

Guidance note: NERL Licence Condition 10a – Airspace modernisation

Introduction

1. The purpose of this note is to provide guidance on the CAA's expectations for how NATS (En Route) Plc – referred to as NERL – works with and uses the Airspace Change Organising Group (ACOG) in delivering condition 10a of the NERL Licence and how it will be assessed as to whether it has met the requirements of this condition.
2. This note does not override the obligations of the Licence but is intended to provide some additional information about the CAA's approach to assessment of performance against it. In summary, the CAA recognises and will note when considering compliance with this Licence condition that NERL does not have absolute control over all the stakeholders and all the issues that are required to deliver the requirements set out in condition 10a. The CAA has asked NERL to establish an ACOG to assist with the delivery of NERL's requirements in this Licence condition and to effect some impartial governance through the establishment of the ACOG Steering Committee. Nevertheless, NERL is well placed to substantially (positively or negatively) both influence the other stakeholders and mitigate the impacts of any issues that arise. The CAA therefore expects NERL to use its reasonable endeavours to deliver the requirements of condition 10a of the Licence. While, in the CAA's view, NERL continues to do so it will not reach a conclusion that NERL has breached this Licence condition.

NERL's relationship with its ACOG team

3. Airspace Modernisation is a complex programme that involves many stakeholders and a series of separate, but in some cases interdependent, airspace changes. All parties recognised some time ago that a high level of coordination was required between geographically adjacent airspace changes in the South and the North of the UK and that while NERL had many of the skills and experience to carry out this coordination, given the wide number of stakeholders and the complexity of the relationships between each other, some impartial coordination would be of value. For this reason and purpose, NERL was asked to establish and maintain ACOG. Moreover, the Department for Transport (DfT) and the CAA recognised that a masterplan was required to identify potential conflicts between individual airspace change requests and, subsequently, NERL was asked to produce and maintain a UK masterplan, engaging with relevant stakeholders in order to do so. NERL started work on the masterplan, and since its creation in late 2019, the ACOG team within NERL has been leading the development of this masterplan.
4. ACOG is a unit within the Licensee, separate and acting impartially. This impartiality is in part achieved through a Steering Committee set up by NERL to provide external challenge and support to the work of ACOG. This is particularly important given the wide range of stakeholders that need to be involved in the airspace masterplan process. The Licensee appoints and employs the Head of ACOG and the Chair of the Steering Committee following consultation with the CAA and the DfT. The

Steering Committee will include at least one representative from the Licensee, airlines, airports, the general aviation community and independent members with appropriate experience.

5. Licence condition 10a requires NERL to establish an Airspace Change Organising Group (ACOG) to assist it with the masterplanning task. ACOG was established before the start of Reference Period 3 (RP3) with airspace user funding in 2019. For the period of RP3 (1 January 2020 to 31 December 2024), the CAA has made an additional allowance of £15m of operating costs, within NERL's determined costs, to provide resources for the masterplanning task, including the costs of running ACOG but excluding the costs of implementing individual airspace changes. The CAA expects NERL to efficiently manage this allowance to deliver the masterplan and, as with all aspects of NERL's operating costs allowance, the money allowed for the ACOG unit is part of normal incentive regulation, and it is for NERL to manage the ACOG unit to efficiently deliver its expected outputs. In the event that there is a very material change to the scope of the masterplanning task such that it includes tasks not reasonably foreseeable, NERL would be able to make an application to access the Opex Flexibility Fund (OFF) contained within the RP3 decision. Additionally, should NERL be directed under the powers in the proposed ATM and Unmanned Aircraft Bill to progress another sponsors' airspace change proposal, the CAA confirm that NERL would be able to apply to the OFF to cover the operating costs of doing so. Such applications will be determined by the governance process that applies to the OFF.
6. While under Licence condition 10a NERL has overall accountability for creating the masterplan, the CAA's current expectation is that (in order to achieve the impartiality this task demands) this will be carried out by ACOG, hence the requirement in condition 10a to establish and maintain ACOG. Condition 10a also requires NERL to use constructively the other skills and resources that NERL, including ACOG, have at its disposal to further the delivery of the development and completion of the masterplan in the interests of all stakeholders
7. For the avoidance of doubt, noting of course their ultimate corporate responsibility as Directors for all aspects of NERL, the CAA does not expect NERL's senior leadership team to exert day to day operational control over the ACOG team.

Nature of NERL's accountability for delivery of the Licence obligation

8. There are a number of factors that the CAA will take into account in determining whether NERL is delivering the requirements of condition 10a of the Licence. Some of these factors are within NERL's direct control and some are within NERL's (positive or negative) influence. These factors include:
 - The CAA has asked NERL to establish some impartial challenge to ACOG via the Steering Committee and it acknowledges that the work of ACOG will be influenced by this Steering Committee.
 - That a full masterplan can only be delivered with the coordination and positive engagement of the airports within its scope – and that NERL cannot force the coordination of those airports to happen, though the level and nature of this

coordination and engagement is within its influence. The CAA expects any masterplan to report faithfully on the degree of appetite and collaboration from airports, and the extent to which completing the overall plan can/cannot be achieved without any that are reluctant or disengaged.

- The current Government strategy for airspace modernisation and the policy framework is described in the CAA's Airspace Modernisation Strategy and is sourced from Section 70 of the Transport Act 2000, the Air Navigation Directions and Guidance, and policy publications including the Airports National Policy Statement. This framework is determined by Government and may be reviewed and revised. In the event that relevant aspects of that framework are changed, the CAA's Airspace Modernisation Strategy would change and the objectives of the masterplan and the associated criteria for its creation may also change. In those circumstances, the CAA would seek to understand the extent to which NERL's masterplan had achieved the government policies in place at the inception of their work, and the extent to which it could/could not meet the policies in place at the time of the change and work with NERL to make clear what is needed to continue to meet this Licence condition.
 - While NERL has the overall accountability for delivering the masterplan, the CAA currently expects ACOG to make the most significant contribution (within NERL) in delivering this obligation. In the event that ACOG does not deliver what is asked of it, the CAA expects NERL to work constructively with work completed to date and relevant stakeholders to deliver the best outcome possible within the overall operating costs provisions for RP3.
9. In assessing NERL's performance in meeting the requirements of the condition 10a of the Licence, the CAA will take all these factors into account and the extent to which NERL has used its reasonable endeavours to positively deliver them.