



Department  
for Transport

# **Notice of proposed modification to the NATS (En Route) plc licence to extend the licence termination notice period**

July 2021

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# 1. Foreword

## Purpose of this document

This document is a formal notice under section 11A(1) of the Transport Act 2000 to modify the licence granted to NATS (En Route) plc (NERL) dated 28 March 2001.

The proposed modification is to extend the licence termination notice period from 10 years to 15 years.

## Background

NERL is authorised to provide air traffic services through a licence granted under section 6 of the Transport Act 2000. This enables aircraft to carry passengers and freight safely and efficiently through our airspace. The licence can be found [here](#). The Secretary of State granted NERL its licence on 28 March 2001.

Termination of the licence, under normal circumstances, currently requires the Secretary of State to give NERL a notice period no shorter than 10 years.

Consultation on the future regulatory framework for air traffic services in the UK took place in 2016. As part of the response to that consultation (2017), the Government set out its intention to extend the licence termination notice period from 10 years to 15 years. The consultation documents are available [here](#).

A longer notice period facilitates NERL's access to more efficient financing, by giving investors greater certainty over the ability of NERL to carry on its business in a stable regulatory environment. This should lower the cost of financing for NERL and be reflected in lower charges to airspace users. This is particularly important to help manage the impacts of the fall in air traffic as a result of COVID-19.

The Air Traffic Management and Unmanned Aircraft Act 2021 accordingly modernises the licensing framework for air traffic services in the UK and amends the Transport Act 2000 so as to provide the Secretary of State with the power to modify certain terms of the licence, including the licence termination notice period. The power came into legal effect on 29<sup>th</sup> June 2021.

## 2. Proposal

### Statutory requirements

Under section 11A of the Transport Act 2000, before the Secretary of State can modify the licence term, they must publish a notice which:

- states that they propose to modify the licence;
- specifies the proposed modification;
- gives the Secretary of State's reasons for the proposed modification;
- states the effect of the proposed modification; and
- specifies a reasonable period for making representations

### The proposed modification

The Secretary of State hereby gives notice of their intention to extend the licence termination notice period from the current 10 years to 15 years. The modifications the Secretary of State proposes to make are set out below:

#### Part I, Term 6

"In so far as it authorises the provision of air traffic services in respect of the En route (UK) Area, unless revoked in accordance with the terms of Schedule 3 this Licence shall continue to have effect until determined by not less than ~~ten~~ fifteen years' notice in writing given by the Secretary of State to the Licensee following consultation with the CAA, ~~such notice not to be served earlier than the twentieth anniversary of the grant of this Licence.~~"

#### Part I, Term 7

"In so far as it authorises the provision of air traffic services in respect of the En route (Oceanic) Area, unless revoked in accordance with the terms of Schedule 3, this Licence shall have effect until determined by not less than ~~ten~~ fifteen years' notice in writing given by the Secretary of State to the Licensee following consultation with the CAA, ~~such notice not to be served earlier than the twentieth anniversary of the grant of this Licence.~~"

## 3. Rationale

### Reasons for the proposal

Section 1(1) of the Transport Act 2000 sets out the Secretary of State's general duty with regard to the provision of air traffic services. This requires the Secretary of State to exercise the relevant statutory functions so as to maintain a high standard of safety in the provision of air traffic services. The Secretary of State also has a number of duties secondary to this general duty.

Under section 1(2)(b) and (c), the Secretary of State for Transport, when exercising the relevant statutory functions, is required to promote "efficiency and economy" on the part of licence holders, and also to secure that they will not "find it unduly difficult to finance activities authorised by their licences".

NERL undertakes regular investments in infrastructure in support of its licence obligations, with asset lives of 15 years on average. Under the economic regulatory framework established under the Transport Act 2000, NERL can earn a return on those investments over a 15-year period. It is generally considered efficient for firms to finance investments over a period matching the economic life of the asset, i.e. over 15 years in the case of NERL.

NERL raised concerns that it would face difficulties securing debt financing with maturity longer than the notice period and would therefore be reliant on shorter maturity debt financing.

Under the current terms of the licence, any revocation notice cannot be served earlier than the twentieth anniversary of the grant of the licence, with a minimum notice period of 10 years. As the twentieth anniversary has now passed, the licence continues to operate with a 10-year rolling notice period. Given that the maximum possible duration of the licence has effectively reduced, these concerns have become more relevant.

The Department for Transport formally requested the Civil Aviation Authority (CAA) under section 16(1) of the Civil Aviation Act 1982 to investigate these concerns and provide further evidence and analysis to support a decision on potential changes to the duration and/or structure of the NERL licence. The CAA's advice – set out in [CAP 1467](#) stated that there may be a good case to extend the notice period to 15 years to reflect the average lifecycle and regulatory depreciation period. The CAA also noted that while there is little evidence of regulated companies being unable to secure debt financing extending beyond the notice period, there is a risk premium associated with such debt.

In CAP 1467, the CAA estimated that risk premium to be approximately £1 million per annum. Therefore, aligning the notice period with the average asset lifecycle and regulatory depreciation period should remove the need for that premium and lead to lower financing costs. As NERL is economically regulated by the CAA, these savings can be passed on to consumers through a lower price cap.

The Secretary of State therefore intends to extend the minimum termination notice period for NERL to a period of 15 years.

The relative merits of the various options for extending the notice period were explored in more detail in an [impact assessment](#).

As presented in the final impact assessment, the incremental benefit of moving to a 20-year period over a 15-year period is more uncertain, whilst the costs of doing so are much greater. A longer notice period reduces the flexibility of future governments to make changes to the market structure, and risks diluting NERL's incentives to keep costs contained. The latter risk significantly outweighs any potential benefit from extending the notice period to 20 years. The Government believes that an extension of the notice period to 15 years would strike an appropriate balance between allowing NERL to finance itself efficiently and retaining the Government's flexibility to change the licence holder.

## Effects of the proposal

The proposed changes further the Secretary of State's duty to promote efficiency and economy on the part of NERL, and to secure that NERL does not find it unduly difficult to finance activities authorised by its licence.

Extension of the licence notice period provides NERL with additional flexibility to ensure efficient financing of its investment programme. Such flexibility has been welcomed and NERL have financed a package of investments (spanning several years) with a single bond issue based on the Secretary of State's commitment to formally extend the licence notice period from 10 to 15 years. This is particularly important to help manage the impacts of the fall in air traffic as a result of COVID-19.

## 4. Next steps

### Views invited

We welcome views on the proposed licence modification. Any representations on them should be sent by e-mail to [ATMlicenceextension@dft.gov.uk](mailto:ATMlicenceextension@dft.gov.uk) by **5pm on 13<sup>th</sup> August**.

We expect to publish the representations on our website for other interested parties to read after the period for written representations expires. Any material that is regarded as confidential should be clearly marked as such. Please note that information provided may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you have any questions on this document, please e-mail the above mailbox.

### Publication of further notice

Once the closing date for representations has passed, we will consider those received and publish the further notice regarding the proposed modification as required by section 11A of the Transport Act 2000. Any changes to the licence will then be reflected in the licence by the CAA and published on the CAA's website.

**Secretary of State**

**July 2021**