

Proposal to modify Condition 2 of NATS (En Route) plc licence in respect of resilience planning, policy statement on enforcement and consultation on draft guidance

CAP 1639

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Chapter 1

Proposal to modify licence

- 1.1 This document invites representations on our proposal to modify the air traffic services licence held by NATS (En Route) plc (“NERL”). The proposal is to add to Condition 2 of the licence (General obligation to provide Core Services and Specified Services) a requirement for NERL to submit a resilience plan to the CAA to ensure it is consistent with its obligation to develop and maintain its assets, personnel and systems to meet its requirement to provide the core service and specified services under Condition 2 (2). NERL’s Board will be required to take full ownership of the plan by submitting a certificate confirming that it considers the plan is fit for purpose and complies with its obligations under its Licence.
- 1.2 NERL would be required to ensure that this resilience plan is consistent with guidance issued by the CAA. The CAA will finalise the guidance following this consultation. We also propose that NERL should review the plan at least every two years, or when directed by the CAA.
- 1.3 The plan submitted by NERL would be subject to review by an independent reviewer appointed by the CAA to provide an opinion on the likely effectiveness of NERL’s principles, plans and processes to produce a resilient service. The text of the proposed licence modification is at Appendix A.
- 1.4 We consulted on the proposed licence modification in February 2017 and explained our reasons for the proposal.¹
- 1.5 We are also inviting comments on the draft guidance to which NERL should have regard when developing its resilience plan. The text of this guidance is at Appendix B.²
- 1.6 Our February consultation document also included policy proposals on the principles and performance levels for better defined resilience requirements which we would expect NERL to achieve, and how we proposed to enforce them. These requirements are intended to be used as guidance for informing our enforcement process, using indicators that would trigger intervention by us in accordance with our enforcement policy. As such, these will not be hardwired into the licence itself but will be set out in an update to our policy on the

¹ [CAP 1512: Proposals to take forward the NATS Independent Enquiry recommendations with regards to resilience](#) (February 2017)

² The February consultation did not include the draft guidance, which we are seeking views on for the first time here.

enforcement of the licence. We anticipated that we could, if necessary, amend these expected resilience levels and our proposed enforcement of them during RP3. We also said that we were content with NATS' current contingency arrangements but noted that NATS was currently looking at how to improve these.³

- 1.7 We received three responses to our consultation from NERL, British Airways and the Heathrow Airport Consultative Committee. All supported the proposed licence modifications.

Views invited

- 1.8 Under section 11(1) of the Transport Act 2000 (the Act) the CAA may modify the conditions of a licence if the holder consents to the modifications. NERL, as the licence holder, has given its consent to the modifications proposed in this document.
- 1.9 Under sections 11(2) and (3) of the Act, before making modifications to a licence, the CAA must publish a notice setting out the proposed modifications, their effect and the reasons for the proposal, and state the period (of not less than 28 days) within which representations may be made regarding the proposed modifications. This document constitutes such a notice.
- 1.10 Any representations on the proposals in this document should be sent by email to economicregulation@caa.co.uk by 26 March 2018. 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
- 1.11 We expect to publish the representations on our website as soon as practicable after the period for representations 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 Act and the Freedom of Information Act 2000.
- 1.12 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.

³ RP3 is the regulatory period for the next NERL Performance Plan (2020-24).

Next steps

- 1.13 Once we have considered the representations, we will decide what further modifications, if any, to make to NERL's licence. We will publish notice of our decision which we expect will take effect in the second half of April 2018.
- 1.14 We will take representations on our draft resilience plan guidance into account in finalising our guidance. If the representations do not lead us to consider making material changes to our guidance, we will publish our guidance when we publish the notice of our decision on the licence modification. If we are minded to make material changes to our guidance we will consult on revised draft guidance, and will aim to publish our resilience plan guidance during the first half of 2018.
- 1.15 Under the proposals NERL will have to publish its resilience plan within nine months of the modified Condition coming into effect. If we publish guidance, as we propose to do, NERL shall have to produce its resilience plan within nine months of the publication of the guidance.

Chapter 2

Statutory and licence framework, and reasons for the proposed modifications

Statutory and licence framework

- 2.1 We have a primary duty under section 2 of the Act to exercise our functions under the Act so as to maintain a high standard of safety in the provision of air traffic services. We have secondary duties, including to exercise our functions in a manner we think best calculated to (among other things) further the interests of users of air traffic services (including with regards to the availability, continuity, and quality of air traffic services).
- 2.2 Under section 8 of the Act NERL has 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;⁴
 - 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; and
 - have regard, in providing, developing and maintaining the system, to likely future demands.
- 2.3 Under Condition 2 of the licence NERL has 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. 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 Our enforcement policy⁵ sets out that we concentrate on serious and systemic issues and, as far as practicable, take a proportionate approach to enforcement issues with increasing levels of involvement and intervention, depending on the severity of the issue. Our involvement and interventions can range from working level meetings to flag areas of possible concern to prevent these becoming more

⁴ For the purposes of Section 8 of the Act, the system is considered safe if (and only if) NERL complies with requirements imposed by the Air Navigation Order with regards to its services.

⁵ [CAP 1234: Economic Licensing Enforcement Guidance](#) (May 2015)