

Proposals to take forward the NATS Independent Enquiry recommendations with regards to resilience

CAP 1512

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Chapter 1

Introduction

- 1.1 This document sets out the outcome of work carried out jointly by the Civil Aviation Authority (CAA) and NATS with regards to NATS' resilience and seeks views on a proposed enforcement tool and a new licence condition.
- 1.2 NATS' en route part of its business (NATS en Route plc, otherwise known as NERL) has a licence (the licence), granted by the Secretary of State on 28 March 2001, to provide air traffic services in the en route UK and Oceanic areas.¹
- 1.3 On 12 December 2014 a disruption in NATS en route air traffic services caused 14,863 minutes of NATS attributable delay. This followed a more severe disruption on 7 December 2013 which caused 137,225 minutes of NATS attributable delay. The 2014 disruption led us to set up an Independent Enquiry² led by Sir Robert Walmsley to review the circumstances around the events of that day, including addressing the levels of future resilience and service delivery that should be expected across the en route air traffic network, taking into account relevant aviation benchmarks and costs.
- 1.4 In both incidents, we found it difficult to answer the question as to whether NATS was compliant with the requirements of its licence to meet a reasonable level of demand on a continuing basis. This is because, although the regulatory framework clearly envisages some disruption in service to ensure the safety of aircraft, we had no formal view on what level of disruption should be considered to be acceptable.

¹ The Licence can be found at <http://www.caa.co.uk/Commercial-industry/Airspace/Air-traffic-control/Air-navigation-services/NATS-En-Route-plc-NERL-Licence/>.

² The Independent Enquiry's final report can be found at <http://www.caa.co.uk/Commercial-industry/Airspace/Air-traffic-control/Air-navigation-services/Air-Traffic-Control---NATS-system-failure-enquiry/>.

- 1.5 We also found it difficult to assess whether NATS could be said to have taken ‘all reasonable steps to secure that...demand is met’³ and that it had ‘at all times develop[ed] and maintain[ed] its assets, personnel, systems and other parts of its business’⁴ to be able to meet demand in accordance with its statutory duties and licence obligations. We accepted that NATS had taken a number of steps to recover each time quickly and safely, that it had maintained good communications with its customers and had taken steps to minimise the impact of the disruption such as offering alternative routing. However, we did not consider that the licence obligations were clear enough to effectively hold NATS to account should we find that NATS’s policies, plans and procedures were inadequate to properly minimise the risk of disruption or to manage an efficient and effective recovery, in line with its statutory duties and licence obligations. The Independent Enquiry report did not find that there had been deficiencies in NATS’s actions in this regard but accepted our concerns about better oversight and assurance in the future.
- 1.6 The Independent Enquiry therefore recommended that we and NATS jointly develop and agree definitions of resilience, contingency and business continuity to be used in the context of air traffic control in the UK and a methodology for determining acceptable levels of disruption to give greater clarity.⁵ The Independent Enquiry also recommended that we include a new condition in the licence requiring NATS to submit a resilience plan to us for our approval.⁶
- 1.7 This document proposes definitions of resilience, contingency and business continuity. It sets out the approach we and NATS have taken to developing the definitions, the context in which they are defined and the proposed definitions themselves.

³ Section 8 of the Transport Act 2000 (2000).

⁴ Condition 2 of the licence.

⁵ Recommendation 20 of the Independent Enquiry.

⁶ Recommendation 30 of the Independent Enquiry.

- 1.8 We also set out our joint proposals for setting the requirements for contingency, resilience and business continuity in the context of these baseline definitions, considering a range of factors in their development, including the principles we used in developing the resilience requirements.
- 1.9 We explain the proposed methodology and set out how we will use these requirements to gain greater assurance that NATS is taking all reasonable steps to minimise and manage disruption.
- 1.10 Finally this document also includes our proposals for a new licence condition that will require NATS to consult on and submit a resilience plan setting out how it will comply with its licence obligations.

Views invited

- 1.11 Any comments on the proposals in this document should be sent by email to economicregulation@caa.co.uk by 21 April 2017. Alternatively, comments may be sent by post to:
- Rod Gander
Consumers and Markets Group
Civil Aviation Authority
CAA House
45-59 Kingsway
London WC2B 6TE
- 1.12 We intend to hold a short workshop to have an open discussion on our proposals as part of this consultation. This will take place on the morning of Tuesday 21 March at the CAA's London office at the address above. If you would like to attend please email abigail.grenfell@caa.co.uk.
- 1.13 We expect to publish responses on our website for other interested parties as soon as practicable after the consultation period ends. Any material that is regarded as confidential should be clearly marked as such. Please note that we have powers and duties with respect to information

under section 102 of the Transport Act 2000 (TA00) and the Freedom of Information Act 2000.

- 1.14 If you have any questions on this document please contact Abigail Grenfell on 020 7453 6243 or by email to abigail.grenfell@caa.co.uk.

Next steps

- 1.15 Once we have considered your comments we will decide what modifications we propose to make to NERL's licence and to our policy on the enforcement of the licence. Licence modifications will require another short consultation under section 11 of the TA00 which we will publish shortly after this consultation closes, with details of the changes we are making to our enforcement policy.

Chapter 2

The relevant regulatory framework

- 2.1 We have a primary duty under section 2 of the TA00 to exercise our functions under Chapter 1 of the TA00 so as to maintain a high standard of safety in the provision of air traffic services. There are secondary duties to exercise its functions in a manner we think best calculated to (among other things) further the interests (with regards to range, availability, continuity, cost and quality of air traffic services) of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them.
- 2.2 Section 8 of the TA00 gives NERL a number of duties that it must fulfil in carrying out its functions in respect of the licensed area. It must:
- secure that a safe system for the provision of authorised air traffic services is provided, developed and maintained - the system is considered safe if (and only if) NERL complies with requirements imposed by the Air Navigation Orders with regard to its services;
 - take all reasonable steps to secure that the system is also efficient and co-ordinated;
 - take all reasonable steps to secure that the demand for authorised air traffic services is met;
 - have regard, in providing, developing and maintaining the system, to likely future demands.
- 2.3 Condition 2 of the licence gives NERL a general obligation to make available the Core Services (as defined in Condition 1(3)) so as to be capable of meeting on a continuous basis any reasonable level of overall demand for such services (in accordance with the forecast capacity set out in the Service and Investment Plan under Condition 10). Furthermore, NERL must at all times develop and maintain its assets, personnel, systems and other parts of its business so as to be able to comply with its general obligation.

- 2.4 In May 2015 we published our Enforcement Policy⁷ for enforcing economic licences issued under the TA00 and, in respect of airport licences, the Civil Aviation Act 2012. The main principles of this policy are that we will concentrate on serious and systemic issues and, as far as possible, we will take a stepped approach to enforcement, with increasing levels of involvement depending on the severity of the issue. This would range from working level meetings to flag areas of possible concern to prevent these becoming more serious through to more formal, high level discussions for more serious incidents or where we considered that action was not being taken quickly enough. Ultimately, for serious issues that we consider could be an indication of a licence breach, a more formal investigation into the issues can lead to an enforcement order requiring specific action. Our policy is clear that we do not necessarily need to go through each step of the process but could move immediately to an investigation of licence breach if necessary.
- 2.5 NATS resilience performance is already implicitly measured through the application of the C4 performance metric within the licence (Condition 21(12) and (13)) and associated performance regime. Effectively NATS has an allowance of (currently) 2000 points and excess delay on any given day scores a number of points. If NATS exceeds the allowance within a given year then it becomes liable for “penalties” within the incentive scheme. The formula for determining the excess delay score is relatively complex, varying according to the time of year and level of delay, but broadly it is based on the average delay per aircraft on that day.

⁷ www.caa.co.uk/cap1234.