

SECTION 15/16 MANUAL

FREEDOM OF INFORMATION ACTS 1997 TO 2003

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Commission for Aviation Regulation
3rd Floor, Alexandra House
Earlsfort Terrace
Dublin 2
Ireland

Tel: +353 1 6611700
Fax: +353 1 6611269
E-mail info@aviationreg.ie

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Guide to the Functions and Records of the Commission for Aviation Regulation

1. FREEDOM OF INFORMATION ACT 1997 - SECTION 15

1.1 Introduction

The Freedom of Information (FOI) Act establishes three new statutory rights:

- a legal right for each person to access information held by public bodies;
- a legal right for each person to have official information relating to him/herself amended where it is incomplete, incorrect or misleading;
- a legal right to obtain reasons for decisions affecting oneself.

The Act asserts the right of members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy of individuals.

This manual is prepared in accordance with publication requirements set out in Section 15 of the Act. Its purpose is to facilitate access to official information held by the Commission, by outlining the structure and functions of the Commission; information on the classes of records we hold and information on how to make a request to the Commission under the Freedom of Information Act.

2. HOW TO GET INFORMATION

2.1 Routinely Available Information

The Freedom of Information Act is designed to allow public access to information held by public bodies, which is NOT routinely available through other sources.

Access to information under the Act is subject to certain exemptions and involves specific procedures and time limits. This manual provides a guide to the structure of the Commission so as to help you access information under the Freedom of Information Act.

2.2 Applications under the F.O.I. Act

Under the FOI Act, anyone is entitled to apply for access to information not otherwise publicly available. Within the framework established by the Freedom of Information Act, each person has a right to:

- access to records of the Commission;
- correction of personal information relating to oneself held by the Commission, where it is inaccurate, incomplete or misleading;
- access to reasons for decisions made by the Commission directly affecting oneself.

The following records come within the scope of the Act:

- all records relating to personal information held by the Commission irrespective of when created;

- personnel records of serving staff with effect from 21 April, 1995;
- all other records created from 21 April, 1998;
- any other records necessary to the understanding of a current record.

The Commission is generally obliged to decide on the request within 4 weeks.

Applications for information under the FOI Act should be addressed to:

The Commissioner for Aviation Regulation,
Commission for Aviation Regulation,
3rd Floor,
Alexandra House,
Dublin 2.

Telephone: 353-1-6611700
Fax: 353-1-6611269
Email: info@aviationreg.ie

Applications must be in writing and should indicate that the information is sought under the Freedom of Information Act.

If information is desired in a particular format e.g. photocopy, computer disk, etc. this should also be mentioned in your application.

Please give as much detail as possible to enable the staff in the Commission to identify the record. If you have difficulty in identifying the precise records that you require, the FOI Officer will be happy to assist you in preparing your request.

See separate note about fees below.

2.3 Assistance to persons with a disability

The FOI Officer is available to provide assistance to persons with a disability to exercise their rights under the FOI Act (e.g. accepting oral requests from requesters who are unable to read, print and/or write due to their disability, enabling the requester to inspect or have records explained to him or her).

2.4 Rights of Review and Appeal

The Act sets out a series of exemptions to protect sensitive information where its disclosure may damage key interests of the State or of third parties. Where a public body invokes these provisions to withhold information, the decision may be appealed. Decisions in relation to deferral of access, charges, forms of access, etc., may also be the subject of appeal. Details of appeals mechanisms are as follows:

2.5 Internal Review

You may seek an internal review of the initial decision, which will be carried out by an official at a higher-level if:

- (a) you are dissatisfied with the initial response received e.g. refusal of information, method of access, charges, etc.; or,
- (b) you have not received a reply within 4 weeks of your initial application. This is deemed to be a refusal of your request and allows you to proceed to internal review.

Requests for internal review should be submitted in writing to:

The Commissioner for Aviation Regulation - Contact details are provided in paragraph 2.2 above.

Such a request for internal review must be submitted within 4 weeks of the initial decision.

The Commission must complete the review within 3 weeks. The internal review must normally be completed before an appeal may be made to the Information Commissioner.

2.6 Review by the Information Commissioner

Following completion of the internal review, you may seek an independent review of the decision from the Information Commissioner. Also if you have not received a reply to your application for internal review within 3 weeks, this is deemed to be a refusal and you may appeal the matter to the Commissioner.

Appeals in writing may be made directly to the Information Commissioner at the following address:

Office of the Information Commissioner
18 Lower Leeson Street
Dublin 2.

Telephone: 353-1-6785222
Fax: 353-1- 6610570

Email: foi@ombudsman.irlgov.ie
Website: <http://www.irlgov.ie/oic/>

2.7 Fees

The following charges apply in relation to requests for records made under the FOI Act:

2.7.1 Application Fees

There is no application fee if your request is for personal information only. If your request is for a record containing non-personal information, an application fee of €15 (€10 if you are a medical card-holder) must accompany your request.

2.7.2 Search and Retrieval and Copying Fees

Fees also apply in respect of the time spent searching and retrieving records that are released to you on foot of your request and in respect of the copying of any records released. Such fees are unlikely to arise if your request is for personal information. The rates of these fees are as follows:

€20.95 per hour of search and retrieval

€0.04 per sheet for a photocopy

€0.51 for a three and a half inch computer diskette containing copy document

€10.16 for a CD-ROM containing copy documents

€6.35 for a radiograph (X-ray) containing copy documents

2.7.2.1 Fees for Appealing a Decision

A fee of €75 must accompany most applications for internal review of a decision of a public body. A reduced fee of €25 applies if you are covered by a medical card. There is no fee for internal review applications concerning only personal information relating to oneself or in relation to a decision to impose a fee or deposit.

A fee of €150 must accompany most applications for review by the Information Commissioner. A reduced fee of €50 applies if you are covered by a medical card or in relation to a review concerning certain third party information. There is no fee for review applications concerning only personal information relating to oneself or in relation to decisions to impose fees or deposits.

2.7.3 Deposits

A deposit is payable where the estimated cost of search and retrieval of records sought is estimated to exceed €50.79. In such a case, every effort must be made to assist the requester to amend the request so as to reduce or eliminate the amount of the deposit.

2.7.4 Reductions and Waivers

A fee in respect of search and retrieval and copying of records will be waived where the cost of collecting and accounting for the fee would exceed the amount of the fee itself (a guideline of less than €10 is used in this respect);

A fee in respect of search and retrieval and copying of records or a deposit may be reduced or waived where the information in the record would be of particular assistance to the understanding of an issue of national importance.

A charge applies to most internal and independent reviews (Information Commissioner) concerning access to non-personal records. There is a reduction for medical cardholders. These will be notified to you at the appropriate time by the relevant public body.

3 DESCRIPTION AND FUNCTIONS OF THE COMMISSION

3.1 Statutory Functions of the Commission

The Commission for Aviation Regulation was established by section 3 of the Aviation Regulation Act, 2001, on 27 February 2001. Its twin principal functions are:

The regulation of airport charges at Dublin Airport.

The regulation of aviation terminal services charges that may be imposed by the Irish Aviation Authority.

These requirements are achieved by making determinations on the maximum levels of airport and aviation terminal services charges, which may be levied by Dublin Airport Authority and the Irish Aviation Authority, as the case may be.

In addition to those functions, the Act also transfers to the Commission a number of functions which, prior to the Commission's establishment, were discharged by the Minister for Public Enterprise under EU and national legislation, viz: -

3.1.1 EU Legislation:

3.1.1.1 Slot allocation and the appointment of a schedules coordinator.

Council Regulation (EEC) 95/93 of 18 January 1993, as amended by Regulation (EC) No. 793/2004 of the European Parliament and of the Council, sets out common rules for the allocation of slots at Community airports. Under Section 8(1) of the Act, the Commission is the competent authority in Ireland for the purposes of Council Regulation (EEC) 95/93 of 18 January

1993, other than the functions of a coordinator. In addition, section 8(2) provides that the Commission shall be the appointing authority for such a coordinator.

3.1.1.2 Air carrier licensing

Section 8(3) of the Act provides that the Commission shall have the function of licensing air carriers under Council Regulation (EEC) 2407/92. Section 9(2)(d) of the Act transfers the Minister's functions under the Air Navigation and Transport Act, 1965 (Section 8) Regulations, 1993 (S.I. No. 323 of 1993). This Statutory Instrument gives effect to the current licensing arrangements.

3.1.1.3 Denied Boarding Complaints

Regulation (EC) No. 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights came into force on the 17th of February 2005. Regulation 3 of the European Communities (Compensation and Assistance to Air Passengers) (Denied Boarding, Cancellation or Long Delay of Flights) Regulations 2005, S.I. No 274 of 2005, designated the Commission as the body responsible for the enforcement of the Regulation as regards flights departing from airports in Ireland and in certain circumstances from flights outside the EU to Ireland.

3.1.2 National Legislation:

The following functions previously vested in the Minister under national legislation were transferred to the Commission from the date of its establishment: -

3.1.2.2 Ground handling

Section 9(2)(c) of the Act transferred the functions contained in the European Communities (Access to the ground handling market at Community airports) Regulation 1998 (S.I. No. 505 of 1998).

3.1.2.3 Travel Trade licensing

Sections 9(2)(a) and 9(2)(b) of the Act transferred the functions contained in the Transport (Tour Operators and Travel Agents) Act, 1982 and the package Holidays and Travel Trade Act, 1995.

3.1.3 Summary:

In summary, therefore, the Commission is responsible for:

regulating Dublin Airport Authority's airport charges at Dublin Airport

regulating the Irish Aviation Authority's aviation terminal services charges

approving ground handlers

licensing Irish air carriers

administering regulations concerning compensation and assistance to air carrier passengers denied boarding.

implementing certain aspects of community legislation in relation to slot allocation and schedule coordination, and

licensing travel agents and tour operators in Ireland

3.2 About the Commission for Aviation Regulation

The Aviation Regulation Act established the Commission, 2001, on 27 February 2001. The establishing legislation specifies that the Commission is a body corporate that shall consist of at least one but not more than three members.

On establishment, the Minister for Public Enterprise appointed Mr. William Prasifka as a Member of the Commission. Mr. Prasifka remained the sole Member until 1 December 2005. The present sole Commissioner for Aviation Regulation is Mr. Cathal Guiomard.

Below is some more detailed information on the functions of the Commission.

3.2.1 Economic Regulation

The Commission for Aviation Regulation sets maximum levels of airport charges that may be charged by Dublin Airport Authority at Dublin Airport and maximum levels of aviation terminal services charges that may be charged by the Irish Aviation Authority. Under Sections 33 and 36 of the Aviation Regulation Act, 2001, (as amended by the State Airports Act, 2004) the Commission must take into account certain factors in arriving at its decision in respect of maximum charges. The aim of the Commission is to have an economic framework which fulfills its statutory obligations. These are to facilitate the efficient and economic development and operation of Dublin Airport which meets the requirements of current and prospective users of Dublin airport; to protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport and to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner.

Airport charges are charges relating to take off, landing and parking of aircraft, the arrival and departure of passengers and cargo charges. Aviation terminal services charges are air traffic control charges relating to take-off and landing of aircraft. Under the legislation, the Commission is not required to make either determination by reference to a specific formula.

The Commission sets maximum charges for both airport charges and aviation terminal services charges, generally for a five-year period, in accordance with the Aviation Regulation Act, 2001. In both cases, prior to making its determinations, the Commission must give notice of its intention to make a determination and invite representations. The Commission must then make its determinations and reports.

To finance its airport regulatory activities, the Commission under Section 23 of the Aviation Regulation Act, 2001, is empowered to make regulations providing for the imposition of a levy. The purpose of the levy is to meet the costs and expenses of the Commission. The regulations may require the levy to be paid by such classes of undertaking as are specified by the Commission. The Commission is also empowered to provide that different rates apply as between different classes of undertaking.

3.2.2 Groundhandling

Groundhandling broadly comprises all those services required by an aircraft between landing and take-off. The Commission is responsible for authorising ground handling operations. Core groundhandling services include: marshalling aircraft, loading/unloading, refueling and baggage handling. Related services include: passenger handling, aircraft maintenance and servicing, surface transport between terminals, catering and general administration services at an airport. An airline may choose to provide services itself (self-handling), or contract with another company (third party handling), be it an airline or a dedicated ground handling company.

Council Directive 96/67/EC of 15 October 1996 regulates groundhandling, and it is implemented into Irish law by the European Communities (Access to the Groundhandling Market at Community Airports) Regulations, 1998, Statutory Instrument No. 505 of 1998. The Directive is intended to provide for open access to the ground handling market. Dublin and Shannon airports are required to meet all the provisions of the Directive. At present, Cork airport is only required to meet the self-handling provisions. Other airports are bound by the general provisions on free access, only as regards providers of related services.

Council Directive 96/67/EC of 15 October 1996 provides that there shall be open access to airports by groundhandling service providers subject to certain conditions. It also provides that access may be restricted in respect of the core groundhandling services, provided it is restricted to no fewer than at least two providers for each category of service at a given airport and a minimum of two self-handlers. Airports are entitled to charge for access and to establish rules for the proper functioning of the airport. The approval of those charges requires the consent of the Commission.

3.2.3 Slot Allocation

Under the Aviation Regulation Act, 2001, the Commission is responsible for deciding if airports located in Ireland should be coordinated airports pursuant to Council Regulation (EEC) No. 95/93 as amended by Council Regulation 793/2004. Those designations relate to the degree of congestion at a particular airport and whether those difficulties may be overcome by operational changes.

At a coordinated airport, a coordinator is appointed and its function is to facilitate the operations of air carriers operating or intending to operate at that airport. At a fully coordinated airport, in order to land or take off during the periods of full coordination, an air carrier must have a slot allocated by the coordinator.

The Minister decided in 2000 that Dublin airport should be coordinated, or schedules facilitated as it is now known, and Airport Coordination Limited has been appointed as the coordinator (schedules facilitator). The Minister also commissioned a capacity study by SH&E Limited with a view to deciding whether or not Dublin airport should be fully coordinated.

On 26th April 2005, the Commission for Aviation Regulation announced that Dublin airport would be a fully coordinated airport within effect from the summer 2006 scheduling season in accordance with the provisions of Regulation 95/93 as amended by Regulation 793/04. This decision has been overturned and Dublin is once again operating as schedules facilitated.

3.2.3.1 Complaints relating to compensation and assistance to passengers denied boarding.

The Commission for Aviation Regulation was designated by the Minister for Transport on 31 May 2005 under [Statutory Instrument 274/2005](#) as the body responsible for the enforcement of Regulation (EC) No. 261/2004 of 11 February 2004 of the European Parliament and of the Council. A full list of the [National Enforcement Bodies](#) in the EU can be found on the Commission website www.aviationreg.ie

The Regulation establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights from Ireland and the Commission is the body to whom complaints may be made by passengers who consider they have not been accorded their statutory rights.

The Regulation does not provide for compensation in respect of lost or damaged baggage, which is already provided for under the Montreal Convention.

General information on the full range of Air Passenger Rights in the EU can be accessed at

http://www.europa.eu.int/comm/transport/air/rights/info_en.htm and on http://www.ecic.ie/topics/air_travel.html#denied.

3.2.4 Travel Trade Licensing

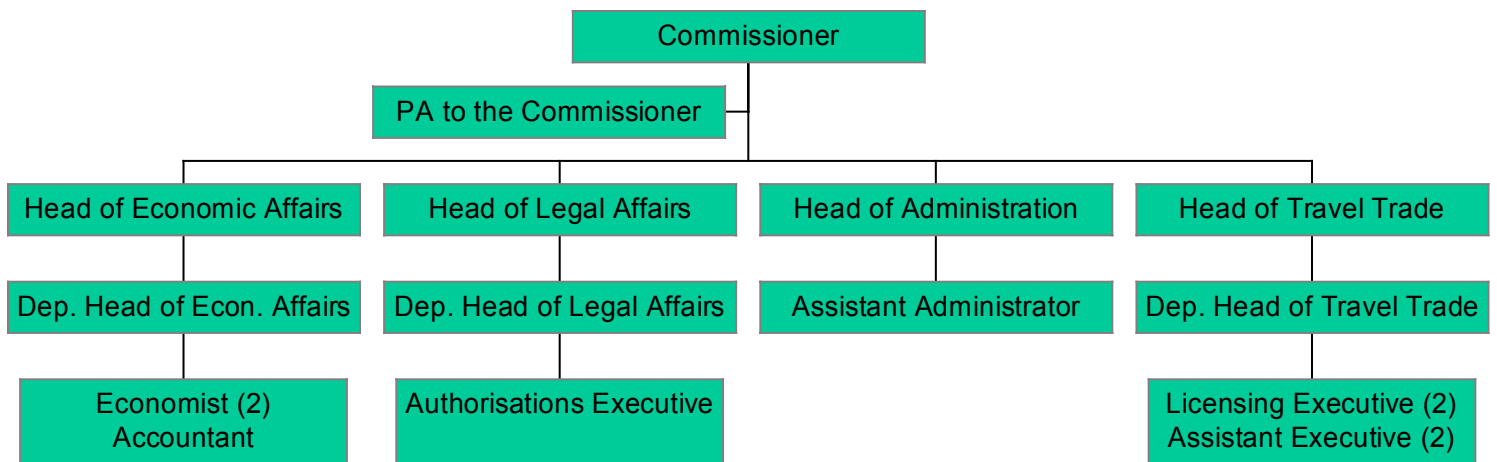
The Commission for Aviation Regulation is responsible for regulating aspects of the activities of tour operators and travel agents in Ireland. The Commission grants tour operator and travel agent licences and administers a bonding scheme for both types of licence holder.

Under the Transport (Tour Operators and Travel Agents) Act, 1982, as amended by the Package Holidays and Travel Trade Act 1995, a distinction is made between tour operators and travel agents. In general terms, a tour operator is a person who acts as the principal in relation to overseas travel which it arranges for the purpose of selling or offering for sale to the general public. By contrast, a travel agent is a person who sells or purchases or offers to purchase overseas travel on behalf of the public on a commission basis. Where a person engages in the activity of both tour operator and travel agent, then both licences are required. Both licensing regimes are explained in the Transport (Tour Operators and Travel Agents) Act, 1982: Explanatory Note.

Tour Operators and travel agents are obliged to enter into a bond before the Commission grants a licence. In the event of a failure of a tour operator or travel agent, the Commission is then responsible for administering the bond. This work usually consists of assessing the eligibility of individual claims from customers of the failed tour operator or travel agent, making the appropriate refunds, and where necessary, making arrangements for the repatriation of customers who need to be repatriated.

Written queries in relation to any of these issues may be directed to info@aviationreg.ie or by telephone to +353 1 6611700, and by fax to +353 1 6612092. It should be noted that the Package Holidays and Travel Trade Act, 1995, requires package holiday organisers to provide certain protections in the event of insolvency, as well as regulating other aspects of the package holiday industry. Aspects of that Act are administered by the Director of Consumer Affairs, telephone +353 1 402555.

3.3 Organisational Structure



3.3.1 Economic Affairs Division

3.3.1.1 Functions

The Economic Affairs division is responsible for advising the Commissioner and preparing the decisions of the Commission, in relation to airport and ATC Regulation

Finance and Accounting

The finance and accounting section of the Commission for Aviation Regulation is responsible for all of the financial functions of the Commission.

These include:

Preparing the Annual Budget along with the implementation of the Levy under Section 23 Aviation Regulation Act, 2001.

Managing the Commission's financial resources.

Processing payments relating to the administration of the Commission, including payroll.

Preparing the Commission's monthly management accounts, including variance reporting on expenditure.

Preparing the Commission's annual accounts.

Liaising with the Comptroller and Auditor General.

Ongoing review and improvement of existing processes.

Liaising with the Revenue Commissioners in relation to the Commissions various tax returns.

Providing support to the licensing section of the Commission regarding analysis of Travel Agent/Tour Operator/Groundhandling and Air-Carriers' Annual Accounts.

3.3.1.2 Structure

Head of Economic Affairs
Deputy Head of Economic Affairs
Accountant
Economists

3.3.1.3 Classes of records held:

Staff- Payroll information
Supplier, including payment records and notes regarding procurement procedures.
Customer i.e. Undertakings as per the Levy
Taxation

Banking records, including bank statements of all travel agents/ tour operators' bonds.

Budget

Travel and Subsistence

Audit

Fixed Assets

Financial Statements

Monthly management Accounts

Licensing correspondence

3.3.1.4 Information Available:

The following information is available from the Commission website www.aviationreg.ie under the headings Economic Regulation and The Levy:

Commission Papers on Airport Charges, Air Terminal Services Charges and The Levy.

Cooperation Agreement with the Competition Authority.

Ministerial Directions

Submissions Received from interested parties

Statutory Requests to regulated firms

Notices made by the Commission

Internal economic files

Correspondence between the Commission and the aviation industry and others

3.3.2 Legal Affairs Division

3.3.2.1 Functions.

The provision of legal advice is the responsibility of the Legal Affairs division. A wide range of advisory work is undertaken ranging across all the areas that are functions of the Commission in addition to other areas such as

constitutional law, competition law, contract and labour law. The legal affairs division is consulted in connection with any legal issue which a division of the Commission requires advice.

In addition the division is responsible for the management and conduct of all litigation to which the Commission is a party. This involves civil and criminal matters.

The division is also responsible for groundhandling, air carrier licensing and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. In this regards it s functions are:

To authorise groundhandling operations at airports in Ireland under national and EU legislation.

Licensing of Irish air carriers under National and EU legislation.

Administration of the EU "Denied Boarding" Regulation in Ireland

3.3.2.2 Structure.

Head of Legal Affairs
Deputy Head of Legal Affairs
Authorisations Executive
EU Affairs Executive

3.3.2.3 Classes of document held

Internal general administration
Legal advises
Legislation
Litigation files
Licence applications

Information relating to the monitoring of approved groundhandlers
Correspondence between the Commission and approved groundhandlers on various issues
Research materials relating to groundhandling
Correspondence between the Commission and licensed air carriers
Information relating to the monitoring of licensed air carriers
Research materials relating to air carrier licensing
Correspondence regarding claims for compensation under the Denied Boarding Regulation

3.3.2.4 Information Available:

Groundhandling

Application form for approval as a supplier of groundhandling services for a self-handler and relevant legislation.

Lists of approved self-handlers and suppliers of groundhandling services.

Appeal Decisions

Air Carrier Licensing

Application form for an Air Carrier Operating Licence

List of licensed Irish air carriers

Relevant legislation

Assistance of Air Carrier Passengers

Complaint Registration Form

Relevant Legislation

3.3.3 Administrative Affairs Division

3.3.3.1 Functions

Ensuring the effective deployment and management of human resources within the Commission:

Ensuring there is an efficient and effective payroll system in place;

Providing accommodation and any other physical resources necessary for staff;

Creating an accident free and Health and Safety conscious environment;

Providing training to meet individual needs and those of the organization;

Overseeing the discharge the Commission's duties in relation to Slot Coordination pursuant to EU regulations;

Providing the Commissioner with the administrative support in respect of his/her statutory obligations;

Managing commitments of the Commissioner in respect of domestic and foreign engagements;

Providing for efficient and effective processing of all internal and external communications.

3.3.3.2 Structure

Head of Administration

Personal Assistant to the Commissioner

Administrative Assistant

3.3.3.3 Classes of Documents held

Commission Publications

Replies to Parliamentary questions

Speeches by the Commissioner
Invitations to the Commissioner and other diary related matters
Correspondence with government departments and other public bodies
Correspondence issued by the office
Annual report
Finance, Accounts and Borrowing
Industrial relations
Pensions
Property issues
Commission matters
Financial Matters
Internal Administration
Legislation
Policy

3.3.3.4 Information Available

The following Information is available in relation to Slot Allocation on the Commission website at www.aviationreg.ie under the heading Slots:

Commission paper on the appointment of a Coordinator for Dublin Airport

The Commission Decision on Full Coordination at Dublin Airport.

Legislation

3.3.4 Travel Trade Licensing Division

3.3.4.1 Functions

The Travel Trade Licensing Division of the Commission is responsible for the licensing of travel agents and tour operators pursuant to the Transport (Tour

Operators and Travel Agents) Act, 1982 as amended and the various regulations made under that Act.

3.3.4.2 Structure

- Head of Travel Trade Licensing
- Deputy Head of Travel Trade Licensing
- Two Licensing Executives
- Two Assistant Licensing Executives

3.3.4.3 Classes of Document Held

- Records relating to licence applications from travel agent and tour operators
- Licences issued to travel agents and tour operators
- Internal Administration
- Correspondence with interest groups
- Records relating claims by customers of travel agents and tour operators against the firms' bonds and/or the Travellers' Protection Fund.

3.3.4.4 Information Available.

The following information is available on the Commissions website at www.aviationreg.ie under the heading Travel Trade:

- Application forms and fees
- List of Licensed Operators
- Other documents including frequently asked questions.
- Legislation

4. FREEDOM OF INFORMATION ACT - SECTION 16 MANUAL

RULES AND PRACTICES S AND PROCEDURES

The staff of the Commission for Aviation Regulation is made up of civil servants seconded from the Department of Transport together with staff directly employed by the Commission.

Part I - CIVIL SERVICE PERSONNEL SCHEMES AND POLICIES

4.1 Introduction

The Personnel schemes and policies operated by the Commission are, largely, those agreed centrally by the Department of Finance and which operate across the Civil Service as a whole. Details of these schemes can be found in the Department of Finance's, Rules and Practices, Freedom of Information Act - Section 16 Reference Book. In a limited number of cases, the Commission has flexibility in the way it operates policies and schemes. This flexibility is likely to increase in future under the Strategic Management Initiative (SMI). Details of the personnel schemes and policies operated at present by the Department of the Transport are set out below:

4.1.1 Refund of Academic Fees

Members of staff who undertake courses of learning which are deemed appropriate to their work or their development as civil servants may apply for a full refund of the academic fees they incur. On an exceptional basis, partial refunds may be approved for courses of less immediate relevance or for personal development.

Advance written applications for approval in principle to reclaim the fees must be made. The fees are refunded retrospectively at the end of the academic year on production of certification from the education body that the officer attended the course and sat the appropriate exams. In the past it was not a requirement that the officer passed the exams. However, this matter is now being reviewed.

The officer to whom a payment has been made must sign a form of undertaking to refund the payment should s/he resign from the Civil Service before completing one year's service in respect of each academic year or course period for which a payment has been made (the academic years or course periods themselves are not reckoned as service in this context)

4.1.2 Promotion

The Commission fulfills its obligations to interdepartmental promotion panels. Promotion policy is currently under review. One should note the staff of the Commission is a mix of staff seconded from the Department of Transport and staff employed directly by the Commission for Aviation Regulation.

4.1.3 Financial Procedures

The Commission operates its financial procedures in line with the guidelines and instructions set down by the Department of Finance, but within these there are particular administrative procedures that the Commission has discretion to exercise as it sees fit.

4.2 Commission For Aviation Regulation Schemes And Procedures

4.2.1 Application for an Air Carrier Operating Licence

An Air Carrier Operating Licence permits the holder to engage in the carriage by air of passengers, mail and/or cargo for remuneration and/or hire.

The granting of Operating Licences to undertakings based within the European Union is governed by Council Regulation (EEC) No. 2407/92 on licensing of air carriers. The relevant national legislation in relation to air carrier licensing in Ireland is the Air Navigation and Transport Act, 1965 (Section 8) Regulations, 1993 which gives effect to Council Regulation No. 2407/92. Before a licence can be issued the applicant must obtain an Air Operator's Certificate (AOC) from the Irish Aviation Authority, Aviation House, Hawkins Street, Dublin 2. Tel: (01) 6718655, Fax: (01) 6793349.

Full details of the information, which must be furnished when submitting an application for an Air Carrier Operating Licence, are contained in the application form and accompanying notes.

On receipt of an application for an Air Carrier Operating Licence, the Commission issues a letter acknowledging receipt of same. The Licensing Executive examines the application and supporting documentation in detail. The Commission's accountant examines the applicant's business plan and relevant financial information. At this stage, a letter may be issued outlining any queries or additional information that the Commission needs to enable it to process the application further.

As soon as the Commission is satisfied that all necessary information has been received, it will be in a position to take a decision on the application. The decision is made by the Licensing Executive and the applicant is notified. A decision not to grant an Air Carrier Operating Licence will state the reasons

for refusal. While there is no formal appeals procedure, an undertaking whose application has been refused may refer the matter to the European Commission.

Holders of Air Carrier Operating Licences must at all times comply with Council Regulation No. 2407/92, the Air Navigation and Transport Act, 1965 (Section 8) Regulations, 1993 and any provision or condition of the Air Carrier Operating Licence. Air Carrier Operating Licence's issued by the Commission are subject to review one year after the licence has been granted and every five years thereafter. The Licence is also subject to regular monitoring requirements in order to ensure compliance with the relevant legislation.

The following fee structure applies with regard to air carrier licensing:

New applications	€6,000 (Category A) €2,000 (Category B) ¹
Review of Operating Licences	€3,000 (Category A) €1,000 (Category B)
Annual Monitoring Fee	€3,000 (Category A) €1,000 (Category B)

The fee payable on application for an Air Carrier Operating Licence is non-refundable.

4.2.2 Application for Groundhandling Approval

Groundhandling broadly comprises all those services required by an aircraft between landing and take-off (e.g. marshalling aircraft, loading/unloading,

¹ Permitted to carry passengers, cargo and/or mail on aircraft with fewer than 20 seats and/or less than 10 tonnes MTOW (maximum take-off weight).

refueling, baggage handling, passenger handling, aircraft maintenance etc.)
The Commission is responsible for authorising groundhandling operations.

The Commission for Aviation Regulation is the competent authority in Ireland for the purposes of Council Directive 96/67/EC on access to the groundhandling market at Community airports. This Directive has been implemented into Irish Law by the European Communities (Access to the Groundhandling Market at Community Airports) Regulations, 1998 (S.I. 505 of 1998). The Directive is intended to facilitate the opening up of access to the groundhandling market and to facilitate effective competition in that market.

Prior approval must be obtained from the Commission before engaging in groundhandling operations. Full details of the information that must be furnished when submitting an application for a Groundhandling approval are contained in the application form.

On receipt of an application for a Groundhandling approval, the Commission issues a letter acknowledging receipt of same. The Licensing Executive examines the application and supporting documentation in detail. The Commission's accountant examines the applicant's business plan and relevant financial information. At this stage, a letter may be issued outlining any queries or additional information that the Commission needs to enable it to process the application further.

As soon as the Commission is satisfied that all necessary information has been received, it will be in a position to take a decision on the application. The Licensing Executive makes the decision and the applicant is notified. A decision not to grant a Groundhandling approval will state the reasons for refusal.

Holders of Groundhandling approvals must at all times comply with the relevant legislation. Groundhandling approvals are issued for a period of five

years and are subject to regular monitoring requirements in order to ensure compliance with the relevant legislation.

The following fee structure applies with regard to groundhandling:

New applications	€1,600
Approval amendment fee	€ 800
Renewal Fee	€1,600
Annual Monitoring Fee	€ 800

The fee payable on application for a Groundhandling approval is non-refundable.

4.2.3 Complaints under the “Denied Boarding” Regulation

Regulation (EC) No. 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights establishes minimum rights for passengers when:

- (a) they are denied boarding against their will;
- (b) their flight is cancelled;
- (c) their flight is delayed.

The scheme makes it a matter for the air carrier or Tour Operator to compensate or reimburse and cater for passengers in certain circumstances when they are denied boarding or their flight is cancelled or delayed. The time to act is at the time of the event. Therefore, it is for the passenger to initially seek to have their rights vindicated. If a carrier refuses to discharge their obligations under the regulations, passengers may complain to the Commission who may investigate the matter.

If an airline expects to deny boarding to certain passengers it must first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passengers concerned and the air carrier. The passenger is entitled to an offer of reimbursement, a return flight to their point of departure, re-routing to their final destination on a later flight or later date at the passengers convenience.

If a passenger is denied boarding against their will or has their flight cancelled at short notice with no offer of re-routing, the air carrier is obliged to compensate the passenger along the following lines:

- (a) €250.00 for all flights of 1, 500 kilometres or less;
- (b) €400.00 for all flights within the EU of more than 1.500 kilometres, and for all other flights between 1.500 and 3.500 kilometres;
- (c) €600.00 for all flights not falling under (a) or (b).

Such compensation may be reduced by 50% if the passenger is re-routed and arrives at their destination not less than two hours later than scheduled for category (a) flights above, three hours later for category (b) and four hours later for category (c).

The passenger must be offered the choice to be reimbursed or rerouted at their convenience. Passengers denied boarding or having their flights cancelled shall also be entitled to meals and refreshments in a reasonable relation to waiting time, hotel accommodation if necessary and transport between the airport and a place of accommodation.

When an air-carrier expects a flight to be delayed beyond its scheduled time of departure, depending on the length of such delay, various entitlements arise.

- (a) For delays of two hours or more in the case of flights of 1.500 kilometres or less;

- (b) For three hours or more for all flights within the EU of more than 1.500 kilometres, and for all other flights between 1.500 and 3.500 kilometres;
- (c) For four hours or more for all flights not falling under (a) or (b), passengers shall be offered by the operating air carrier:
 - (i) meals and refreshments in a reasonable relation to waiting time free of charge and, in addition, passengers shall be offered free of charge two telephone calls, telex or fax messages or e-mails and
 - (ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, hotel accommodation in cases where a stay of one or more nights becomes necessary or where a stay additional to that intended by the passenger becomes necessary plus transport between the airport and place of accommodation, and
 - (iii) when the delay is at least five hours, passengers shall be offered the choice between reimbursement within seven days for the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the parts or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure.

If a passenger is dissatisfied with the action taken by an airline following such an event, they may complain to the relevant authority to investigate the treatment they have received.

Since 31 May 2005, the Commission for Aviation Regulation has been designated pursuant to Regulation 3 of the European Communities

(Compensation and Assistance to Air Passengers) (Denied Boarding, Cancellation or long delay of flights) Regulations, 2005, S.I. No 274 of 2005, as the enforcement body to which passengers should complain if dissatisfied with their treatment having been denied boarding, had their flight cancelled or delayed at an airport in Ireland or if they were denied boarding by an Irish licensed air carrier flying to Ireland from a country outside the European Union.

Passengers contacting the Commission need to supply the following information:

Names and addresses of passengers affected

Location of airport at which boarding was denied, flight was cancelled or delayed

Details of the flight – time, destination, airline

Details of the price paid for the ticket

Reason given for denied boarding, cancellation or delay

Action taken by airline

Action taken by passenger

Where the Commission considers that a carrier is infringing the regulation, it may issue to the carrier a direction to cease the infringement and comply with any instructions contained in the direction. The carrier may, within one month of the issue of the direction, make representations to the Commission. The Commission shall consider and reply to such representations. In so doing, the Commission may vary or withdraw its direction. Where a carrier fails to implement the direction, not earlier than one month after hearing such representations, the Commission may apply to the appropriate Court for an order for compliance. The Court may make such order as it sees fit.

4.2.4 Application for a tour operator or travel agent license

The licensing of tour operators and travel agents takes place in accordance with the Transport (Tour Operators and Travel Agents) Act, 1982;

Tour Operators and Travel Agents (Bonding) Regulations, 1983;

Transport (Tour Operators and Travel Agents) Act, 1982 (Claims by Customers) Regulations, 1983;

Travellers' Protection Fund Regulations, 1984;

Travellers' Protection Fund (Amendment) Regulations, 1986;

Tour Operators (Licensing) Regulations, 1983;

Travel Agents (Licensing) Regulations, 1983;

Tour Operators (Licensing) (Amendment) Regulations, 1995;

Travel Agents (Licensing) (Amendment) Regulations, 1995;

Approved Bodies (Fees) Regulations, 1995;

Package Holidays and Travel Trade Act, 1995 (Bonds) Regulations, 1995;

Package Holidays and Travel Trade Act, 1995 (Occasional Organisers) Regulations, 1995.

Copies of this legislation may be obtained from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2, and may be read on the Commissions website, www.aviationreg.ie.

It is an offence to carry on business or hold oneself out as carrying on business as a tour operator or travel agent without a licence. The Acts provide for penalties for illegal trading.

The Acts and the related regulations set out in full the legislative requirements regarding applying for, and holding a licence.

These are in the main:

- application for a licence must be made on an application form provided for under the Licensing Regulations;

- Copies of the forms may be obtained from the Commission and may also be downloaded from its website.

- Application forms must be completed in full and must be accompanied by

- the appropriate application fee (see website);
- audited annual accounts for a period ending not later than 12 months from the date of the application;

- in the case of new applicants evidence of company registration and trade name registration where appropriate;

- details of personnel employed or to be employed in the business;

- information on the current state of applicants' finances;

details of the applicants financial and other assets;

details of management and staff;

financial and business projections for the period of the licence being sought;

an estimate of licensable turnover (i.e. turnover relating to the activity for which the licence is being sought).

Applicants are assessed on the basis of the information supplied

Applicants may be asked to supply additional information or clarification of the material they submitted on or in support of their application

When the Commission has processed the application and is of the view that there is no obstacle to the granting of a licence, the applicant is invited to submit a bond for the protection of its customers with whom it undertakes travel contracts over the period of the licence. Those bonds may take the form of cash or guarantee from a duly authorised bank or insurance company. The level of the bond is set at 10% of licensable turnover for tour operators and 4% of licensable turnover for travel agents.

The legislation governing the licensing of tour operators and travel agents does not stipulate the period for which a licence is granted, but the Commission normally grants a licence which is valid for a period of up to one year.

Licences issued by the Commission are in the form provided for in Schedule 2 of the Tour Operators (Licensing) Regulations, 1993 and the Travel Agents (Licensing) Regulations, 1993.

In addition to the standard conditions contained in the prescribed licence documents, the Commission may impose further conditions on a licence holder by including them in writing on the licence document and may vary these conditions from time to time.

A full list of current holders of tour operators' and travel agents' licences is available on request from the Commission and may also be viewed on the Commission's website. The list also includes names and addresses of holders of recently expired licences.

During the period of validity of their licences, tour operators and travel agents may be asked to submit further information to the Commission, which usually relates to their ongoing financial performance.

A tour operator's or travel agent's licence may be revoked where events, such as bankruptcy or insolvency, provided for in section 2(4) of the Transport (Tour Operators and Travel Agents) Act occur and will automatically be revoked, pursuant to section 10 of the Act, where a payment from the firm's bond becomes necessary due to its failure to meet its financial and contractual obligations to its clients.

Where the Commission proposes to revoke a licence, (other than in circumstances provided for in section 10), or to refuse to grant a new licence, it must first notify the holder of the licence of its intention to do so and the reasons therefore, allow seven days for representations to be made by the holder and consider any representations the licence holder may make.

If at that stage, the Commission intends to proceed with the revocation or refusal of a licence, the licence holder or applicant may appeal against the Commission's proposal to the High Court within a further seven days, but in the meantime, may not trade as a tour operator or travel agent unless a bond is in place.

4.2.5 Claims for Refunds from bonds of Tour Operators and Travel Agents

Sections 13(4) and 18 (1) of the Transport (Tour Operators and Travel Agents) Act 1982 and the Transport (Tour Operators and Travel Agents) Act 1982 (Claims by Customers) Regulations, 1983 provide for the main rules and conditions governing claims against bonds of tour operators or travel agents whose licences have been revoked or who have failed to meet their overseas travel contract obligations to customers.

In addition to funds made available by a bond of a tour operator or travel agent, the Commission may also use the resources of the Travellers' Protection Fund, which was established pursuant to Section 15(1) of the Transport (Tour Operators and Travel Agents Act) 1982, for the benefit of customers of the travel firm concerned.

The Commission may call a bond of a tour operator or travel agent at any time up to six months after the expiry of the licence in respect of which the bond was provided. Unless the Commission becomes aware within that time that a claim may be made by a customer of the tour operator or travel agent, the bond provider is at that stage released from its obligations and the protection it accorded to customers ceases to have effect.

Claims may only be made in respect of overseas travel contracts with a tour operator or travel agent, i.e. the customer must have purchased travel (with or without accommodation or other holiday services) commencing in the Republic of Ireland to a place outside the island of Ireland.

Claims from customers must be made in writing on an official claim form which obtainable from the Commission on request or through its website and must contain details of the travel contract in respect of which the particular claim is being made.

Claims must be made within 60 days and be supported by receipts and other evidence of payment.

The Commission may ask the claimant to supply any additional proof it deems necessary to assess whether a claim is admissible.

The amount claimed by way of a refund in respect of travel that had not commenced at the time the tour operator or travel agent defaulted on the contract may not exceed the total amount paid.

A claim may be made, however, for reasonable expenses necessarily incurred by a customer of a tour operator or travel agent as a result of the travel firm failing to fulfill its obligations under an overseas travel contract.

If the Commission has already arranged the repatriation of the customer of a tour operator or travel agent, any further claim will be deemed inadmissible.

If the Commission has repatriated a customer or a tour operator or travel agent on a date earlier than the return date specified in the contract that the customer had with the tour operator or travel agent, any refund will be made on a pro-rata basis for the curtailed portion of the travel.

If the Commission has insufficient resources in both the bond of a tour operator or travel agent and the Travellers' Protection Fund to fully pay all eligible claims for refunds, each claimant will be paid a similar proportion of the amount due to them.

A claim from a customer in respect of vouchers, trading stamps or similar tokens will be deemed inadmissible except where these have been used as part payment towards an overseas travel contract.

A claim may not be made from either a bond or the Travellers' Protection Fund for damages in respect of the standard of accommodation or other services which a tour operator or travel agent provided to a customer.

In assessing the admissibility of any claim, the Commission is obliged to take into account any payments the claimants may have received in the context of the liquidation of the tour operator or travel agent in respect of which they have made the claim.

If a claimant is unable to supply fully satisfactory receipts or other evidence of payment in support of a claim, the Commission is the final arbiter of the eligibility of the claim.

4.2.6 Airport Charges determination (the procedure by which they are calculated)

The procedure by which the Commission determines airport charges in respect of Dublin Airport is set out in section 22 of the Aviation Regulation Act, 2001 as amended by the State Airports Act 2004.

A determination is to be in force for not less than 4 years coming into effect on such a day as the Commission specifies.

In general, a determination may provide for an overall limit on the level of airport charges, for limits to apply to particular categories of such charges, or for a combination of such limits.

Prior to making a determination the Commission must give notice that it intends to do so and publish this notice in a national newspaper. At the same time it must specify a period being not less than one month within which representations may be made from the public in respect of the proposed determination. It has been the practice of the Commission to

publish a draft determination with this notice to facilitate the most useful consultation process.

The Commission, heretofore, has published these representations to allow respondents the opportunity to make further comment. Thereafter, the Commission, on making a determination must set out a report on the determination giving an account of these reasons for making that determination together with its reasons for accepting or rejecting any representations.

4.2.7 Aviation Terminal Services Charges determination (the procedure by which they are calculated)

In May 2001 the Commission published a paper CP4/2001 setting out the process leading up to the first Determination due in February 2002. This paper states the following.

“Given the nature of economic regulation, and having regard to the objective of the Commission in making a determination on the maximum levels of aviation terminal services charges, as well as the other requirements of the Act, the Commission has decided that consultation with interested parties and the public needs to be as complete as possible. Accordingly, the Commission has decided to supplement and amplify the requirements in relation to consultation contained in the Act as follows.

To begin the process, the Commission has published CP5/2001, a Consultation Paper on Economic Regulation of Aviation Terminal Services Charges in Ireland. Interested parties and the public will be given a period of 2 months to make comments. They will also have the opportunity of viewing and making comments on each other’s submissions. Having considered these submissions, the Commission will, on or about 17 October 2001 publish notice of its determination.

That notice will be by way of draft determination and an explanatory memorandum. This will commence the period of statutory consultation specified in the Act. Interested parties and the public then have two months to make representations, which will then be considered by the Commission. The Commission will then make its determination and publish its report.”

The Commission placed all of the submissions and representations that it received in response to requests, on its website. As a result, the content of any submission is solely a matter for the submitting party.

The Commission envisages a two-stage public consultation leading to the determination of maximum airport charges.

The first phase started with the Commission publishing a consultation paper on the issues that arise in deciding a framework for setting airport charges. This was followed by a period for submission and consideration of written responses.

In the second phase of the work program, the Commission published its draft determination and allowed a statutory one-month period for consideration of its proposals and receipt of written responses. Following consideration of representation received, the Commission made and published its determination as well as its report.

A new determination is due to be made in 2007.

Due to the detailed and technical nature of airport and ATC charges regulation, it is outside the scope of this manual to describe how maximum charges are determined. For detailed information please see the documents under economic regulation heading available on the Commission website at www.aviationreg.ie.

4.2.8 The Levy.

The costs of the Commission are required by law to be recovered by a levy imposed by the Commission on the aviation sector. To do this the Commission has had to decide on the best way of dividing up the cost so as to charge the relevant undertakings in the fairest way possible. The Commission has decided to make the allocation of its expenditure according to the six principal areas of responsibility given to it under the Act and in proportion to the Commission's costs incurred in respect of those areas. The six areas are comprised of: regulation of airport charges, regulation of aviation terminal services charges, slot allocation and co-ordination, approval of ground handlers and ground handling matters, travel trade licensing and air carrier licensing. Specific costs of the Commission are allocated to each of the six principal areas as set out in Section 5 of The Levy Consultation Paper CP4/2002.

For more detailed information on how the levy is determined and applied please see the Commission papers which are available on the Commission website www.aviationreg.ie under the Financial heading.

5 GLOSSARY

Aeronautical Communications services means services providing communication facilities for any purpose connected with aviation.

Air Navigation Services includes services providing, giving or issuing information, directions or instructions, or other facilities, for the purposes of or in connection with the navigation or movement of aircraft.

Air Carrier (Operating) Licence means an authorisation granted to an undertaking permitting it to carry out carriage by air of any one or more of the following, that is to say, passengers, mail or cargo, as stated in the operating licence, for either remuneration or hire or both

Airport Charges means:

- (a) charges levied in respect of the landing, parking or taking off of an aircraft at an aerodrome including charges in respect of air navigation and aeronautical communications services;
- (b) charges levied in respect of the arrival at or departure at an airport by air of passengers, or
- (c) charges levied in respect of the transportation by air of cargo, to or from an airport

Aviation Terminal Service Charges means the charges levied in respect of air navigation services provided for aircraft landing at or taking off from an aerodrome or while in the vicinity of an aerodrome before landing at or taking off from that aerodrome.

Coordinator means a natural or legal person with detailed knowledge of air carrier scheduling coordination. They are responsible for allocation and monitoring of slots.

Coordinated Airport means an airport where a coordinator has been appointed to facilitate the operations of air carriers operating or intending to operate at that airport;

Fully coordinated Airport means a coordinated airport where, in order to land or take off, during the periods for which it is fully coordinated, it is necessary for an air carrier to have a slot allocated by a coordinator

Groundhandling means providing services such as the following: marshalling aircraft, loading/unloading, refuelling and baggage handling. Related services include; passenger handling, aircraft maintenance and servicing, surface transport between terminals, catering, and general administration services at an airport

Levy for the purposes of meeting expenses incurred by the Commission in the discharge of its functions under the act, it is entitled to impose a levy upon those whom it regulates to meet but not to exceed the estimated operating costs and expenses of the Commission.

Slot means the scheduled time of arrival or departure available or allocated to an aircraft movement on a specific date at an airport coordinated under the terms of this Regulation;

Terminal Services means the air navigation services provided for aircraft landing at or taking off from an aerodrome or while in the vicinity of an aerodrome before landing at or after taking off from that aerodrome.

Tour Operator means a person other than a carrier who arranges for the purpose of selling or offering for sale to any person accommodation for travel by air, sea or land transport commencing in the State to destinations outside the State or Northern Ireland or who holds himself by advertising or otherwise as one who may make available such accommodation, either solely or in association with accommodation, facilities or other services

Travel Agent means a person other than a carrier who as agent sells or offers to sell to, or purchases or offers to purchase on behalf of, any person, accommodation on air, sea or land transport commencing in the State to destination outside the State or Northern Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or services.

Schedules Facilitated Airport means an airport where there is potential for congestion at some periods of the day, week or year which is amendable to resolution by voluntary cooperation between air carriers and where a schedules facilitator has been appointed to facilitate the operations of air carriers operating services or intending to operate services at that airport.

Statutory Instrument means a piece of secondary legislation that is made under seal of the appropriate Minister. A primary example of a statutory instrument is a regulation made to give effect to part of an Act of the Oireachtas.