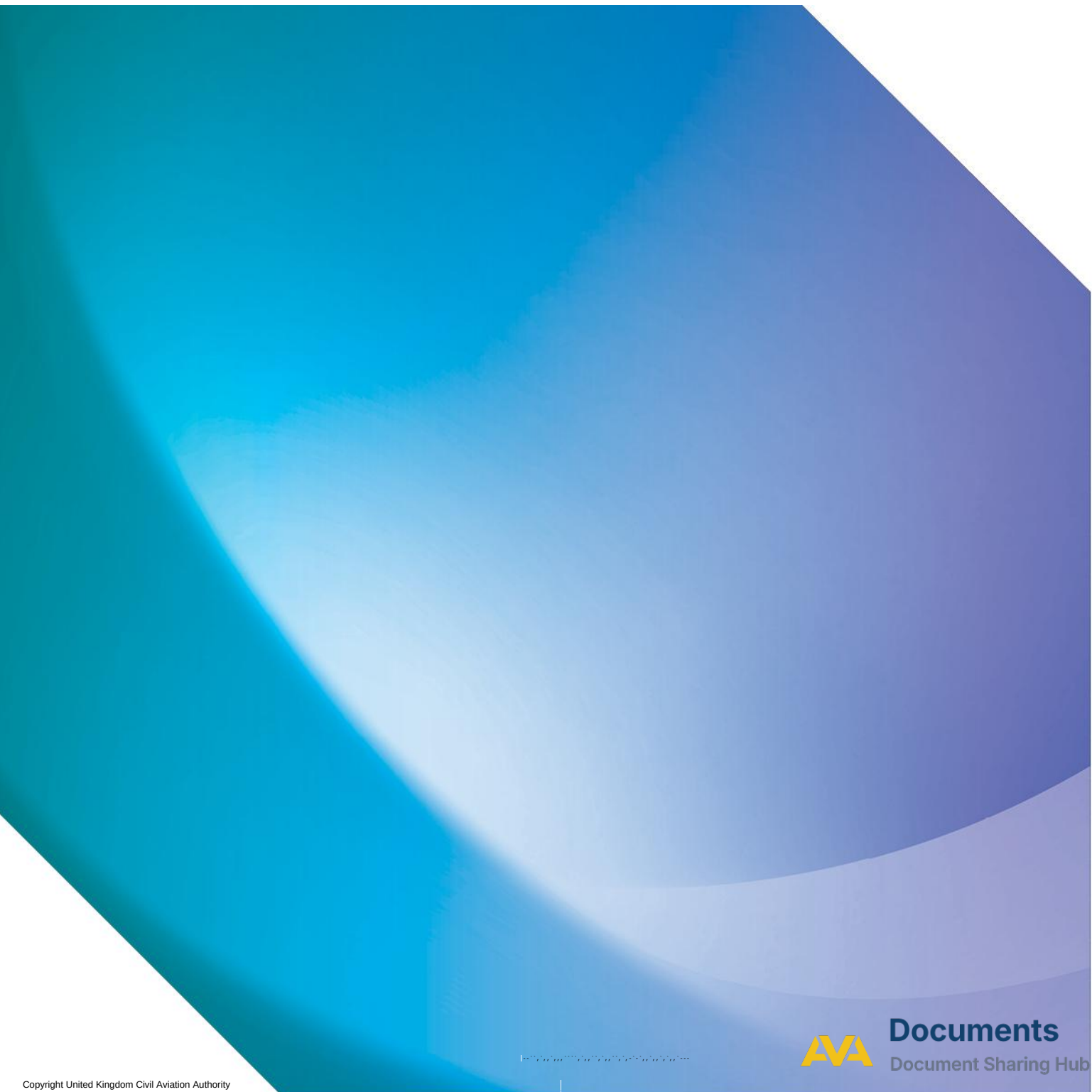


Decision on modifications to NATS (En Route) plc licence in respect of Governance and Ring- fencing

CAP 1380



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Enquiries regarding the content of this publication should be addressed to: economicregulation@caa.co.uk

Consumers and Markets Group, CAA, 4th Floor, CAA House, 45-59 Kingsway, London WC2B 6TE

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Chapter 1

Introduction

Purpose of this document

- 1.1 This document sets out the CAA's decision on modifications to the NATS (En Route) plc ("NERL") licence in respect of Governance and Ring-fencing with the object of ensuring that users are adequately protected from risks which arise outside the regulated business.
- 1.2 The modifications affect NERL's licence with effect from 1 April 2016 in the following manner:
- 1) modify Condition 1 – Interpretation and construction to require that compliance certificates are approved either at a board meeting at which all the directors of NERL present, or that the Certificates are issued under a written resolution signed by all NERL's directors;
 - 2) modify Condition 5 – Availability of Resources and Financial Ring-Fencing to:
 - a) re-focus the annual directors' resources certificate to separate NERL's certification that it has sufficient operational resources from its certificate of sufficient financial resources;
 - b) include new statements from the directors setting out the processes used and factors considered in issuing the certificates;
 - c) require new annual certificates from NERL's directors that the licensee has complied with specific elements of the ring-fence;
 - d) require certificates of compliance with the ring-fence conditions to be issued each time the licensee declares or recommends a dividend;
 - 3) introduce a new licence Condition 7 requiring NERL to maintain an intervention plan to assist a special administrator in the event of insolvency;

- 4) introduce a new licence Condition 8 which will ensure the independence of the NERL board's decisions and contain a requirement that at least two 'Mandated Independent Directors' (MIDs) must sit on the NERL board unless the CAA consents otherwise; and
- 5) modify Condition 9: Prohibition of cross-subsidies to clarify and simplify the prohibition against cross subsidies and ensure it aligns clearly with the parallel requirements of European law.

The CAA's proposals and representations

- 1.3 With NERL's consent under section 11(1) of the Transport Act 2000 ("the Act"), we published, on 9 February 2016, final proposals by notice under section 11(2) of the Act¹ to modify Condition 1, Condition 5 and Condition 9, and to introduce Condition 7 and Condition 8 in NERL's licence.
- 1.4 We invited representations on these proposals by Wednesday 9 March 2016. A representation was received from NERL which confirmed acceptance of the CAA's proposed modifications.
- 1.5 In addition to accepting the proposed modifications, NERL formally requested the CAA's consent not to comply with the obligations contained in Condition 8, and thus to not appoint two mandated independent directors (MIDs). This consent was requested on the grounds that NERL considers that it has sufficient corporate governance arrangements in place to provide equivalent assurance that the appointment of MIDs would provide.
- 1.6 No other representations were submitted and the Secretary of State gave no directions to the CAA under section 11(4) of the Act requiring it not to make the proposed modifications.

¹ [CAP 1368: Proposal to modify the NATS \(En Route\) plc licence in respect of Governance and Ring-fencing: Notice under section 11\(2\) of the Transport Act 2000](#)

Chapter 2

The CAA's decision

- 3.1 In the absence of any adverse comments on our proposal, we have decided to modify NERL's licence with effect from 1 April 2016, as proposed in our notice of 9 February 2016 and consistent with our duties under section 2 of the Act.
- 3.2 The modifications to Condition 1, Condition 5 and Condition 9, and the new Conditions 7 and 8 are set out in Appendix A.
- 3.3 We have also consented to NERL's request to not comply in relation to certain provisions of new Condition 8 of its Licence. The request for consent from NERL is set out in Appendix B, and our consent, which includes the reasons for granting it, is set out in Appendix C.
- 3.4 Our position in respect to these licence conditions is based on the CAA's current risk assessment. Should the risk assessment change and warrant a different approach, the approach taken in this document will not fetter our discretion and we reserve the right to consider alternative actions, including revised licence conditions.
- 3.5 This decision was made by Mr Richard Moriarty, Director, Consumers and Markets Group, and a member of the CAA.

Civil Aviation Authority

22 March 2016

Appendix A

Modification to the Air Traffic Services Licence for NATS (En Route) plc

This Appendix sets out the modifications to the Air Traffic Services Licence for NATS (En Route) plc (“NERL”) air traffic services licence (the “Licence”) with effect from 1 April 2016 in relation to:

- Condition 1: Interpretation and construction - to include a new definition of “Compliance Certificate”;
- Condition 5: Availability of Resources and Financial Ring-Fencing - to implement the additional certification obligations described in the main body of this document; and
- Condition 9: Prohibition on cross subsidies - to clarify and simplify the obligation contained in it.

The changes to Conditions 5 and 9 are marked against the existing text of those conditions.

This Appendix also sets out the text of the following new conditions that also take effect on 1 April 2016:

- Condition 7: introducing a requirement to maintain an intervention plan; and
- Condition 8: introducing requirements for NERL to appoint mandated independent directors and in relation to NERL’s corporate governance.

For the avoidance of doubt, the existing obligations set out in paragraphs 9 to 30 of Condition 5 are retained without modification. Those paragraphs set out the obligations of NERL in relation to:

- Restriction on Activity and Financial Ring-Fencing;
- Amendments to the Finance Documents;
- Disposal of Relevant Assets and Indebtedness;
- Ultimate Holding Company Undertaking;
- Credit rating of Licensee; and

- Financial Indebtedness.

The text of the modifications is set out on the following pages. The text of paragraphs of the relevant Licence conditions that is not the subject matter of the modifications is not reproduced.

PART II THE GENERAL CONDITIONS

Condition 1: Interpretation and construction

Insert after the definition of “Auditors”:

“Compliance Certificate”

means a certificate that is addressed to the CAA and:

- (a) approved by a resolution of the board of directors of the Licensee either:
 - (i) at a meeting of the board of directors of the Licensee at which all directors of the Licensee are present; or
 - (ii) by a written resolution of the board of directors of the Licensee signed by all the directors of the Licensee; and
- (b) signed by a director of the Licensee.