

# Economic Regulation of NERL: Decision to modify NERL's Licence to support the implementation of a UK Airspace Design Service

**CAP 3225**

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Published by the Civil Aviation Authority, 2026

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First published March 2026

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## About this document

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This document sets out the CAA's Final Decision on:

- 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 are making to NERL's air traffic services licence (the "Licence") to implement these arrangements.

As required by section 11A(5) of the Transport Act 2000 ("TA00"), this document also includes a notice at Appendix B setting out the modifications we have decided to make to the Licence.

This decision follows on from the notice proposing to modify the Licence that we issued under section 11A(1) TA00 alongside a consultation in December 2025 ("Final Proposals"), as well as earlier consultations on our proposed approach in November 2024 (the "Illustrative Proposals") and June 2025 (the "Initial Proposals").

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## Introduction and summary

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1. We have previously published three consultation documents regarding proposals to modify the air traffic services licence (the “Licence”) held by NATS (En Route) plc (“NERL”) to implement a UK Airspace Design Service (“Airspace Design Service”). Those publications were:
  - “Illustrative Proposals”, published in November 2024;<sup>1</sup>
  - “Initial Proposals”, published in June 2025;<sup>2</sup> and
  - “Final Proposals”, published in December 2025,<sup>3</sup> which included the notice required by section 11A(1) of the Transport Act 2000 (“TA00”) setting out the modifications we proposed to make to the Licence to create an Airspace Design Service and implement associated changes.
2. This document follows on from these consultations and sets out our decision to modify the Licence. In doing so, it sets out our response to stakeholders’ views on the Final Proposals as well as how we have considered, and given effect to, our duties in arriving at our decision to proceed with the broad approach to the modifications to NERL’s licence as set out in our December 2025 Final Proposals.
3. This document includes, at Appendix B, the notice required by section 11A(5) TA00, setting out the modifications to the Licence that we have decided to make.

### Policy context of the Airspace Design Service

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4. In June 2025, the Government announced its intention to reform the approach to modernising UK airspace design by introducing an Airspace Design Service.<sup>4</sup> It said NERL would provide the 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.<sup>5</sup> To create the obligation for NERL to provide the

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<sup>1</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>2</sup> CAP 3121: “Economic Regulation of NERL: Initial proposals for modifying the Licence to support the implementation of a UK Airspace Design Service”, available at [www.caa.co.uk/CAP3121](http://www.caa.co.uk/CAP3121).

<sup>3</sup> CAP 3164: “Economic Regulation of NERL: Final proposals for modifying the Licence to support the implementation of a UK Airspace Design Service”, available at [www.caa.co.uk/CAP3164](http://www.caa.co.uk/CAP3164).

<sup>4</sup> The Government’s [announcement on 2 June 2025](#).

<sup>5</sup> The Airspace Modernisation Strategy can be found at: [CAP1711: Airspace Modernisation Strategy 2023–2040 Part 1: Strategic objectives and enablers | UK Civil Aviation Authority](#).

Airspace Design Service, we have brought forward changes to the Licence.<sup>6</sup> The Government also confirmed that NERL would continue to provide a coordination service for those strategically important interdependent airspace change proposals where the Airspace Design Service is not being provided.

5. The Department for Transport (“DfT”) and CAA consulted on the concept of the 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” of airspace modernisation or individually, on different aspects of the CAA’s Airspace Change Process<sup>7</sup>, broader government airspace policy and the regulatory framework, all of which set out how airspace should be used, managed and changed/modernised in the UK.<sup>8</sup> CAP 3156,<sup>9</sup> published in September 2025 (and last updated in March 2026), provides a comprehensive view of the suite of changes that have been made, or are being proposed through consultation,<sup>10</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 document for broader context.
6. This decision sets out the modifications to the Licence that we have decided to make. These are one part of the suite of changes required to:
  - create obligations for NERL to provide the Airspace Design Service, Airspace Coordination Service and administer<sup>11</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.
7. These modifications also cover the “business as usual” airspace change work that NERL undertakes.
8. These modifications follow on from changes made by the Secretary of State to the TA00 to:

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<sup>6</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>7</sup> The Airspace Change Process can be found at: [CAP1616: Airspace Change Process | UK Civil Aviation Authority](#).

<sup>8</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>9</sup> CAP 3156: “Modernising the way we do airspace design – Third edition”, available at [www.caa.co.uk/CAP3156](http://www.caa.co.uk/CAP3156).

<sup>10</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.

<sup>11</sup> To be clear, this includes funding the Airspace Design Support Fund.

- include the development and making of airspace change proposals to the CAA within the scope of the activities comprising “air traffic services”;<sup>12</sup> and
  - permit the Secretary of State to modify the “Terms” of the Licence to authorise NERL to carry out these activities. (Following this modification to the TA00, the Secretary of State then used those powers to modify the Licence “Terms” accordingly.)<sup>13</sup>
9. This decision addresses the “conditions” of the Licence. These conditions go beyond the authorisation set out in the Terms of the Licence to specify what NERL is *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 to the Licence to accommodate these changes.

## Key aspects of our decision

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### Licence modifications to implement an Airspace Design Service

10. The Licence modifications specify both “what” NERL is required to do and “how” NERL is to carry out these activities. In addition to continuing to undertake its “business as usual” airspace change work, NERL will be required to:
- provide the “Airspace Design Service” and the “Airspace Coordination Service”; and
  - administer the Airspace Design Support Fund as directed by the CAA.
11. In doing so, we have decided to require NERL to have due regard to the strategic objectives issued by the Secretary of State as to how and where it should prioritise the efforts of the Airspace Design Service.<sup>14</sup> NERL should also have due regard to:
- the CAA’s guidance setting out detail on the things NERL should do and consider in providing the Airspace Design Service and Airspace Coordination Service;<sup>15</sup>

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<sup>12</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>13</sup> For more information on the decision, see [UK airspace design service: modifications to NERL licence terms – government response - GOV.UK](#)

<sup>14</sup> See [UKADS and UKACS licence obligations: strategic objectives - GOV.UK](#).

<sup>15</sup> See “Guidance for the UK Airspace Design and Coordination Services”, available at [www.caa.co.uk/CAP3219](http://www.caa.co.uk/CAP3219). This was the object of consultation in CAP 3158 and CAP 3161 sets out the outcome of that consultation.

- requirements for the Airspace Coordination Service and associated guidance;<sup>16</sup> and
- the Airspace Design Support Fund rules and eligibility criteria published by the DfT.<sup>17</sup>

## Costs, form of charge control and charges

12. The key aspects of this decision that relate to costs, the form of charge control and charges that NERL should levy are that:
- the new Charge should reflect the incremental costs of NERL in providing the Airspace Design Service, and administering and funding the Airspace Design Support Fund;
  - the cost estimates included in our Final Proposals will be the basis for the charges that will apply for the remainder of the NR23 period;
  - a cost pass-through mechanism will be adopted, which will provide a true-up for charges made in the initial period, such that actual costs and associated operating margin of the Airspace Design Service and Airspace Design Support Fund will be recovered from charges;
  - the initial price control period should be relatively short and aligned with the remainder of the NR23 period;
  - a margin of 2% will be applied to the base costs, reflecting the additional risks to NERL in undertaking this additional economic activity and an allowance for its working capital; and
  - the Charge will 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.

## Next steps and implementation

13. The licence modifications in Appendix B will take effect on 6 May 2026, six weeks after publication and as per section 11A(8) TA00.
14. Following the publication of this decision notice and licence modifications, certain stakeholders have six weeks in which they can apply to the Competition and

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<sup>16</sup> See “Requirements for the UK Airspace Coordination Service and associated guidance”, available at [www.caa.co.uk/CAP3220](http://www.caa.co.uk/CAP3220). These were the object of consultation in CAP 3159 and CAP 3162 sets out the outcome of that consultation.

<sup>17</sup> See [UK Airspace Design Support Fund rules and eligibility criteria - GOV.UK](https://www.gov.uk/government/consultations/uk-airspace-design-support-fund-rules-and-eligibility-criteria).

Markets Authority for permission to appeal the CAA decision on modifications to NERL's licence.<sup>18</sup>

15. Any questions regarding this decision should be sent to [economicregulation@caa.co.uk](mailto:economicregulation@caa.co.uk).

## Our duties as economic regulator of NERL

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16. The decisions that we have taken, and which are set out in this document, have been taken in the light of the CAA's statutory duties in relation to the economic regulation of air traffic services. 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, and this must take priority over all our other duties. Further details of these duties are set out in Appendix A.<sup>19</sup>
17. In discharging our primary duty, we are required to exercise our economic functions in the manner we best think calculated to, amongst other things, further the interests of "customers and consumers",<sup>20</sup> promote the economy and efficiency of licence holders and secure that licence holders do not find it unduly difficult to finance their licensed activities.
18. This document explains both the reasons for our final decisions and why we consider these decisions to be consistent with our duties.

## Structure of this decision

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19. The structure of this document is as follows:

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<sup>18</sup> Section 19A TA00 provides that an appeal may be brought to the CMA by NERL (the licence holder), an owner/operator of an aircraft whose interests are materially affected by the decision or an owner/manager of a prescribed aerodrome whose interests are materially affected by the decision. An appeal may be brought on one or more of the following grounds: that the decision was based on an error of fact, the decision was wrong in law, or that an error was made in the exercise of a discretion.

<sup>19</sup> We have also considered the "public sector equality duty" under the Equality Act 2010. Given the nature of our decision in relation to how airspace changes are to be developed, we do not consider that the subject matter of our decision raises issues under that duty.

<sup>20</sup> In this context, section 2(2)(a) of the TA00 requires the CAA 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". We use the expression "customers and consumers" to refer to these stakeholders as a whole. The only interests to be considered are interests regarding the range, availability, continuity, cost and quality of air traffic services, as set out in section 2(3).

- Chapter 1 deals with the modifications we have decided to make to the Licence to require NERL to (i) establish and maintain the Airspace Design Service, (ii) replace the coordination services currently provided by NERL (from its Airspace Change Organising Group (“ACOG”) unit) with an updated coordination and monitoring service, the Airspace Coordination Service, (iii) provide the “business as usual” activities currently provided by NERL, and (iv) administer the Airspace Design Support Fund;
- Chapter 2 discusses estimates of the costs of the Airspace Design Service and the Airspace Design Support Fund, the design of the Airspace Design Charge and how the Licence will facilitate the recovery of NERL’s costs through these charges. It also addresses the level of charges to users;
- Appendix A sets out a summary of our statutory duties;
- Appendix B sets out the notice under section 11A(5) TA00 of the modifications that the CAA has decided to make;
- Appendix C provides further information on a correction mechanism to be introduced at NR28; and
- Appendix D defines a list of abbreviations and terms 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 sets out our decision on the matters covered by chapter 1 of the Final Proposals and covers the licence modifications to:
- require NERL to provide the Airspace Design Service and Airspace Coordination Service;
  - require NERL to administer the Airspace Support Fund; and
  - make the consequential changes needed to other conditions of the Licence.
- 1.2 It also addresses issues raised by stakeholders in response to the Final Proposals. To the extent that the reasons for the approach taken in the Final Proposals have not changed, we have adopted those reasons in support of this decision and have not repeated them here.
- 1.3 In this light, this chapter should be read in conjunction with both:
- the relevant sections of the Final Proposals referred to below; and
  - the Notice setting out the modifications to the Licence that we have decided to make and which is set out at Appendix B.

## Overall approach to the design of licence modifications, the nature of the obligation to be placed on NERL, enforcement issues and geographic scope

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### Final Proposals

- 1.4 In the Final Proposals,<sup>21</sup> we proposed to create clear and relatively high-level obligations in the Licence to:
- use “all reasonable endeavours” to provide the Airspace Design Service and Airspace Coordination Service; and
  - administer an Airspace Design Support Fund as directed by the CAA or DfT.

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<sup>21</sup> See the Final Proposals at paragraphs 1.12ff.

- 1.5 We proposed<sup>22</sup> that these obligations would be supported by obligations to have “due regard” to:
- “Strategic Objectives” for the Airspace Design Service and Airspace Coordination Service published by the Secretary of State;<sup>23</sup> and
  - “Guidance” on how NERL should provide those services published by the CAA.<sup>24</sup>
- 1.6 Taken together, these obligations and supporting materials would both require NERL to undertake these activities and provide the detail needed to enable it to understand:
- the geographic scope of each of the Airspace Design Service and Airspace Coordination Services;
  - in broad terms what it would be required to deliver in providing these services; and
  - the broad issues it should take into account in delivering these activities, including in relation to stakeholder engagement.
- 1.7 We said this would create a proportionate and effective set of obligations and replace the requirement in the Licence to carry out the activities currently carried out by ACOG, which would be removed from the Licence. It also recognised that, while the geographic scope of the Airspace Design Service should be UK wide, by publishing the Strategic Objectives on 17 November 2025 the Secretary of State has said that NERL’s approach to delivery should focus at the outset on the London Terminal Control Area (“LTMA”) region, at the same time providing coordination activities formerly provided by ACOG outside the area where the Airspace Design Service will now be provided.
- 1.8 This approach would also provide some flexibility and agility to changes in geographic scope and what would be required to deliver the Airspace Design Service and Airspace Coordination Service. At the same time, we proposed to provide procedural protections for stakeholders. These were that NERL should only be required to have due regard to any revised strategic objectives:
- after they had been consulted on; and

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<sup>22</sup> See, chapter 1 of the Final Proposals, particularly at paragraphs 1.12 to 1.15, 1.20 to 1.23, 1.37 to 1.38 and 1.51 to 1.58.

<sup>23</sup> See [UKADS and UKACS licence obligations: strategic objectives - GOV.UK](#) [UKADS and UKACS licence obligations: strategic objectives - GOV.UK](#) and [UKADS and UKACS licence obligations: strategic objectives - GOV.UK](#).

<sup>24</sup> Published in draft for consultation by the CAA as CAP 3158. See [Airspace Modernisation: Consultation on draft guidance for the UK Airspace Design and Coordination Services](#).

- once the CAA had published a statement as to whether it would be appropriate for it to modify the Licence in the light of the proposed revisions.

- 1.9 The Final Proposals also discussed the enforcement risks for NERL and considered that our approach, especially with the adoption of a standard of “all reasonable endeavours” in the obligations on NERL, would not create any disproportionate downside risk.<sup>25</sup>
- 1.10 We said that this approach would also provide an appropriate focus on the tasks required of NERL in proposing changes in accordance with the Airspace Change Process set out in CAP 1616.

### Stakeholders' views

- 1.11 British Airways and easyJet expressed support for the creation of the Airspace Design Service with a primary focus on the LTMA and the Airspace Coordination Service.
- 1.12 British Airways also said it is vital to recognise that airspace modernisation is needed regardless of the progress or approval of any airport expansion plans. It also noted that other clusters of airspace changes should progress in a timely manner and expressed concern that the CAA's approach would create an apparent over reliance on direction from CAA and DfT as co-sponsors of airspace modernisation.
- 1.13 To this end, it considered that the changes to the Licence needed to strike the appropriate balance between flexibility and ensuring future developments will be subject to statutory consultation to adjust the (i) scope, (ii) obligations and, as appropriate, (iii) charging arrangements to ensure the ICAO User Pays Principle applies.
- 1.14 IATA said that the geographic scope remained insufficiently defined. Given that the LTMA is the primary driver of the airspace modernisation programme, the initial scope of the Airspace Design Service should be explicitly limited to this area. It continued to advocate for the scope to be set in the Licence and changed through the licence modification process.
- 1.15 London Oxford Airport said that, because of the focus on the LTMA region until 2035, airports in other regions might feel neglected and this could create a two-tier modernisation process. It was concerned that focus on the LTMA might disproportionately affect business jets and training aircraft by delaying efficient lower airspace designs. It also queried whether London Oxford Airport could be considered as part of the LTMA cluster of airports.

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<sup>25</sup> See the Final Proposals at paragraphs 1.30 to 1.42.

- 1.16 NERL welcomed the CAA's proposal to recast the overall obligations on NERL on an "all reasonable endeavours" basis for providing the Airspace Design Service and Airspace Coordination Service. It also supported the CAA's commitment to:
- consider the impact of changes on NERL's resource requirements; and
  - where appropriate, consult on modifications to the Licence to address these issues.
- 1.17 On enforcement, NERL:
- welcomed clarification of Condition 5 that it would not be required to prioritise the Airspace Design Service over the Core Services; and
  - said that the CAA's exposition of its position on enforcement in the Final Proposals was useful for stakeholders considering the financial risk of penalties arising from a breach relating to the Airspace Design Service.
- 1.18 However, its main substantive concern remained that the enforcement risk was disproportionate. On that basis, it retained the strong view that:
- the Licence termination rights based on breach of the Airspace Design Service obligation should be confined to termination of the Airspace Design Service; and
  - clarification should be included in the Licence confirming that financial penalties for a breach in relation to the Airspace Design Service would be calculated only by reference to that service.
- 1.19 It also stated that it had "significant" concerns with the draft guidance for the Airspace Design Service and the Airspace Coordination Service. These are addressed in CAP 3161 and CAP 3162.<sup>26</sup>
- 1.20 Local noise groups and some individuals expressed concerns over the use of high-level obligations coupled with guidance, rather than "enforceable licence conditions". Their concerns included that other stakeholders did not represent the public interest or those of community and campaign groups.
- 1.21 Another stakeholder requested that, if the scope of the activities were to broaden to include emerging users, there should be a separate consultation on these matters.

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<sup>26</sup> CAP 3161: "Airspace modernisation: Outcome of the consultation on draft guidance for the UK Airspace Design and Coordination Services", available at [www.caa.co.uk/CAP3161](http://www.caa.co.uk/CAP3161); and CAP 3162: "Airspace Modernisation: Outcome of the consultation on draft requirements for the UK Airspace Coordination Service (UKACS) and associated guidance", available at [www.caa.co.uk/CAP3162](http://www.caa.co.uk/CAP3162).

## Our views

- 1.22 We remain of the view that the most effective approach will be that set out in the Final Proposals that the Licence should employ high-level obligations to require NERL to provide the Airspace Design Service and Airspace Coordination Service. This will allow NERL to develop appropriate airspace change proposals, having regard to the wider context created by the Government guidance to the CAA made under TA00 including government policy on the design of UK airspace. NERL will also have to have due regard to:
- Strategic Objectives set by the Secretary of State (which will also address the geographic scope of the respective new services); and
  - guidance issued by the CAA.
- The Licence also sets out commitments made by the CAA and Secretary of State to consult on changes to the Strategic Objectives and CAA guidance, and for the CAA to consider whether changes might have a material impact on NERL's resourcing.
- 1.23 While we note other stakeholders' comments on the nature of the licence obligations, we consider that these arrangements are appropriate given the need to balance clarity and flexibility outlined above.
- 1.24 On the geographic scope of the Airspace Design Service, we consider that our approach does not create an undue restriction on the way NERL will provide the Airspace Design Service and Airspace Coordination Service. It provides the ability for changes needed for the modernisation of the LTMA to be designed appropriately without being unnecessarily constrained by the precise geographic scope of the LTMA. We also note that the engagement requirements for the Airspace Design Service and the Airspace Change Process itself, provide for significant stakeholder engagement that will allow stakeholders to raise issues in relation to proposals for changes to airspace in the LTMA region.
- 1.25 We also consider that appropriate stakeholder engagement on changes to the Strategic Objectives and Guidance is needed, and that the consultation requirements we set out in the Final Proposals should provide sufficient input and protection for stakeholders in the event that changes were to be needed. Any significant changes to the arrangements that would require licence changes will, as a matter of course, require public consultation as required by TA00.
- 1.26 On enforcement:

- we note that changes to the way the Licence could be terminated are a matter for the Secretary of State in setting the “Terms” of the Licence. Nonetheless, given the position we have set out in the Initial Proposals and reiterated in the Final Proposals at paragraphs 1.30 to 1.36, we can still not envisage any credible scenario whereby delivery issues in relation to the Airspace Design Service would require us to take regulatory enforcement steps that would compromise NERL’s provision of core air traffic services; and
- for reasons set out in the Final Proposals we do not consider it appropriate to seek to further limit the scope of the CAA’s powers to issue financial penalties.

1.27 In this light, and for the reasons set out above, together with those set out in the Final Proposals referred to above, we consider that this approach provides a suitable set of obligations for the establishment of these services and do not consider that it would be appropriate to adopt an alternative approach.

## Final decision

1.28 Consistent with the approach set out in our Final Proposals, we have decided to modify the Licence to introduce obligations on NERL to use all reasonable endeavours to provide the Airspace Design Service and Airspace Coordination Service, having due regard to Strategic Objectives set by the Secretary of State and Guidance set by the CAA.

1.29 The text of the modifications we have decided to make, together with the reasons for and effects of those modifications, is set out in the statutory notice at Appendix B.

## Matters the Airspace Design Service should take into account

### Final Proposals

1.30 The Final Proposals<sup>27</sup> set out our view that the matters NERL will be required to take into account in providing the Airspace Design Service and the Airspace Coordination Service should:

- support NERL’s understanding of how it is to deliver against the proposed obligations in the Licence; and
- act as the “link” between Government policy and the expectations on NERL.

1.31 In addition to the Strategic Objectives issued by the Secretary of State and Guidance issued by the CAA, we said it would be appropriate for the Licence to require NERL to have due regard to:

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<sup>27</sup> See the Final Proposals at paragraphs 1.61 to 1.65.

- any Air Navigation Directions to the CAA made by the Secretary of State;
- Government guidance to the CAA 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.

1.32 We also proposed that NERL should have due regard to:

- the strategic delivery plan it would be required to develop and publish; and
- the advice of the Advisory Board it would be required to appoint, to assist NERL contribute to the objectives of the AMS as its work develops.

### Stakeholders' views

1.33 Aside from NERL, which agreed with our Final Proposals, stakeholders did not comment on these matters.

### Final decision

1.34 We have decided to maintain the position set out in the Final Proposals that the Licence should set out the policies listed in paragraphs 1.31 and 1.32 above as being matters to which NERL should have due regard in providing the Airspace Design Service and the Airspace Coordination Service.

1.35 The text of the modifications we have decided to make, together with the reasons for, and effects of, those modifications is set out in the statutory notice at Appendix B.

## Governance, the Advisory Board, delivery and monitoring

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### Final Proposals

1.36 Consistent with the approach of NERL, as provider of the Airspace Design Service, being the “guiding mind” responsible for the development of airspace change proposals for consideration in the Airspace Change Process under CAP 1616, we did not consider it appropriate for NERL to be unduly constrained by governance arrangements that would either:

- require NERL to seek the agreement of stakeholders at particular staging points in its work; or
- have the effect of giving stakeholders a direct or indirect power of veto over the approach to be adopted by NERL.

- 1.37 That said, we suggested there should be appropriate structures to provide advice and input from stakeholders. So, we proposed<sup>28</sup> that NERL should:
- be required to appoint an Advisory Board that would meet regularly and frequently enough to act as a forum to exchange views, ideas and information with and obtain advice from stakeholders, while not being a decision-making body; and
  - develop a structure, terms of reference and membership for the Advisory Board, consulting the CAA and Secretary of State on them.
- 1.38 We also proposed to require NERL 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.
- 1.39 On delivery, we did not consider that it would be appropriate for NERL to be required to deliver its airspace change proposals by a specific date, but that it should be required to maintain a strategic delivery plan<sup>29</sup> that would set out its plan for delivering:
- the airspace changes it will be responsible for through the Airspace Design Service; and
  - the airspace changes it will be responsible for coordinating through the Airspace Coordination Service.
- 1.40 We said that this would be to provide stakeholders with appropriate information on NERL's plans for delivery.
- 1.41 We also proposed that targeted information provision requirements<sup>30</sup> be included in the Licence to facilitate oversight.

## Stakeholders' views

- 1.42 British Airways supported the creation of the Advisory Board but was sceptical of its ability to act as a point for stakeholders to appropriately influence and provide input. It was also concerned at the lack of any:
- ability for any party to escalate exclusion from membership of the Advisory Board should NERL not grant it membership; or
  - requirement for stakeholders, especially commercial airlines, to be consulted on the establishment of the structure, Terms of Reference and membership of the Advisory Board.

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<sup>28</sup> See the Final Proposals at paragraphs 1.73 to 1.83.

<sup>29</sup> See the Final Proposals at paragraph 1.16 to 1.19 and 1.24.

<sup>30</sup> See the Final Proposals at paragraphs 1.80 and 1.82.

- 1.43 It wanted the co-sponsors to guarantee an appropriate proportion of membership for commercial airlines on the Advisory Board and for commercial operators to be far more integrated into the decision making and governance structures of the Airspace Design Service, Airspace Coordination Service and wider airspace modernisation boards and groups.
- 1.44 IATA welcomed the creation of the Advisory Board but remained concerned about imbalance in the governance model, as airlines would not have a formal decision-making role in setting or revising strategy, priorities, reviewing costs, validating benefits and assessing delivery performance.
- 1.45 London Oxford Airport said membership of the Advisory Board should include specific representation for smaller airports and general aviation / training sectors.
- 1.46 NERL agreed with our Final Proposals for licence changes in relation to governance and the Advisory Board. It also agreed with the proposal to include a specific obligation in the Licence to publish a strategic delivery plan.
- 1.47 Stakeholders did not comment directly on our proposal to introduce a targeted requirement to provide information.

## Our views

- 1.48 Having considered stakeholders' views, we remain of the view that, as provider of the Airspace Design Service, NERL should be the "guiding mind" responsible for the development of airspace change proposals for consideration in the Airspace Change Process under CAP 1616. We do not consider it appropriate to put in place strict governance arrangements requiring NERL to seek stakeholders' agreement or giving stakeholders any ability to veto NERL's approach.
- 1.49 Rather, we consider that the proposed arrangements balance stakeholders' concerns appropriately with the approach of giving NERL the responsibility and freedom to deliver.
- 1.50 As for the membership of the Advisory Board, the CAA's Guidance states that NERL should include a range of subject matter experts to help it succeed in modernising airspace in accordance with the objectives of the Airspace Modernisation Strategy in a timely manner. Membership should at least include the Ministry of Defence, subject matter experts and other representatives from airports and airlines.
- 1.51 We consider that this sets sufficiently clear expectations for the way that NERL should seek to constitute the Advisory Board, noting that different groups of stakeholders will inevitably have different, and possibly opposing, views on what the appropriate composition of the board, and its role, should be. In this light, we consider that the oversight we require NERL to obtain through consultation with

the DfT and CAA is sufficient to protect the spectrum of interests who may seek representation in the Advisory Board.

- 1.52 We continue to take the view that setting a date for delivery would not be appropriate, but that publication of a strategic delivery plan sets appropriate expectations for delivery. Matters relating to NERL's performance in delivering the Airspace Design Service and Airspace Coordination Service are for the CAA, as discussed above in relation to enforcement issues. That said, we note that the airspace modernisation arrangements already in place between the CAA and DfT will provide a clear route for NERL's performance to be monitored more broadly on an ongoing basis.
- 1.53 The information provision we proposed to make will appropriately support this and we have therefore decided to implement this provision.
- 1.54 The Guidance to which NERL must have due regard sets out more detail on the Advisory Board.

## Final decision

- 1.55 We consider the governance, Advisory Board, delivery and oversight arrangements set out in the Final Proposals are appropriate and we have decided to modify the Licence to implement them without amendment.
- 1.56 The text of the modifications we have decided to make, together with the reasons for, and effects of, those modifications is set out in the statutory notice at Appendix B.

## Relationships with stakeholders

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### Final Proposals

- 1.57 The Final Proposals<sup>31</sup> set out our view that it is important for NERL to be 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 responsibility to deliver. As discussed above, we sought to avoid putting in place strict governance arrangements that would require NERL to obtain stakeholders' agreement or give stakeholders a direct or indirect power of veto.
- 1.58 We considered it appropriate for NERL to be required to provide transparency to stakeholders and proposed to require NERL to develop and publish a stakeholder engagement plan that sets out written ways of working for its

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<sup>31</sup> See paragraphs 1.89 to 1.93.

approach to engaging with key stakeholders with an interest in how NERL is providing the Airspace Design Service and Airspace Coordination Service.

- 1.59 We considered it would be inappropriate for us to detail in the Licence what the stakeholder engagement plan should contain, as this would be inconsistent with our approach to setting a relatively high-level set of obligations on NERL. Instead, the detail of what NERL would be required to produce would be set out in Guidance issued by the CAA.
- 1.60 We also proposed a high-level obligation be placed on NERL 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. As NERL would be administering the Airspace Design Support Fund as directed, we did not consider there would be scope for NERL to discriminate in administering the Airspace Design Support Fund and, therefore, did not consider it necessary for the obligation to extend to that activity.

### Stakeholders' views

- 1.61 British Airways wanted greater detail on the governance, representation, roles and accountabilities of the varying industry groups in relation of the Airspace Design Service and Airspace Coordination Service.
- 1.62 London Oxford Airport suggested that NERL should be required to report on how previous design principles or stakeholder data from abandoned projects will be integrated into new airspace change proposals to ensure operational continuity and respect for past input.
- 1.63 Luton and District Association for the Control of Aircraft Noise (“LADACAN”) was concerned that the approach proposed would allow key design decisions to be taken within the Airspace Design Service, with meaningful public engagement occurring only later through the CAP 1616 process. So, it wanted consultation on designs as they were developed to avoid dissatisfaction if people felt their voices were not being heard.
- 1.64 It considered that communities should be treated as legitimate stakeholders in the airspace design framework, not merely consultees at the end of the process, so wanted strengthened transparency, engagement and governance obligations in the Licence.
- 1.65 The Gatwick Area Conservation Committee and Stop Low Flights from Luton made similar comments to LADACAN. Together with HarpendenSky, some individual respondents argued that, given the public nature of its work and the impact of it, there was a strong case for NERL to be subject to the Freedom of Information Act or equivalent statutory disclosure obligations when acting as the Airspace Design Service.

- 1.66 NERL agreed with our Final Proposals for licence changes on relationships with stakeholders. It had significant concerns with the content of the stakeholder engagement plan as proposed in the draft guidance. Our response document<sup>32</sup> explains our response to these concerns and any changes we have made in the final guidance.<sup>33</sup>
- 1.67 Cranborne Chase National Landscape identified the provisions of the Countryside and Rights of Way Act 2000 and emphasised the impact of the number and frequency of flights on natural National Landscapes.

## Our views

- 1.68 As explained in CAP 3156,<sup>34</sup> the fundamental aim of the proposals for the Airspace Design Service is to create a “guiding mind” to deliver the holistic, modernised airspace design envisaged by the Airspace Modernisation Strategy.
- 1.69 It will be for NERL to create that design and to propose airspace changes to implement it in accordance with the Airspace Change Process set out in CAP 1616, which includes formal stakeholder consultation and engagement through the processes designed specifically for that purpose.
- 1.70 Therefore, as our proposals to modify the Licence are designed to address the institutional arrangements for setting up the Airspace Design Service and Airspace Coordination Service to be provided by NERL, they are not designed, nor would it be appropriate for them, to add significant extra requirements (such as for public consultation on specific designs and trade-offs) into these arrangements. Such matters are properly addressed through the arrangements set out in the Airspace Change Process in CAP 1616.
- 1.71 As for environmental considerations, the arrangements we have designed will require NERL, in providing the Airspace Design Service, to have due regard to the matters required by the Air Navigation Directions and Air Navigation Guidance (as discussed above). We consider that our approach, therefore, addresses these matters appropriately.
- 1.72 In this light, we do not consider it appropriate to provide for detailed stakeholder engagement in the creation of designs as part of the regulatory arrangements provided for in the Licence. Taking this approach is also consistent with our approach for the requirements for NERL to have an Advisory Board, in that the

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<sup>32</sup> CAP 3161: “Airspace Modernisation: Outcome of the consultation on draft guidance for the UK Airspace Design and Coordination Services”, available at [www.caa.co.uk/CAP3161](http://www.caa.co.uk/CAP3161).

<sup>33</sup> CAP 3219: “Airspace Modernisation: Guidance for the UK Airspace Design and Coordination Services”, available at [www.caa.co.uk/CAP3219](http://www.caa.co.uk/CAP3219).

<sup>34</sup> CAP 3156: “Modernising the way we do airspace design – Third edition”, available at [www.caa.co.uk/CAP3156](http://www.caa.co.uk/CAP3156).

Advisory Board should not be a forum for the discussion of specific airspace designs. Arrangements that would have the effect of giving stakeholders a direct or indirect power of veto over the approach to be adopted would likely undermine NERL's ability to act in a non-discriminatory and objective way.

- 1.73 Similarly, we do not consider that it would be appropriate for NERL to have further transparency requirements placed on it, since the Airspace Change Process in CAP 1616 is designed to provide a transparent process for public consultation and decision making for specific airspace changes. In any event, the scope of the application of the Freedom of Information Act is a matter for Parliament, not the Licence.
- 1.74 A description of each of the relevant Airspace Modernisation Boards and Groups can be found on the CAA's website.<sup>35</sup>

## Final decision

- 1.75 Consistent with the approach set out in Final Proposals, we do not consider that it is appropriate to impose additional obligations for governance or transparency in the Licence, other than the requirements set out in our Final Proposals, including for NERL to appoint an Advisory Board, prepare a strategic delivery plan and publish a stakeholder engagement plan.
- 1.76 The text of the modifications we have decided to make, together with the reasons for, and effects of, those modifications is set out in the statutory notice at Appendix B.

## Administration of the Airspace Design Support Fund

### Final Proposals

- 1.77 For administering the Airspace Design Support Fund, we proposed<sup>36</sup> that:
- the DfT should determine the final eligibility criteria;
  - the DfT or CAA should decide whether the applications meet those eligibility criteria; and
  - NERL should be directed to distribute the funds, acting only to administer the Airspace Design Support Fund.
- 1.78 In this context, we noted that the document, "Draft UK Airspace Design Support Fund: Rules and Eligibility Criteria",<sup>37</sup> had been published as draft written

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<sup>35</sup> [AMS governance and progress reports | UK Civil Aviation Authority](#)

<sup>36</sup> See the Final Proposals at paragraphs 1.99 to 1.104.

<sup>37</sup> See [\[ARCHIVED CONTENT\] UK Airspace Design Support Fund rules and eligibility criteria - GOV.UK](#),

guidance for the eligibility and processes relating to the Airspace Design Support Fund. At that time, we were also in the process of conducting a subsidy control assessment.

- 1.79 We considered that these arrangements would provide 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 region.

## Stakeholders' views

- 1.80 British Airways and NERL supported the revised approach of having NERL administer the Airspace Support Fund. NERL wanted further engagement with CAA to understand better the CAA's expectations for its administration role.
- 1.81 easyJet wanted greater transparency on the rationale for NERL administering the Fund.
- 1.82 London Oxford Airport said that the 450,000 passenger threshold for eligibility for the Airspace Design Support Fund was an arbitrary metric that would exclude smaller airports that facilitate high-value business aviation and critical pilot training. It considered that the recent abandonment of its airspace change proposal was a result of a shifting regulatory landscape and that, as a smaller operation, it might require access to the Airspace Design Support Fund to restart this work.

## Our views

- 1.83 Having considered the comments we have received, we do not consider that they set out sufficient reasons for us to depart from the position set out in our Final Proposals. That said, in line with the overarching approach of the DfT setting policy and eligibility criteria rather than dealing with more “operational” issues in relation to the Airspace Design Support Fund, we think it would be appropriate to clarify the respective roles of the DfT and CAA. This allows the drafting of the Licence to be simplified so that it makes clear that NERL will administer the Airspace Design Support Fund as directed by the CAA alone. This should provide for clear accountability for each of:
- policy/eligibility setting (DfT);
  - decision making on particular funding requests (CAA); and
  - practical administration/distribution of funding (NERL).
- 1.84 As for the scope of and eligibility for the Airspace Design Support Fund, this is being set by the DfT. The Final Proposals specifically noted that the rules and

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which has since been superseded by [UK Airspace Design Support Fund rules and eligibility criteria - GOV.UK](#).

eligibility criteria for the Airspace Design Support Fund had been published in draft by DfT and encouraged stakeholders to submit any written comments to the DfT. We also made clear<sup>38</sup> that for responses to this consultation, the CAA will only take into account those elements of the responses that address the matters covered by this consultation. We also note that these matters are also too detailed to be addressed through the Licence. That said, we note that there is scope in the eligibility criteria for DfT to consider an airport could be eligible on an “exceptional” basis (see paragraph 18b). Airports looking to take advantage of this flexibility should engage with DfT.

- 1.85 As a result, we do not consider it appropriate to make any other changes to the Licence modifications set out in the Final Proposals.

## Final decision

- 1.86 Save for simplifying the drafting to make clear that NERL will administer the Airspace Design Support Fund as directed by the CAA alone, we have decided to implement the modifications set out in the Final Proposals. The text of the modifications we have decided to make, together with the reasons for, and effects of, those modifications is set out in the statutory notice at Appendix B.

## Role of ACOG

### Final Proposals

- 1.87 Our proposal<sup>39</sup> was to include in the Licence a new obligation on NERL to provide the Airspace Coordination Service to replace the coordination services currently carried out by ACOG<sup>40</sup> for strategically important interdependent airspace changes outside the LTMA. As such, these activities would be carried out in parallel with the operation of the Airspace Design Service.
- 1.88 In this light, we proposed to delete the existing licence Condition 10a that provides for the creation and operation of ACOG.

### Stakeholders’ views

- 1.89 British Airways supported the residual ACOG activities being taken over by the Airspace Coordination Service, but expressed some concern over repurposing the costs of ACOG to support the Airspace Coordination Service. It wanted a clear ring fence to be put in place between the Airspace Design Service and

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<sup>38</sup> See the Final Proposals at paragraphs 31, 32 and 1.100.

<sup>39</sup> See the Final Proposals at paragraphs 1.111 to 1.116.

<sup>40</sup> See [Airspace modernisation: Consultation on the requirements for a UK Airspace Coordination Service and associated guidance - Civil Aviation Authority - Citizen Space](#).

Airspace Coordination Service both operationally and financially to ensure transparency in delivery and costs.

- 1.90 IATA considered that the transition from ACOG to the Airspace Coordination Service presented significant risk of double counting, particularly where staff or activities were transferred without corresponding reductions in the NR23 cost base and requested a detailed transparency framework for cost reporting and a robust *ex post* efficiency review before NR28.
- 1.91 NERL supported the CAA's proposals to:
- remove the requirement in the Licence to maintain ACOG, as well as the removal of the masterplan acceptance criteria and assessment framework; and
  - replace this requirement with a relatively simple obligation to provide the Airspace Coordination Service coupled with an obligation for it to have due regard to guidance from CAA on how to provide the service.

## Our views

- 1.92 We have considered whether it would be proportionate or appropriate to place ring fencing arrangements between the Airspace Design Service and Airspace Coordination Service and have concluded that this would not be appropriate or proportionate to the risk identified by stakeholders. Such an approach could also undermine the complementary and efficient operation of both the Airspace Design Service and the Airspace Coordination Service by NERL.
- 1.93 Rather, as set out in the Final Proposals, we consider that it would be appropriate for ring fencing arrangements to be put in place between the Airspace Design Service and Airspace Coordination Service (taken together) and the rest of NERL's operations in the manner set out in the modifications we have decided to make to Condition 5 and discussed below. Taken together with the regulatory accounting arrangements in Condition 6 discussed below, this approach is both proportionate and sufficient to provide appropriate protection for the interests of customers and consumers.

## Final decision

- 1.94 Consistent with our Final Proposals we have decided that the appropriate approach is to modify the Licence to remove Condition 10a (Airspace modernisation) relating to ACOG in its entirety and replace it with new obligations to carry out the Airspace Coordination Service.
- 1.95 The text of the modifications we have decided to make, together with the reasons for and effects of those modifications, is set out in the statutory notice at Appendix B.

## Consequential modifications to the Licence and specific drafting issues

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### Final Proposals

- 1.96 The Final Proposals included<sup>41</sup> 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. Many of these build on the revised definitions we proposed for the terms "Permitted Purpose" and "Separate Business" so that they take account of the creation of the Airspace Design Service and Airspace Design Business.
- 1.97 We proposed modifications to:
- Condition 5 (Availability of resources and financial ringfencing) 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;
  - Condition 6 (Regulatory accounting requirements) to provide for 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) to extend the requirement for an intervention plan to cover the Airspace Design Service; and
  - extend the effect of Condition 9 (Prohibition of Cross-Subsidy), using the amended definition of "Permitted Purpose" referred to above, so that it would preclude cross-subsidies to or from the Airspace Design Business.

### Stakeholders' views

- 1.98 British Airways supported the proposed:
- additional accounting requirements under Condition 6 and Condition 7 to enable the separate, transparent assessment of the financial position of NERL's En Route, Oceanic and Airspace Design Service businesses; and
  - updating of the regulatory accounting guidelines to sufficiently and transparently address any transactions between NERL's business units, for example in the requirement for the use of simulators or resources.

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<sup>41</sup> See the Final Proposals at paragraphs 1.120 to 1.124 and paragraphs B52 to B59.

- 1.99 NERL provided the following specific comments on the text of the modifications we proposed:
- Condition 1: Interpretation and construction: It considered that inclusion of “and guidance” in the definition of Airspace Change Process is superfluous and potentially confusing. Part B already adequately requires NERL to “have due regard to guidance published by the CAA” in the Licence condition;
  - also in Condition 1, it considered that the definition of “Strategically Important Interdependent Airspace Change” did not make clear which body or bodies were empowered to determine whether an airspace change was Strategically Important, and what process if any they must follow before doing so; and
  - in the draft Condition 18: Provision of the Airspace Design Service and related activities - “UK En route Air Traffic Control Service”, it suggested clarifying the drafting to make clear that the UK En route Air Traffic Control Service included Core and Specified Services;
  - also in the draft Condition 18, asked whether the words “would deliver the objectives of the AMS” were necessary, given the subsequent specification that NERL must follow guidance in delivering the Airspace Design Service and queried whether this wording was appropriate given that each individual Airspace Design Service activity would deliver only in part, one or more of the AMS objectives, some of which would be delivered by other bodies, whereas the drafting implies a one to one match between current activities and achieving AMS outcomes; and
  - finally, in Condition 18, it wanted the non-discrimination obligation in Part D paragraph 22 to include a qualifier relevant and appropriate to NERL’s remit in relation to the Airspace Design Service and Airspace Coordination Service, proposing the following words be added: “after taking into account the need to maintain the most expeditious flow of air traffic as a whole without unreasonably delaying or diverting individual aircraft or such other criteria as the Licensee may apply from time to time with the approval of the CAA”. It considered that this would more explicitly allow the Airspace Design Service to act in the interests of the whole network.

## Our views

- 1.100 We consider that extending the regulatory accounting arrangements required by Condition 6 (Regulatory accounting requirements) to cover the new activities, will ensure appropriate transparency (including in relation to the activities formerly undertaken by ACOG) to address the concerns raised by IATA on these matters.
- 1.101 As for NERL’s specific drafting comments:

- we consider that the reference to guidance in the definition of “Airspace Change Process” is appropriate because both the procedures and guidance that constitute the CAP 1616 process are made by the CAA under a direction from the Secretary of State pursuant to section 66 TA00. As such, we do not consider that it would be appropriate to adopt NERL’s suggested change. However, for additional clarity, we have decided to change the word “process” to “procedures” in the definition, to better follow the wording of the relevant direction made by the Secretary of State under section 66 TA00. This change is not significant;
- we consider that the definition of Strategically Important Interdependent Airspace Change is appropriate. The current process for identifying such airspace changes is set out in CAP 2156a. The revised process for identifying such airspace changes is set out in CAP 3220,<sup>42</sup> which is the replacement of CAP 2156a, so can accurately be described as CAP 2156a as amended or replaced from time to time. This process provides for NERL continuously to *monitor* where in its view clusters of strategically important interdependent airspace changes should be established (or are no longer needed) and whether particular changes should be added to or removed from any clusters, for NERL to provide that *advice* to the CAA and DfT, and for the CAA and DfT to *determine* whether to accept that advice (thereby determining whether an airspace change is strategically important and interdependent). This definition and concept is not to be confused with the threshold for determining whether an airspace change proposal is in scope of the Secretary of State call in procedure (set out in draft air navigation directions on which the DfT consulted earlier this year). As a result, we do not consider that a change to this definition would be appropriate, save to replace the reference from CAP 2156a to CAP 3220 and to make it clear that such changes are those we identify by adding the words “by the CAA and the DfT” in the text of the definition. This change is not significant;

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<sup>42</sup> CAP 3220: “Airspace Modernisation: Requirements for the UK Airspace Coordination Service and associated guidance”, available at [www.caa.co.uk/CAP3220](http://www.caa.co.uk/CAP3220).

- we do not consider that it would be appropriate for Condition 18, Part A, paragraph 4 to be amended so that it requires NERL to undertake “business as usual” airspace changes in areas outside the area in which it provides the “UK En route Air Traffic Control Service”. The scope of this obligation has been carefully selected: extending it to cover the area for which NERL provides the “Core Services” and the “Specified Services” would significantly extend the scope of this obligation, for example, to cover not only the Oceanic airspace, but also the area in which it provides the London Approach Service. This would conflict with the geographic scope of the Airspace Design Service and, therefore, would not be appropriate. That said, the scope of the obligation as drafted does not preclude NERL carrying out such activities in the Oceanic area. So, we have decided to implement this modification unchanged;
- we do not consider it appropriate to remove the words “would deliver the objectives of the AMS” from Condition 18, Part A, paragraph 4. While we agree that all airspace change activities must be conducted to deliver the objectives of the AMS, removing this wording here would not help the reader to understand the purpose of the obligation. So, we have decided to implement this provision unchanged; and
- we do not consider that it would be appropriate to add the additional wording proposed by NERL to Condition 18, Part D, paragraph 22. The new condition we have decided to implement makes clear that NERL must have due regard to the Air Navigation Directions and Air Navigation Guidance. These draft Secretary of State materials have been carefully constructed to provide clarity as to what the Secretary of State wants airspace design to achieve. Inserting text in the Licence that purports to “clarify” the position is likely to have the opposite effect increasing project and delivery risk for airspace changes. We have decided to implement this modification unchanged.

## Final decision

1.102 We have decided to modify the Licence so that:

- Condition 5 (Availability of resources and financial ringfencing) secures that the Airspace Design Business will be appropriately resourced and kept separate from NERL’s other regulated activities;
- Condition 6 (Regulatory accounting requirements) provides for separate accounting information for the Airspace Design Business;
- Condition 7 (Requirement to maintain an intervention plan) extends the requirement for an intervention plan to cover the Airspace Design Business; and

- the effect of Condition 9 (Prohibition of Cross-Subsidy) is extended, using the amended definition of “Permitted Purpose” referred to above, so that it would preclude cover cross-subsidies to or from the Airspace Design Business.

1.103 We have also decided to make the small changes to the text we consulted on in our Final Proposals as discussed in paragraph 1.101 above. The text of the modifications we have decided to make, together with the reasons for and effects of those modifications, is set out in the statutory notice at Appendix B.

## Summary of our final decision in relation to Licence modifications

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1.104 Consistent with the approach set out in the Final Proposals the changes we have decided to make will remove the existing obligations in relation to ACOG in Condition 10a of the Licence and replace them with requirements for NERL:

- to provide the Airspace Design Service, the Airspace Coordination Service and administer the Airspace Support Fund alongside its “business as usual” airspace design activities;
- to have due regard to Strategic Objectives set by the Secretary of State and Guidance from the CAA;
- to have due regard to Government policy, as set out in the Air Navigation Directions, any national policy statement issued under the Planning Act 2008, and the Airspace Modernisation Strategy;
- to put in place an Advisory Board to obtain advice and assistance from stakeholders in delivering its new licence obligations;
- to carry out the Airspace Design Service and the Airspace Coordination Service in a non-discriminatory manner; and
- have in place strategic delivery and stakeholder engagement plans.

1.105 These provisions will be backed by targeted information provisions to facilitate oversight by the CAA and DfT. The text of the modifications we have decided to make, together with the reasons for and effects of those modifications, is set out in the statutory notice at Appendix B.

## CHAPTER 2

# Costs, form of charge control and charges

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## Introduction

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- 2.1 This chapter sets out our decision on the matters covered by chapter 2 of the Final Proposals and covers:
- the duration of the price control arrangements that will allow the recovery of the costs of the Airspace Design Service and Airspace Design Support Fund;
  - the expected costs of these 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.
- 2.2 We then set out the maximum average charges that NERL will be able to levy on its customers for these services for 2026 and 2027.
- 2.3 This chapter also addresses issues raised by stakeholders in response to the Final Proposals. To the extent that the reasons for the approach taken in the Final Proposals have not changed, we have adopted those reasons in support of this decision and have not repeated them here.
- 2.4 It should be read in conjunction with both:
- the relevant sections of the Final Proposals referred to below; and
  - the Notice setting out the modifications to the Licence that we have decided to make, which is set out at Appendix B.

## Duration of the price control

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### Final Proposals

- 2.5 We proposed to establish a short initial price control, aligned with the remainder of the NR23 period. We said that this would be the most appropriate and effective way of supporting the timely launch of the Airspace Design Service and Airspace Design Support Fund, including because it 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; and
- support interim arrangements for the NR28 price control review, in the light of our September 2025 statement<sup>43</sup> on the review's timing and the need to bridge the gap between the start of the period (January 2028) and when the final decision itself would take effect, later in the year.

2.6 At NR28, with the benefit of better information on how these activities work in practice, we would consider whether a more typical price control period would be appropriate, including to align with NERL's other price controls.

## Stakeholders' views

2.7 NERL agreed with a short initial price control period. It said it expected to make proposals on the longer-term costs of providing the Airspace Design Service and economic regulation framework as part of the NR28 price control review. Other stakeholders also supported, or did not object to, a short initial price control period.

## Our views

2.8 For the reasons set out above, and noting stakeholders' support for our proposal, we consider a short initial price control period to be the most appropriate and effective way of supporting the timely launch of the Airspace Design Service and Airspace Design Support Fund.

## Final decision

2.9 Our final decision is to have a short initial control period, aligned with the remainder of the NR23 period. We consider this decision to be consistent with our duties, for the reasons described above and in our Final Proposals.

2.10 This approach recognises the novelty of these activities and the impact this could have on the potential costs incurred and outcomes delivered. A short duration strikes an appropriate balance, providing time to consider how these activities work in practice and for NERL to develop the Airspace Design Service, but also the opportunity to review the arrangements and consider targets and incentives. It will also align the timing of review of these matters with our review of NERL's other regulated businesses, including at the upcoming NR28 review, which we consider will reduce the administrative burden on NERL and its customers going forward.

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<sup>43</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).

## Costs of new airspace design services

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### Final Proposals

- 2.11 In our Final Proposals, we reiterated our view that the Charge should only cover the incremental costs of providing the Airspace Design Service and administering the Airspace Design Support Fund, noting this approach would avoid the need to re-open the NR23 decision but would also provide transparency to stakeholders on the additional relevant costs. Importantly, we said any estimates of incremental costs would not include an allowance for the Airspace Coordination Service, as we anticipated the allowance already provided for ACOG in the NR23 decision could cover the costs of the Airspace Coordination Service for the remainder of the price control period, including any costs of the winding down of ACOG.
- 2.12 Our estimate of the incremental costs of providing the Airspace Design Service and administering the Airspace Design Support Fund for the remainder of the NR23 period was based on the medium scenario of the Egis estimates we commissioned as part of our Illustrative Proposals,<sup>44</sup> as we did not receive any additional evidence from NERL or other stakeholders that would suggest that an alternative baseline for these costs would be more appropriate. That said, we made some downward adjustments to reflect new information on the likely early costs of the Airspace Design Service and DfT's tighter parameters<sup>45</sup> in the draft Airspace Design Support Fund rules and eligibility criteria.
- 2.13 Our adjusted estimate of the combined costs of the Airspace Design Service and Airspace Design Support Fund was £31.6 million in 2024 prices, a decrease from our estimate in Initial Proposals (£52.1 million in 2024 prices). We adjusted our estimate downward to reflect:
- NERL's lower expectation for the Airspace Design Service and Airspace Design Fund costs for 2025, reflecting the delays to the setting up of these new arrangements that had arisen since our Initial Proposals; and
  - a lower estimate for the Airspace Design Support Fund over the remainder of NR23, taking account of the DfT's draft Airspace Design Support Fund rules and eligibility criteria.<sup>46</sup>

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<sup>44</sup> CAP 3063A: "Developing illustrative policy and costs to implement a new airspace design service and charge: Final report", available at [www.caa.co.uk/CAP3063A](http://www.caa.co.uk/CAP3063A).

<sup>45</sup> Notably the introduction of the maximum total of funding which an applicant may receive from the Airspace Design Support Fund being £1 million, irrespective of the number of funding claims submitted.

<sup>46</sup> See [\[ARCHIVED CONTENT\] UK Airspace Design Support Fund rules and eligibility criteria - GOV.UK](#), which has since been superseded by [UK Airspace Design Support Fund rules and eligibility criteria - GOV.UK](#).

- 2.14 We noted that the actual costs of providing these activities for the remainder of the NR23 period could be different from the estimates in our Final Proposals. However, any differences between forecast and actual costs and traffic would be trued-up in NR28 through a correction mechanism.
- 2.15 We also said that the costs of these activities for 2028 and beyond would be considered as part of the NR28 review and would be further developed by NERL in the context of its strategic delivery plan for the Airspace Design Service and NR28 business plan.

### Stakeholders' views

- 2.16 NERL said it could not provide updated cost estimates as it was still evaluating the likely scope of the Airspace Design Service and because other relevant airspace policy consultations were still ongoing. It also noted that if the pace of mobilisation was delayed, it said the incremental costs of the Airspace Design Service could be lower than the estimates in the CAA's Final Proposals. Nonetheless, it considered that the estimates in the CAA's Final Proposals were still appropriate for setting the Charge, given the proposed cost recovery framework would ultimately allow no more than actual costs incurred.
- 2.17 NERL also suggested that the incremental costs "incurred in the delivery of UKADS" should be determined in relation to the NR23 baseline for airspace change capital investment and ACOG activities.
- 2.18 easyJet requested greater transparency on the rationale for NERL administering the Airspace Design Support Fund and the incremental overheads involved, and how NERL intended to ensure these costs would be efficiently controlled.
- 2.19 British Airways said repurposing the NR23 ACOG allowance for the Airspace Coordination Service was a simple and proportionate solution but wanted to understand how the approach would take account of the difference in roles of ACOG and the Airspace Coordination Service, since the new role would be diminished. It asked for the Final Decision to provide clarity on any cost differences between the roles so that stakeholders could determine whether wholesale repurposing of the NR23 allowance was justified.
- 2.20 British Airways also said NERL should be required to include its working capital financing costs as a category in cost reporting, to support transparency and provide evidence to the CAA and stakeholders for the purpose of setting any future working capital allowances, and to minimise any risk of consequent windfall gains or losses.
- 2.21 IATA expressed concern that staff redeployed from NR23 to the new airspace design activities might be charged to the cost base twice, and that the ACOG allowance under NR23 might overlap with new funding. It requested a reconciliation of the ACOG and new activities' cost bases and confirmation that

no staff or project costs were included in both. More broadly, it asked for a detailed framework for cost reporting and a robust *ex post* efficiency review before NR28, with inefficient costs excluded from future baselines.

- 2.22 Airlines for America urged that the Charge be limited to incremental costs only, particularly given the significant and growing cost pressures already faced by airlines in the UK.

## Our views

- 2.23 We remain of the view that the cost estimated included in our Final Proposals and shown in Table 2.1 below are the best ones available to us and appropriate to be used to set the Charge for 2026 and 2027.

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

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

- 2.24 We agree with NERL and airlines that the incremental costs of providing the Airspace Design Service, Airspace Coordination Service and Airspace Design Support Fund should only be those that are not covered by NR23 baseline costs.
- 2.25 While we note NERL's view that mobilisation delays may lead to lower costs in NR23, we would still encourage NERL to avoid implementation delays given the importance of delivering airspace modernisation in a timely way. That said, if lower costs are incurred in NR23, they will be reflected in lower charges in NR28.
- 2.26 Furthermore, we remain of the view that 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 provide the necessary transparency and accountability requested by stakeholders.

## Final decision

- 2.27 Our final decision 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.

- 2.28 As we have not received additional evidence from NERL or other stakeholders that suggests an alternative baseline for those costs, we have decided to use the cost forecasts included in our Final Proposals. Given the level of cost uncertainty that remains, we have retained the proposal to introduce cost pass-through arrangements, as discussed below.
- 2.29 We consider that adopting these costs for the setting of the Charge (in combination with the correction mechanism discussed below) is consistent with our statutory duties. It reflects the best information available to us and will translate into a Charge that is both reasonable and no higher than necessary, in the interest of NERL's customers and consumers. Additionally, if actual costs end up being less than estimated, the difference will be returned via the correction mechanism to those paying the Charge. This approach is also consistent with our duty to ensure NERL will not find it unduly difficult to finance its licensed activities.

## Approach to cost recovery, incentives and early costs

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### Final Proposals

- 2.30 Our Final Proposals proposed adopting a cost pass-through approach during the remainder of NR23, with the introduction of a correction mechanism at NR28 to take account of any over- or under-recoveries by NERL during the NR23 period. We also said any efficient costs incurred before the Licence modifications had taken effect would be recoverable. We considered that, together, these proposals would provide NERL with sufficient certainty and confidence to stand up the Airspace Design Service as quickly as possible while also taking account of ongoing uncertainty around the costs of these activities.
- 2.31 The cost pass-through approach would mean NERL could recover all appropriate and efficiently incurred incremental costs, including those incurred by NERL in standing up the Airspace Design Service in advance of licence modifications taking effect. This would provide some flexibility and, in relation to the Airspace Design Support Fund specifically, recognise that NERL would only be collecting and administering the funds.
- 2.32 The proposed correction mechanism<sup>47</sup> would operate on a two-year lag and, through charges recovered from, or returned to, airspace users in year t, account for any differences between forecast and actual costs and traffic in year t-2. This would:

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<sup>47</sup> This mechanism would be separate from other correction mechanisms for NERL's other price controls in the Licence.

- ensure NERL would 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; and
- in addition to the cost pass-through proposal, recognise the uncertainty surrounding cost levels and the nature of setting a charge based on forecast rather than actual traffic volumes.

2.33 We did not propose introducing any new delivery incentives for NERL in the context of a short initial price control, as we considered that the combination of our other proposals<sup>48</sup> should mitigate concerns about NERL double counting or misallocating costs across its businesses.

2.34 We also reaffirmed that, in line with our statutory duties to promote economy and efficiency on the part of the licensee we would consider carrying out an *ex post* assessment of costs if they were materially greater than estimated or if there was evidence of inappropriate cost allocation. If costs were found to be demonstrably inefficient or inappropriately allocated, we could disallow the recovery of those costs through changes to future allowances.

### Stakeholders' views

2.35 Airlines for America said cost recovery must be carefully calibrated and there must be appropriate reporting requirements to ensure efficiency, transparency and value for money for airspace users. It also encouraged the CAA to ensure the correction mechanism was designed to address any inefficiencies or cost overruns identified during the initial price control period.

2.36 NERL supported cost pass-through for the remainder of the NR23 period with a correction mechanism at NR28. It recognised the CAA's proposals regarding *ex post* assessments in the Final Proposals aligned with some of its duties but encouraged the CAA to adopt a fair and proportionate approach to any cost assessment and subsequent disallowance.

2.37 NERL said that if there were delays to mobilisation and reduced expenditure in 2026 and 2027, it was possible the correction mechanism could result in a negative unit rate in the early years of NR28. To mitigate this, it considered that the charging formulae should include a nil limit, with unrebated amounts rolled into future charges.

2.38 British Airways said it supported cost pass-through for the remainder of the NR23 period, although noted it diminished incentives for cost efficiency and that this needed to be addressed through stronger safeguards. Further, it said it would be appropriate to move to a determined cost approach at NR28, in line

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<sup>48</sup> See paragraph 2.40 of Final Proposals.

with NERL's other regulated businesses, to provide stronger efficiency incentives for NERL.

- 2.39 IATA supported the inclusion of a robust *ex post* efficiency review before NR28, with inefficient costs excluded from future baselines.

### Our views

- 2.40 We note the points NERL has made in relation to the *ex post* assessment of costs and remain of the view that such an approach is consistent with both the interests of consumers and the promotion of economy and efficiency.
- 2.41 The introduction of a correction mechanism at NR28 should ensure that NERL does not benefit from efficiency improvements outside of its control or if the pace of mobilisation is slower than anticipated. A correction mechanism also accommodates the uncertainty in the level of cost estimates for the Airspace Design Service.
- 2.42 We consider that there is merit in avoiding circumstances whereby the Charge would be negative in NR28 and for such amounts to be rolled forward in future Charges. The precise mechanisms for NR28 charging and avoiding any undue changes in charging levels can be further considered in the context of NR28.

### Final decision

- 2.43 For the reasons set out above our final decision is to adopt a cost pass-through approach during the remainder of NR23, with the introduction of a correction mechanism at NR28 that trues up any revenue differences arising because of differences between forecast and actual costs and traffic, as well as inflation. The precise final form of this correction mechanism will be finalised as part of NR28; however, we have included more information on the proposed mechanism at Appendix C. In line with our Final 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

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### Final Proposals

- 2.44 Our Final Proposals on the recovery of costs were that an opex with margin approach should be adopted, with an operating margin of 2% for the remainder of NR23.
- 2.45 This approach would treat all costs as opex and allow for the costs to be recovered broadly in the period they would be incurred. The operating margin would have the dual purpose of:

- acting as an economic inducement for NERL to undertake the new activities; and
- recognising the modest additional delivery risks NERL would be likely to incur by undertaking the new activities.

2.46 We noted that our approach to estimating the appropriate margin was high-level, but this was a proportionate approach, given the relatively small magnitude of costs involved. Also, that we intended to review these matters further at NR28, when we would have better information on how these activities work in practice and are able to consider them in the context of NERL's wider regulatory arrangements.

## Stakeholders' views

### Opex with margin approach

- 2.47 NERL supported the allowance for opex plus a margin approach for the remainder of the NR23 period. It said it would make proposals for the profile of cost recovery over time and return on costs in its plan for NR28. In this context it said that its previous comments about the validity of capitalisation of costs in the longer term would remain valid and that the CAA argument regarding the trade-off between complexity and convenience in the short-term would no longer be relevant.
- 2.48 NERL also noted that the spreadsheet model (CAP 3164A)<sup>49</sup> calculated an opex mark-up rather than an operating margin. It said that the opex mark-up approach would lead to a small under-recovery in percentage and absolute terms.
- 2.49 British Airways said it would be appropriate to consider the merits of a regulatory asset base ("RAB") based approach<sup>50</sup> as part of the NR28 review.

### Operating margin

- 2.50 NERL said the 2% operating margin is acceptable, given further clarity provided on scope, enforcement risk and financial penalties.
- 2.51 British Airways, easyJet and IATA disagreed with the 2% margin, saying:
- the delivery risks were minimal or modest. IATA specifically said the combination of proposals created a risk-free environment;

<sup>49</sup> CAP 3164A: The spreadsheet model accompanying CAP 3164, "Economic Regulation of NERL: Final proposals for modifying the Licence to support the implementation of a UK Airspace Design Service", available at [www.caa.co.uk/CAP3164](http://www.caa.co.uk/CAP3164).

<sup>50</sup> See paragraphs 5.43 to 5.47 of the Initial Proposals and paragraph 2.44 of the Final Proposals for more information on what a RAB-based approach means.

- that providing a margin to a regulated monopoly should not be required and that it weakened cost efficiency incentives and distorted delivery priorities across NERL's regulated businesses; and
- that 2% was an arbitrary number, and the calculation was not well-evidenced. BA also said it was inappropriate to 'aim up' in estimating the margin and provide anything over-and-above a working capital amount.

2.52 British Airways also said that the approach to Charge collection had not yet been consulted on with stakeholders, but if it were to be via Eurocontrol's Central Route Charges Office ("CRCO"), then the CAA should consider maintaining consistency between the working capital approach (including the timing basis for collecting charges) for this and NERL's other regulated activities, including in respect of the CAA's international obligations..

2.53 IATA suggested the removal of the operating margin.

## Our views

2.54 Our view remains that the opex with margin approach is appropriate for the remainder of the NR23 period.

2.55 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). The margin also acts as an economic inducement to undertake the new activities, something that any commercial entity would expect. NERL's current weighted average cost of capital was set at the start of the NR23 period and based on our view of the required activities and risks at that time and therefore does not reflect the impact of standing up the Airspace Design Service.

2.56 We have taken a high-level and proportionate approach to establishing the 2% margin, as set out in paragraphs 2.56 to 2.62 of our Final Proposals, which we consider appropriate in the light of the relatively modest materiality of these adjustments. We intend to review these matters further in the context of NR28, when we anticipate having better information on how these activities will work in practice, and in the context of NERL's wider regulatory arrangements.

2.57 Alongside this final decision we publish a spreadsheet model<sup>51</sup> that shows the effect of a 2% operating margin (rather than a 2% mark-up). It shows that, on the basis of the estimated costs in Table 2.1, a 2% operating margin represents, in 2024 prices, £644,000 over 2026 and 2027 (rather than £631,000 on a mark-up basis). If, as NERL expects, the estimated costs in Table 2.1 turn out to be lower

<sup>51</sup> CAP 3225A: The spreadsheet model accompanying CAP 3225, "Economic Regulation of NERL: Decision modifying the Licence to support the implementation of a UK Airspace Design Service", available at [www.caa.co.uk/CAP3225](http://www.caa.co.uk/CAP3225).

than forecast, some of this margin would be returned to airspace users in NR28 through the proposed correction mechanism.

## Final decision

2.58 Our final decision is to adopt an opex with margin approach, with an operating margin of 2% for the remainder of NR23. We consider this decision to be consistent with our statutory duties and a relatively simple short-term arrangement that will support delivery of important airspace design priorities for the benefit of consumers.

## Charge design

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### Final Proposals

2.59 Our Final Proposals were that:

- the Charge should be levied on airspace users in receipt of en route air traffic services in UK airspace on a “per service unit” basis. And, consistently with NERL’s main price control, that military and other users that do not pay the en route charge, would be excluded from paying the Charge;
- this was appropriate in the short term, given the work of the Airspace Design Service and Airspace Design Support Fund would initially focus on airspace primarily used by, and to the benefit of, commercial airlines and their customers;
- levying the Charge in this way would reasonably target the main beneficiaries and benefits from being well-established and understood by stakeholders, avoiding the need to develop a new basis for the Charge which could be disproportionate and potentially lead to delays; and
- NERL should, in consultation with airspace users, determine the most efficient and effective way of collecting the Charge.

2.60 We also said that if the scope of the Airspace Design Service broadens in the 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.

### Stakeholders’ views

2.61 Airlines for America said the Charge must be assessed within the broader charging environment for airlines and its cumulative impact considered, since airlines face other charges (including air passenger duties). It said any new levy should be clearly justified, fairly distributed and deliver tangible benefits to airspace users.

- 2.62 IATA said that under the CAA's proposals, most airspace changes related to airport-centric, lower airspace changes and that commercial airlines, including those overflying and not serving these airports, would derive minimal or no direct benefit from the changes yet be required to fund most of the costs through the Charge. It said this was neither equitable nor compliant with ICAO charging principles, Article 15 of the Chicago Convention or the Eurocontrol en route rate setting principles. It requested that the CAA:
- reallocate costs so that each user group pays for the services from which it benefits, and to ensure that military, business and general aviation and emerging users contribute appropriately; and
  - publish a transparent mapping of airspace change proposals to beneficiaries, and to adjust cost allocations accordingly.
- 2.63 IATA said that military and exempt flights not paying the Charge, and their costs being "grossed up" onto chargeable users, contradicts Eurocontrol charging guidance, which requires States to fund the costs of exempted flights.
- 2.64 Drone Alliance Europe agreed with airspace change proposals aimed at facilitating beyond visual line of sight (commonly referred to as "BVLOS") unmanned aircraft systems being out of scope in the short-term charging structure. It requested that, if the CAA later considers including these within the charging framework, a separate consultation be conducted.
- 2.65 Duxford Airfield was supportive of general aviation users being exempt from paying the Charge.
- 2.66 British Airways considered that collecting the Charge via CRCO would be a suitable approach, but it was looking forward to engaging with NERL to agree an appropriate solution. IATA also supported a per service unit charge collected via CRCO provided the allocation issues highlighted above are resolved.

## Our views

- 2.67 The issues raised by stakeholders largely mirrored those provided in response to our previous consultation and which were considered in developing our Final Proposals.
- 2.68 We continue to consider that levying the Charge on airspace users in receipt of en route air traffic services in UK airspace remains the most appropriate and proportionate approach, taking account of international charging principles.
- 2.69 Levying the Charge in this way reflects that the initial focus of the Airspace Design Service, and the eligibility criteria of the Airspace Design Support Fund, relates to re-designing airspace primarily used by, and delivering benefits to, commercial airlines and their customers. For example, NERL, as the Airspace Design Service provider, will initially address the complex London airspace

(including upper airspace), where delays often propagate across the rest of the UK network. Improved design, enabling updated technology to be incorporated (such as performance-based navigation), is expected to enhance en route performance across the whole UK network.

- 2.70 The Charge is non-discriminatory and we consider that it would be inequitable to require only those airlines which use specific airports to pay for these services, given the wider benefits to the system resulting from these airspace modernisation activities. Furthermore, based on the Eurocontrol CRCO flight data for 2024, we note most of the costs will be met by airlines flying in and out of UK airports and that most airlines overflying the UK also fly to and from UK airports.
- 2.71 We also continue to consider that it remains appropriate for military and other civil and general aviation users to be exempt from paying the Charge because, as we noted in paragraphs 2.77 to 2.79 of the Final Proposals, 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.
- 2.72 As we noted in paragraph 2.80 of the Final Proposals, 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 likely to collect the Charge directly, rather than through a third party (such as CRCO), 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 decision

- 2.73 Our final decision is therefore consistent with the Final Proposals that:
- the Charge is to be 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.
- 2.74 For the reasons above, we consider this decision to be in line with our statutory duties as it will help NERL to stand up the Airspace Design Service as quickly as possible, using a well-understood and existing charging basis. In turn, this will allow airspace users to more quickly realise the benefits of airspace modernisation.

## Charges for 2026 and 2027

### Final Proposals

2.75 Our Final Proposals focused on the charges for 2026 and 2027 only, as charges for 2028 onwards will be addressed through the NR28 review. Based on the cost estimates in the Final Proposals and using the opex-based approach, the 2% operating margin proposed, and a set of traffic and inflation assumptions, we calculated proposed charges, in 2024 prices, to be £1.02 per service unit for 2026 and £1.47 per service unit for 2027.

### Stakeholders' views

2.76 The comments from stakeholders that relate to the levels of these charges, such as airline views of the operating margin and NERL's comments on the possibility of a negative unit rate in NR28, have been summarised and dealt with in the sections above.

### Updated charges for 2026 and 2027

2.77 Consistent with the approach we took for Final Proposals, our final decision also focused 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 and using the opex-based approach and 2% margin previously described, we have updated the calculation of the charges that will apply in 2026 and 2027, using the assumptions in Table 2.2 below. We have continued to use the Autumn 2025 traffic forecast from Eurocontrol, and we have used the Office for Budget Responsibility's Autumn 2025 forecasts of inflation, used to set the charge control condition.

**Table 2.2: Key inputs and assumptions to model the 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>52</sup>	26,090
Percentage difference between TSUs and Chargeable Service Units ("CSUs"), based on 2024 data	1.24%
Operating margin	2%

<sup>52</sup> CAA analysis of [EUROCONTROL Forecast Update 2025-2031 - Autumn Update](#).

- 2.78 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 for this, 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>53</sup>
- 2.79 Table 2.3 shows the average charge per service unit over the remainder of the NR23 period (2026 and 2027). To provide context for the relative magnitude of these 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. The licence modification provides for the introduction of the per service unit charge.

**Table 2.3: Costs and average 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	0.64
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>Charge per service unit (£)</b>	<b>1.02</b>	<b>1.47</b>	<b>1.25</b>
Illustrative Charge per flight (£) <sup>54</sup>	5.12	7.42	6.28
Illustrative Charge per passenger (£) <sup>55</sup>	0.04	0.06	0.05
Illustrative Charge as % of 2024 UK en route charge <sup>56</sup>	1.36%	1.96%	1.66%

Source: Spreadsheet model accompanying this decision, available at [www.caa.co.uk/CAP3225A](http://www.caa.co.uk/CAP3225A)

- 2.80 It should be noted that the charges that will be borne ultimately by airspace users will depend on the actual costs of providing the Airspace Design Service, and

<sup>53</sup> CAA analysis of STATFOR Spring 2025 forecasts and CRCO data.

<sup>54</sup> Using flight forecasts for the UK from [EUROCONTROL Forecast Update 2025-2031 - Autumn Update](#).

<sup>55</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>56</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.

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

## Final decision

2.81 Our final decision is to implement the maximum average charges above in a new Charge control condition. The new Charge control condition, as well as the reasons for and effects of the modification to the Licence, are shown at the end of Appendix B.

## Summary of final decision in relation to costs, form of charge control and charges

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- 2.82 The key aspects of this decision that relate to costs, the form of charge control and charges that NERL should levy are that:
- the new Charge should 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 will apply for the remainder of the NR23 period;
  - a cost pass-through mechanism will be adopted, which will provide a true-up for charges made in the initial period, such that actual costs and associated operating margin of the Airspace Design Service and Airspace Design Support Fund will be recovered from charges;
  - the initial price control period should be relatively short and aligned with the remainder of the NR23 period;
  - a margin of 2% will be applied to the base costs, reflecting the additional risks to NERL for undertaking this additional economic activity and an allowance for its working capital; and
  - the Charge will 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.

## 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>57</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>58</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;
  - 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 guidance has been given to the CAA by the Secretary of State under s.2(2)(e) TA00;
- 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>57</sup> See section 98 TA00 for the definition of “air traffic services”: [Transport Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

<sup>58</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>59</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>60</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>59</sup> See section 8 TA00: [Transport Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

<sup>60</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

# Notice under section 11A(5) TA00 of the Licence modifications we have decided to make

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## Introduction and context

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- B1 This Appendix constitutes Notice under section 11A(5) TA00 of the modifications that the CAA has decided to make to the Licence to support the implementation of an Airspace Design Service, Airspace Coordination Service, Airspace Design Support Fund and Airspace Design Charge.
- B2 This notice follows on from the notice under section 11A(1) TA00 published by the CAA on 9 December 2025 that set out our proposals to modify the Licence in relation to these matters. We have not made any significant changes to the drafting of these modifications since we published that notice alongside our Final Proposals. However, as discussed in chapters 1 and 2 and further below, we have made minor changes to the text, including to simplify drafting, improve clarity and update references to guidance documents.
- B3 The licence modifications we have decided to make 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 charges) are provided to indicate where further relevant supporting materials on the reasons for and effects of these modifications are to be found.
- B4 To the extent that:
- the reasons for and effects of the proposed modifications; and
  - our exposition of how we have taken account of the representations made to the notice we published on 9 December 2025
- are set out in those chapters of this consultation and or the Final Proposals, those matters (and the supporting materials in the Final Proposals referred to in them) are deemed to be incorporated in this Notice.
- B5 Subject to paragraphs 6 to 8 of Schedule A1 (Appeals under section 19A) TA00, the modifications set out in this Notice will have effect from **6 May 2026**.
- B6 As discussed at chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), the modifications set out below are designed to:

- create NERL's obligations to provide the Airspace Design Service and Airspace Coordination Service;
- require NERL to administer the Airspace Design Support Fund; and
- address any consequential modifications required to other conditions of the Licence.

## Modifications to Condition 1 (Interpretation and construction)

### New and modified definitions

B7 To support the modifications we have decided to make, we have decided:

- to insert new defined terms in the Licence to support
  - (i) the creation of the new obligations that implement the changes to the approach to developing airspace changes discussed in this decision; as well as
  - (ii) the necessary consequential amendments to other conditions; and
- to modify existing defined terms to support the consequential changes to the Licence which are required as a result.

B8 We have decided to implement these changes by modifying 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), we have decided to modify the Licence to insert a new condition into the Licence to require NERL to provide the Airspace Design Service.

B10 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 replace activities currently carried out by ACOG under Condition 10a (Airspace modernisation) under CAP 2156a/b for those areas where NERL is not required to provide the Airspace Design Service; and
- administer the Airspace Design Support Fund as directed by the CAA.

- B11 We have decided to support this condition by inserting into Condition 1 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”.
- B12 The modifications we have decided to make to implement these definitions are set out in turn below.

### Definition of Airspace Change Process

- B13 In order to support the new obligation on NERL to provide the Airspace Design Service, we have decided to modify the Licence to insert a definition of “Airspace Change Process”. The airspace change process and guidance in question is set out in CAP 1616, but to “future proof” the definition, we have decided to define this term by reference to the underlying legal provisions which give rise to CAP 1616. More accurately to reflect the wording of the relevant legislation, we have updated the word “process” to “procedures in this definition from that set out in the notice accompanying the Final Proposals. This change is not significant.
- B14 To effect this, we have decided to modify the Licence by inserting the following definition in Condition 1 after the definition of “Airfield Service”:
- “Airspace Change Process” means the procedures 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).
- B15 We have decided to modify Condition 1 of the Licence to insert a new definition of “Airspace Coordination Service” that covers the activities to be undertaken by NERL after Condition 10a (Airspace modernisation) of the Licence is removed (meaning the obligation to create ACOG as an separate unit is thereby

removed). As with the current obligation set out in Condition 10a (which we have decided to delete from the Licence in its entirety), 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.

B16 To effect this, we have decided to modify the Licence by inserting the following definition in Condition 1 after the definition of “Airspace Change Process”.

B17 In accordance with the comments we made in the Final Proposals, we have updated the reference to CAP 2156a/b used for the Final Proposals to the replacement publication, CAP 3220. We do not consider that this change from the Final Proposals is significant.

**“Airspace Coordination Service” means carrying out the activities set out in CAP 3220, as amended, revised or replaced by the CAA from time to time;**

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

B18 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 this decision, we have decided 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.

B19 This definition also supports ensuring that the consequential amendments we have decided 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 UK and Oceanic En route activities.

B20 To effect this, we have decided 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;
- (iii) the provision of the Airspace Coordination Service; and
- (iv) the administration of the Airspace Design Support Fund.

### Definition of “Airspace Design Service”

B21 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 have decided to define the Airspace Design Service by reference to relevant sections of TA00 to ensure that these provisions are aligned.

B22 For the reasons set out in Appendix B, paragraphs B22 and B23 of the Final Proposals (which are deemed to be incorporated in this Notice), we have decided to set 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. The expectations on NERL in relation to the geographic scope of the Airspace Design Service in the context of the Strategic Objectives set by the CAA are discussed in more detail in chapter 1.

B23 In this light, we have decided 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 containing at least one Strategically Important Interdependent Airspace Change.**

### Definition of “AMS”

B24 To support the new obligations on NERL in relation to the Airspace Design Business, we have decided to define the Airspace Modernisation Strategy, or “AMS” as it is known. As the Government has consulted on changes to The Civil Aviation Authority (Air Navigation) Directions 2023, we consider it preferable to refer to the underlying statutory power giving rise to those Directions rather than the Directions themselves.<sup>61</sup> We do not consider this change from the Final Proposals to be significant. To effect this, we have decided 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 Directions given by the Secretary of State to the CAA under s66 and 68 TA00 (as amended, revised or replaced from time to time).**

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<sup>61</sup> The Civil Aviation Authority (Air Navigation) Directions 2023 at paragraph 2 currently 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>.

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

- B25 The Licence also needs to make clear that the scope of the role of the Airspace Design Service is limited to clusters that include a “strategically important airspace change proposal”, hence we have decided to modify the Licence to insert a definition of “Strategically Important Interdependent Airspace Change”. Because 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), this definition needs to retain flexibility.
- B26 We have decided to achieve this by making clear where the process is to be found for identifying potentially Strategically Important Interdependent Airspace Changes (an activity that NERL will carry out as one of the “replacement” functions of ACOG and currently required pursuant to Condition 10a (Airspace modernisation), which, as noted above, we have decided to delete from the Licence), which also requires NERL to advise the CAA and for the CAA to make a determination after considering NERL’s advice.
- B27 In accordance with the comments we made in the Final Proposals, we have updated the reference to CAP 2156a/b used for the Final Proposals to the replacement publication, CAP 3220. We do not consider that this change from the Final Proposals is significant. As discussed in chapter 1, we have also clarified this by making clear that the determination is made by the CAA and the DfT.
- B28 To effect this, we have decided 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 by the CAA and the DfT to be strategically important and interdependent with at least one other proposal for airspace change in accordance with CAP 3220 as amended or replaced by the CAA from time to time.**

### Modified definitions

- B29 For the reasons set out in the Final Proposals, to support the consequential modifications that we have decided 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 have decided 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 have decided to make to the Licence**

B30 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 UK and Oceanic en route businesses. We consider that the drafting will be clearer if the new definition of “Airspace Design Business” is used to implement this, rather than by referring to the individual elements of the new obligation we have decided to insert in the Licence in relation to airspace change (discussed further below).

B31 To effect this, we have decided 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**

- B32 As discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service), we have decided to modify the Licence to insert a new condition in the Licence to require NERL to provide the Airspace Design Service, the replacement functions currently carried out by ACOG (that is, what is to be the Airspace Coordination Service) and administer the Airspace Design Support Fund. This new condition will also require NERL to carry out its “business as usual” airspace change activities currently referred to in Condition 10a (Airspace modernisation). So, we have decided to modify Condition 18 to delete the words “[not used intentionally left blank]” and insert the text set out below.
- B33 At the same time, we have decided to delete Condition 10a (Airspace modernisation) in its entirety.
- B34 The condition we have decided 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.
- B35 Part A, sets out obligations for NERL to carry out each of the activities (where applicable, defined above) that the condition covers. So,
- Paragraph 3 requires 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; and
  - Paragraph 7 requires NERL to develop its business infrastructure to support these activities.
- B36 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 from time to time and set out in CAP 3219.

B37 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 our policy that the CAA will consult on changes to the regulatory arrangements for NERL if material changes to the resourcing requirements of NERL arise.

B38 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 2008;
- 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 advice of the Advisory Board, which NERL will be required to appoint (see below).

B39 The process set out in CAP 1616 applies to 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 inevitably be required to address these matters as part of its preparation of any airspace change proposals, in the same way as any other sponsor of airspace changes.

B40 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, submit it to the CAA and Secretary of State for their approval of 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 guidance published by the CAA as CAP 3219.

- B41 The governance obligations we have decided to make and which are 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.
- B42 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.
- B43 Further detail is to be worked out by NERL in accordance with the guidance set out in CAP 3219.
- B44 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;
  - the requirements for stakeholder engagement on these new services, discussed further below; and
  - stakeholder consultation that forms part of the airspace change process in CAP 1616.
- B45 Part C concludes with a targeted obligation for NERL to provide the CAA and DfT with information to enable them to oversee its performance and its progress in modernising UK airspace.
- B46 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.
- B47 This sits alongside the approach that is required by the 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>62</sup>

B48 To effect the above, we have decided to modify the Licence to delete "[not used intentionally left blank]" at Condition 18 and insert the text set out below in red.

### **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;
  - (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

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<sup>62</sup> See [www.caa.co.uk/CAP3129](http://www.caa.co.uk/CAP3129).

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.
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:
  - (a) the appointment (and any subsequent replacement) of the head of the Airspace Design Business; and
  - (b) any material changes to the operation of the Airspace Design Business.
16. 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.
17. 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.
18. 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.
19. 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**

20. 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.
21. 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**

- B49 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.
- B50 We have decided that this approach should be effected by making appropriate use of the defined term “Airspace Design Business” discussed above.

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

- B51 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).

B52 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.

B53 To address NERL's concerns over the clarity of paragraph 2 of Condition 5, we have decided 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.

B54 The further modifications we have decided to make are set out below and are to insert appropriate references to the "Airspace Design Business" into the Condition. Provisions that we have not decided to modify have not been reproduced.

## Modified Condition 5

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

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- B55 To ensure appropriate transparency and cost reporting in relation to the new as well as the activities carried out by NERL, we have decided 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 will 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 charges).
- B56 To effect this, we have decided 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).

### Condition 6: Regulatory accounting requirements

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:

- (b) the appropriateness of any amounts referred to in paragraphs 5(b)(i) and 5(b)(ii) of this Condition;
  - (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

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B57 For the reasons discussed in chapter 1 (Licence modifications to implement the creation of the Airspace Design Service) of the Final Proposals, we have decided to extend the scope of the intervention plan that NERL is required to produce to cover the Airspace Design Business. We have decided to effect this by modifying Condition 7 in the manner set out below.

### Condition 7: Requirement to maintain an intervention plan

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

- B58 For the reasons discussed in chapter 2 (Costs, form of charge control, and charges), we have decided to modify the Licence to insert a new condition to introduce the new Airspace Design Charge and set its maximum permitted average level. This new condition is substantively the same as set out in our Final Proposals, apart from minor updates to the values of the FDCAD<sub>t</sub> term.
- B59 The effect of this will be 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 will also enable NERL to recover in 2026 the early costs incurred in 2025, as well as all the forecast costs for 2026 and 2027, even if the new Charge is

only introduced part-way through 2026. The modifications to effect this are set out below as the new condition 21b.

### 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	14,011,000
2027	20,981,000

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

Year $t$	ForecastTSU <sub><math>t</math></sub>
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

## Proposed correction mechanism for NR28

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- C1 As discussed in chapter 2 (Costs, form of charge control, and charges), paragraphs 2.40 to 2.43, we decided that for (at least) 2028 and 2029 the  $MaxADC_t$  in “Condition 21b: Control of Airspace Design Charge” set out in Appendix B will include a correction term that will be added to forecast determined costs in year  $t$  ( $FDCAD_t$ ). Using a correction mechanism at NR28 (the next price control period), allows this new Charge condition (Condition 21b set out in Appendix B) to be relatively simple for the remainder of the NR23 period. The correction mechanism will implement the cost pass-through approach discussed in paragraphs 2.40 to 2.43.
- C2 The precise final form of this correction mechanism does not need to be finalised before the Licence is changed as part of NR28, but this Appendix outlines how we currently envisage that correction mechanism to operate from 2028.
- C3 From 2028, the correction mechanism should 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  $t-2$ .
- C4 The correction mechanism should also adjust for over or under recoveries by a measure of forecast CPI inflation between year  $t-2$  and year  $t$ . As this mechanism will only be introduced in the Licence as part of NR28, there is still an opportunity to make some refinements to precisely how this term should operate and be implemented in NR28 while maintaining its policy objective.

$$MaxADC_t = \frac{FDCAD_t + Correction_t}{ForecastTSU_t}$$

where:

$$Correction_t = \left( ADCAD_{t-2} - ActualTSU_{t-2} * \frac{FDCAD_{t-2}}{ForecastTSU_{t-2}} \right) * (1 + Inf_{t-2}) * (1 + Inf_{t-1})$$

and where:

- $MaxADC_t$  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.

- $ADCAD_{t-2}$  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;
- $ActualTSU_{t-2}$  is the actual Total Service Units in year t-2;
- $FDCAD_{t-2}$  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;
- $ForecastTSU_{t-2}$  is the forecast Total Service Units in year t-2;
- $Inf_{t-2}$  is the average CPI inflation for year t-2, as published by the Office for National Statistics; and
- $Inf_{t-1}$  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

# Abbreviations

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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
CPI	Consumer Prices Index
CRCO	Eurocontrol’s Central Route Charges Office
CSUs	Chargeable Service Units
DfT	Department for Transport
Final Proposals	CAP 3164: “Economic Regulation of NERL: Final Proposals for modifying the Licence to support the implementation of a UK Airspace Design Service”, available at <a href="http://www.caa.co.uk/CAP3164">www.caa.co.uk/CAP3164</a>
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
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>
LADACAN	Luton and District Association for the Control of Aircraft Noise
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 UKADS and UKACS licence obligations: strategic objectives - GOV.UK
NERL	NATS (En Route) plc
NR23	The regulatory period for 2023 to 2026 for the economic regulation of NERL
NR28	The regulatory period for 2028 to 2032 for the economic regulation of NERL
Opex	Operating expenditure
RAB	Regulatory asset base
TA00	Transport Act 2000
TSUs	Total Service Units