

# CALL FOR EVIDENCE: NATS Government Share Ownership

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# Executive summary

1. The Government has been considering whether to sell all, part or none of its remaining 49% shareholding in NATS.
2. NATS provides strategically important services to the UK, which are critical to both national security and the economy. Given this, a number of factors need to be considered before any sale of Government shares could take place. In particular we need to ensure that sufficient protections remain around the safety and security of the business as safety is and will remain the Government's top priority.
3. However, the business was part-privatised in 2001 and since privatisation performance has continued to improve in a number of areas including safety.
4. This call for evidence has been designed to gain evidence on whether the protections available through legislation and the NATS licence, that are independent of the Government's shareholding, are sufficient to ensure the delivery of the UK's overall aviation policy objectives on economic growth, environment, safety and security.
5. The focus of the call for evidence is the potential impact of a whole or partial sale of the Government's shareholding on the delivery of its overall aviation policy objectives. We are seeking evidence to help us determine and understand any impact, in order to inform our final decision making.
6. We are therefore inviting responses to the questions summarised at section 5 below. Thank you for taking the time to respond to this call for evidence.

# 1. PROCESS & TIMETABLE

## How to Respond

**1.1** A response form is available on the same webpage as this document. You can access it at <http://www.dft.gov.uk/consultations/>. When responding please state whether you are responding as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

**1.2** Your responses to the questions asked in section 5 should be sent to Andy Kirby at the e-mail or postal address below by **Wednesday 6 July**.

Email: [andy.kirby@dft.gsi.gov.uk](mailto:andy.kirby@dft.gsi.gov.uk)

Postal: Andy Kirby

Zone 1/25

Department for Transport

76 Marsham Street

London

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**1.3** Please note that we will make every effort to ensure that late responses and responses that fall outside the scope of the call for evidence are read, but these responses may not be taken into account in the publication of results and any final decisions.

## Help with queries

**1.4** Questions about the issues raised in the document can also be addressed to Andy Kirby at the above email or postal addresses.

## Consultees

- 1.5** A list of organisations/stakeholders to whom we have sent this call for evidence is included at Annex A. If you have any suggestions of others who may be in a position to offer informed evidence, please contact Andy Kirby at the email or postal address above.
- 1.6** This call for evidence has also been posted on the Department for Transport's website at <http://www.dft.gov.uk/consultations/>.

## Format

- 1.7** The format chosen reflects the fact that the changes proposed will not have a direct impact on the public. We have been engaging with key stakeholders throughout the process and at this stage need to ensure that all perspectives have been taken into account.

## Issues relating to the call for evidence process

- 1.8** If you have comments or complaints about the way this call for evidence has been conducted, these should be sent to:

Consultation Co-ordinator  
Department for Transport  
Zone 2/25, Great Minster House  
76 Marsham Street  
London  
SW1P 4DR  
Email: [Consultation@dft.gsi.gov.uk](mailto:Consultation@dft.gsi.gov.uk)

## Data Protection and Freedom of Information

- 1.9** Information provided in response to this call for evidence, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

- 1.10** If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 1.11** In view of this it would be helpful if you could explain why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.12** The Department will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## What Happens Next?

- 1.13** A summary of responses to this call for evidence will be published on our website at <http://www.dft.gov.uk/consultations/dft-2011-15/> after the call for evidence has closed.
- 1.14** The Department also intends to publish an impact assessment, if judged to be necessary, alongside its decision on whether or not to sell Government shares. The impact assessment would take into account evidence submitted in response to this call for evidence.



## 2. BACKGROUND: THE GOVERNMENT'S SHAREHOLDING IN NATS

### Government Policy Objectives

- 2.1** The Department for Transport's Business Plan sets out the Government's commitment to create a sustainable framework for aviation in the UK, improve passenger experience at airports, and maintain high standards of safety and security for passengers and freight.
- 2.2** The Government wants to see a successful and competitive aviation sector which supports economic growth and addresses aviation's global and local environmental impacts.
- 2.3** Airspace design and management have an important role in delivering the Government's broad aviation policy objectives. The Government supports the EU's Single European Sky (SES) initiative, which aims to enhance air traffic safety, contribute to the sustainable development of the air transport system, and improve overall performance through the establishment of a Performance Scheme for Air Traffic Management and Air Navigation Services
- 2.4** We also support the development of the CAA's Future Airspace Strategy. This strategy is considering strategic airspace issues for the UK over the medium and long term with the overall aim of modernising the UK's air traffic management system and contributing directly to SES objectives.
- 2.5** We need to make sure that a sale of Government shares in NATS would not compromise the delivery of any of these overall aviation policy objectives on safety, security, economic regulation, civil/military cooperation, the environment and supporting the Single European Sky program.

## What does NATS do?

- 2.6** NATS (formerly National Air Traffic Services) provides air traffic control services in the UK and Eastern North Atlantic Airspace.
- 2.7** It is split into two main business units which provide distinct services:
- NATS (En Route) plc (NERL) – the regulated part of the business which provides en route air traffic management services to aircraft within the UK and Eastern North Atlantic airspace. These services make up approximately 80% of the business; and
  - NATS (Services) Ltd (NSL) – the unregulated part of the business which provides air traffic control services at 15 of the UK's major airports and Gibraltar. These services make up the remaining 20% of the business.
- 2.8** NATS has 4,600 employees and operates from two main centres in Swanwick, Hampshire and Prestwick, Ayrshire.
- 2.9** In 2010, NATS handled 2.2 million flights in some of the world's most complex airspace. This is up from 2.0m flights handled in 2000.

## Privatisation and subsequent restructuring

- 2.10** A public private partnership (PPP) for NATS (then 100% Government owned) was proposed in 1998 and completed in July 2001. This included the sale of a controlling stake to strategic partner, The Airline Group, a consortium of seven airline companies<sup>1</sup>.
- 2.11** Following 9/11, NATS underwent a financial restructuring in 2003 which involved the Government providing £65 million of funding, airport operator, BAA becoming a shareholder and significant economic regulatory changes taking place.
- 2.12** The resulting economic regulatory regime for NERL included the mechanism to share the risk of significant shortfalls in traffic volumes, resulting in adjusted prices. In the current regulatory regime, controls over gearing levels have also been introduced.

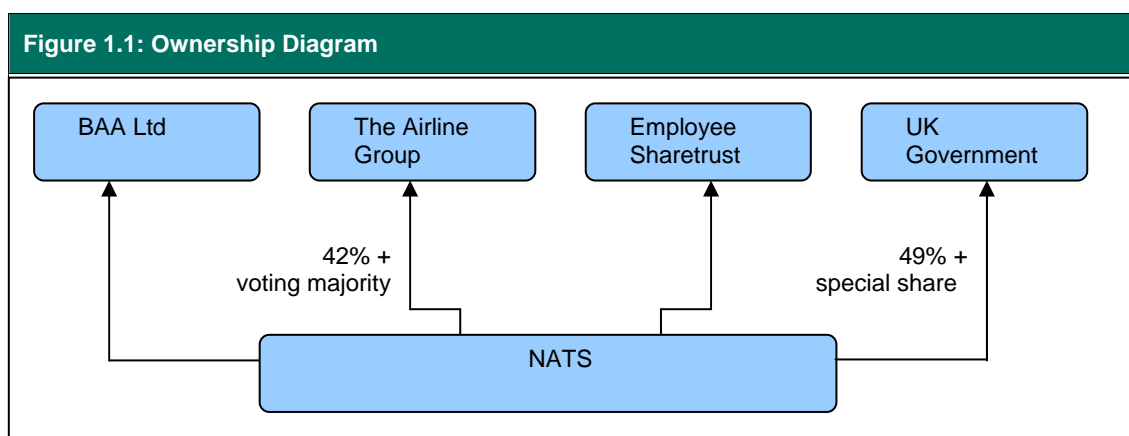
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<sup>1</sup> British Airways, BMI Lufthansa, Virgin Atlantic, Thomson Airways, Monarch, easyJet and Thomas Cook

## Current Ownership structure

**2.13** Under the shareholders' agreement, The Airline Group has the majority of voting rights and holds 42% of the shares.

**2.14** The Government holds 49% of the equity and a special share, with BAA holding 4% and the NATS Employee Share Trust holding 5%.



**2.15** The shareholder agreement restricted the sale of the shares by the Government, The Airline Group and BAA until January 2010 when the new centre in Prestwick opened.

## Performance record since the PPP

**2.16** Following privatisation in 2001, a significant year on year improvement has been observed in the performance record of NATS in the following areas:

- Safety. The number of NATS attributable airprox<sup>2</sup> has gone down from 32 in 2002 to 6 in 2010, and the number of risk-bearing airproxes from 8 to 0.
- Delays. NATS attributable delays have been reduced by over 95% from an average of 109.4s in 2002 to 4.3s in 2010.
- Gearing (NERL). Gearing levels have been reduced from 112% in 2002 to 55% in 2010<sup>3</sup>

<sup>2</sup> An Airprox is a situation in which, in the opinion of a pilot or a controller, the distance between aircraft as well as their relative positions and speed have been such that the safety of the aircraft involved was or may have been compromised.

<sup>3</sup> Gearing is defined as net debt as a proportion of NERL's regulatory asset base.

- Operating Cost reduction (NERL). Underlying operating costs have been reduced by nearly 30% in real terms between 2001-02 and 2010-11, falling from £447m to £318m (both values expressed in 2008-9 prices).
- 2.17** In addition, financial performance has improved from a loss of £80m in 2002 to a 2010 profit of £78m.
- 2.18** Environmental performance is also improving; NATS has committed to reducing ATM related CO2 emissions by 10% per flight against a 2006 baseline by 2020. In 2010 alone 50,000 tonnes of CO2 savings were enabled.

## Regulation and Legal Context

- 2.19** NERL operates under a licence which was granted by the Secretary of State for Transport in 2001. The legal basis of operation for NERL is set out in the Transport Act 2000, which contains a number of provisions designed to provide safeguards for the Government. The headline provisions are laid out below and further provisions included at Annex B.
- 2.20** Under section 8, the licence holder:
- Must secure that a safe system for the provision of authorised air traffic services in respect of a licensed area is provided, developed and maintained;
  - Must take all reasonable steps to secure that the system is also efficient and co-ordinated;
  - Must take all reasonable steps to secure that the demand for authorised air traffic services in respect of a licensed area is met; and
  - Must have regard, in providing, developing and maintaining the system, to the demands which are likely to be placed on it in the future.
- 1.15** NATS is subject to both safety and economic regulation by the CAA, both through its licence for its en route services and wider regulations including the Air Navigation Order 2009. In particular, the licence provides a wide range of powers and controls (listed at Annex C) over the operation of the business irrespective of any Government shareholding, including:
- The Secretary of State may revoke the licence if there is a change of control deemed detrimental to national security or relations with the

Government of a country or territory outside the United Kingdom (Schedule 3(g)(i))<sup>4</sup>

- The requirement for NERL to be able to finance its obligations (Licence Cond 5.2) and maintain an investment grade credit rating (Licence Cond 5.23);
- The requirement for NERL to use reasonable best endeavours not to exceed a gearing level of 65%, with financial disincentives for a gearing level greater than 60% (Licence Cond 5.24-29)
- The power of the CAA to modify the condition within the NERL Licence in accordance with its duties (Licence Cond 3.1); and
- A Special Administration regime to protect service provision in the event of financial distress in the company (Licence Sch 3(f)(ii)). This is also covered in s26-32 of the Transport Act 2000.

**2.21** In addition to the above powers, the Government currently has a Special Share which protects a number of the Strategic Partnership Agreement (shareholders' agreement) rights that are embedded in the Company's Articles of Association. The rights available to the Government through the special share are largely defensive and include a limitation on shareholdings of 15 per cent or more of the shares which carry voting rights. This limitation will not apply unless and until NATS shares become listed. A list of the special share rights can be found at Annex D.

**2.22** The Government is likely to retain a special share regardless of whether it reduces its shareholding. However, the rights may have to be re-drawn in the event of a sale to ensure that they are proportionate.

**2.23** The Government currently appoints 3 non-executive Directors to the board of NATS – Partnership Directors. Partnership Directors are appointed to exercise independent commercial judgement on issues of strategy, performance etc and to seek to ensure that the board functions effectively and transparently. These functions must be exercised for the benefit of the Company and all shareholders as a whole and the Partnership Directors do not owe any allegiance to the Government in a policy or regulatory capacity.

**2.24** Partnership Directors have the following areas of responsibility:

- Protecting the value of the Crown's financial interest in the company
- Ensuring that NATS, whilst benefiting from the skills, resources and strategic vision of the strategic partner and any other private sector shareholdings, retains an independent identity and the capability for

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<sup>4</sup> A complete list of conditions whereby the Secretary of State may revoke the licence can be found in Licence Schedule 3.

independent operation without undue or improper reliance on the strategic partner or other private sector shareholders

- Ensuring that NATS is treating Crown shareholders fairly. They have a duty to report unfairness at company level to the Government and to inform it if circumstances arise that suggest grounds for an investigation exist.
- One Partnership Director must be appointed to each of the audit, remuneration and safety review committees and must chair the safety review committee.

## Legislation governing ownership levels

**2.25** The Government does not currently have the powers to sell shares in NATS. Section 51 of the Transport Act 2000 sets out that the Government is unable to sell below a 49% shareholding. However a provision exists in the same section to amend this section of the Act.

**2.26** If, following the close of this call for evidence, the decision was made to reduce the Government shareholding, an affirmative resolution Statutory Instrument (SI) would need to be laid in both Houses of Parliament for approval and there would be opportunities for debates.

# 3. PROPOSAL

## Budget 2011 Announcement

- 3.1** It was announced in the Budget (March 2011) that the Government “intends to realise value from its shareholding in NATS, subject to considering the views of key interested parties”.

## What have we done to date?

- 3.2** Since the 2010 Budget announcement that the Government was considering options for the sale of its shareholding in NATS, we have had discussions with a range of stakeholders including NATS, the other shareholders, the CAA and the unions.

- 3.3** We have also reviewed the evidence available to us to determine whether the Government needs to retain a shareholding in NATS (summarised in section 4) in order to meet its overall aviation policy objectives. This review was wide ranging and covered:

- Controls available to Government independent of shareholding, including those available through regulation
- Necessary influence (not tied to specific legal controls)

- 3.4** This call for evidence is an opportunity to seek specific evidence from the wider aviation community in advance of approaching Parliament for consent (if the decision is taken to sell Government shares).

## Why do we intend to “realise value through [our] shareholding in NATS”?

- 3.5** The Treasury’s 2008 publication “Value for money and the valuation of public sector assets” sets out that the public sector holds financial, corporate and physical assets in the pursuit of policy objectives and not for its own sake or for the creation of profit.

- 3.6** Assets that are held in the public sector where there is no policy requirement to do so are judged to be tying up state resources that would be better invested elsewhere, and therefore not delivering value for money for the public.
- 3.7** We are therefore running this call for evidence to assist us in establishing whether the Government needs to retain its 49% shareholding in order to meet the Department's overall aviation policy objectives.

## What are we seeking to achieve through this call for evidence?

- 3.8** Before the Government makes a decision about whether to sell shares in NATS and how much of its shareholding it would sell, we need to be confident that the controls in place in a new shareholding structure together with regulatory and legislative controls, would be sufficient to allow the Government to deliver its overall aviation policy objectives.
- 3.9** This call for evidence is therefore designed to enable us to give all interested parties across the aviation industry the opportunity to provide specific evidence.
- 3.10** This will help us to establish whether sufficient protections and controls exist independently of the Government's shareholding to ensure the delivery of Government policy objectives in relation to safety, security, economic regulatory, civil/military co-operation and environmental objectives and European influence without retaining a shareholding, or through retaining a reduced shareholding.

## Why are we seeking evidence now?

- 3.11** We believe that this is an appropriate time to seek further evidence for the following reasons:
- The Government has now decided that it intends to realise value from its stake in NATS, subject to considering the views of key stakeholders.
  - We have reviewed the powers and influence necessary to ensure that the overall aviation policy objectives are met and are now ready to test our understanding and seek more evidence to support or challenge it.
  - We have heard the views of a range of key stakeholders; and are now seeking evidence from a wider range of interested parties to set alongside these views.



## What is the scope to influence the Government's decisions?

- 3.12** This call for evidence is limited to the controls necessary to achieve the Government's overall aviation policy objectives, and the extent to which a Government shareholding is necessary to achieve this.
- 3.13** No decisions have been made regarding the amount of shares that the Government will sell. The results of this call for evidence will be taken into account in the decision making process.
- 3.14** Following the close of the call for evidence, we will review the evidence provided and at that point consider the best way to run a sale process (if appropriate). Issues relating to the sale process are therefore outside the scope of this call for evidence.

## How will this evidence be used

- 3.15** The results of this call for evidence will be compiled and considered by the Department for Transport. The evidence will be taken into account in the final decision making process.
- 3.16** As outlined in Section 1, if the decision was made to sell shares, the Government would still need to conduct a Parliamentary process in the form of an affirmative resolution SI to give it the powers to sell shares. This is subject to approval from both Houses.

# 4. DOES THE GOVERNMENT NEED TO RETAIN A SHAREHOLDING?

## Overview

- 4.1** As set out in the Section 2 of this document, the Government's overall aviation policy objectives are to create a sustainable framework for aviation in the UK, improve passenger experience at airports, and maintain high standards of safety and security for passengers and freight.
- 4.2** The Government has recently published a scoping document, Developing a sustainable framework for UK aviation (DfT, 30 March 2011), which sets out strategic questions on a range of issues including the UK's international and regional connectivity needs, making better use of existing infrastructure, and aviation's climate change impacts and local environmental impacts. The responses to these questions will inform a new aviation policy framework, due to be published for consultation in March 2012 and formally adopted by March 2013.
- 4.3** The section below tests whether a retained shareholding in NATS is necessary to support delivery of the Government's overall aviation policy objectives on safety, security, economic regulation, civil/military cooperation, the environment and supporting the Single European Sky programme, regardless of specific policy measures which may be developed over the medium and longer term.
- 4.4** As described in section 2 of this document, the Government has a number of powers over air traffic control in the UK that are independent of its normal shareholding, including a special share that it would expect to retain. These are set out in more detail below. Each section draws on the key provisions applicable to each overall policy objective. The regulatory and legislative environment is laid out in full in the licence<sup>5</sup>, the

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<sup>5</sup> This can be found at <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=585>

Transport Act 2000<sup>6</sup>, the CAA's regulatory obligations<sup>7</sup> and the Strategic Partnership Agreement (which is available on request from [anna.west@dft.gsi.gov.uk](mailto:anna.west@dft.gsi.gov.uk)).

## Safety

- 4.5** The following mechanisms are in place to ensure aviation safety is protected:
- Regulation. The CAA has specific responsibility for air safety in the UK. This is the top priority of the organisation. The Secretary of State has granted a licence to NERL to operate air traffic control in the UK and oceanic areas and the CAA regulates its performance.
  - Transport Act 2000. The obligation for the licence holder to "secure that a safe system for the provision of authorised air traffic services is provided, developed and maintained for the area authorised (ie UK and oceanic area)" is enshrined in section 8a of the Transport Act 2000.
  - Under section 10 of the Act, the Government is able to serve an injunction or order in respect of an act or omission which takes place in the course of NERL's provision of air traffic services
  - Under section 20, the CAA must make a final order containing the provision it thinks is needed to secure compliance with the duty or condition, if it is satisfied that NERL is contravening or likely to contravene this duty.
  - Strategic Partnership Agreement. In accordance with section 11.3A of the Strategic Partnership Agreement, an executive director of the company has overall responsibility for safety related matters arising out of the business of the company and its affiliates. Nominations are made by private sector shareholders.
- 4.6** The following specific powers could be lost if the Government gave up its 49% shareholding. If the Government retained 25%, it is possible that this power could be retained:
- Strategic Partnership Agreement. Section 11.3B allows for a committee to be formed to monitor safety related matters arising out of the business of the Company and its Affiliates – The Safety Review Committee (SRC). The agreement currently provides that this be chaired by a Government appointed Partnership Director. If the

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<sup>6</sup> This can be found at <http://www.legislation.gov.uk/ukpga/2000/38/contents>

<sup>7</sup> the text of "CAP 393 Air Navigation: The Order and the Regulations" is at <http://www.caa.co.uk/docs/33/CAP393.pdf>

Government sold its full shareholding, we would not expect to appoint Partnership Directors.

- 4.7** It may be possible to set up an appropriately qualified regime in the future whereby an independent chair of the SRC could be appointed by the Government even if a shareholding was not retained. This would ensure that an appropriately qualified person continued to hold the post.

**Q1: Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that aviation safety is protected? Why? How much?**

**Q2: Do you agree that an appropriately qualified independent post holder would be a suitable appointee for chair of the Safety Review Committee?**

## Security

- 4.8** The following mechanisms are in place to ensure national security interests are protected:
- NERL Licence. NERL's licence may be revoked if there is a change of control which the Secretary of State deems detrimental to national security or relations with the government of a country or territory outside the United Kingdom (Schedule 3(g)(i) & Condition 19).
  - Transport Act 2000. Under section 38(1), the Secretary of State may give directions to NERL of a general character as he thinks are necessary or expedient in the interests of national security.
  - Under section 38(2) the Secretary of State may give to NERL a direction requiring it to do or not to do a particular thing, if necessary in the interests of national security. Direction must be laid before Parliament.
- 4.9** The following specific powers could be lost if the Government gave up its 49% shareholding. If the Government retained 25%, it is more likely that this power could be retained, although it may require modification:
- Articles of Association. The Government's special share enshrines the article right to block one owner having a shareholding of 15%+ (11.2) following an Initial Public Offering (IPO). If the Government sold down to less than 25% of its shareholding, the company is entitled to redeem the special share. However, it may be possible for the Government to retain a special share with more tightly drawn powers if it sold down beyond 25%. National security considerations would be taken into account in redrawing the special share if this approach was taken.

**Q3: Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that security interests are protected? Why? How much?**

## Economic regulation, Civil/military co-operation and environmental protection

- 4.10** The CAA regulates the economic activities of NATS including investment activity, controls on the charges they can set airlines, and levels of debt.
- 4.11** The CAA (Regulatory Policy Group) is also responsible for establishing the content of the 'Control Periods' of economic regulation which detail the provisions to be made by NATS for future capacity capability. The CAA applies: forecasts of traffic, performance bonus and penalty arrangements and alert mechanisms to be used for (usually) 5 yearly terms. The Government's shareholding has no influence on this provision.
- 4.12** The CAA is charged with ensuring 'fair and equitable access' to airspace for all users – this includes the military, and is reinforced in this case by their obligation to enable a 'Joint and Integrated' approach to airspace and traffic management. The Government's shareholding has no influence on this provision.
- 4.13** The Government has issued guidance to the CAA on environmental objectives relating to the exercise of its air navigation functions. The CAA is required to take this guidance into account in airspace design and management.

**Q4: Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that economic regulatory interests, civil/military co-operation and environmental interests are protected? Why? How much?**

## Delivery of the Single European Sky programme

- 4.14** As mentioned above, the Government supports the SES programme, which is an ambitious initiative, launched by the European Commission in 1999, to reform the architecture of European air traffic management (ATM). It puts forward a legislative approach to meet future capacity and safety needs at a European rather than at local level.
- 4.15** Key objectives of the SES are:
- To restructure European airspace as a function of air traffic flows;

- To create additional capacity; and
- To increase the overall efficiency of the European air traffic management system.

**4.16** Ownership of NATS has not in the past been a direct lever in delivering these objectives. The principal levers include:

- Government intervention at the State level – for example, DfT Aviation Directorate sits on the Single European Sky group and Eurocontrol's Provisional Council not NATS.
- European Aviation Safety Agency (EASA) is responsible for rule-making on Air Traffic Management providers and as such is safety regulator for EU airspace (CAA implements these rules within the UK).
- Through the CAA's role in:
  - Safety regulation;
  - Economic regulation of en-route charges; and
  - Preparing the UK's National Performance Plan helping to deliver EU wide objectives in improving capacity, safety, cost-efficiency and delay figures.
- Market competition for airport ATC services.

**Q5: Given the control mechanisms in place, does the Government need to retain a shareholding to support the Single European Sky programme? Why? How much?**

## Other issues

**4.17** If you have evidence on any other issues which you believe to be a material consideration in determining the future level of the Government's shareholding in NATS, please include it in your response to us.

## 5. QUESTIONS SUMMARY

- **Q1: Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that aviation safety is protected? Why? How much?**
- **Q2: Do you agree that an appropriately qualified independent post holder would be a suitable appointee for chair of the Safety Review Committee?**
- **Q3: Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that security interests are protected? Why? How much?**
- **Q4: Given the control mechanisms in place, does the Government need to retain a shareholding to ensure that economic regulatory interests, civil/military co-operation and environmental interests are protected? Why? How much?**
- **Q5: Given the control mechanisms in place, does the Government need to retain a shareholding to support the Single European Sky programme? Why? How much?**
- **If you have evidence on any other issues which you believe to be a material consideration in determining the future level of the Government's shareholding in NATS, please include it in your response to us.**

**Please note that responses are due by Wednesday 6 July.**

# ANNEX A: List of Consultees

Table 1: List of Consultees	
Aer Lingus	Eurocontrol
Air Canada	The EU Commission
Air France	Flybe
The Airline Group	IATA
Aircraft Owners and Pilots Association	Government partnership directors
Airport Operators Association	Joint Trade Unions
American Airlines	KLM
BAA	Monarch
BATA	NATS
BMI - Lufthansa	Popular Flying Association
British Airways	Ryanair
British Business and General Aviation Association	Thomas Cook
CAA	Thomson Airways
Delta Airlines	United Airlines
Easyjet	Virgin Atlantic



# ANNEX B: Safeguards in the Transport Act 2000

**B.1** In the below section, we have summarised the key powers available to the Government through the Transport Act 2000. The full Act can be accessed at <http://www.legislation.gov.uk/ukpga/2000/38/contents>.

## Safeguards in the Transport Act 2000

**B.2** Under section 8, the licence holder:

- Must secure that a safe system for the provision of authorised air traffic services in respect of a licensed area is provided, developed and maintained;
- Must take all reasonable steps to secure that the system is also efficient and co-ordinated;
- Must take all reasonable steps to secure that the demand for authorised air traffic services in respect of a licensed area is met; and
- Must have regard, in providing, developing and maintaining the system, to the demands which are likely to be placed on it in the future.

**B.3** Under section 10, in the event of a failure by the licence holder to perform a section 8 duty or condition of the licence, the remedies of injunction and/or an order for specific performance would be available to the Government, not just damages.

**B.4** Under section 20, if the CAA is satisfied that NERL is contravening or likely to contravene these duties or a licence condition it must make a final order containing provision it thinks is needed to secure compliance with the duty or condition.

**B.5** Under section 38(1), the Secretary of State may give directions to NERL of a general character as he thinks are necessary or expedient:

- In the interests of national security
- In the interests of encouraging or maintaining the UK's relations with another country. A direction must be laid before Parliament.

- B.6** Under section 38(2) the Secretary of State may give to NERL a direction requiring it to do or not to do a particular thing, if necessary in the interests of national security. A direction must be laid before Parliament.
- B.7** Under section 38(3) the Secretary of State may give NERL a direction to do or not do something, or to secure that a particular thing is done in connection with the licence, if necessary to discharge or facilitate the discharge of an international obligation.

## Restrictions on the Shareholdings

- B.8** Under section 51(4) the Secretary of State must ensure that the Crown does not dispose of any of the shares it holds in NATS unless –
- The Crown holds at least 49 per cent of the company's issued ordinary share capital immediately before the disposal; and
  - The Crown will continue to hold at least 49 per cent of that share capital immediately after disposal.
- B.9** Under section 51(5) the Secretary of State must ensure that at any given time the Crown holds at least 25 per cent of the designated company's issued ordinary share capital.
- B.10** Under section 51(6) the Secretary of State must ensure that the Crown continues to hold any special share provided for under the designated company's articles of association.
- B.11** Under 51(8) the Secretary of State must not consent to any alteration of the designated company's articles of association which requires his consent on behalf of the Crown as special shareholder unless a statement of the intended consent has been laid before and approved by resolution of each House of Parliament.

# ANNEX C: Powers and controls contained in licence conditions

- C.1** The licence contains the following key powers and safeguards exercisable by the Secretary of State and/or the CAA in relation to the behaviour and operation of the licence holder. The full licence can be found at <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=585>.

## Duties

- C.2** The power of the CAA to modify the NERL Licence in accordance with its duties (Condition 3.1).
- C.3** NERL must advise and provide reports to the Secretary of State for the purpose of assisting him in relation to the discharge of any obligations relating to the provision of air traffic services arising from the UK's membership of an international organisation or a party to an international agreement. (Condition 13.1).

## Change of control

- C.4** NERL must notify the Secretary of State as soon as it becomes aware that an undertaking has become or intends to become a parent undertaking in respect of NERL (Condition 19.1).
- C.5** NERL must notify the Secretary of State of:
- Any change in the proportion of shares held in NERL or a parent undertaking; or
  - The acquisition or intended acquisition of shares held in NERL or a parent undertaking by a person not already holding shares.
  - Where the total number of shares held would exceed 15%, 30% or 50% of the total shares. (Condition 19.2).
- C.6** NATS must notify the Secretary of State following its becoming aware of any change, transaction or arrangement which would enable a person or

group of persons directly or indirectly to control or materially influence the policy of NERL. (Condition 19.3).

## National Security

- C.7** NERL's licence may be revoked if there is a change of control which the Secretary of State deems detrimental to national security or relations with the government of a country or territory outside the United Kingdom (Schedule 3(g)(i)).

## Financial

- C.8** The requirement for NERL to be able to finance its obligations (Licence Cond 5.2) and maintain an investment grade credit rating (Condition 5.23).
- C.9** The requirement for NERL to use reasonable best endeavours not to exceed a gearing level of 65%, with financial disincentives for a gearing level greater than 60% (Licence Cond 5.24-29).
- C.10** A Special Administration regime to protect service provision in the event of financial distress in the company (Licence Sch 3(f)(ii)).
- C.11** Under its licence, NERL must give the CAA 3 months written notice of intentions to dispose of relevant operational assets, to obtain the Authority's consent (Condition 5.16).
- C.12** NERL's licence restricts diversification outside the core en route business, in part through a 4.5% ceiling on turnover and a ceiling of 1% of the share capital of NERL in issue on investment in other business. (Condition 5.12(a)(v) and 5.12(b)).
- C.13** NERL must submit to the CAA for approval a full 10 year business plan to include details of NERL plans and expectations for its en route businesses together with measures it proposes to take to improve the efficiency and effectiveness of its operation (Condition 10.4).
- C.14** NERL's licence includes a general obligation to meet "any reasonable level of overall demand...having regard to the objective of permitting access to airspace on the part of all users". (Condition 2.1-2).
- C.15** NERL's licence defines the services it must provide. If it wishes to reduce materially the scope of their services it must formally apply for CAA to modify the licence. (Condition 3.1).

- C.16** Under its licence, NATS' regulated business must obtain the CAA's consent if it wishes to unduly mortgage its assets (Condition 5.19(a)).
- C.17** NATS' regulated business must certify to the CAA each June that it has financial and operational resources for the next two years to meet its obligations under the Transport Act 2000 and its licence to provide services. This certificate is to be supported by an auditor's report (Condition 5.3).
- C.18** NERL cannot amend or vary any of the finance documents unless it has given prior notice to the CAA, (Condition 5.14(a)).
- C.19** NERL must promptly notify the CAA upon becoming aware of any default under the finance documents (Condition 5.14(c)).

# Annex D: Summary of special share rights

**D.1** Under Article 10 of the Articles of Association of NATS Holdings Limited (“the Articles”), the Government has the following key special share rights:

- Limitation on shareholdings – no one other than a ‘permitted person’ may directly or indirectly own or control the right to exercise 15% or more of the votes attaching to the shares following a listing on a stock exchange
- The right to restrict the number of directors between 9 and 17
- The right to appoint a maximum of 3 non-executive directors and the exclusive right to remove them
- The right to restrict the convening of director’s meetings so that meetings are held in the UK or any other place agreed by all the directors at least once every 3 months
- The right to restrict voting at directors’ meetings so that resolutions of the directors shall be decided by the majority of the votes cast and each director shall have one vote.

**D.2** In addition, on an ordinary resolution HMG has one vote more than the total number of votes cast and on a special resolution one vote more than 25% of the total votes cast in respect of the following:

- The company creating, issuing, purchasing, redeeming or repaying any of its shares or reducing or reorganising its share capital in any way
- The company altering the voting rights of any of its shares
- The removal of any director appointed by a Crown representative