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Dear Denis,

Thank you for meeting with me on 15 December to discuss the Air Traffic Management and Unmanned Aircraft (ATMUA) Bill. I promised to write to you with further information on the Government's airspace modernisation programme and address your concerns on funding for airspace change proposals (ACPs) if the Secretary of State decides to direct another party (i.e. NATS (En-Route) PLC).

The UK's airspace is some of the most complex in the world, yet there has been little change to its overall structure since the 1950s. Upgrading airspace will provide the opportunity to reduce aircraft noise experienced by local communities, reduce traffic delays when demand returns and support the aviation industry's recovery and growth. Fewer flight delays and service disruptions at short notice will save time and improve the passenger experience. Critically, the emissions savings modernisation will deliver are also a key component of the UK's commitment to reach net zero by 2050. It is estimated that airspace modernisation will save 594,420 tonnes of CO₂ annually based on 2019 traffic. The programme will also provide benefits for all users of our skies, including General Aviation flyers and new types of aircraft such as drones. Without modernisation, our airspace will not be fit for purpose, which jeopardises achieving these crucial outcomes.

It is right that the aviation industry, which will primarily benefit from airspace modernisation, should pay the costs of the programme under the 'User Pays' principle. For these benefits to be realised, significant co-ordination and oversight of the design process is needed. Therefore, Department for Transport (DfT) and the Civil Aviation Authority (CAA) requested NATS (En-Route) PLC (NERL) to establish the Airspace Change Organising Group (ACOG) to effectively manage the complex interdependencies.

The Government is acutely aware of the impact the COVID-19 pandemic continues to have on the aviation industry and air traffic levels, as well as airport sponsors' ability to progress work associated with the programme.

However, the Government believes that the need to modernise the UK's airspace design remains clear. Airspace modernisation is a long-term programme to future-proof against long-term demand, growth and change. There remains a very strong case for pushing forward with overall airspace modernisation however, we recognise the route to modernisation will need to change in light of the impact that COVID-19 has had on the sector operationally and financially.

Early on in the pandemic, we asked ACOG to examine possible routes for re-mobilising the UK Airspace Change Programme in light of the impact of COVID-19. ACOG has now developed a set of recommendations which are being considered, and on 17 July 2020, the Government and the CAA, as co-sponsors of airspace modernisation, issued a joint statement asserting our continued commitment to airspace modernisation and responding to that report. As part of that statement, we made clear that we would consider what changes may be required to how individual organisations progress their individual airspace changes and the timescales in which airspace modernisation will take place. The full statement is contained in an annex to this letter.

In their report, ACOG recommended that external funding would be required to deliver the programme. We are continuing to review options for the funding programme. Should government funding be the best way forward, the Secretary of State has the ability to do so through the Civil Aviation Act 1982, which would allow funding to be provided through the CAA administering grants to airport sponsors. Officials have and will continue to work closely with all stakeholders to identify ways forward for the programme, considering all options for the future.

The powers in the ATMUA Bill, specifically Clauses 2 and 3, remain critical to the airspace modernisation programme. The UK's airspace is highly interdependent, particularly over the South-East region. For airspace change to take place, airports and NATS have to work together through ACOG and take into account the needs of neighbouring airports, as well as their own. If one airport pulls out of the programme, this could delay the whole modernisation programme. Should this situation occur, neither the Government nor the CAA currently has powers to guarantee that airspace change is taken forward. Given the complex and interdependent nature of the ACPs required for modernisation, the powers in the Bill are considered necessary to avoid any sponsor holding up another ACP or potentially the whole programme.

However, as I stated on the floor of the House on 10 February, these powers are only intended to be used as a last resort if airspace changes are not taken forward voluntarily or at the requisite pace and would not be used where delays are due to factors outside of a sponsor's control, for example, as a result of COVID-19. The Bill contains procedural safeguards for the

potential recipient of a direction to progress or co-operate in an ACP, designed to ensure that any direction is proportionate and robustly justified.

Clause 2: Direction to progress airspace change proposal

Subsection 3: Before giving a direction to a person under subsection (1) the Secretary of State must consult the person.

Subsection 4: The Secretary of State may give a direction under subsection (1) only if the Secretary of State considers that the direction will assist in the delivery of the CAA's airspace strategy.

Clause 3: Direction to co-operate in airspace change proposal

Subsection 2: Before giving a direction under subsection (1) the Secretary of State must consult –

- (a) The person to whom the direction would be given, and
- (b) The person with whom co-operation would be directed.

Subsection 3: The Secretary of State may give a direction under subsection (1) only if the Secretary of State considers that the direction will assist in the delivery of the CAA's airspace strategy.

If the consultation required under these clauses revealed that a person would not be able to comply with the direction, we would expect that the Secretary of State (or the CAA as the case may be), would not give a direction.

Colleagues nevertheless raised a number of important points on the proposed powers in Part 1 of the Bill during Committee Stage, including the costs of ACPs, ensuring representations from persons involved in an ACP are considered before a direction is given, ensuring an appropriate appeals procedure for individual ACPs is in place, and CAA resourcing. Given the pause between Committee Stage and Report Stage and the impact that COVID-19 has had on our aviation sector, I would be happy to discuss any ongoing or new concerns at the earliest possible opportunity.

I am aware that NERL is concerned about its ability to fund taking forward an ACP in circumstances where it is not the primary sponsor, i.e. on behalf of another airport and have requested amendments to ensure that the Bill makes it explicit what considerations must be taken into account before any such direction is given. We understand that NERL is trying to guard against a worst-case scenario whereby they are directed to take forward multiple ACPs with no way of recouping the costs. However, we do not believe this would happen nor that it would be proportionate to include such amendments in the Bill. I would like to reassure you that the Bill requires that the Secretary of State consults the potential recipient, as set out in Clauses 2 and 3 above, before a direction is given, and this would provide an opportunity for NERL or

any other body asked to progress or co-operate in an ACP, to raise any financial concerns. We expect the use of the powers to work in the following way.

The CAA will be given a role by the Secretary of State in monitoring the progress of ACPs as part of the CAA's Airspace Modernisation Strategy. We expect the CAA's oversight team to work with the airport operator before recommending that the Secretary of State uses the powers to direct.

At this early stage, if the airport operator expressed concerns that it did not have sufficient funding for it to proceed with a particular ACP, we would expect the oversight team to work with the operator in suggesting alternative solutions before deciding to direct an alternative sponsor, such as NERL to take forward the ACP. We expect this could include:

- **Alternative sponsor paying for the changes:** The CAA oversight team could help identify and seek support from another ACP sponsor most likely to benefit, or whose own ACP plans depend upon the change in question.
- **Alternative funding support:** An airport may be able to apply to the Airspace Modernisation Support Fund (ASF). This fund was included in the CAA's determined costs for the current Reference period. The intention was for this to be £10m between 2020-2024 for Reference Period 3, but due to the impacts of COVID, the size of the ASF will be the subject of further consideration.
- **Government funding:** As a last resort, the Government could consider, on a case by case basis only, whether grant funding under section 34(1)(b) of the Civil Aviation Act 1982 could be provided to an airport directed to bring forward an ACP that resulted in adverse financial impacts. This funding would be subject to Treasury approval and would only be offered if it proved absolutely necessary. Alternative funding mechanisms would be considered in the event that the sponsor is not an airport.

If the sponsor has the resources to fund an ACP, but does not do so, the Secretary of State can then direct the sponsor to take forward the ACP. If the sponsor does not comply with the direction we have also introduced financial penalties to enforce the direction in the form of a fine of up to 10% annual turnover or 0.1% daily rate. We therefore consider that Part 1 of the Bill will not have the unintended consequence of incentivising airports not to bring forward an ACP and for this to be taken forward by NERL.

If this were to be the case, the Secretary of State would consult with NERL before issuing a direction. We have agreed with NERL that there are two

potential funding mechanisms for these ACPs (the Opex Flexibility Fund or via Article 28 of the EU Performance and Charging Scheme Regulation (Commission Implementing Regulation 2019/317, with similar domestic provision expected to be made following the end of the transition period)). If NERL was in a position whereby these mechanisms for funding were not available for any reason, and there was evidence that NERL did not have the resource to progress an ACP for which NERL was not the primary sponsor, we do not believe it would be appropriate for the Secretary of State to give a direction to NERL in such circumstances. There is provision in the Bill for appeal against any direction to the Competition Appeal Tribunal, and NERL would have strong grounds to appeal if such a direction was given in these circumstances.

I hope the above explanation reassures you that the powers in the Bill are appropriate and, upon reading this, feel able to withdraw your amendments in relation to the above. I would happy to discuss this matter with you again in the new year, ahead of Report stage.

I am copying this letter to all Noble Lords who spoke at Committee Stage and I will place a copy in the Library of the House.

Yours,
Charlotte

BARONESS VERE OF NORBITON

ANNEX A

Joint statement from the Department for Transport and Civil Aviation Authority in reponse to a report published by the Airspace Change Organising Group. Published 17 July 2020

Airspace modernisation is vital to the future of aviation to delivering net zero and, now, to supporting the aviation sector's recovery from the impact of the COVID-19 pandemic. Both the Department for Transport (DfT) and the UK Civil Aviation Authority (CAA) are acutely aware of the effect that the pandemic is having on the sector and its ability to progress airspace changes to original plans, so the Airspace Change Organising Group's (ACOG's) report is timely and welcome.

As co-sponsors of airspace modernisation, the DfT and the CAA would like to thank ACOG and the organisations who contributed to the work that has gone into its Remobilising the Airspace Change Programme report over the last few weeks. The report is insightful, thorough, and raises important questions for us to consider around the future of airspace change and the masterplan ACOG has been working on. This masterplan will set out where airspace change could be taken forward to provide benefits, consider the potential conflicts, trade-offs and dependencies, and set out a preferred implementation plan.

Despite the current international crisis caused by the COVID-19 pandemic and its impact on the aviation industry and air traffic levels, the need to modernise the UK's airspace design remains clear. Airspace modernisation is a critical infrastructure programme of national importance, and the potential benefits of designing the "motorways in the sky" are significant for all those who use and are affected by airspace. Upgrading airspace is essential to open up airspace for all users, including general aviation flyers and new types of aircraft such as drones, to provide the opportunity for reducing noise and to improve capacity for the aviation industry to reduce traffic delays when the demand returns.

Critically, the emissions savings modernisation can deliver are a key component of the UK's commitment to reach net zero by 2050. The aviation industry's decarbonisation roadmap suggests that air traffic management and operational improvements are likely to reduce CO2 emissions from UK aviation by around 4.6% by 2050 relative to 2016, with the potential for additional savings from future innovations. NATS' feasibility study into modernisation also estimates savings of up to 10-20% on fuel burn

and CO2 emissions in the South East of England, where the airspace is most congested.

In light of the pandemic, we recognise that the timescales in which airspace modernisation will take place will change. We also need to consider what changes may be required to how individual organisations progress their individual airspace changes and they will interact with NATS and ACOG. With that in mind, the DfT and CAA are pleased to immediately accept recommendations 1, 2 and 4 in ACOG's report, namely that we will:

- ask ACOG to establish clear protocols for: the airports that are able to resume work on airspace change, engagement with those that remain paused, and the exit process for those that decide to opt out (subject to their criticality to the programme)
- ask NERL and ACOG to work together to re-evaluate NERL's 2018 feasibility report into airspace modernisation, specifically in order to identify the core set of airport led airspace changes that will be required in the post COVID-19 world
- in the short term, the CAA will work with ACOG to ensure that work on airspace change that can still progress does not conflict with or constrain the broader programme

The DfT and CAA will thoroughly consider the remaining recommendations in further detail given the range and scale of the options proposed. Some of the recommendations outlined in the report would require changes to existing regulation and policy and we would need to engage the sector so that we take into account sponsors' objectives and constraints. We are conscious of the need to do this quickly given the significant amount of time and resource that sponsors have already put into their work on airspace change. We will advise ACOG and stakeholders of our preferred approach in early autumn, allowing work on the masterplan to restart in good time.

Grant Shapps MP, Secretary of State for Transport

Richard Moriarty, Chief Executive, Civil Aviation Authority