



Department
for Transport

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

September 2021

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Contents

1. Foreword	4
Purpose of this document	4
Background	4
2. Proposal	6
Statutory requirements	6
The modification	7
3. Rationale	8
Reasons for the modification	8
Effects of the modification	9
4. How the Secretary of State has taken account of any representations made in the period specified in the earlier notice	10
Stakeholder Representations	10
The decision to modify the licence	11
5. Next steps	12
Annex A: Stakeholder Responses	13

1. Foreword

Purpose of this document

This document is a formal notice under section 11A(5) of the Transport Act 2000 of the Secretary of State's decision to modify the licence granted to NATS (En Route) plc (NERL) dated 28 March 2001.

The modification extends the licence termination notice period from 10 years to 15 years. The modification will take effect 28 days after publication of this notice.

This decision follows on from the notice issued under section 11A(1) of the Transport Act 2000 in July 2021.

In accordance with section 11A(7), this notice sets out the modification that the Secretary of State has decided to make to the licence, the date from which the modification is to have effect, the reasons for making this modification and its effect. It also sets out how the Secretary of State has taken account of the representations made in response to earlier notice.

If you would like to discuss any aspect of this document, please contact ATMlicenceextension@dft.gov.uk.

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.

Prior to the making of this modification, termination of the licence (under normal circumstances) required the Secretary of State to give NERL a notice period no shorter than 10 years. Historically, the notice could not be served prior to the twentieth anniversary of the licence. As the twentieth anniversary has now passed, the licence has been operating with, in effect, a 10-year rolling notice period.

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.

2. The Modification

Statutory requirements

The Air Traffic Management and Unmanned Aircraft Act 2021 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 29th June 2021.

Under section 11A of the Transport Act 2000, before the Secretary of State can modify the licence term, they must

- publish a notice in relation to the proposed modification;
- send a copy of the notice to the relevant stakeholders set out in s. 11A(2); and
- consider any representations that are made about the proposed modification in the period specified in the notice and not withdrawn.

If the Secretary of State wishes to proceed with the licence modification, they must

- publish a further notice in relation to the modification; and
- send a copy of the notice to the relevant stakeholders as set out in s.11A(2).

The further notice must:

- specify the modification;
- specify the date from which the modification is to have effect;
- give the modifying authority's reasons for the modification;
- state the effect of the modification;
- state how it has taken account of any representations made in the period specified in the earlier notice; and
- state the reasons for any differences between the modification and that set out in the notice under subsection.

The modification

The Secretary of State hereby gives notice of the extension to the licence termination notice period from the current 10 years to 15 years. The modifications the Secretary of State will 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.”~~

The modification is to have effect from 24 October 2021.

3. Rationale

Reasons for the modification

Section 1(1) of the Transport Act 2000 sets out the Secretary of State's general duty with regard to 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, when exercising the relevant statutory functions, is required to do so in a manner they think best calculated to "promote efficiency and economy" on the part of licence holders, and also to secure that the licence holders "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. Prior to this modification, any revocation notice could not 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 has been operating with, in effect, a 10-year rolling notice period, making these concerns more relevant.

The Department for Transport formally requested the 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 CAP1467, 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 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 strikes an appropriate balance between allowing NERL to finance itself efficiently and retaining the Government's flexibility to change the licence holder.

Effects of the modification

The 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. How the Secretary of State has taken account of any representations made in the period specified in the earlier notice

Stakeholder Representations

Five responses were received to the consultation from stakeholders including Aer Lingus, Emirates, London Luton Airport and the Royal Aeronautical Society. Aer Lingus, London Luton Airport, and the Royal Aeronautical Society support the modification. Aer Lingus pointed out the change has already been extensively consulted upon and is a necessary step to support the re-financing of NERL's business. London Luton Airport believe that a longer termination period would ensure that that projects are continued which have a lengthier timescale, for example investment in airspace modernisation and airspace management technology.

In its response, Emirates acknowledged that an extension to the licence termination period could provide some benefit with infrastructure planning and associated debt servicing but believe that continued good governance and oversight associated with delivery should minimise the need to provide notice of termination. Whilst Emirates did not formally object to the proposal, it did struggle to accept the justification.

We have noted the concerns raised by Emirates and agree that good governance and oversight is essential and would minimise the need to terminate the licence, but poor performance by NERL is not the sole reason the licence could be terminated, and there could be a scenario where the regulatory, technological or economic environment changes such that licence termination is necessary. Emirates also noted that that the modification would mean that the termination period would no longer align with two complete Reference Period consultations. A Reference Period is a five year regulatory cycle in which the CAA set a price cap to regulate NERL.

Our view is that 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), and that this approach is preferred over aligning with Reference Period consultations. Under the current NERL licence, the CAA depreciates the assets in NERL's regulated asset base over a 15-year period. The 15-year period is based on the average life of the assets NERL invests in. Matching the licence termination notice period with the depreciation period ensures that NERL is able to efficiently raise debt to finance such investments. The maturity of the debt will therefore be closely aligned with the period over which NERL charges back the investment cost to its customers, which in turn means that the size of the debt repayments is more closely

matched with the revenue received in any single year. This benefits NERL as it simplifies cash flows and doesn't require NERL to frequently refinance shorter term debt.

Given the strong overall support for the modification, we are of the view that the justification set out above remains. Responses can be viewed in full at Annex 1, except where responses have been marked as confidential.

The decision to modify the licence

Having considered stakeholders' responses, the Secretary of State has decided to modify NERL's licence.

5. Next steps

The changes to the licence set out above will be reflected in the licence by the CAA and published on the CAA's website on 25 October 2021.

Secretary of State

September 2021

Annex A: Stakeholder Representations

We received the below representations from stakeholders. We have not published representations that had been highlighted as confidential.

Respondent	Representation
Aer Lingus	<p>Thank you for the opportunity to respond to your consultation to modify the licence granted to NATS (En-route) plc (“NERL”) under section 11A(1) of the Transport Act 2000. Aer Lingus supports the modification of the licence termination notice period to 15 years; this change has already been extensively consulted upon and is a necessary step to support the re-financing of NERL’s business which has already taken place. Extending the licence termination notice period to 15 years would support NERL’s ability to more cost-efficiently raise further financing in future and will thus benefit users through lower charges.</p>
Emirates	<p>From a TCO perspective, we acknowledge that the proposed extension could provide some benefit with infrastructure planning and associated debt servicing on behalf of NATS. We believe however that it is a considerable compromise to use this as justification for extension as the decision leading to licence termination would undoubtedly also relate to other aspects such as the ability to control costs and/or provision of service levels.</p> <p>In that respect we note that the current 10 year term also aligns with two complete RP consultation periods whereas the new proposal will extend that to three. We also note that the decision to terminate would come after a considerable period of mandated consultation which in effect should have provided further foresight.</p> <p>From our view, continued good governance and oversight associated with delivery of cost discipline and agreed service levels should minimise the need to provide notice of termination. As such while we do not formally object to the proposed extension, we do struggle to accept the justification.</p>

Respondent	Representation																
<p>London Luton Airport</p>	<p>London Luton Airport (LLA) would support NERL having the license termination period extended as set out in this consultation. We believe that a longer termination period would ensure that projects are continued which have a lengthier timescale, for example investment in airspace modernisation and airspace management technology. An extension to NERL would mean that the developments within UK airspace will keep progressing, which is good for LLA, our operators and usually the environment as NERL are keen to increase efficiency and reduce CO2 emissions throughout the network. These also tend to be progressed on a much longer timescale.</p> <p>In order to produce some real life examples for this consultation, below we have outlined the timeline for our Future Airspace Strategy Implementation-South (FASI-S) airspace change proposal, which as you can see has quite a long implementation date. As we are doing this with other airports and NATS we need to be able to plan for the long timescales associated with airspace change and improvements. A longer term for NERL will make these projects much easier to plan for.</p> <table border="1" data-bbox="418 1070 1327 1899"> <thead> <tr> <th data-bbox="418 1070 874 1146">Stage in CAP 1616</th> <th data-bbox="874 1070 1327 1146">Timescale</th> </tr> </thead> <tbody> <tr> <td data-bbox="418 1146 874 1258">Stage 2A Options Development</td> <td data-bbox="874 1146 1327 1258">Q4 2021</td> </tr> <tr> <td data-bbox="418 1258 874 1335">Stage 2B Options Appraisal</td> <td data-bbox="874 1258 1327 1335">Q1 2022</td> </tr> <tr> <td data-bbox="418 1335 874 1482">Stages 3A and 3B Consultation Preparation and Approval</td> <td data-bbox="874 1335 1327 1482">Q4 2022</td> </tr> <tr> <td data-bbox="418 1482 874 1639">Stages 3C and 3D Consultation and Collate & Review</td> <td data-bbox="874 1482 1327 1639">2024</td> </tr> <tr> <td data-bbox="418 1639 874 1751">Stages 4A and 4B Update Design and Submit ACP</td> <td data-bbox="874 1639 1327 1751">2024</td> </tr> <tr> <td data-bbox="418 1751 874 1827">Stage 5 Decide</td> <td data-bbox="874 1751 1327 1827">2025</td> </tr> <tr> <td data-bbox="418 1827 874 1899">Stage 7 Implementation</td> <td data-bbox="874 1827 1327 1899">2026</td> </tr> </tbody> </table> <p>The other airspace improvements we need to make are relating to technology, specifically 'Airport Co-ordination Decision Making' (ACDM) which is technology airports and Air Traffic</p>	Stage in CAP 1616	Timescale	Stage 2A Options Development	Q4 2021	Stage 2B Options Appraisal	Q1 2022	Stages 3A and 3B Consultation Preparation and Approval	Q4 2022	Stages 3C and 3D Consultation and Collate & Review	2024	Stages 4A and 4B Update Design and Submit ACP	2024	Stage 5 Decide	2025	Stage 7 Implementation	2026
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Respondent	Representation
	<p>Control (NATS) can use on route to predict the times aircraft will land/depart and also the most efficient route. Other airports do have some of these facilities (Heathrow and Gatwick) but we don't at LLA. For us to get it, NATS need to see some longevity on their investment which would be better with a longer termination period.</p>
<p>The Royal Air Nautical Society</p>	<p>The Royal Aeronautical Society (RAeS), and our Air Traffic Management Advisory Panel, has considered the proposal outlined in the Notice of proposed modification to the NATS (En Route) plc licence to extend the licence termination notice period document.</p> <p>We are satisfied with the justification set out in the document for the Secretary of State's intention to extend NATS' en-route licence notice period, and support the proposal.</p>