

Proposal to modify the NATS (En Route) plc licence to transpose the UK-Ireland FAB Performance Plan for 2015-2019: Notice under section 11(2) of the Transport Act 2000

CAP 1229

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Chapter 1

Introduction

Purpose of this document

- 1.1 This document sets out, for representations, proposals to transpose the cost efficiency and other charges elements of the UK-Ireland FAB RP2 Performance Plan as well as incentive schemes relevant to NERL, into its licence¹.

Views invited

- 1.2 Under section 11(1) of the Transport Act 2000 the CAA may modify the conditions of a licence if its holder consents to the modifications.
- 1.3 NERL, as the licence holder, has given its consent to the modified conditions in Appendices A - D.
- 1.4 Under section 11(2) of the Transport Act 2000, before making modifications to the licence the CAA must publish a notice setting out the proposed modifications, their effect and the reasons for the proposal, and must state the period (of not less than 28 days) within which representations may be made regarding the proposed modifications. Accordingly, this document constitutes such a notice and the CAA would welcome comments on the proposed modifications. Any comments should be sent, if possible, by email to economicregulation@caa.co.uk by **12:00 on Monday 15 December 2014**. Alternatively, comments may be sent by post to:

Stephen Gifford
Markets and Consumers Group
Civil Aviation Authority
4th floor, CAA House
45-59 Kingsway
London WC2B 6TE

1 Air traffic Services Licence for NATS (En Route) PLC as consolidated September 2013.

- 1.5 The CAA would expect to make responses available on its website for other interested parties to read as soon as practicable after the period for written comments has expired. Any material that is regarded as confidential should be clearly marked as such. Please note that the CAA has powers and duties with respect to information under section 102 of the Transport Act 2000 and the Freedom of Information Act 2000.
- 1.6 If you have any questions on this document please contact Mike Goodliffe on 020 7453 6226 (or, by e-mail, to mike.goodliffe@caa.co.uk).

Next steps

- 1.7 The CAA is allowing 29 days for comments on this document. Subject to the scale and nature of the responses received the CAA plans to publish its final decision on the proposed modification to conditions 10a, 20, 21 and 21a during December 2014. This will allow the conditions to take effect on 1 January 2015.

Chapter 2

Proposals

Background

- 2.1 The SES Performance Scheme is an EU initiative to improve the performance of air navigation services (ANS) in four key performance areas (KPAs):
- Safety (at FAB level);
 - Environment (at FAB level);
 - Capacity (at FAB level for en route and national level for terminal services); and
 - Cost-efficiency (at charging zone level in local currency).
- 2.2 The Performance Scheme requires Member States to adopt performance plans in respect of ANS over a reference period. The first reference period (RP1) ran from 2012 to 2014 and the second reference period (RP2) will run from 2015 to 2019. For RP2 these plans are presented by Functional Airspace Blocks (FAB).
- 2.3 The UK and Ireland submitted a FAB plan for RP2 jointly to the European Commission on 24 June 2014 and this is currently being assessed.
- 2.4 In order to allow more time for other Member States to amend their Plans in light of assessment by the Performance Review Body², the Commission intends to bring a draft decision on the acceptance of Plans submitted by FABs to a Single Sky Committee meeting on 14/15 January 2015. Although this decision will come after the start of RP2 (1 January 2015), in accordance with Article 16 of the Performance Regulation No 390/2013, it will apply retrospectively as from the first day of the reference period.
- 2.5 As the UK element of the Plan meets and in the case of cost efficiency exceeds the EU-wide target, the CAA does not currently anticipate a change in the NERL component of the UK unit rate. However, should the Commission recommend a revision of the Plan with a bearing on these licence conditions then the CAA can if appropriate put forward subsequent licence modifications.

2 An advisory body to the Commission.

- 2.6 The maximum amounts that NERL is entitled to receive in respect of Eurocontrol services and London Approach charges are regulated under conditions 21 and 21a of its licence granted under the Transport Act 2000. The current conditions refer to the period up to 31 December 2014 in the case of Eurocontrol services and 31 March 2015 in the case of London Approach. Unless these conditions are amended they will cease to have effect on those dates.
- 2.7 The CAA is hereby publishing a notice setting out the modifications it proposes to make largely to transpose the relevant requirements of the UK-Ireland RP2 FAB Plan for cost efficiency targets, the incentives for capacity and environment targets, and the Future Airspace Strategy (FAS) reporting condition into NERL's licence. The proposed modifications also include some subsequent changes to definitions set out in Condition 20. Any areas where the Plan has required further interpretation are highlighted below.
- 2.8 The CAA is also publishing a separate notice to modify condition 22 of the licence which relates to Oceanic services.

Outline of changes proposed

- 2.9 The licence modifications being considered here should be read alongside the supporting document to the UK-Ireland FAB plan as well as the plan itself³. This provides the detail of what is being proposed, its effect and the reasoning behind it. The following gives a summary of the major points and highlights those areas where the CAA has had to exercise further judgement in making the transposition into a licence condition.

New Condition 10a on FAS reporting

- 2.10 The CAA proposes to introduce a new condition on the implementation of and reporting on programmes under the FAS Deployment Plan.
- 2.11 These programmes are:
- the raising of the United Kingdom Transition Altitude ('TA');

3 Both documents are available from: <https://www.gov.uk/government/publications/single-european-sky-performance-scheme-2015-to-2019>

- the terminal airspace redesign under the London Airspace Modernisation Programme ('LAMP'); and
- the implementation of the Pilot Common Project⁴.

2.12 The condition will require NATS to use reasonable endeavours to implement these major air traffic management modernisation programmes, and makes other provisions that will help the CAA oversee this implementation.

2.13 The proposed new condition is set out in Appendix A.

Update of definitions in Condition 20

2.14 The CAA proposes to update definitions in Condition 20 with effect from 1 January 2015 to give effect to relevant content of the UK-Ireland FAB Performance Plan.

2.15 The CAA proposes to replace condition 20 with the text set out in Appendix B with effect from 1 January 2015 to give effect to the relevant content of the UK-Ireland FAB Performance Plan.

Significant factors for both Condition 21 and Condition 21a

- 2.16 The following points should be noted for the proposed amendments to both licence conditions:
- The condition is specified in terms of a **maximum** amount per service unit rather than prescribing that charges should be at a specific level. This gives NERL, at its own discretion, the latitude to charge less than the amount indicated rather than be obliged to charge at the prescribed level regardless.
 - The conditions add an element of interest to any legacy carry-forwards from year n to n+2 from RP1 to RP2. This honours the expectations in the RP1 conditions.

4 ATM functionalities stemming from the European ATM Master Plan set out in Commission Implementing Regulation (EU) No 716/2014.

- In respect of carry-forwards from 2015 to 2017 and thereafter the CAA is proposing to discontinue the practice of adding an element of interest for the two years. It is doing so to be more closely aligned to the wording of the Charging Regulation which makes no explicit provision for financing. It should be noted that this would apply where the carry forward is either a positive or a negative sum and given the forecasts for inflation, traffic and incentives have been rebased to current expectations there should be a roughly symmetrical probability of these sums being positive or negative. There is therefore a roughly equal chance of this change being either to the benefit of NERL or the benefit of users.

The NERL component of Eurocontrol Charges (Condition 21)

2.17 Condition 21 follows the structure specified in the relevant charging regulation⁵. The maximum amount is to be calculated by dividing the forecast number of total en route service units for the relevant year as defined in the performance plan into the algebraic sum of the following elements:

Component in Charging Regulation	Source in
i) the determined costs, expressed in nominal terms of the relevant year as defined in the performance plan;	Fig. 5 -supporting document.
ii) the adjustment of the difference between forecast and actual inflation as referred to in Article 7(1) of the charging regulation;	Fig. 5 -supporting document.
iii) the recovery of restructuring costs, if authorised in accordance with Article 7(4) of the charging regulation;	Zero
iv) the carry-overs resulting from the implementation of the traffic risk-sharing mechanism referred to in Article 13 of the charging regulation;	Derived from Article 13.
v) the carry-overs from the previous reference	UK En route Reporting tables (Table 3)

⁵ Commission Regulation No 391/2013 laying down a common charging scheme for air navigation services - the Charging Regulation - Annex IV.

period resulting from the implementation of the cost sharing mechanism referred to in Article 14 of the charging regulation;	N.B. The outcomes for 2012-2014 inclusive will be revised based on actual outcomes for RP1, applying any revised interpretation of Article 14 of the charging regulation developed by the Commission.
vi) bonuses and penalties resulting from the financial incentive schemes referred to in Article 15 of the charging regulation;	Derived from Chapter 4 and Appendix C of the Supporting Document
vii) the over-or under-recoveries that may result from the modulation of air navigation charges in application of Article 16 of the charging regulation;	None currently expected.
viii) the over-or under-recoveries resulting from traffic variations;	Provision to deal with the situation where a fixed sum is to be recovered in respect of carry-overs etc based on forecasts of traffic where there is a subsequent variation in actual traffic.
ix) for the first two reference periods, the over-or under-recoveries incurred by Member States up to and including the year 2011;	These costs were intended to be recovered in RP1 but because of traffic being less than anticipated there has been an under recovery which has been carried forward to 2015 and 2016. It will be zero from 2017 onwards.
x) Deduction of other revenue.	Zero in RP2 N.B. Forecasts of any other revenues have been considered ex ante in the derivation of the determined cost under a single till approach.

- 2.18 The CAA proposes to replace Condition 21 with the text set out in Appendix C with effect from 1 January 2015 to give effect to the relevant content of the UK-Ireland FAB Performance Plan.

Control of London Approach Charges (Condition 21a)

- 2.19 This modification to the licence in respect to London Approach Charges applies the charging regulation provisions to terminal services through the Licence. As such the proposed condition has a significantly different structure to the existing condition more closely resembling Condition 21.
- 2.20 Applying the charging regulation also requires:
- The charge condition to be based on calendar years rather than the 31 March financial year which had previously been adopted in previous reviews (CP1, CP2 and CP3). It should be noted that the proposed licence modification will mean that the effective expiry of the existing Condition 21a will be brought forward from 31 March 2015 to 31 December 2014.
 - A structure of charges which is consistent with the relevant Article of the charging regulation. (We understand that NERL is consulting users separately on the implementation of the structure of charges for London Approach.)
 - Indexation using the Harmonised Index of Consumer Price as published in April of year n rather than the average Retail Price Index for year n consistent with Article 7 (1).
 - The introduction of traffic risk sharing as required in Article 13 of the Charging Regulation.
- 2.21 The proposed Condition 21a follows the structure specified in the relevant Charging Regulation⁶. The maximum amount is to be calculated by dividing the forecast number of terminal service units for the relevant year as defined in the performance plan into the algebraic sum of the following elements:

Component in Charging Regulation	Source in
i) the determined costs, expressed in nominal terms of the relevant year as defined in the performance plan;	UK Zone C Reporting Tables
ii) the adjustment of the difference between forecast and actual inflation as referred to in Article 7(1) of the charging regulation;	UK Zone C Reporting Tables

⁶ Commission Regulation No 391/2013 laying down a common charging scheme for air navigation services - the Charging Regulation - Annex IV.

iii) the recovery of restructuring costs, if authorised in accordance with Article 7(4) of the charging regulation;	Zero
iv) the carry-overs resulting from the implementation of the traffic risk-sharing mechanism referred to in Article 13 of the charging regulation;	Derived from Article 13.
v) the carry-overs from the previous reference period resulting from the implementation of the cost sharing mechanism referred to in Article 14 of the charging regulation;	Zero
vi) bonuses and penalties resulting from the financial incentive schemes referred to in Article 15 of the charging regulation;	Zero
vii) the over-or under-recoveries that may result from the modulation of air navigation charges in application of Article 16 of the charging regulation;	None currently expected.
viii) the over-or under-recoveries resulting from traffic variations;	Provision to deal with the situation where a fixed sum is to be recovered in respect of carry-overs etc based on forecasts of traffic where there is a subsequent variation in actual traffic.
ix) for the first two reference periods, the over-or under-recoveries incurred by Member States up to and including the year 2014;	The amounts from the licence condition in place in 2013/14 and 2014/15 will be carried forward to 2015 and 2016.
x) deduction of other revenue.	Zero in RP2 N.B. Forecasts of any other revenues have been considered ex ante in the derivation of the determined cost under a single till approach.

2.22 The CAA proposes to replace Condition 21a with the text set out in Appendix C with effect from 1 January 2015 to give effect to the relevant content of the UK-Ireland FAB Performance Plan.