2.24 While we remain of the view that costs in the region of £20 million each year (in 2024 prices) is a reasonable indication of the broad medium- to longer-term incremental costs of providing the Airspace Design Service and the Airspace Design Support Fund, there remains a high level of uncertainty on the eventual magnitude of those costs. For the purposes of these final proposals, we focus solely on the remainder of NR23, noting that costs beyond 2027 will be considered as part of the NR28 review. We anticipate that forecast costs for that period will be further developed by NERL once it has developed its strategic delivery plan for the Airspace Design Service and will be included in NERL's NR28 business plan, following constructive engagement processes.

## Final Proposals

- 2.25 Our final proposal is that the Charge should only reflect the incremental costs of providing the Airspace Design Service and administering the Airspace Design Support Fund for the remainder of NR23.
- 2.26 We have reduced the cost estimates to be recovered in NR23 in line with NERL's additional information regarding 2025 costs. However, we still consider that the Egis medium scenario estimated costs for 2026 and 2027 are the best estimates available to date for the Airspace Design Service and we have not received additional evidence from NERL or other stakeholders that suggests an alternative baseline for those costs. We have also reduced the cost estimates for the Airspace Design Support Fund as described above. However, given the level of cost uncertainty that remains, we have retained the proposal to introduce cost pass-through arrangements, as discussed below.

## Approach to cost recovery, incentives and early costs

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### Initial Proposals

- 2.27 We said a cost pass-through approach would be the most appropriate way of recovering the costs of the Airspace Design Service and the Airspace Design Support Fund in the short term, noting:
- the flexibility this would afford; and
  - in relation to the Airspace Design Support Fund specifically, NERL would only be administering the fund and not carrying out airspace design work funded through it, so NERL should not bear related cost risks.<sup>46</sup>
- 2.28 We said NERL should be able to recover any appropriate and efficient costs incurred in advance of any licence modifications coming into effect. In combination with the cost pass-through proposal, we said these arrangements would provide certainty to NERL on the recovery of costs and the confidence to continue work to “stand up” the Airspace Design Service. The benefits of expediting this aspect of airspace modernisation would likely outweigh any potential risks, especially in the context of the low materiality of short term estimated costs.
- 2.29 We also said that:
- there should be a correction mechanism at NR28 to account for any differences between forecast and actual recoveries through the Charge, over the remainder of the NR23 period;<sup>47</sup>
  - NERL should report Airspace Design Service and Airspace Design Support Fund costs separately from its NR23 costs in its regulatory accounts, to help address concerns about NERL’s incentives to cross-subsidise its other businesses; and
  - that there were some existing incentives in the current legislative and regulatory framework for NERL to be effective and efficient, but we could consider introducing further incentives and mechanisms in future price control reviews.

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<sup>46</sup> NERL would only be responsible for controlling and distributing funds to applicants who are eligible for the Airspace Design Support Fund and have completed the necessary processes to access and receive funds. It would then be the applicant’s responsibility to develop the airspace change proposal.

<sup>47</sup> See paragraph 5.20 of the Initial Proposals.

## Stakeholders' views

### Cost pass-through

- 2.30 Most stakeholders supported the principle of a cost pass-through approach for the short term. However, some comments were raised about:
- how it would be implemented, including relating to transparency and safeguards to ensure NERL is efficient and does not misallocate or double count its other businesses' costs;
  - triggers for stakeholder consultation; and
  - provisions for independent *ex post* reviews, to ensure costs do not escalate above a certain threshold or be passed through to users without scrutiny.
- 2.31 There was general support for requiring NERL to report costs separately in its regulatory accounts. NERL said it had already put in place arrangements to do this. The mechanism in the Licence to give effect to this is discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service).
- 2.32 easyJet said NERL should be required to provide a monthly report of actual spend versus forecast costs broken down by major cost category, and have regular engagement with users to discuss outturn expenditure.
- 2.33 Airlines for America said the cost pass-through approach should be reconsidered once the Airspace Design Service was operational, and British Airways said a determined cost approach<sup>48</sup> should be adopted from NR28 onwards.

### Correction mechanism

- 2.34 Stakeholders generally supported the inclusion of a correction mechanism at NR28, however they said there must be full transparency of costs and scope for efficiency assessments and stakeholder consultation so that the mechanism could be appropriately and credibly applied.
- 2.35 British Airways said correction on a t+2 basis<sup>49</sup> would likely be reasonable and avoid excessive spikes in charges. Virgin said the structure and budget of the Airspace Design Service must remain flexible so that any future changes to the regulatory framework delivered benefits to users in the form of lower charges, rather than allow NERL to accrue windfall savings.

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<sup>48</sup> i.e. a set cost allowance, like for NERL's other regulated businesses.

<sup>49</sup> That is, recovery of the difference between forecast and actual costs in the period that is two years after the period the actual costs are incurred.

## Early costs

- 2.36 easyJet supported the recovery of early costs in principle but welcomed further consultations to define “appropriate” and “efficient” and said that any efficiency incentives introduced should also apply to early costs. Airlines for America agreed early costs should be recoverable but said Government should fund them using proceeds collected from the Air Passenger Duty or Emissions Trading Scheme, so that airspace users only paid for en route air traffic services actually delivered.

## Our views

- 2.37 We consider that a cost pass-through approach for the remainder of NR23, implemented through a correction mechanism at NR28, as well as allowing NERL to recover appropriate and efficiently incurred early costs, to be the most appropriate and practicable approach. This will provide NERL with sufficient certainty and confidence to stand up the Airspace Design Service as quickly as possible. Our proposals are that NERL should be able to recover in 2026 the early costs incurred in 2025, as well as all the forecast costs for 2026, even if the new Charge is only introduced part-way through 2026.
- 2.38 The introduction of a correction mechanism at NR28 should ensure that NERL does not benefit from efficiency improvements outside of its control in the short term, for example because of changes to the Airspace Change Process which might result in lower airspace design costs. A correction mechanism also accommodates the uncertainty in the level of cost estimates for the Airspace Design Service.
- 2.39 The introduction of an airspace design correction mechanism from 2028 would allow NERL to recover from, or return to, airspace users in year  $t$ , any revenue differences resulting from differences between forecast and actual costs in year  $t-2$ , and differences between forecast and actual traffic in year  $t-2$ . The correction mechanism would also take into account a measure of forecast CPI inflation between year  $t-2$  and year  $t$ . This correction mechanism would be separate from other mechanisms in other price controls in the Licence. See paragraph B59 of Appendix B and for further information on this proposed correction mechanism.
- 2.40 We consider that stakeholders’ concerns about the possibility that NERL might double count or misallocate costs, and regarding transparency of costs, are partially mitigated by our proposals to extend Condition 9 (Prohibition of cross-subsidies) and Condition 5 (Availability of resources and financial ringfencing), to require NERL to report costs separately in its regulatory accounts and through the existing incentives in the current legislative and regulatory framework. We also expect that NERL will report on costs and progress through existing reporting mechanisms for stakeholders such as the Service and Investment Plan.



- 2.41 In line with our statutory duties to promote economy and efficiency on the part of the licensee and to further specified interests of customers and consumers, we would consider carrying out an *ex post* assessment of costs if they are materially greater than estimated or if there is evidence of inappropriate cost allocation. In the event such costs were found to be demonstrably inefficient or inappropriately allocated, we could disallow the recovery of such costs through changes to future allowances.
- 2.42 As stated above we will consider the overall future arrangements for the Airspace Design Service as part of the NR28 review. This will provide an opportunity to consider further efficiency incentives/mechanisms.

## Final Proposals

- 2.43 Our final proposals are to adopt a cost pass-through approach during the remainder of NR23, with the introduction of a correction mechanism at NR28. In line with our Initial Proposals, NERL will be able to recover appropriate and efficiently incurred early costs of standing up the Airspace Design Service.

## The profile of cost recovery over time and risk and return

### Initial Proposals

- 2.44 We set out two possible cost recovery options:<sup>50</sup>
- an **opex with margin** approach, which would treat all costs as opex and allow for the costs to be recovered broadly in the period that they would be incurred. The margin would be applied to all opex and provide a return to NERL for providing the services; and
  - a **RAB-based** approach, which would allow NERL to capitalise costs for the remainder of NR23 in a CPI-linked RAB. Any differences between forecast and actual costs would be added to or subtracted from the RAB. NERL would earn a CPI-real return of 3% on the RAB, which we said would be an appropriate rate, higher than the risk-free rate but lower than NERL's NR23 weighted average cost of capital ("WACC").<sup>51</sup>
- 2.45 We said the opex with margin was our preferred approach. We proposed a 1% margin as a midpoint between two precedents for broadly similar regulated activities, and because of the novelty and uncertainty of the services. In net

<sup>50</sup> Discussed in paragraphs 5.43 – 5.47 of the Initial Proposals.

<sup>51</sup> This was to reflect that providing the services would likely carry lower risk than NERL's other regulated businesses, including because of our proposed cost pass-through approach. We considered it would be disproportionate to complete a bottom-up estimate of the WACC for the activities for the remainder of the NR23 period.



present value terms<sup>52</sup> the charges to users were broadly similar across the two options. We said we would consider further as part of NR28 whether a RAB-based approach would be proportionate and in users' and consumers' interests.

## Stakeholders' views

### Opex with margin versus RAB-based approach

- 2.46 Airlines and MAG expressed a preference for the opex with margin approach. British Airways, easyJet and IATA noted that costs are expected to largely be opex and staff-related, and that an opex approach would likely be more straightforward and proportionate in the context of a short initial control. British Airways and IATA said it would avoid the complexity of administering a RAB and easyJet and Virgin said it would focus attention on near-term delivery and the day-to-day operation and performance of the Airspace Design Service.
- 2.47 NERL said the opex with margin approach would be appropriate for the short term, but in the longer term (that is, for NR28 and beyond) it preferred a RAB-based approach because it would better align the timing of costs with the realisation of benefits. NERL also said the model choice should primarily be focused on supporting its financeability.
- 2.48 Prospect said it supported adopting a RAB-based approach since the costs for the remainder of NR23 were likely to be lumpier than previously thought and because the illustrative charges in the Initial Proposals showed lower costs to customers and passengers over the longer term under the RAB-based approach.

### Size of margin for the opex with margin approach

- 2.49 NERL welcomed CAA's acknowledgement that NERL would need to earn a return for providing the new activities but said that 1% would be too low and that it would lead to it making a loss. It illustrated<sup>53</sup> its view using its 7% nominal WACC as the rate to fund working capital expenses, and suggested a 3% operating margin would be more appropriate and provide a positive return.
- 2.50 IATA said there was no need for a margin if there was no risk of under recovery of costs. It questioned the actual level of risk for which NERL should be compensated, given the cost pass-through proposal.
- 2.51 Virgin was concerned with the precedent that even a modest margin would set. It considered these activities to be low risk and already within NERL's remit. It said including a margin on a pass-through basis would dilute NERL's incentives to be efficient as well as introduce competition concerns, since NERL would be designing the airspace it controls.

<sup>52</sup> Using a social discount rate of 3.5%, consistent with HM Treasury's Green Book.

<sup>53</sup> See NERL's response to CAP 3121, published at [UKADS – licence proposals](#).

- 2.52 There was no consensus among stakeholders that were not explicitly opposed to a margin, about what an appropriate level would be:
- easyJet said it could not judge whether 1% was proportionate or appropriate without having a better-defined scope of what the Airspace Design Service would be required to do. It also welcomed an explanation on why delivery risks would not be already incorporated in the WACC that underpinned NERL's return on its other regulated businesses; and
  - British Airways said the margin needed to be considered further in the light of the risks and the CAA's proposed enforcement and intervention approach, and that the CAA should be mindful that the margin might create incentives for NERL to prioritise the Airspace Design Service over its other licensed activities.

### **Level of return for a RAB**

- 2.53 NERL said the CAA's assessment of the appropriate return on a RAB was flawed because it would use existing rather than new capital to finance the Airspace Design Service and therefore the proposed 3% CPI-real return would be lower than its current financing costs and lead it to making a loss. It also said the 3% return did not include an allowance for the risks associated with management time, reputation and licence enforcement. It said if a RAB-based model were chosen, a return of at least 5% CPI-real should be applied to the RAB, which was NERL's NR23 WACC expressed on a CPI-real basis plus some additional return to reflect the risks above.

### **Further analysis and our views**

- 2.54 Our view remains that the opex with margin approach will be the most appropriate for the remainder of the NR23. Noting there was broad stakeholder support for this approach for the remainder of the NR23 period, we do not consider a RAB-based approach further here.
- 2.55 We continue to consider it is appropriate to include a margin in respect of the incremental risks associated with the provision of the Airspace Design Service and the administration of the Airspace Design Support Fund (including in relation to potential breaches of licence obligations). It also acts as an economic inducement to undertake the new activities, something that any commercial entity would expect. NERL's current WACC was set at the start of the NR23 period and based on an assessment of NERL's known activities and its perceived risks at that point in time. It therefore could not have taken account of new activities such as the Airspace Design Service.

### **Establishing the appropriate margin**

- 2.56 The 1% proposal for the margin in the Initial Proposals was a mid-point of a range of 0.5% and 1.5%, informed by precedents from other regulated

businesses.<sup>54</sup> We considered that the lower end of the range would be a better estimate to remunerate risks associated with administering and funding the Airspace Design Support Fund and the higher end of the range to remunerate the risks associated with delivering the activities of the Airspace Design Service, with the approximate blended 1% considered an appropriate benchmark.

2.57 We acknowledge NERL's working capital requirements may be greater than previously provided for because:

- there are potential lags between the time when NERL would be incurring costs and when it would be able to raise its revenues through the Charge. NERL said it would require an average working capital balance of three months' worth of costs to appropriately fund the additional activities and we consider this to be a plausible estimate of the required facility size, including because NERL told us that it was considering introducing billing on a quarterly basis; and
- those precedents may have not reflected the current relatively higher interest rate environment for short-term credit needs.

2.58 However, we do not consider NERL's 7% nominal WACC to be an appropriate rate to calculate the working capital financing costs. This is because the WACC reflects long-term costs of business financing and accounts for both the cost of debt and cost of equity, whereas working capital is about the short term, day-to-day operation of a business and so would most commonly be funded by debt.

2.59 We consider it would be more appropriate to use a rate that reflects financing costs on a short-term basis, such as the Sterling Overnight Index Average ("SONIA"),<sup>55</sup> which is a near risk-free rate, plus some margin to reflect additional lending risks (including NERL's short-term credit risk). A simple average of 30 days (that is, an 'average' month) of the SONIA gives an annualised rate of 3.97% (rounded to two decimal places).<sup>56</sup> NERL's annual report and accounts<sup>57</sup> show that the average effective interest rate on its bank loans was SONIA + 0.39% from December 2024 onward, and so we have used 4.36% as a plausible estimate of NERL's short-term financing costs.

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<sup>54</sup> See paragraphs 5.48 – 5.51 of the Initial Proposals for information.

<sup>55</sup> The SONIA is the daily observed average of the interest rate banks pay to borrow sterling overnight from other financial institutions and investors. While the SONIA is an overnight interest rate, the series (IUDSOIA) is presented on an annualised basis. See the Bank of England's [website on SONIA](#) for more detail.

<sup>56</sup> We used data from 15 October 2025 to 26 November 2025 (that is, 30 business days, aligned with when the SONIA is published). See CAP 3164A: "Spreadsheet model for UKADS final proposals", available at [www.caa.co.uk/CAP3164A](http://www.caa.co.uk/CAP3164A) for details on the calculation.

<sup>57</sup> Page 135, [NATS Annual Report and Accounts 2025](#)

- 2.60 Using the above assumptions, the financing of working capital needs alone would warrant an operating margin in the region of 1.1%.<sup>58</sup> Therefore, we consider that any proposed operating margin should be higher than 1.1%, as it should also remunerate NERL for the other risks of providing the Airspace Design Service, and administering and funding the Airspace Design Support Fund.
- 2.61 On balance, we consider a 2% operating margin to be appropriate, to provide a reasonable economic inducement for NERL to undertake the new activities and to remunerate NERL for the modest delivery risks involved. The expected size of the Airspace Design Support Fund (a lower risk activity) now represents a much smaller proportion of overall expected costs, compared to the assessment we made in the Initial Proposals. This further justifies an increase in the size of the operating margin since Initial Proposals.
- 2.62 Our approach to estimating the appropriate margin is high-level and with proportionality in mind, given this adjustment represents relatively modest amounts of money. For example, the difference in estimated return for NERL for 2026 and 2027 combined because of a 2% rather than 1.5% operating margin would be approximately £160,000 in 2024 prices. We also consider that this approach supports NERL in standing up the Airspace Design Service as quickly as possible. Nevertheless, we intend to review these matters further in the context of NR28, when we will have better information on how these activities will work in practice and in the context of NERL's wider regulatory arrangements.

## Final Proposals

- 2.63 Our final proposals are to adopt an opex with margin approach, with an operating margin of 2% for the remainder of NR23.

## Charge design

### Initial Proposals

- 2.64 We proposed that the Charge should be payable by airspace users in receipt of en route air traffic services in UK airspace. That is, the Charge would mainly be paid by commercial airlines because they would be the primary beneficiaries of the work done by the Airspace Design Service and enabled by the Airspace Design Support Fund in the short to medium term. This would mean military and certain other categories of air traffic would be exempt from paying the Charge. We also said it might be appropriate and necessary to expand the scope of who pays the Charge in the future, should the scope of the Airspace Design Service evolve to accommodate new users' needs.

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<sup>58</sup> Calculated as (3/12) months \* 4.36% = 1.1%.

- 2.65 Consistent with NERL's other price controls, we proposed to adjust determined costs (and hence charges) by the percentage difference between Total Service Units ("TSUs") and Chargeable Service Units ("CSUs") to account for those categories of traffic that do not pay the Charge. To calculate the proposed charges, we used 2024 flight data and adjusted determined costs by 1.24%.
- 2.66 We also said NERL should determine how best to collect the Charge from users, which might include working with third parties if it would be efficient to do so, and that the Charge should be on a "per service unit" basis rather than per flight, as this would better reflect users' airspace usage and ability to pay, and was already well understood by stakeholders.

## Stakeholders' views

### Who pays the Charge

- 2.67 NERL agreed with our proposal for who should pay the Charge. Airlines supported user pays in principle but made clear the scope of the Airspace Design Service and charging arrangements would need to evolve over time (including through statutory consultation) to ensure costs were met by all users who benefit from modernised airspace, including new users who would not be required to pay the initial Charge.
- 2.68 IATA said new airspace users should contribute toward the costs of airspace modernisation since they would benefit from it too, and that if it was not possible to charge them, then the Government should cover their relevant portion of the costs.
- 2.69 IATA also said it did not believe the Charge was in line with ICAO cost relatedness principles and could be in contravention of Article 15 of the Chicago Convention because:
- it would be a new charge that was not levied on its members in other jurisdictions;
  - users who overfly but did not take off or land in the UK would be required to pay the Charge and therefore would be paying for airspace change proposals that had little or no advantage to them; and
  - the charges for the use of facilities should not be higher for foreign aircraft than for the domestic aircraft engaged in similar international operations.

### The basis for the Charge

- 2.70 NERL agreed the Charge should be on a "per service unit" basis.
- 2.71 IATA said the "per service unit" basis was appropriate if the Charge was to be levied based on receipt of en route services. It also sought clarification of whether military, business and general aviation airspace changes would be

within scope of the Airspace Design Service. If so, it said the method of grossing up CSUs to TSUs would not be consistent with Eurocontrol and ICAO charging principles and that commercial airlines would be wrongly subsidising these users' airspace changes.

### **How the Charge should be collected**

- 2.72 NERL supported the proposal that it should determine how to collect the Charge and said it had been in discussions with Eurocontrol about these issues. IATA said the Charge should be collected by Eurocontrol's Central Route Charges Office ("CRCO") for ease of collection and administration. NERL has since advised that it understood it would not be possible for Eurocontrol to collect the charge.

### **Our views**

- 2.73 We agree that if the scope of the Airspace Design Service broadens in future to reflect new users' airspace use and design needs then charging arrangements should evolve too, in-line with the user or beneficiary pays principle. In the short term, levying the Charge on airspace users in receipt of en route air traffic services in UK airspace to remain the most appropriate approach, noting the work of the Airspace Design Service and Airspace Design Support Fund will initially focus on airspace primarily used by, and to the benefit of, commercial airlines and their customers.

### **Who pays the Charge**

- 2.74 Eurocontrol CRCO flight data for 2024 shows that the majority of airlines overflying the UK also depart from or arrive in the UK. Nonetheless, we recognise there is variability in the intensity of airlines' use of lower-level airspace given where they are based and the routes that are flown.
- 2.75 Our position reflects a trade-off between the precision of cost allocation and the speed and burden of implementing the Charge and establishing the Airspace Design Service. We consider a charge based on the en route will reasonably target the main beneficiaries of airspace modernisation and benefits from being well-established and understood by stakeholders. It is also our understanding that airspace design in other countries is generally done by state air navigation service providers, whose costs are met through their respective en route charges. While developing a new basis for the Charge has the potential to more accurately target the beneficiaries of lower-level airspace modernisation, we consider this could be disproportionate, because the estimated Charge is likely to be small in magnitude compared to the en route charge. We also note new charging arrangements could:
- take considerable time to establish, potentially delaying airspace modernisation; and



- be complex to develop and administer, especially if there are challenges in identifying and measuring benefits and allocating costs to users.

2.76 Additionally, in general terms, all flights, including overflights, benefit from an efficient, optimised and predictable airspace system because capacity is managed at a network level (e.g. flow management and spacing).

### **The basis for the Charge**

2.77 Primary airspace design activities for the military are not in scope of the Airspace Design Service and will not be eligible for the Airspace Design Support Fund. However, there may be instances where changes to the design of airspace in the vicinity of military aerodromes or other airspace volumes are required to enable modernisation of a neighbouring aerodrome or airspace volume that is within scope of the Airspace Design Service.

2.78 For example, RAF Northolt has close and interdependent flight paths with its neighbour, Heathrow airport. This has the effect that, changing the airspace around Heathrow (including to accommodate any third runway) requires changes to be made to the airspace around RAF Northolt. In this example, changes to the airspace around RAF Northolt are primarily made for the benefit of the users of the airspace around Heathrow, not the military or other flights using RAF Northolt.

2.79 On this basis, we consider it remains appropriate to exclude military, other civil and general aviation users from paying the Charge.

### **How the Charge is collected**

2.80 We consider that NERL should have some discretion to decide (in consultation with airspace users) the most efficient and effective way of collecting the Charge, provided that there is an objective justification for its approach, and it is consistent with the overall price control condition and wider legal obligations. We understand that NERL is now likely to collect the Charge directly, rather than through a third party, on the basis that this will be more straightforward to implement. It has said it is working through practical implementation considerations, including the approach to invoicing and currently anticipates it will be in a position to begin collection during the course of 2026.

## **Final Proposals**

2.81 Our final proposals are that:

- the Charge is levied on airspace users in receipt of en route air traffic services in UK airspace;
- the Charge will be levied on a “per service unit” basis; and

- NERL should, in consultation with airspace users, determine the most efficient and effective way of collecting the Charge.

## Proposed charges

- 2.82 In our Initial Proposals, we presented illustrative charges for both the opex with margin and RAB-based approaches to give stakeholders a sense of the potential magnitude of charges to users.<sup>59</sup> For both models the charge per service unit was a small proportion of the 2024 UK en route charge. We also provided a 10-year view on what charges might look like based on a set of cost and regulatory assumptions.
- 2.83 Our final proposals focus on the charges for 2026 and 2027 only, as charges for 2028 onwards will be addressed through the NR28 review. Using the cost estimates set out in Table 2.1 above, derived from the opex-based approach and 2% margin previously described, we have calculated proposed charges, using the assumptions in Table 2.2 below. We have updated the traffic forecast to reflect latest available information from Eurocontrol, and we have used the Office for Budget Responsibility's Autumn 2025 forecasts to update the forecast inflation used to set the charge control condition in nominal terms.

**Table 2.2: Key inputs and assumptions to model the proposed Charge**

Variable	NR23
Estimated total cost of providing the Airspace Design Service and the Airspace Design Support Fund (2024 prices)	£31.6 million
Total Service Units (TSUs) forecast (000s) <sup>60</sup>	26,090
Percentage difference between TSUs and CSUs (based on 2024 data)	1.24%
Operating margin	2%

- 2.84 Table 2.3 shows the average charge per service unit over the remainder of the NR23 period (2026 and 2027). To provide context of the relative magnitude of the proposed charges, the table also shows illustrative average charges on a “per flight” and “per passenger” basis, and as a proportion of the 2024 UK en route charge. Only the per service unit charges is being proposed.

<sup>59</sup> These illustrative charges were calculated using the Egis medium cost scenario estimates, the proposed levels of return discussed earlier in this chapter and Eurocontrol's STATFOR traffic movement forecasts. See tables 5.1 – 5.4 in the Initial Proposals for more detail.

<sup>60</sup> CAA analysis of [EUROCONTROL Forecast Update 2025-2031 - Autumn Update](#)



- 2.85 Under the Eurocontrol Principles, “Determined Unit Costs” (charges) are established using TSUs, which include both civil and military flights. However, the military and other exempt flight service units will not pay the Charge (as is the case for UK en route air traffic services). Therefore, unadjusted NERL would under recover its required revenues. Consistent with the approach for setting the UK en route charge, we have increased determined costs (and hence charges) by the percentage difference between TSUs and CSUs. Using 2024 data, we therefore increased determined costs by 1.24%.<sup>61</sup>

**Table 2.3: Costs and average proposed Charge over 2026 and 2027 (2024 prices)**

Variable	2026	2027	NR23
Forecast Costs (£ million)	12.8	18.8	31.6
Forecast operating margin (£million)	0.26	0.38	0.63
Forecast uplift for difference between TSUs and CSUs (£million)	0.16	0.24	0.40
Forecast Determined Costs (£ million, including operating margin and uplift for difference between TSUs and CSUs)	13.2	19.4	32.6
<b>Proposed Charge per service unit (£)</b>	<b>1.02</b>	<b>1.47</b>	<b>1.25</b>
Illustrative Charge per flight (£) <sup>62</sup>	5.12	7.42	6.27
Illustrative Charge per passenger (£) <sup>63</sup>	0.04	0.06	0.05
Illustrative Charge as % of 2024 UK en route charge <sup>64</sup>	1.36%	1.96%	1.66%

Source: Spreadsheet model for UKADS final proposals, available at [www.caa.co.uk/CAP3164A](http://www.caa.co.uk/CAP3164A)

- 2.86 It is noted that the charges that will be borne by airspace users ultimately will depend on the actual costs of providing the Airspace Design Service, and administering and funding the Airspace Design Support Fund, rather than the cost projections set out in Table 2.1. Any adjustments will be managed through

<sup>61</sup> CAA analysis of STATFOR Spring 2025 forecasts and CRCO data.

<sup>62</sup> Using flight forecasts for the UK from [EUROCONTROL Forecast Update 2025-2031 - Autumn Update](#)

<sup>63</sup> Assumes that average number of passengers per flight is 130 based on CAA analysis of EUROCONTROL’s [Standard Inputs for Economic Analyses](#) – section 13.

<sup>64</sup> Based on the 2024 UK en route rate of £75.21, sourced from Eurocontrol Route Charges System, [Information to users \(No.2024/01\)](#). Conversion based on EUR/GBP rate of 0.861581.

the cost pass-through arrangements outlined above, and will be implemented through a correction mechanism to be introduced in the licence for NR28.

## Final Proposals

- 2.87 Our final proposal is to implement the maximum average charges above in a new Charge control condition. The proposed draft Charge control condition is shown at the end of Appendix B.

## Summary of final proposals and key issues for consultation

- 2.88 The key aspects of our final proposals and issues for consultation on costs, form of charge control and proposed charges are:
- the new Charge should only reflect the incremental costs of NERL providing the Airspace Design Service, and administering and funding the Airspace Design Support Fund;
  - the cost estimates in Table 2.1 will be the basis for the charges that would apply for the remainder of the NR23 period;
  - a cost pass-through mechanism will be adopted, such that the Airspace Design Service and Airspace Design Support Fund costs will be recovered in due course;
  - the initial price control period should be relatively short and aligned with the remainder of the NR23 period;
  - a margin of 2% should be applied to the base costs, reflecting the additional risks to NERL's for undertaking this additional economic activity and an allowance for its working capital; and
  - the Charge should be payable by airspace users in receipt of en route air traffic services in UK airspace on a "per service unit" basis, and that, in consultation with airspace users, NERL should determine the most efficient and effective way of collecting the Charge.
- 2.89 We welcome the views of stakeholders on these proposals and on the proposed charges set out in this chapter.

## APPENDIX A

## Our Statutory Duties

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A1 Chapter I of the TA00 provides for the economic regulation of air traffic services.<sup>65</sup> 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”);<sup>66</sup>
- 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 that case, apply them in the manner it thinks reasonable having regard to them as a whole.

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<sup>65</sup> 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)

<sup>66</sup> 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.

- 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:<sup>67</sup>
- secure that a safe system for the provision of authorised air traffic services in respect of a licensed area is provided, developed and maintained;<sup>68</sup>
  - 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.

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<sup>67</sup> See section 8 TA00: [Transport Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>68</sup> 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

# Final proposals: Draft licence modifications

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## Introduction and context

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- B1 Before it can make any changes to the Licence<sup>69</sup>, the CAA must issue a notice under section 11A(1) of the TA00 to bring notice of our proposed modifications to the attention of persons likely to be affected by the making of the modifications.
- B2 Such a notice must:
- (a) state that we propose to modify the Licence;
  - (b) specify the proposed modifications;
  - (c) state the reasons for the proposed modifications;
  - (d) state the effect of the proposed modifications; and
  - (e) specify a reasonable period for making representations.
- B3 This Appendix sets out the modifications that we propose to make to the Licence to implement the proposals set out in chapters 1 and 2 of this consultation and constitutes a notice under section 11A(1) of the TA00 that we propose to make these modifications.
- B4 The proposed licence modifications are set out below together with an explanation of the reasons for them and their effects. References to chapter 1 (Licence modifications to implement the creation of the Airspace Design Service) and chapter 2 (Costs, form of charge control and proposed charges) are provided to indicate where further relevant supporting materials on the reasons for and effects of these modifications are to be found. To the extent that the reasons for and effects of the proposed modifications are set out in those chapters of this consultation, those reasons and effects are deemed to be incorporated in this Notice.
- B5 Stakeholders have a period of 6 weeks from the date on which this consultation is published to submit their representations on these proposed modifications to us. Please e-mail responses to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk) by no later than **20 January 2026**.

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<sup>69</sup> The Air Traffic Services Licence granted by the Secretary of State to NERL on 28 March 2001.

B6 As discussed at chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), the draft modifications set out below are designed to:

- create NERL's obligations to provide the Airspace Design Service and associated airspace design activities; and
- address any consequential modifications required to other conditions of the Licence

should these final proposals be implemented.

## Proposed modifications to Condition 1 (Interpretation and construction)

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### New and modified definitions

B7 To support the modifications we need to make as a whole:

- new defined terms will need to be inserted in the Licence to support the creation of the new obligations required to implement the changes to the approach to developing airspace changes discussed in this consultation, as well as the necessary consequential amendments to other conditions; and
- modifications will need to be made to existing defined terms to support the consequential changes to the Licence which are required as a result.

B8 We propose that these changes will be effected by modifications to Condition 1 (Interpretation and construction) of the Licence. The text of the modifications we propose to make is specified below.

### New Definitions to support other modifications we propose to make to the Licence

B9 As discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service) and further below, we propose to modify the Licence to insert a new condition into the Licence to require NERL to provide the Airspace Design Service. That condition will also require NERL to:

- continue to carry out the "business as usual" airspace change activities in relation to en route airspace that it is currently required to provide by Condition 10a (Airspace modernisation);
- provide the "Airspace Coordination Service" activities that represent the residual activities currently carried out by ACOG under Condition 10a (Airspace modernisation) under CAP2156a/b; and
- administer the Airspace Design Support Fund as directed by the CAA or DfT.

- B10 This new condition will need to be supported by new definitions of:
- “Airspace Change Process”;
  - “Airspace Design Business” to cover NERL’s activities in relation to the “Airspace Coordination Service”, “Airspace Design Service”, “Airspace Design Support Fund” (as each is to be defined and discussed below) and its business as usual airspace change activities in relation to en route airspace taken together;
  - “Airspace Coordination Service”;
  - “Airspace Design Service”;
  - “Airspace Design Support Fund”;
  - “AMS” (to refer to the airspace modernisation strategy); and
  - “Strategically Important Interdependent Airspace Change” to support the definition of “Airspace Design Service”.
- B11 The modifications we propose to implement these definitions are set out in turn below.

### Definition of Airspace Change Process

- B12 In order to support the new obligation on NERL to provide the Airspace Design Service, we would need to define “Airspace Change Process” and continue to consider that the approach set out in the Initial Proposals would be appropriate. The airspace change process and guidance in question is set out in CAP 1616, but to “future proof” the definition, we propose to define this term by reference to the underlying legal provisions which give rise to CAP 1616.
- B13 To effect this, we propose to modify the Licence by inserting the following definition in Condition 1 after the definition of “Airfield Service”:
- “**Airspace Change Process**” means the process and guidance which airspace change proposals (as that term is defined in section 1 of the Air Traffic Management and Unmanned Aircraft Act 2021) must follow, 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).
- B14 We propose to modify Condition 1 of the Licence to insert a new definition of “Airspace Coordination Service” that covers the residual activities to be undertaken by NERL after ACOG is disbanded. As with the current obligation set out in Condition 10a (Airspace modernisation), to balance flexibility and clarity, we consider that the most appropriate approach is for these activities to be defined by reference to where the detail of those activities is to be found.

- B15 To effect this, we propose to modify the Licence by inserting the following definition in Condition 1 after the definition of “Airspace Change Process”.
- B16 As the CAA is currently consulting on new procedures to replace those set out in CAP2156a/b, we would expect the reference to the CAA publication to be updated for the Final Decision to modify the licence, subject to the outcome of that consultation. The consultation on those matters is available on the CAA’s website.<sup>70</sup> In order to future proof the definition, we propose to refer to the possibility that CAP2156a/b may be amended or replaced.

**“Airspace Coordination Service” means carrying out the activities set out in CAP 2156a and CAP2156b, as amended, revised or replaced by the CAA from time to time;**

### **Definition of “Airspace Design Business”**

- B17 In order to facilitate more concise drafting of the obligations in the Licence and avoid repetition where obligations apply across all the airspace activities covered by these final proposals, we propose to insert a new definition of “Airspace Design Business” to cover:
- the Airspace Design Service;
  - NERL’s “business as usual” airspace change activities in relation to en route airspace;
  - the Airspace Coordination Service; and
  - administration of the Airspace Design Support Fund.
- B18 This definition will also support ensuring that the consequential amendments we propose to make to the Licence (discussed further below) cover the correct activities, for example ensuring that consequential amendments to the ringfencing obligations are appropriate and effective to keep these activities separate from NERL’s En route and Oceanic activities.
- B19 To effect this, we propose to modify the Licence by inserting the following definition in Condition 1 after the definition of “Airspace Coordination Service”:

**“Airspace Design Business” means:**

- (i) the provision of the Airspace Design Service;
- (ii) the provision of the activities required by paragraph 4 of Condition 18;

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<sup>70</sup> See [Airspace modernisation: Consultation on draft guidance for the UK Airspace Design and Coordination Services - Civil Aviation Authority - Citizen Space](#)



(iii) the provision of the Airspace Coordination Service; and

(iv) the administration of the Airspace Design Support Fund.

### Definition of “Airspace Design Service”

- B20 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 relevant sections of TA00 to ensure that these provisions are aligned.
- B21 In this context, we also note stakeholders’ comments in relation to whether the geographic scope of the airspace design service should be set out on the face of the Licence. In this context, we note Secretary of State’s decision<sup>71</sup> modifies the Terms of the Licence that authorises NERL to carry out airspace change activities as follows:
- [1] c) to provide air traffic services as set out in section 98(1)(f) of the Act, in and in respect of the London Flight Information Region, the London Upper Flight Information Region, the Scottish Flight Information Region, the Scottish Upper Flight Information Region and the En route (Oceanic) Area, for the period specified in paragraph 6, subject to the Conditions set out in Parts II and III of this Licence and the terms in Schedule 3.*
- B22 This definition sets the focus of the airspace design services squarely on clusters of airspace changes that include at least one strategically important interdependent airspace change proposal in UK airspace, rather than all airspace changes. Given this, and the fact that the importance of the geographic scope of the Airspace Design Service should also be viewed in the context of the priorities set out in the strategic objectives, we consider that it is appropriate to refer to the geographic scope of the Airspace Design Service simply as being “UK Airspace”, broadly in line with the scope of the authorisation set out in the Terms of the Licence, but not covering oceanic airspace.
- B23 The drafting issued with Initial Proposals referred to taking account of local circumstances and Government policy. These objectives are now addressed in both the strategic objectives and para 11 of the new condition which appears more appropriate than the definition of the Airspace Design Service itself.
- B24 To effect this, we propose to modify the Licence by inserting the following definition in Condition 1 after the definition of “Airspace Design Business”:

**“Airspace Design Service” means undertaking the activities set out in section 98(1)(f) of the Act for airspace designs in UK airspace in relation to any area**

<sup>71</sup> See [UK airspace design service: modifications to NERL licence terms – government response - GOV.UK](#)

containing at least one Strategically Important Interdependent Airspace Change.

### Definition of “AMS”

B25 To support the new obligations on NERL in relation to the Airspace Design Business, we need to define the Airspace Modernisation Strategy, or “AMS” as it is known. To do this, we propose to refer to where that expression is defined in The Civil Aviation Authority (Air Navigation) Directions 2023.<sup>72</sup>

B26 To effect this, we propose to modify the Licence by inserting the following definition in Condition 1 after the definition of “Airspace Coordination Service”:

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

### Definition of “Strategically Important Interdependent Airspace Change”

B27 Noted above, the Licence also needs to make clear that the scope of the role of Airspace Design Service is limited to clusters that include a “strategically important airspace change proposal”. To avoid:

- widening the scope of the Airspace Design Service beyond strategically important airspace change proposals that are not interdependent with another airspace change proposal; and
- creating unclear or confusing obligations

we need to define “Strategically Important Interdependent Airspace Change”.

B28 It is not appropriate to set out precisely what such changes are on the face of the Licence (since such changes themselves change over time as airspace change proposals are developed and revised). So, this definition needs to retain flexibility, and we propose to do this by making clear where the process is to be found for identifying Strategically Important Interdependent Airspace Changes. This is an activity that NERL will carry out as one of the “residual” functions of ACOG and currently required pursuant to Condition 10a (Airspace modernisation), which is to be deleted from the Licence.

B29 As noted above and in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), the CAA is currently consulting on new procedures to replace those set out in CAP2156a/b which are used to identify strategically important airspace changes. We would expect the reference to the

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<sup>72</sup> 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>

CAA publication to be updated for the Final Decision to modify the licence, subject to the outcome of that consultation. The consultation on those matters is available on the CAA's website.<sup>73</sup> At present, as noted above, the draft definition expressly refers to the possibility that CAP2156a/b may be amended.

B30 To effect this, we propose to modify the Licence by inserting the following definition in Condition 1 after the definition of "Specified Services":

**"Strategically Important Interdependent Airspace Change" means a proposal for an airspace change determined to be strategically important and interdependent with at least one other proposal for airspace change in accordance with CAP2156a/b as amended or replaced by the CAA from time to time.**

## Modified Definitions

B31 As discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), to support the consequential modifications that we consider are needed to:

- the financial ringfence in Condition 5 (Availability of Resources and Financial Ringfencing);
- support the continued efficacy of Condition 6 (Regulatory accounting requirements);
- provide an appropriate scope for the intervention plan required by Condition 7 (Requirement to maintain an intervention plan); and
- ensure that no further modifications are required to Condition 9 (Prohibition of cross-subsidies) for it to remain effective,

we consider that it is necessary to modify the definitions of "Permitted Purpose" and "Separate Business" in Condition 1 (Interpretation and construction) to reflect the new activities that NERL will be required to undertake.

## Modified Definitions to support other modifications we propose to make to the Licence

B32 As discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), we consider that the definitions of "Permitted Purpose" and "Separate Business" should reflect the new airspace activities of NERL and that they will be conducted in a separate part of the business from the en route and Oceanic air traffic business. We consider that the drafting will be clearer if the new definition of "Airspace Design Business" is used to implement this,

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<sup>73</sup> See [Airspace modernisation: Consultation on draft guidance for the UK Airspace Design and Coordination Services - Civil Aviation Authority - Citizen Space](#)

rather than by referring to the individual elements of the new obligation we propose to insert in the Licence in relation to airspace change (discussed further below).

- B33 To effect this, we propose to modify the definitions of “Permitted Purpose” and “Separate Business” in Condition 1 to include appropriate reference to the “Airspace Design Business” in the manner set out below:

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

- (a) the En route (UK) Business, the En route (Oceanic) Business, the Airspace Design Business, or any business or activity within the limits of Condition 5.9 to 5.12; and
- (b) without prejudice to the generality of paragraph (a), 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 Airspace Design Business

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 Condition to require NERL to provide the Airspace Design Business**

- B34 As discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), we propose to modify the Licence 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 (that is, what is to be the Airspace Coordination Service) and administer the Airspace Design Support Fund. This condition will also require NERL to carry out its “business as usual” airspace change activities currently referred to in Condition 10a (Airspace modernisation). We propose to do this by modifying Condition 18 to delete the words “[not used intentionally left blank]” and insert the text set out below.
- B35 At the same time, we propose to delete Condition 10a (Airspace modernisation) in its entirety.
- B36 The condition we propose to insert is in four parts:

- Part A sets out the obligations on NERL to undertake the various activities comprising the Airspace Design Business;
- Part B sets out how NERL will be required deliver the Airspace Design Business which it is required to provide by Part A;
- Part C sets out governance obligations applicable to the Airspace Design Business; and
- Part D, sets out NERL's obligations in respect of third parties.

B37 Part A, sets out simple obligations for NERL to carry out each of the activities (where applicable, defined above) that the condition covers. So,

- Paragraph 3 sets out an obligation for NERL to use all reasonable endeavours to provide the Airspace Design Service;
- Paragraph 4 restates the existing obligation in Condition 10a (6) for NERL to undertake the current airspace design activities it already carries out;
- Paragraph 5 requires NERL to use all reasonable endeavours to provide the Airspace Coordination Service;
- Paragraph 6 requires NERL to administer the Airspace Design Support Fund as directed by the CAA or Secretary of State; and
- Paragraph 7 requires NERL to develop its business infrastructure to support these activities.

B38 The obligations in Part B on how NERL is to be required to deliver the obligations in Part A are that it must:

- have due regard to the strategic objectives published by the Secretary of State (discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service)); and
- comply with directions on how to administer the Airspace Design Support Fund made by the CAA or Secretary of State; and
- have due regard to the guidance published by the CAA (currently under consultation as discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service)).

B39 Further, Part B sets out the change procedure for the strategic objectives published by the Secretary of State and guidance issued by the CAA. These require the Secretary of State or CAA (as appropriate) to consult interested stakeholders appropriately before any changes become effective. These arrangements also reinforce the CAA's policy that it will consult on changes to the regulatory arrangements for NERL if material changes to the resourcing requirements of NERL arise. The reasons for and effects of these procedural

safeguards are discussed further in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service).

B40 Part B also requires NERL to have due regard to:

- the Air Navigation Directions, Government guidance made under the TA00 and any airports national policy statement under the Planning Act;
- the Airspace Modernisation Strategy and any prioritisation principles prepared by the CAA;
- the strategic delivery plan that NERL will be required to prepare (see below); and
- the views of the Advisory Board, which NERL will be required to appoint (see below).

B41 The process set out in CAP 1616 binds any application that is made to propose changes to airspace. As a result, it is not necessary for NERL to be required by the Licence to comply with the Airspace Change Process (including having regard to stakeholders' responses to consultations on individual airspace change proposals) because NERL will be inevitably be required to address these matters as part of its preparation of substantive airspace change proposals, in the same way as any other promoter of airspace changes.

B42 Finally, Part B requires NERL to create a strategic delivery plan for the Airspace Design Service and the Airspace Coordination Service that allows the CAA and DfT to understand its activities. NERL will be required to prepare this plan for approval by the CAA and Secretary of State in relation to its form, scope and level of detail and keep that plan under review for updates. Further detail on what the strategic delivery plan should contain is set out in the draft guidance which is currently out for consultation as discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service).

B43 The governance obligations set out in Part C require NERL to inform the CAA and Secretary of State of the appointment of the head of the Airspace Design Business and any material operational changes.

B44 Part C also requires NERL to appoint an Advisory Board to act as a forum for parties other than the CAA and DfT to provide it with advice, views, ideas and information to support NERL in delivering the Airspace Design Service and the Airspace Coordination Service. NERL will be required to:

- consult with the CAA and Secretary of State on the structure, terms of reference and membership for the Advisory Board prior to appointment; and
- ensure it meets regularly and sufficiently frequently.

- B45 Further detail is to be worked out in accordance with the guidance that is currently out for consultation as discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service).
- B46 The requirement for NERL to appoint and use the Advisory Board is separate from:
- CAA/DfT governance, which is carried out through oversight by the Joint Airspace Modernisation Programme Board; and
  - the requirements for stakeholder engagement more generally, discussed further below.
- B47 Part C concludes with a targeted obligation for NERL to provide the CAA and DfT with information to enable them to monitor its performance and its progress in modernising UK airspace.
- B48 Part D deals with NERL's relationships with third parties, setting out obligations to:
- behave in a transparent and non-discriminatory manner; and
  - develop a stakeholder engagement plan that sets out the written ways of working for its approach to engaging with key stakeholders.
- B49 This sits alongside the approach that is required by CAP 1616 process and its associated guidance that ensures that NERL will have overall accountability for any airspace change proposal it is sponsoring. While NERL has overall accountability, the division of tasks between NERL and its airspace change partners for a given airspace change proposal in respect of consultation and engagement is specified in the onboarding partnership arrangement as discussed in the CAA's "Onboarding Process for the UK Airspace Design Service (UKADS) Provider for the London TMA Region".<sup>74</sup>
- B50 To effect the above, we propose to modify the Licence to delete "[not used intentionally left blank]" at Condition 18 and insert the text set out below in red.

### Proposed draft new provision

#### **Condition 18: Provision of the Airspace Design Service and related activities**

1. The purpose of Part A of this Condition is to require the Licensee to:
  - (a) provide the Airspace Design Service;

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<sup>74</sup> See [www.caa.co.uk/CAP3129](http://www.caa.co.uk/CAP3129)



- (b) carry out the activities set out in section 98(1)(f) of the Act for the airspace in which the Licensee provides the UK En route Air Traffic Control Service;
- (c) provide the Airspace Coordination Service; and
- (d) administer an airspace design support fund in accordance with rules and eligibility criteria published by the Department for Transport (the "Airspace Design Support Fund") as amended, revised or replaced from time to time.

2. This Condition sets out:

- (a) in Part A, the Licensee's obligations to undertake the activities comprising the Airspace Design Business;
- (b) in Part B, the Licensee's obligations on how it shall deliver the obligations in Part A;
- (c) in Part C, the Licensee's obligations in relation to governance for the activities in Part A; and
- (d) in Part D, obligations in respect of interested parties.

**Part A: Requirements to provide the Airspace Design Service and other airspace design activities**

- 3. The Licensee shall use all reasonable endeavours to provide the Airspace Design Service.
- 4. Without prejudice to the other obligations set out in this Condition, the Licensee shall use all reasonable endeavours to undertake the activities set out in section 98(1)(f) of the Act relating to the airspace in which the Licensee provides the UK En route Air Traffic Control Service which, if approved by the CAA in accordance with the Airspace Change Process, would deliver the objectives of the AMS.
- 5. The Licensee shall use all reasonable endeavours to provide the Airspace Coordination Service.
- 6. The Licensee shall administer the Airspace Design Support Fund as directed by the CAA or Secretary of State.
- 7. 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 Business.



**Part B: Obligations on how the Licensee shall deliver the Airspace Design Service and other airspace design activities**

8. When providing the Airspace Design Service and the Airspace Coordination Service, the Licensee shall:
  - (a) have due regard to strategic objectives for the Airspace Design Service and/or Airspace Coordination Service published by the Secretary of State; and
  - (b) have due regard to guidance published by the CAA for the purposes of this condition.
9. The Licensee shall not be required to have due regard to any revised:
  - (a) strategic objectives for the Airspace Design Service and/or Airspace Coordination Service published by the Secretary of State; or
  - (b) guidance published by the CAA for the purposes of this condition(in each case, a “Revised Document”) unless the Secretary of State or CAA, as the case may be, has complied with the requirements of paragraph 10 of this Condition (the “Consultation Requirements”).
10. The Consultation Requirements are that the Secretary of State or CAA (as appropriate) has:
  - (a) consulted on its proposals to publish a Revised Document, giving the Licensee and any other relevant parties, including airlines, airports and, in the case of a consultation by the CAA, the Secretary of State for Defence, a reasonable period to respond;
  - (b) in relation to any consultation on any proposal to issue a Revised Document, the CAA has published a statement setting out its position on whether:
    - (i) the proposed Revised Document would involve a material change to the resources required by the Licensee to discharge its obligations under this Condition; and
    - (ii) in accordance with the CAA’s duties under the Act, it would be appropriate for the CAA to consult on modifications to this Licence to address such material change;
  - (c) having considered the responses to any such consultation, published the Revised Document.
11. In providing the Airspace Design Service and the Airspace Coordination Service, the Licensee shall have due regard to:

- (a) any Air Navigation Directions made under sections 66(1), 68 and 104(2) of the Act from time to time in effect, while taking account of Government guidance made under section 70(2)(d) of the Act and any national policy statement relating to airports designated under section 5 of the Planning Act 2008;
- (b) the AMS and any prioritisation principles that the CAA is required to produce by any Air Navigation Directions from time to time in force;
- (c) the strategic delivery plan it has developed from time to time pursuant to paragraph 12 of this condition; and
- (d) the views of the Advisory Board that the Licensee is required to appoint in accordance with Part C of this Condition.

12. As part of its provision of the Airspace Design Business, the Licensee shall develop and publish a strategic delivery plan in accordance with any guidance published by the CAA. The strategic delivery plan shall set out, as a minimum:

- (a) for the Airspace Design Service, the Licensee's plans to deliver airspace changes, including in any areas identified in any strategic objectives document;
- (b) the plans for delivery of the relevant airspace changes which the Licensee is responsible for coordinating as part of the Airspace Coordination Service; and
- (c) sufficient information for:

- (i) the CAA and Secretary of State; and
- (ii) the other relevant parties identified in paragraph 10(a) of this Condition

to understand any other matters on which delivery of the Airspace Design Service or the Airspace Coordination Service (as the case may be) depends or relies, including:

- (aa) any other activities relating to delivery of the AMS for which the Licensee is responsible; and
- (bb) the Licensee's plans to deliver its air traffic technology replacement and upgrade programme.

13. The Licensee shall consult the Secretary of State and the CAA for approval of the form, scope and level of detail of the strategic delivery plan and any update to it, in accordance with any guidance published by the CAA.

14. The Licensee shall keep the strategic delivery plan it produces under paragraph 12 of this Condition under review and update it from time to time, or as directed

by the CAA, to reflect changes to and progress in delivering its strategic delivery plan.

**Part C: Governance arrangements for the Airspace Design Service and other airspace design activities**

15. The Licensee shall inform the CAA and Secretary of State, as soon as practicable, of:
16. the appointment (and any subsequent replacement) of the head of the Airspace Design Business; and
17. any material changes to the operation of the Airspace Design Business.
18. The Licensee shall appoint an Advisory Board to act as a forum to exchange views, ideas and information with, and obtain advice from, stakeholders on the Airspace Design Service and the Airspace Coordination Service in order to assist the Licensee contribute to the objectives of the AMS.
19. The Licensee shall develop a structure, terms of reference and membership for the Advisory Board and shall consult with the CAA and Secretary of State on these matters prior to appointing the Advisory Board.
20. 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 develop under paragraph 17 of this Condition.
21. The Licensee shall furnish to the CAA and the Secretary of State, in such manner and at such times as the CAA or Secretary of State (as the case may be) may require, such information (having the meaning set out in paragraph 4 of Condition 17) as the CAA or Secretary of State (as the case may be) may reasonably require for the purposes of monitoring the Licensee's performance of its obligations in paragraphs 3, 4, 5 and 7 of this Condition and its progress in modernising UK airspace. The Licensee shall not be required to furnish the CAA or Secretary of State with any information which the Licensee could not be compelled to produce or give under section 25 of the Act.

**Part D: obligations in respect of other parties**

22. The Licensee shall, in carrying out the Airspace Design Service and Airspace Coordination Service, act transparently and not unduly prefer or discriminate against any person or class of persons.
23. The Licensee shall develop and publish a stakeholder engagement plan that sets out written ways of working setting out its approach to engaging with key stakeholders with an interest in how the Licensee is providing the Airspace Design Service and Airspace Coordination Service.

## Consequential modifications

- B51 The obligations set out above would create a new set of activities for NERL, consistent with the scope of the “Airspace Design Business”. The Licence needs to address the issues that this raises, not only by setting out appropriate obligations for NERL to carry out these activities, but also by making appropriate adjustment to other rules within the Licence so that they properly recognise that NERL is being required to undertake the new activities. We propose that this approach should be effected by making appropriate use of the defined term “Airspace Design Business”, in preference to the approach used in the Initial Proposals, where we referred to each of the new activities separately.

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

- B52 We consider that adopting the approach outlined above means that no further modification would be needed to the existing requirements on NERL in relation to:
- the obligation to provide compliance certificates in relation to the sufficiency of its financial resources for “Permitted Purpose” activities (see paragraphs 3 and 4 of Condition 5);
  - the obligation to provide compliance certificates in relation to the sufficiency of its operational resources for “Permitted Purpose” activities (see paragraph 5 and 6 of Condition 5);
  - the obligations in relation to amendments to NERL’s finance documents (see paragraph 14 of Condition 5);
  - the restrictions on the disposal of assets and indebtedness (see paragraphs 15 to 20 of Condition 5);
  - the requirement for an ultimate controller undertaking (see paragraphs 21 and 22 of Condition 5);
  - the obligation to maintain an investment grade credit rating (see paragraph 23 of Condition 5);
  - the restrictions on NERL’s financial indebtedness (see paragraphs 24 to 28 of Condition 5); or
  - the interpretation of the condition (see paragraph 29 of Condition 5).
- B53 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 set out in paragraphs 7 and 8 of Condition 5; or

- the obligation to provide certificates to the CAA in relation to dividends set out in paragraphs 8A to 8E of Condition 5.

B54 As discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), we note NERL's concerns over the clarity of paragraph 2 of Condition 5 and propose to modify it by inserting wording that reinforces the position that NERL will not be required to do anything that would favour the Airspace Design Business over the En route (UK) Business, the En Route (Oceanic) Business or any business or activity within the limits of paragraphs 9, 10, 12 (a) (iii) and 12 (a)(v) of Condition 5.

B55 The further modifications we propose to make are set out below and are to insert appropriate reference to the "Airspace Design Business" into the Condition. Provisions that we do not propose to modify have not been reproduced.

## 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, and the Airspace Design Business;
  - (c) create an effective financial ring-fence around the En route (UK) Business, ~~and~~ the En route (Oceanic) Business, and the Airspace Design Business, 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.

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.

## Availability of Resources

2. The Licensee shall at all times act in a manner calculated to secure that it has available to it sufficient resources including (without limitation) financial, management and staff resources, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights as shall ensure that at all times it is able to:

- (a) carry out its Permitted Purpose activities; and
- (b) comply in all respects with its obligations under the Act and this Licence including, without limitation, its duties under section 8 of the Act,

provided always that nothing in this paragraph 2 shall require the Licensee to prioritise the availability of its resources in favour of the Airspace Design Business to the detriment of the En route (UK) Business, the En Route (Oceanic) Business or any business or activity within the limits of paragraphs 9, 10, 12(a)(iii) and 12(a)(v) of this Condition.

[...]

## Restriction on Activity and Financial Ring-Fencing

9. 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 and the Airspace Design Business.
10. 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.

11. 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.

12. 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 Business
 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.

[...]

- 13. 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 the En route (UK) Business, and the En route (Oceanic) Business and the Airspace Design Business 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

- B56 Given the discussion above, we consider that this condition should reflect the Airspace Design Business being conducted within NERL as a distinct activity 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 2 (Costs, form of charge control and proposed charges).
- B57 To effect this, we propose to modify Condition 6 of the Licence to require separate accounting of the Airspace Design Business just as we do for the UK Air Traffic Services Business and the En Route (Oceanic) Business (as each is defined in the Licence as set out below).

### Proposed draft modified Condition

1. 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 Airspace Design Business
 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.
2. 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.
3. 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.

4. 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 Airspace Design Business; and
- (iv) the Licensee as a whole

in accordance with this Condition and the Regulatory Accounting Guidelines.

5. 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 Business

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 Business.

- (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.

6. The Licensee shall:

- (a) procure, in respect of the regulatory accounts prepared in accordance with paragraph 4 in respect of a regulatory year, a report by the Auditors addressed to the CAA which provides their opinion on those accounts. The opinion should be worded in the form required by those professional bodies accountable for prescribing the form of audit reports on regulatory accounts and should reference compliance with the Condition and 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.

7. The Licensee shall also:

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

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

## 9. In this Condition:

**“Regulatory Accounting Guidelines”** means the guidelines drawn up in accordance with paragraph 2 of this Condition.

**“UK Air Traffic Services Business”** means the Licensee’s business other than the En route (Oceanic) Business or the Airspace Design Business.

**“Agreed Upon Procedures”** means procedures which are from time to time agreed between the CAA, the Auditors and the Licensee and which the Auditors carry out and report on factual findings.

**“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

B58 As discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), we propose to extend the scope of the intervention plan that NERL is required to produce to cover the Airspace Design Business. We propose to effect this by modifying Condition 7 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 Business 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 Business 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."*

## Modifications to the price control arrangements for NERL

- B59 As discussed in chapter 2 (Costs, form of charge control, and proposed charges), we propose to modify the Licence to insert a new condition to implement the final proposals set out in that chapter. This new condition would introduce the new Airspace Design Charge and set its maximum permitted average level. This is intended to enable NERL to recover the costs of, and earn a return for, providing the Airspace Design Service and administering the Airspace Design Support Fund, as well as funding the Airspace Design Support Fund. This also enables NERL to recover in 2026 the early costs incurred in 2025, as well as all the forecast costs for 2026, even if the new Charge is only introduced part-way through 2026. Separately, we are also proposing to include a correction mechanism at NR28 (the next price control period), allowing this new Charge condition to be relatively simple for the remainder of the NR23 period. From 2028, the proposed correction mechanism (see paragraph 2.39) would allow NERL to recover from, or return to, airspace users in year  $t$ , any revenue differences resulting from differences between forecast and actual costs in year  $t-2$ , as well as differences between forecast and actual Total Service Units (as defined in the draft condition below) in year  $t-2$ . The correction mechanism would also adjust over or under recoveries by a measure of forecast CPI inflation between year  $t-2$  and year  $t$ .

## Proposed draft new provision

### Condition 21b: Control of Airspace Design Charge

1. 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 ( $\text{MaxADC}_t$ ) shall be calculated as follows:

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



where:

- (a)  $\text{MaxADC}_t$  is the maximum permitted average Airspace Design Charge in year  $t$  in nominal prices. It is a charge per service unit to airspace users to recover the costs of delivering the Airspace Design Service and administering and funding the Airspace Design Support Fund pursuant to the Licensee's obligations in Part A of Condition 18.
- (b)  $\text{FDCAD}_t$  is the forecast determined cost of providing the Airspace Design Service and administering and funding the Airspace Design Support Fund, in nominal prices for relevant year  $t$ , as follows:

Year $t$	£-nominal
2026	14,006,000
2027	20,973,000

- (c)  $\text{ForecastTSU}_t$  is the forecast Total Service Units for relevant year  $t$ , as follows:

Year $t$	$\text{ForecastTSU}_t$
2026	12,934,000
2027	13,156,000

2. In this condition, Total Service Units means the route service units calculated in accordance with Eurocontrol's Central Route Charges Office's Conditions of Application of the Route Charges System and Conditions of Payment as amended from time to time *including* the service units relating to military exempt flights.

## APPENDIX C

## Correction Mechanism

- C1 As discussed in chapter 2 (Costs, form of charge control, and proposed charges), paragraph 2.39, we expect that for (at least) 2028 and 2029 the  $\text{MaxADC}_t$  in the proposed “Condition 21b: Control of Airspace Design Charge” in Appendix B will include a correction term ( $\text{Correction}_t$ ) that will be added to forecast determined costs in year  $t$  ( $\text{FDCAD}_t$ ), calculated as below. We welcome views on how this term should operate and be implemented.

$$\text{MaxADC}_t = \frac{\text{FDCAD}_t + \text{Correction}_t}{\text{ForecastTSU}_t}$$

where:

$$\text{Correction}_t = \left( \text{ADCAD}_{t-2} - \text{ActualTSU}_{t-2} * \frac{\text{FDCAD}_{t-2}}{\text{ForecastTSU}_{t-2}} \right) * (1 + \text{Inf}_{t-2}) * (1 + \text{Inf}_{t-1})$$

and where:

- $\text{MaxADC}_t$  is the maximum permitted average Airspace Design Charge in year  $t$  in nominal prices. It is a charge per service unit to airspace users to recover the costs of delivering the Airspace Design Service and administering the Airspace Design Support Fund and funding the Airspace Design Support Fund pursuant to the Licensee’s obligations in Part A of Condition 18.
- $\text{ADCAD}_{t-2}$  is the actual determined cost of providing the Airspace Design Service and administering the Airspace Design Support Fund and funding the Airspace Design Support Fund, in nominal prices in year  $t-2$ ;
- $\text{ActualTSU}_{t-2}$  is the actual Total Service Units in year  $t-2$ ;
- $\text{FDCAD}_{t-2}$  is the forecast determined cost of providing the Airspace Design Service and administering the Airspace Design Support Fund, in nominal prices for relevant year  $t-2$ ;
- $\text{ForecastTSU}_{t-2}$  is the forecast Total Service Units in year  $t-2$ ;
- $\text{Inf}_{t-2}$  is the average CPI inflation for year  $t-2$ , as published by the Office for National Statistics; and
- $\text{Inf}_{t-1}$  is the forecast CPI inflation for year  $t-1$ , as per the Office for Budget Responsibility’s  $t-1$  autumn forecasts or, if they are not available, similar alternative forecasts from the HM Treasury or the Bank of England.

## APPENDIX D

# Glossary

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ACOG	Airspace Change Organising Group
Airspace Coordination Service	UK Airspace Coordination Service
Airspace Design Service	UK Airspace Design Service
AMS	Airspace Modernisation Strategy
CAA, “we”, “us”, “our”	Civil Aviation Authority
Charge	Airspace Design Charge
CMA	Competition and Markets Authority
CPI	Consumers Price Index
CRCO	Eurocontrol’s Central Route Charges Office
CSUs	Chargeable Service Units
DfT	Department for Transport
GATCO	Guild of Air Traffic Control Officers
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
IFR	Instrument Flight Rules
Illustrative Proposals	CAP 3063: “Economic Regulation of NERL: Illustrative proposals for modifying the Licence to support the implementation of a UK Airspace Design Service”, available at <a href="http://www.caa.co.uk/CAP3063">www.caa.co.uk/CAP3063</a>
Initial Proposals	CAP 3121: “Economic Regulation of NERL: Initial Proposals for modifying the Licence to support the implementation of a UK Airspace Design Service”, available at <a href="http://www.caa.co.uk/CAP3121">www.caa.co.uk/CAP3121</a>
Licence	NERL’s air traffic services licence, issued under the Transport Act 2000
LTMA	London Terminal Control Area

LTMA region	The LTMA region is the area of the LTMA and the area of 11 airports and the corresponding network ACPs. This is further described in paragraph 3.1 of <a href="#">UKADS and UKACS licence obligations: strategic objectives - GOV.UK</a> .
MAG	Manchester Airports Group
MoD	Ministry of Defence
NERL	NATS (En Route) plc
NR23	The regulatory period for 2023 to 2027 for the economic regulation of NERL
NR28	The regulatory period for 2028 to 2032 for the economic regulation of NERL
OBR	Office for Budget Responsibility
Opex	Operating expenditure
RAB	Regulatory asset base
Service units	A service unit is a unit used for charging purposes based on the multiplication of an aircraft's <a href="#">weight factor</a> 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.
SONIA	Sterling Overnight Index Average
TA00	Transport Act 2000
TSUs	Total Service Units
Virgin	Virgin Atlantic Airways
WACC	Weighted average cost of capital