EXPLANATORY MEMORANDUM TO

THE TRANSPORT ACT 2000 (AIR TRAFFIC SERVICES) (PRESCRIBED TERMS) REGULATIONS 2025

2025 No. 000

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Mike Kane, MP, Minister for Aviation, Maritime and Security at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Ian Elston, Deputy Director in the Aviation, Maritime and Security Group at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ben Stafford at the Department for Transport (telephone: 07768 840356 or email: ben.stafford@dft.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Under section 11(3)(b) of the Transport Act 2000 ("the Act"), the Secretary of State may modify prescribed terms in a licence for air traffic services. This instrument designates terms as prescribed.

4.2 By designating as prescribed terms any term specifying air traffic services authorised under a licence, and any term specifying the area in which they may be provided, this instrument allows the Secretary of State to modify these terms in the licence held by NATS (En Route) plc ("NERL"). This will enable the creation and funding of a UK Airspace Design Service ("UKADS") to be provided by NERL.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The Airspace Modernisation Strategy ("AMS")[1] sets out the shared vision of the Civil Aviation Authority ("CAA") and the Department for Transport for the modernisation of UK airspace, aiming to deliver quicker, quieter and cleaner journeys and greater capacity for the benefit of those who use and are affected by UK airspace. Airspace modernisation can reduce aviation's carbon emissions, helping the UK to achieve net zero by 2050.

5.2 A fundamental component of the AMS is delivering airspace redesign. The basic design of UK airspace has remained the same for decades, despite technological advances and a significant increase in demand from airspace users, making modernisation critical to ensure that UK airspace is fit for purpose in the future.

5.3 Controlled airspace structures contain a network of airways that link together to enable aircraft to fly safely. To change the structures, routes or flight procedures in controlled airspace, an airspace change proposal ("ACP") is required. ACPs must go through the CAA's CAP1616[2] airspace change process to attain regulatory approval. The configuration of routes and procedures in controlled airspace is often described as the "design" of airspace.

5.4 Aviation law is governed by an international system of rules set by the International Civil Aviation Organization ("ICAO"). Each contracting state of ICAO adopts and implements standards and practices set by ICAO in line with their commitments under the Convention on International Civil Aviation signed on 7 December 1944, known as "the Chicago Convention".

5.5 In many ICAO contracting states there is one entity, usually a public body, responsible for airspace planning and design. The same body is also responsible for air traffic services (as traditionally understood in the UK) and air navigation. There is not the delineation between this provision of air traffic services and air navigation found in the Act: instead, the planning of airspace is part of the wider provision of air traffic services. This makes it much easier to deliver airspace change that benefits the whole state airspace than is currently possible in the UK. The current system under the Act reflects the privatisation of air traffic control in the UK via a licence mechanism and its separation from regulatory activities, including the air navigation functions conferred on the CAA. So, unlike in most other ICAO states, the formulation and submission of ACPs is today delivered via a dispersed model, making it harder to deliver modernisation, particularly where airports share airspace. A disparate range of organisations, principally operators of individual airports or providers of air navigation services, sponsor (that is, develop and submit) individual ACPs for regulatory approval and implementation by the CAA.

5.6 It is the Department for Transport and the CAA's view that a single guiding mind, the UKADS provider, will better deliver holistic and optimised airspace change and improve confidence in the delivery of airspace modernisation.

5.7 Subject to consultation, NERL will be directed to provide the UKADS through a change to its air traffic services licence, enabling it to charge for providing this service and thus providing funding, although the UKADS provider will remain under the

[1] The AMS (CAP1711) is published at: https://www.caa.co.uk/commercial-industry/airspace/airspace-modernisation/airspace-modernisation-strategy/

[2] CAP1616 is published at: https://www.caa.co.uk/our-work/publications/documents/content/cap1616/

strategic direction of the Department for Transport and the CAA. The UKADS provider will initially focus on modernising the airspace around the London region, which is the most complex, which is being prioritised because it will deliver the greatest benefits, but it could be required by the Secretary of State to take on ACPs in other regions.

5.8 The UKADS provider will take on the role of sponsor for ACPs which fall within its scope. This is a formal role, set out in CAP1616, which refers to ownership of the ACP: at present, a sponsor is typically an airport or air navigation service provider. The UKADS provider is expected to take on some existing ACPs part-way through the airspace change process, in which case the CAA will oversee the formal transfer of each ACP from its original sponsor to the UKADS provider. The original sponsor will have a formalised partner role through which they retain some responsibilities where it is most appropriate to do so, such as the safety case for the ACP.

5.9 Subject to further consultation by the CAA, a new UK Airspace Design Charge ("the Charge") will be created to fund the establishment and provision of the UKADS, and the CAA will use the same provisions in the Act as those currently used to specify UK, Shanwick Oceanic and London Approach air traffic services charges. The Charge is being designed in line with the 'user pays principle', whereby the beneficiaries of airspace change should meet its costs. In practice this is expected to mean that commercial airlines will make a greater contribution than at present to the cost of airspace change, which is currently borne by ACP sponsors.

5.10 In the interests of fairness to ACP sponsors who fall outside the geographic scope of the UKADS, the Charge will also fund a UK Airspace Design Support Fund ("UKADS Fund") to cover eligible costs, which will be broadly equivalent to the costs covered by the UKADS provided for ACPs which are within its scope. This means, for example, that an airport outside the London region, which could not access the UKADS provider's services, could instead receive financial support from the UKADS Fund, towards the cost of airspace design services. The details of the UKADS Fund are subject to further consultation by the CAA.

What was the previous policy, how is this different?

5.11 No single organisation in the UK is currently responsible for creating a modern and integrated airspace design, as ACPs are sponsored by individual bodies, usually airports or air navigation service providers. This approach has led to problems with delivery, particularly in more congested areas such as London, where there are multiple overlapping ACPs, each with a separate sponsor. This fragmented approach exacerbates complexity and is at risk of becoming unworkable. Persisting with the status quo is expected to result in delays to the airspace modernisation programme, a less efficient redesign of lower airspace, and greater risk to the Future of Flight programme[3]. This would prevent the realisation of the full benefits of airspace modernisation, hence the need for change which empowers a single body to provide a more strategic approach and deliver better outcomes.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 3 of the Act prohibits a person from providing air traffic services in a managed area unless authorised to provide the services by an exemption or a licence.

[3] The Future of Flight Action Plan is published at: https://www.gov.uk/government/publications/future-of-flight-action-plan

Section 40(3) of the Act defines a managed area as the United Kingdom, and any area outside the UK in respect of which the UK has agreed to provide air traffic services.

6.2 By section 5(2), a licence may be granted for air traffic services of one or more specified descriptions, and for one or more specified areas.

6.3 Section 11(3)(b) enables the Secretary of State to modify a prescribed term in a licence, by making regulations under section 11(4).

6.4 These Regulations provide that terms specifying air traffic services in a licence, and terms specifying the area served by some, or all, of those air traffic services, are prescribed licence terms capable of modification by the Secretary of State.

6.5 This will allow the Secretary of State to modify a prescribed term in a licence so as to modify the types of air traffic services which are authorised in the licence, and to modify the area(s) in which such authorised air traffic services may be provided.

Why was this approach taken to change the law?

6.6 The UKADS provider will initially prioritise modernisation of airspace in the London region, with flexibility to take on other priorities if required, with a view to extending the scope to all UK airspace in the longer term. There is a need to achieve the short-term goal as quickly as possible, to avoid delays to airspace modernisation, but it could take some years to achieve the final, full-scope UKADS, which could be a bespoke body and is expected to require further legislative change.

6.7 The proposal is therefore for a phased model, with an existing body tasked with becoming the initial UKADS provider, while work continues in parallel to develop more detailed proposals for the final model. Implementation of the latter would be dependent on a review of the extent to which the initial UKADS has succeeded in delivering its objectives, and what policy, process or legislation changes would address any unfulfilled objectives.

6.8 The Department for Transport and the CAA identified NERL as the only organisation in the UK with the required resources and design expertise to deliver the initial model for UKADS at sufficient pace. Additionally, NERL is already licenced to provide en route air traffic services in the UK. Therefore, by implementing this instrument and an accompanying negative statutory instrument (see paragraph 11), NERL will be legally authorised to deliver the UKADS and regulated under provisions to be inserted into its licence through the modification procedure set out in the Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 The CAA and Department for Transport Ministers and officials have regular engagement with the aviation industry, local community groups, and representatives of other affected groups. Through this engagement, officials have collated stakeholder views as to the possible approaches to the establishment of the UKADS.

7.2 The Department for Transport and the CAA undertook a joint consultation, which ran from 22 October 2024 until 17 December 2024. The consultation was run through the CAA website and a link was published on Gov.uk[4].

[4] The consultation is published at: https://www.gov.uk/government/consultations/creating-a-uk-airspace-design-service-ukads

7.3 The Department for Transport and CAA received 151 responses to the consultation, including 35 responses from commercial aviation/aerospace industry, 25 from residents affected by aviation, 20 from General Aviation[5], and 15 from local organisations or community action groups.

7.4 Respondents were generally supportive of the UKADS concept, the proposed remit, and the approach. 84% of respondents said that the implementation of a UKADS, properly scoped and funded, would or may improve confidence in the timely delivery of airspace modernisation and address the challenges identified. There was also widespread recognition that NERL is the only organisation capable of providing the UKADS, though respondents emphasised the importance of robust governance arrangements to ensure transparency, mitigate conflicts of interest, and hold them to account for delivery.

7.5 A consultation summary has been published online[6], and is available in hard copy at Great Minster House, 33 Horseferry Road, London, SW1P 4DR.

8. Applicable Guidance

8.1 No guidance is necessary to accompany these Regulations as the Statutory Instrument does not significantly affect businesses or the general public. NERL, which will provide the UKADS, has been consulted and engaged with.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been produced for this instrument as it is not expected to have significant impact on the private, public or voluntary sectors. A de minimis assessment has been prepared as this instrument is likely to entail some costs for businesses, but the net direct annual impact is estimated to be below £10 million.

9.2 The de minimis assessment is published alongside the Explanatory Memorandum to these Regulations[7], and is available in hard copy at Great Minster House, 33 Horseferry Road, London SW1P 4DR.

Impact on businesses, charities and voluntary bodies

9.3 For airports currently sponsoring ACPs which are taken over by the UKADS, financial costs that they would otherwise face in progressing their ACP through to completion are likely to be reduced, as the UKADS will bear the majority of responsibilities and associated costs. Its work will instead be funded through the new Charge. Airports will continue to be responsible for a portion of costs directly incurred, such as certain consultation and engagement costs, as they are today.

9.4 Airports currently sponsoring ACPs which do not fall within the immediate scope of the UKADS may be eligible in some cases to apply to the UKADS Fund. This will also be funded by the Charge and is designed to align with costs likely to be incurred by the UKADS provider so that eligible airports in other regions are not unfairly disadvantaged. This should alleviate the financial pressures facing some airports and facilitate the continued progress of airspace modernisation across the UK.

[5] General Aviation covers all civil aircraft activities other than those of commercial transport operators.
[6] The consultation summary is published at: https://www.caa.co.uk/cap3106
[7] The de minimis assessment is published at: https://www.legislation.gov.uk/

9.5 Commercial airlines are expected to be the primary payers of the Charge, which will be broadly similar to, and paid in the same way as, the existing en route rate, and so they will be directly affected. Within the context of their operations the scale of the cost is expected to be relatively small, however, and it is anticipated that the financial benefits to airlines (e.g. through reduced fuel costs and improved system resilience) will ultimately outweigh the costs.

9.6 Many ACP sponsors currently rely on the services of specialist consultancies. We would expect that those outside the immediate scope of the UKADS would continue to work with those consultancies as before. It seems possible that the role of those consultancies could change in the medium term, should the UKADS take on, over a period of years, a wider range of ACPs. However, as the UKADS builds capability and expertise, it will be able to contract specialist consultancies in the same way as other sponsors. There is currently a shortage of skilled airspace designers, so it is likely that there would be continuing opportunities for consultancies to work with the UKADS.

9.7 The greatest direct impact is likely to be on NATS Holdings as the parent company of NERL, since it will be tasked with providing the UKADS via changes to its licence. NERL is subject to economic regulation by the CAA and the relevant licence changes will be subject to further consultations, culminating in a statutory window for appeal to the Competition and Markets Authority against a CAA decision to modify NERL's licence.

9.8 The legislation does impact small or micro businesses.

9.9 There are no exemptions to minimise the impact of the requirements on small or micro businesses (employing up to 50 people) because all ACPs within the scope of the UKADS will still need to undergo the CAA's CAP1616 airspace change process.

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

9.11 There is no, or no significant, impact on the public sector because as there are no significant charges placed on publicly owned aerodromes.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department for Transport and the Civil Aviation Authority, as co-sponsors of airspace modernisation, will review The Transport Act 2000 (Air Traffic Services) (Prescribed Terms) Regulations 2025 in the course of normal departmental business.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Mike Kane has made the following statement:

"A review would not be appropriate due to the technical nature of the amendments and would be disproportionate to the limited direct financial impact. This Statutory Instrument is one of two that permit specific terms in NERL's air traffic licence to be modified in order to deliver the UKADS. The DfT and CAA will retain oversight of the UKADS and will monitor its performance on an ongoing basis."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The creation of the UKADS also relies on the Transport Act 2000 (Air Traffic Services) (Amendment) Order 2025, to amend the definition of 'air traffic services' in section 98(1) of the Act to include airspace design services. This will enable the Secretary of State to modify an existing air traffic services licence to authorise the licence holder to provide airspace design services, so that the CAA may allow the licence holder to charge for such services.

11.2 Subsequently, the Secretary of State and the CAA will modify NERL's licence terms and conditions via statutory processes set out within the Act, to enable NERL to deliver UKADS.

12. European Convention on Human Rights

12.1 The Minister for Aviation, Maritime, and Security has made the following statement regarding Human Rights:

"In my view the provisions of the Transport Act 2000 (Air Traffic Services) (Prescribed Terms) Regulations 2025are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").