

Decision on the modification of NATS (En Route) plc licence to transpose the UK-Ireland FAB Performance Plan for 2015-2019

CAP 1252



Documents

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Purpose of this document

1. This document sets out the CAA's decision on the modifications to the NATS En Route Licence in order to set a control on Eurocontrol and London Approach charges for the period 2015-2019 and to introduce a new condition on the implementation of and reporting on programmes under the Future Airspace Strategy (FAS) Deployment Plan.
2. This decision takes effect from 1 January 2015.

Background

3. The Single European Sky (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).
4. 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) runs from 2015 to 2019. For RP2 these plans are presented by Functional Airspace Blocks (FAB).
5. The UK and Ireland submitted a FAB plan for RP2, jointly, to the European Commission on 24 June 2014. The plan was then assessed by an advisory body of the Commission, the Performance Review Body (PRB).
6. In light of the PRB assessment, the Commission brought a draft decision on the consistency of local targets with EU-wide performance targets to a Single Sky Committee (SSC) meeting on 14/15 January 2015. The Commission assessed the UK-Ireland FAB Performance Plan targets as consistent with EU-wide performance targets and a draft Commission decision was adopted at the SSC meeting¹. Although this decision will take effect after the start of RP2 (1 January

1 Note at the time of publication of this document this decision has not yet been published in the EU Official Journal.

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.

7. UK is anticipating a subsequent Commission decision on the approval of the 2015 unit rates. As the UK cost efficiency target was assessed as consistent with 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 any revision of the Plan with a bearing on these licence conditions then the CAA will put forward subsequent licence modifications.
8. 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.
9. On 17 November 2014, the CAA published a notice setting out the modifications it proposed to make largely to transpose the relevant requirements of the UK-Ireland RP2 FAB Performance 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 included some subsequent changes to definitions set out in Condition 20.
10. This current document sets out the CAA's decision following that formal notice and consultation.
11. The CAA also published a separate notice in November 2014 to modify condition 22 of the licence which relates to Oceanic services. The CAA is publishing a separate decision document to cover these changes.

Outline of changes proposed

12. The licence modifications that were proposed by the CAA were to be read alongside the supporting document to the UK-Ireland FAB Performance Plan as well as the plan itself². This provided the detail of what was proposed and the reasoning behind it. The following gives a summary of the major points and highlights those areas where the CAA considered that it had to exercise further judgement in making the transposition into a licence condition.

New Condition 10a on FAS reporting

13. The CAA proposed to introduce a new condition on the implementation of and reporting on programmes under the FAS Deployment Plan.
14. These programmes were:
- the raising of the United Kingdom Transition Altitude ("TA");
 - the terminal airspace redesign under the London Airspace Modernisation Programme ("LAMP"); and
 - the implementation of the SESAR Pilot Common Project³.
15. The new condition 10a requires NATS to use reasonable endeavours to implement these major air traffic management modernisation programmes.

Update of definitions in Condition 20

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

Significant factors for both Condition 21 and Condition 21a

17. In the proposed amendments to both licence conditions:
- The condition would be specified in terms of a **maximum** amount per service unit rather than prescribing that charges should be at a specific level. This would give 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.

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

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

- The conditions would add an element of interest to any legacy carry-forwards from year n to n+2 from RP1 to RP2. This would honour the expectations in the RP1 conditions.
- In respect of carry forwards from 2015 to 2017 and thereafter the CAA proposed to discontinue the practice of adding an element of interest for the two years. It proposed 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 was either a positive or a negative sum and given the forecasts for inflation, traffic and incentives had been rebased to current expectations there was expected to be a roughly symmetrical probability of these sums being positive or negative. There was therefore expected to be 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)

18. The modified Condition 21 would follow the structure specified in the relevant charging regulation⁴ The maximum amount would 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 forecasted 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.

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

Component in Charging Regulation	Source in
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;	UK En route Reporting tables (Table 3) 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.

Control of London Approach Charges (Condition 21a)

- 1.1 This proposed modification to the licence in respect to London Approach Charges would apply the charging regulation provisions to terminal services through the Licence. As such the proposed condition would have a significantly different structure to the existing condition more closely resembling Condition 21.
- 1.2 Applying the charging regulation would also require:
- The charge condition to be based on calendar years rather than the 31 March financial year which had been adopted in previous reviews (CP1, CP2 and CP3). It should be noted that the proposed licence modification would mean that the effective expiry of the existing Condition 21a would 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.
 - 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.
- 1.3 The proposed Condition 21a would follow the structure specified in the relevant Charging Regulation⁵. The maximum amount would 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:

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

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 forecasted and actual inflation as referred to in Article 7(1) of the charging regulation;	UK Zone C Reporting Tables
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.

Responses to the consultation

19. The CAA received two representations to its proposals. These were from NATS and Heathrow Airport Limited (HAL). Neither raised any substantive points relating to the proposed licence conditions.
20. The CAA has published these representations on its website.

CAA Decision

21. The CAA considered that the modifications as published in the Notice of 17 November 2014 best meet its obligations under European legislation and its statutory duties under the Transport Act 2000 as set in the supporting document to the UK-Ireland FAB Performance Plan.
22. The CAA therefore decided to modify Conditions 20, 21 and 21a and to add a new Condition 10a as attached in Annexes A-D. These new conditions are identical to those published in the CAA's Notice of 17 November.
23. These conditions in NERL's licence took effect from 1 January 2015.
24. The CAA published a consolidated version of the NAT En Route licence to include all of the changes that take effect from 1 January 2015.

Appendix A

Condition 10a with effect from 1 January 2015

Implementation of and reporting on programmes under the Future Airspace Strategy (FAS) Deployment Plan

1. Subject to meeting its general obligations under Condition 2, the Licensee shall use reasonable endeavours to further implement the major air traffic management ('ATM') modernisation programmes set out in the UK FAS Deployment Plan of December 2012. These programmes are: the raising of the United Kingdom Transition Altitude ('TA'); the terminal airspace redesign under the London Airspace Modernisation Programme ('LAMP'); and the implementation of the Pilot Common Project.
2. For the purposes of this condition, the 'Pilot Common Project' means the ATM functionalities stemming from the European ATM Master Plan set out in Commission Implementing Regulation (EU) No 716/2014 on the establishment of the Pilot Common Project supporting the implementation of the European Air Traffic Management Master Plan.
3. In relation to the TA programme, by 31 December 2015, and without prejudice to Condition 10 of this Licence, the Licensee shall submit to the CAA a detailed project plan for implementing by 31 March 2018 a TA of 18,000 feet in respect of the airspace for which the Licensee is accountable under the Licence. Implementation shall be subject to the successful outcome of consultation by the CAA in relation to TA, and also to any LAMP dependencies. This project plan shall include significant delivery milestones and the dependencies associated with those milestones, and the implementation plan shall have been subject to consultation with Users. Such consultation shall, so far as is reasonably practicable, take place in the context of the Service and Investment Plan ('SIP') consultation under Condition 10, or any enhancement to that process.