

Updating the licence modification process for the en-route air traffic licence

Department for Transport

RPC rating: fit for purpose

Description of proposal

NERL is the sole provider of en-route air traffic control services over the UK, operating as a statutory monopoly under an economic licence issued by the Civil Aviation Authority (CAA). The Department is proposing to change how the CAA can make changes to NERL's licence conditions.

Currently, proposed licence modifications require the consent of NERL or a positive determination from the Competition and Markets Authority (CMA), which acts as an independent investigator on whether the proposed modification meets certain public interest considerations and can be imposed. This licence modification process is considered to be unnecessarily time-consuming and there are concerns that it encourages the CAA to compromise on regulatory changes to make them acceptable to NERL, regardless of the interests of consumers.

The Department is therefore proposing to allow CAA to make modifications directly to licence conditions without the consent of NERL, but with a new appeals mechanism that will allow NERL or any affected customer (i.e. airlines) to be able to appeal a licence modification. An appeals system does not currently exist because the CAA requires the consent of NERL, or a positive CMA determination, before a modification can be made.

Impacts of proposal

The anticipated impact of the proposal depends upon both the anticipated number of licence modifications and anticipated number of appeals.

The Department has used historical trends and discussion with the CAA to estimate that there will be 12 major and 12 minor licence modifications over the next 20 years.

The CAA modifies NERL's price controls every five years, and there is historic evidence of a number of off-period adjustments. Hence, 4 of the anticipated major licence modifications and 4 of the anticipated minor licence modifications are expected to be non-qualifying regulatory provisions relating to price controls.

The Department has also used historic trends for the appeal rate along with other assumptions to forecast future appeals. As the new regime allows airlines to appeal modifications, the Department expects that a small proportion of proposed licence modifications that would have been accepted under the current regime will now be appealed. Three different appeal rates are anticipated:

- Modifications that were previously likely to be CMA determined (now a 15% appeal rate);
- Modifications that were previously likely to be accepted by NERL (now a 5% appeal rate as a result of airlines being able to appeal modifications that NERL are likely to have accepted); and
- Modifications that were previously likely to be dropped (now a 35% appeal rate).

In its analysis the Department has annualised the expected number of appeals; with 0.12 appeals expected each year, made up of a mix of major and minor appeals.

The principle costs associated with the proposal are the costs of launching an appeal. These will fall on the entity launching an appeal (NERL or an airline), the CAA as the defendant and the CMA, who will hear appeals against licence changes.

It is assumed that the costs to the CMA of hearing appeals is lower than the costs of investigating and making a determination under the current regime, as this is a more onerous exercise, which requires the CMA to take an investigative approach to their decision-making. Appeals will be more limited in scope and will be reliant on appellants (NERL/airlines) and the CAA providing evidence. As such, both NERL and the CAA will also benefit from avoided costs, as the appeals will be less onerous than CMA determinations and will require less input.

The total cost to business will be the difference between the costs of the new appeals, and the avoided costs of CMA determinations. Whilst the appeals will be cheaper for business on a per appeal basis, it is anticipated that there will be more appeals than there are CMA determinations. As such, the proposal will be net costly to business. The Department's best estimate of costs to business is £40,000 per year.

The RPC verifies the estimated equivalent annual net direct cost to business (EANDCB) of £0 million. This will be a qualifying regulatory provision that will score under the business impact target.

The RPC notes that, as the CAA modifies NERL's price controls every five years, four of the major forecast licence changes will relate to price control. These changes are non-qualifying regulatory provisions. The EANDCB associated with any appeals of these price control changes is also £0 million.

Quality of submission

The RPC is satisfied that the Department has used robust evidence, including historic data and consultation with the CAA and CMA, to determine the costs and benefits of the current regime. The department has also used assumptions from the 2012 Civil Aviation Act impact assessment, and consulted with the Competition Appeal Tribunal in determining the likely costs of the proposed appeals system. The RPC notes that it would have been useful for the Department to discuss in more detail why the assumptions used in the 2012 Civil Aviation Act impact assessment remain valid.

The Department has annualised the impact of the proposal, which makes it difficult to determine the exact number of appeals that are anticipated under the proposed new regime. The RPC would suggest that the submission could be improved with the inclusion of narrative explaining why costs and benefits have been annualised in this way. Furthermore, the inclusion of some additional summary detail, including the total number of expected appeals, would be useful.

The IA only considers the impact of changes to the process for modifying the licence. Any impacts relating to specific modifications will need to be considered by CAA separately as and when they occur.

The Department's small and micro business assessment indicates that there will be no impact on small or micro businesses because NERL and its customers (airlines and airports) are all considered to be large businesses.

Departmental assessment

Classification	Qualifying regulatory provision (IN), and non-qualifying regulatory provision (price controls)
Equivalent annual net cost to business (EANCB)	£0 million QRP £0 million NQRP
Business net present value	-£0.6 million
Societal net present value	-£0.3 million

RPC assessment

Classification	Qualifying regulatory provision (IN), and non-qualifying regulatory provision (price
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	controls)
EANCB – RPC validated ¹	£0 million QRP £0 million NQRP
Business Impact Target (BIT) Score ¹	£0 million
Small and micro business assessment	Sufficient



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.