

Prospect ATCOs' Branch

response to CAP 1639:

Proposal to modify Condition 2 of NATS (En Route) plc licence in respect of resilience planning, policy statement on enforcement and consultation on draft guidance



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Prospect represents almost 2000 air traffic controllers and 1000 air traffic systems specialists within the UK. This submission is made by Prospect Air Traffic Controllers' Branch (ATCOs' Branch), a key stakeholder in UK ATM on matters relating to UK and EU regulatory issues. The Branch has a strong working relationship with NATS, particularly with regards to the NERL licence and economic regulation.

The Branch of course welcomes the desire to ensure that resilience is strengthened within ATM service provision in the UK. During any instance of disruption such as those referred to in CAP 1639, the members whom we represent endeavour to provide continuity in service, all the while ensuring that any actions undertaken are safe under the circumstances as referred to in 3.7. We wish to highlight a few areas of note within the document.

It is indeed worthy to remind all stakeholders, as in 3.4, that the perceived lack of '*performance improvements*' that the industry may see is as a result of the agreements that were made before RP2. In fact the industry has shied away from the accord they made when indicating they were accepting of the RP2 level of performance. It is impossible to properly fund an industry such as ATM provision without a long-term perspective, and continued investment must always be imperative when deciding funding. We therefore urge the CAA to be mindful of this in response to any potential request for increased resilience from NERL in whatever form that might take as part of the IBP for RP3, such that this process of the proposed licence modification and that of the upcoming RP3 should not be completed independently of each other. Additionally, we encourage a more 'informed' debate amongst stakeholders in the process leading up to RP3 on the history of resilience planning and investment / funding for RP2.

Taking into account the fact that there is already a funding regime imposed on NERL currently, the Branch encourages the statement in 3.7 of a '*proportionate approach [to resilience requirements] that will not unduly increase the regulatory burden on NERL*'. Indeed, there must be a reasonable degree of flexibility (as suggested) to allow NERL the ability to achieve all other targets in-line with factors long-since agreed for RP2. This appears to be confirmed by the last point in the same paragraph.

With regards to the parameters for intervention by the CAA as detailed in Table 1, we trust that such triggers are deemed acceptable by NERL.

The Branch welcomes the fact that non-engineering events are not within the scope of the enforcement policy itself (3.23), and we take this opportunity once again to remind all stakeholders of the pressure that RP2 is currently putting on NERL, and any less than optimal resilience within NERL undoubtedly has a relationship with RP2 funding.

In Annex A – paragraph 14, it is unclear why the cost burden for any potential resilience review should immediately fall upon NERL, e.g. there could be occasions when undue or unwarranted external issues have caused the problem in the first instance. The Branch welcomes further clarification on this item.

In Appendix B, The Branch obviously encourages all attempts by NERL to ensure that its services, assets, personnel, systems and other parts of its business are providing robust resilience. However, as mentioned before, the CAA must take this requirement into account when looking at the wider RP3 process also.

The Branch also questions whether or not delay is the most appropriate measure of resilience, in isolation or at all. Delay could be seen as a lagging indicator and may do nothing to address dormant and latent software issues like that which factored in the December 2014 failure.

Finally, Prospect ATCOs' Branch welcomes the need for NERL to ensure that system resilience is sufficiently robust. We do wish to remind the CAA that there is a need that it be mindful of this proposed licence amendment and the reason why it has come about when considering the RP3 IBP for NERL, and any potential means by which NERL plans to tackle the issue of resilience. We also believe there is a debate to be had around the sole trigger criterion of delay for any remedial action by the CAA.

Prospect ATCOs' Branch
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