

EXPLANATORY MEMORANDUM TO
THE TRANSPORT ACT 2000 (AIR TRAFFIC SERVICES LICENCE
MODIFICATION APPEALS) (PRESCRIBED AERODROMES) REGULATIONS
2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Section 11(1) of the Transport Act 2000 (“the Act”) enables the Civil Aviation Authority (“CAA”) to modify licence conditions, in a licence to provide air traffic services.

2.2 Under section 19A(1) of the Act, an appeal lies to the Competition and Markets Authority against a decision by the CAA to modify a licence condition under section 11(1) of the Act.

2.3 Section 19A(2) of the Act sets out the persons who may bring such appeals, namely the licence holder, an owner or operator of an aircraft whose interests are materially affected by the decision, or an owner or manager of a prescribed aerodrome whose interests are materially affected by the decision.

2.4 “Prescribed aerodrome” is defined in section 19A(3) as an aerodrome of a description prescribed by regulations made by the Secretary of State. These Regulations prescribe a description of aerodromes for the purposes of section 19A(3).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Transport Act 2000 (Air Traffic Services Licence Modification Appeals) (Prescribed Aerodromes) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being made to ensure that the owners or managers of the relevant aerodromes are able to appeal against modifications to licence conditions made under section 11(1) of the Act.
- 6.2 This is the first use of the power in section 19A(3) of the Act.

7. Policy background

What is being done and why?

- 7.1 NATS (En Route) plc (“NERL”), a wholly owned subsidiary of NATS Holdings Limited (“NATS”) provides en route air traffic services in the United Kingdom. These services are governed by a licence granted to NERL under Part 1 of the Act.
- 7.2 The CAA, as the UK’s specialist aviation regulator, also has the role of economic regulator of NERL and is responsible for monitoring and enforcing NERL’s compliance with the conditions of the licence and with licence holder duties under section 8 of the Act.
- 7.3 The CAA can modify licence conditions so long as in doing so it complies with its general duty as to the exercise of its functions as set out in section 2 of the Act. Its primary duty, one shared with the Secretary of State, is to maintain a high standard of safety in the provision of air traffic services. The CAA also has a number of duties secondary to this main duty (of which the first three are shared with the Secretary of State):
- to further the interests of operators and owners of aircraft, owners and managers of aerodromes, persons travelling in aircraft and persons with rights in property carried in them;
 - to promote efficiency and economy on the part of licence holders;
 - to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences;
 - to take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State; and
 - to take account of any guidance on environmental objectives given to the CAA by the Secretary of State.
- 7.4 In addition, both the CAA and the Secretary of State are under a duty to exercise their functions in such a way as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions.
- 7.5 There have been two serious system failures (on 7 December 2013 and 12 December 2014) that have prompted reviews of the regulatory framework for NERL, including the enforcement and penalty regime. The first incident, a Voice Communications Systems failure on 7 December 2013, which had a particularly disruptive effect on passengers, prompted a wide-ranging CAA review into the NERL licence and regulatory framework. The second incident involved a computer system failure on 12 December 2014, resulting in the CAA and NATS establishing an independent enquiry into its cause.
- 7.6 For both failures, the CAA was satisfied that there were no safety issues associated with NERL’s handling of the incident and there was no evidence that there was breach of the service obligations in the licence. The independent enquiry into the 2014

system failure, however, made a number of recommendations to update and modernise the licensing framework.¹

- 7.7 Part 2 of the Air Traffic Management and Unmanned Aircraft Act 2021 updated the regulatory framework relating to licence modification and enforcement in Part 1 of the Act. The CAA is able to modify a licence condition, with rights of appeal conferred on the licence holder and others, in particular on an owner or manager of a prescribed aerodrome whose interests are materially affected by the decision. The Air Traffic Management and Unmanned Aircraft Act 2021 inserted a new section 19A(3) into the Act which allows the Secretary of State to prescribe a description of aerodrome that constitutes a “prescribed aerodrome”.
- 7.8 The CAA may modify the licence by modifying the licence conditions, subject to consultation. A condition relates to operational matters, such as the requirements which the licence holder must meet to maximise safety and efficiency, and include conditions relating to charge controls. The conditions include:
- General obligation to provide Core Services and Specified Services;
 - Requirement to maintain an intervention plan;
 - Service standards;
 - Provision of information to the CAA for regulatory purposes;
 - Control of Eurocontrol Service Charges;
 - Control of London Approach Charges;
 - Charges for North Sea Helicopter Advisory Service.
- 7.9 Given the licence conditions include control of London Approach charges, airport operators whose interests could be materially affected by the decision to modify are likely to be airports receiving the London Approach Service from the licence holder.
- 7.10 The London Approach consists of the control and sequencing of flights between the licence holder’s en-route service (which operationally includes holding stacks) and the tower service at London airports (which is provided at each by an air navigation service provider under contract with the airport operator). Airports currently receiving the London Approach Service are Heathrow, Gatwick, Stansted, Luton and London City.
- 7.11 The Regulations are required to prescribe the description of aerodromes entitled to appeal. Regulation 2(1) therefore refers to aerodromes in receipt of an “approach control service” (as defined in the Air Navigation Order 2016 (S.I. 2016/765)) provided under a licence. An approach control service essentially refers to the air traffic control service provided to aircraft flying to and from an aerodrome, as distinct from that provided to aircraft by an aerodrome’s tower service. The only approach control service that NERL provides through its licence is the London Approach Service, so this definition ensures that the relevant airports are able to appeal modifications of licence conditions.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

¹ NATS Independent Enquiry (2015) NATS System Failure 12 December 2014 – Final Report <http://www.nats.aero/wp-content/uploads/2015/05/Independent-Enquiry-Final-Report-2.0.pdf>

9. Consolidation

9.1 The issue of consolidation does not arise as this instrument does not amend any legislation.

10. Consultation outcome

10.1 The Department for Transport has not undertaken a formal consultation on this instrument but consulted on the policy principle for modernising the air traffic licensing framework and the introduction of a new CAA licence modification procedure for the licence.²

10.2 The Department has also engaged with the CAA in the drafting process.

11. Guidance

11.1 No guidance has been published with this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 In line with the Better Regulation Framework, a full impact assessment has not been prepared for this instrument as the net annual direct costs to business will be less than £5m. The Department for Transport has produced a de minimis assessment in order to inform Ministerial decision making and verify that the net impact to business is under £5m per year.

12.4 In allowing prescribed aerodromes to appeal decisions there is the potential that a greater number of appeals will be launched. However, during the consultation phase, no aerodromes requested appeal rights, which suggests they may be unlikely to appeal modifications to licence conditions. The number of expected licence modifications over a 20-year period is expected to be between 8 and 16 modifications for major modifications such as price controls, and between 6 and 18 modifications for minor modifications such as procedural changes.

12.5 It is expected that 8% of minor and 12% of major modifications are appealed under the current rights of appeal. For illustrative purposes, we have assessed the impact of a 10% increase in the number of modifications which are appealed based on the 'Updating the licence modification process for the en-route air traffic licence' impact assessment,³ increasing to 8.8% and 13.2%. In the central case, an increase in the number of modifications which are appealed by 10% will result in an extra cost to business of £22,792 per year (2021 prices).

12.6 The impacted parties will face additional minor costs to familiarise themselves with the legislation and understand the specific implications it has. Given the high level of knowledge of the programme in general, it is assumed that one hour is required by one person at each affected organisation to undertake this task and then disseminate this understanding to relevant colleagues. With six organisations affected (including NERL), the total cost of familiarisation will be £111 over a year.

² [Modernising the Licensing Framework for Air Traffic Services](#) (February 2017).

³ [Updating the licence modification process for the en-route air traffic licence – impact assessment](#) (November 2016).

- 12.7 The main non-monetised benefits are to prescribed aerodromes, who have new appeal rights which will ensure that the CAA is fulfils its statutory duty to further the interests of owners and managers of aerodromes. This will ensure that decisions do not place insufficient weight on impacts on aerodromes, providing more efficient market outcomes. Within the London area, this will help to ensure that no individual airport is unnecessarily placed at a competitive disadvantage.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is due to the size of the businesses affected by this legislation. The number of persons employed by each airport concerned and the licence holder exceeds the small business threshold. As such, although the legislation does not exclude small businesses from its application, in practice no such businesses are affected.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is that this will be conducted internally by the Department for Transport to ensure that the legislation continues to support the policy objective.
- 14.2 The instrument does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement:

“It would not be appropriate in the circumstances to make provision for a review as a review would be disproportionate. The intention of this measure is to ensure that airports which receive an approach control service from the licence holder through its licence are able to appeal decisions relating to modification of licence conditions, and the wording of this measure is sufficiently flexible if in the future the list of airports which receive this service changes. Furthermore, this measure is expected to have an annual net impact of less than £5 million.”

15. Contact

- 15.1 Anna Park at the Department for Transport Telephone: 07917 650830 or email: anna.park@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ian Elston, Deputy Director for Airspace, Noise and Resilience at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.