



**Consultation Paper on the Implementation
of the Levy pursuant to
Section 23 of the Aviation Regulation Act, 2001**

Commission Paper CP4/2002

4 April, 2002

Commission for Aviation Regulation,
36 Upper Mount Street,
Dublin 2,
Ireland

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

TABLE OF CONTENTS

1	Purpose of the Consultation Paper	3
2	The Act	5
3	Proposed Timetable for Consultation Process	6
4	The Income and Expenditure of the Commission from 27 th February 2001 to 31 st December 2001.....	7
5	Suggested Allocations of 2001 Expenditure to the Commission's Activities	8
6	Undertakings Liable to Pay and the Level of their Liability.....	12
6.1	Regulation of Airport Charges	12
6.2	Regulation of Aviation Terminal Services Charges.....	13
6.3	Slot Allocation and Co-ordination	14
6.4	Ground handling	15
6.5	Air Carrier Licensing	15
6.6	Travel Trade Licensing	15
7	Projected Costs of the Commission for the Year 2002.....	16
8	Proposed Payment Terms	17
9	Submissions on the Consultation Paper	17
10	Action on Receipt of Submissions.....	18
11	Glossary of Terms.....	18
	Appendix I – The Act	19
	Appendix II – Income and Expenditure.....	21
	Appendix III – Budget Income & Expenditure.....	22

1 Purpose of the Consultation Paper

The Commission for Aviation Regulation has six principal responsibilities¹. The costs of the Commission are required by law to be recovered by a levy imposed by the Commission on the aviation sector. In this consultation paper the Commission has provided information about its costs in 2001 and its budget for 2002, and it discusses how the costs of the office might be collected from the aviation industry, through the imposition of a levy, as envisaged by the Aviation Regulation Act, 2001 (the "Act").

The purpose of this consultation paper is to set out the Commission's proposals on the imposition of the levy and to seek the views of interested parties on the following, as well as any other matters which are considered relevant:

- (1) Suggested allocations of the 2001 expenditure to the Commission's activities;
- (2) Undertakings liable to pay and the level of their liability; and
- (3) Estimated operating costs and expenses of the Commission for 2002.

In the interests of transparency, and in order to ensure as useful a consultation process as possible, the Commission has set out in the Appendices to this paper, figures from the Commission's draft accounts for the year ending December 2001 together with estimated operating costs and expenses for the current year. Interested parties should be aware that these figures are given solely for the purpose of this consultation paper and also for the purpose of giving guidance as to the level of any levy imposed for the year ending 2001 and the current year. The estimated operating costs and expenses of the Commission will change from year to year depending on the

¹ The regulation of airport and aviation terminal services charges, airport slot allocation, the approval of ground handling charges, and the licensing of travel trade operators and air carriers.

level of activity of the Commission and the related costs and expenses in a given year. This will be reflected in varying amounts being imposed on Undertakings from one year to the next. Accordingly, notwithstanding the provision of estimated costs and expenses in the Appendices to this paper, the Commission would ask interested parties to focus, in particular, on the policy issues and proposed approaches outlined in this paper.

2 The Act

Section 23 of the Aviation Regulation Act, 2001 (the "Act") provides that

"(1) For the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions under this Act, the Commission shall make regulations imposing a levy ("levy"), to meet but not to exceed the estimated operating costs and expenses of the Commission..."

The full text of Section 23 of the Act is set out in Appendix I.

3 Proposed Timetable for Consultation Process

04/04/02	Publication of the Consultation Paper
26/04/02	Deadline for submissions (21 days later)
29/04/02	Publication of the Submissions on the Commission's Website
06/05/02	Comments on Submissions due (7 days later)
09/05/02	Publication of the Comments on Submissions on the Commission's Website

The Commission will then consider all submissions and comments on those submissions and decide on how the Levy will be implemented. Once the Commission has made a decision the Commission will make Regulations, in accordance with section 23(3) of the Act.

Interested parties are invited to furnish the Commission with an e-mail address upon making a submission. The Commission will include all e-mail addresses furnished in an automatic notification mailing list which will notify parties, of changes to postings on the Commission's website regarding this consultation process.

4 The Income and Expenditure of the Commission from 27th February 2001 to 31st December 2001

The accounts of the Commission for the period ended 31 December 2001 have not yet been audited by the Comptroller and Auditor General under Section 26(b) of the Act. However, the Commission has prepared a Draft Income and Expenditure Account, which is subject to audit. The Commission proposes to levy its 2001 operating costs and expenses based on these draft accounts, since these accounts form a fair and reasonable estimate of the operating costs and expenses for the period 27 February to 31 December 2001. Any variation in the final audited accounts will be reflected in next year's levy calculations.

The figures from the draft accounts are set out in Appendix II.

5 Suggested Allocations of 2001 Expenditure to the Commission's Activities

The Commission for Aviation Regulation has six principal responsibilities. As a general principle, it is proposed that the levy be collected from each sector of the aviation industry on the basis of the proportion of the Commission's costs incurred in respect of its responsibilities relating to that sector.

However, interested parties should note that the Commission will consider any other reasonable allocation principle proposed to it. For example, an administratively simpler procedure would be to calculate the levy on the basis of a percentage turnover of each undertaking in the aviation industry, without reference to the use made by that undertaking of the Commission's work. There are also other options e.g. imposing a fee per passenger or per aircraft movement. The Commission would welcome views on the various potential approaches.

The Commission's proposal in this consultation paper is that its costs and expenses be divided among the following six cost centres – one for each of its principal activities, since these are the areas in respect of which the Commission exercises its functions:

- a) Regulation of Airport Charges
- b) Regulation of Aviation Terminal Services Charges
- c) Slot Allocation and Co-ordination
- d) Approval of Groundhandlers and Groundhandling matters generally
- e) Travel Trade Licensing
- f) Air Carrier Licensing

By way of illustration of the division of work within the Commission, the percentage of time spent by all Commission staff members including the Commissioner on each cost centre in 2001 was as follows;

Airport Charges	75%
Aviation Terminal Services Charges	15%
Slot Allocation	1%
Ground Handling	3%
Travel Trade Licensing	4%
Air Carrier Licensing	2%
TOTAL	100%

It is intended that similar percentages will be estimated each year, for 2002 and thereafter, and will be used for the allocation of costs on an annual basis in the future.

Some of the Commission's operating costs and expenses are specific to a particular cost centre while others are general in nature and relate to all of the functions carried out by the Commission.

The Commission invites comments from interested parties on the following suggested method of cost allocation relating to its administrative costs; The basic principle reflected in this suggested method is that where a cost relates to a specific cost centre then it should be allocated to that cost centre and where costs are general in nature they should be allocated in accordance with the percentage of Commission time spent working on each cost centre.

- 1) **Staff Costs** – As set out above, the Commission, since its establishment, has recorded the distribution of person-hours to each cost centre, and proposes that Staff Costs be allocated using the percentage of time spent by each staff member on each cost centre.
- 2) **Travel & Subsistence** – The Commission proposes that these costs be allocated directly to the cost centre to which they relate.

- 3) **Central Costs** –The Commission proposes that these costs, with the exception of Postage, be allocated as per the total percentage of Commission time (by all staff members) spent in 2001 on each cost centre.
- 4) **Accommodation Costs** – The Commission proposes that the proportion of Commission staff working in the Travel Trade Licensing be used to allocate a portion of accommodation costs to the Travel Trade Licensing cost centre. The remainder of the staff work on the other cost centres and therefore the accommodation costs would be allocated in line with the Central Costs category.
- 5) **Postage** – The Commission proposes allocating postage costs to the specific cost centre to which they relate.
- 6) **Finance Costs** – The Commission proposes that, as these costs relate to the entirety of the Commission’s work, finance costs be allocated according to the proportions quoted for Central Costs.
- 7) **Equipment & Software Costs** - The Commission proposes that, as these costs relate to the entirety of the Commission’s work, equipment and software costs be allocated according to the proportions quoted for Central Costs.
- 8) **Communications and Media Relations Costs** – The Commission proposes that advertising costs be allocated directly to the specific cost centre to which they relate and that Public Relations costs and those costs associated with the set-up, design and maintenance of the Commission’s Web Site and the design of the Commission’s stationery logo be allocated according to the proportions quoted for Central Costs.

- 9) **Professional Fees** – The Commission proposes that these costs be allocated directly to the cost centre to which they relate.

In this category, litigation costs form an exceptional portion of the Commission's Budget for the year 2002. It is clear that the Commission must be able to defend and prosecute legal proceedings relevant to the areas of its responsibilities, in the discharge of its statutory functions. The discharge of legal costs and expenses arising from litigation raises the following issues in relation to the levy. In certain cases the deciding body may award costs to the Commission, and, in other cases costs may have to be paid by the Commission. There will, in any event, be a portion of costs, which will require to be borne by the Commission. In addition, until proceedings are either compromised or an order is made, the proceedings will require to be funded by the Commission.

Therefore, the Commission invites the views of interested parties about whether these costs should be allocated:

- (a) equally across all classes of undertakings connected with the cost centre to which the proceedings relate, or,
 - (b) to the undertaking(s), which are party to the proceedings
 - (c) on any other basis
- 10) **Depreciation** – The Commission proposes that, because this cost relates to all of the Commission's work, depreciation be allocated according to the proportions quoted for Central Costs

6 Undertakings Liable to Pay and the Level of their Liability

When the Commission's costs and expenses have been allocated across the various cost centres, it must then be decided which undertakings are liable to contribute to those costs and expenses, and the manner in which those undertakings are to be levied. Suggested appropriate undertakings for each cost centre are considered below.

6.1 Regulation of Airport Charges

The beneficiaries of airport charges regulation are the recipient of those charges, namely Aer Rianta Teoranta (ART), and the bearer of those charges, namely users of ART airport facilities.

In its Determination on the maximum levels of airport charges (see CP7/2001) and its Varied Determination further to the referral by the Aviation Appeal Panel (see CP2/2002), the Commission envisaged that ART would be levied directly by the Commission and that ART would, in turn, recover the cost of that levy from airport users through airport charges. This approach would also remove the administrative burden and cost of calculating and levying varying amounts to each and every airport user.

In its Determination on the maximum levels of airport charges, the Commission included in ART's total revenue requirement, an allowance for the Commission's estimated operating costs and expenses and included a term in the formulaic expression of the Determination that would correct differences between the Commission's actual and estimated costs each year.

However, the Commission proposes that airport users should not bear the entirety of its regulatory costs and expenses because the airport operator also benefits from regulation. In particular, the system of independent

economic regulation under the Act with a five-year Determination specifying maximum levels of airport charges should provide improved certainty to ART, which, in turn, it might be argued, reduces ART's cost of capital. Therefore, the Commission proposes that some proportion of the Commission's costs and expenses associated with airport charges regulation be payable directly by ART from, for example, its non-aeronautical operations. If ART is operating these parts of its business under competitive conditions it would not be in a position to pass these costs onto the customers of these operations.

The Commission would welcome views on the relative proportions of this cost centre that should be borne by ART directly and by airport users through airport charges. The Commission asks that views be supported with logical and coherent arguments, and data/statistics where relevant, indicating the source of the information.

6.2 Regulation of Aviation Terminal Services Charges

The beneficiaries of aviation terminal services charges regulation are the recipients of those charges, namely the Irish Aviation Authority (IAA), and the bearer of those charges, namely users of the terminal air navigation system, i.e., airlines using Dublin, Shannon and Cork airports.

In its Determination on the maximum levels of aviation terminal services charges (see CP3/2002), the Commission envisaged that the IAA would be levied directly by the Commission and that the IAA would, in turn, recover the cost of that levy from aviation terminal services users through aviation terminal services charges. The Commission also envisages that the allocation of these costs among aviation terminal services charges would be such that heavy users of the airport pay relatively more than light users (which would, in turn, serve to reflect the relative importance of aviation terminal services charges regulation to each user). This approach would also remove the administrative burden and cost of calculating and levying appropriate small amounts to each and every aviation terminal services user.

The Commission included in the IAA's total revenue requirement, for the purposes of setting maximum aviation terminal service charges, an allowance for the Commission's budgeted costs and expenses and included a term in the formulaic expression of the Determination that would correct for differences between the Commission's actual and budgeted costs each year.

However, the Commission proposes that the users of aviation terminal services should not bear the entirety of its regulatory costs and expenses because the service provider also benefits from regulation, as argued in the previous section.

The Commission would, therefore, welcome views on the relative proportions of this cost centre that should be borne by the IAA directly and by users of terminal services. The Commission asks that views be supported with logical and coherent arguments, and data/statistics where relevant, indicating the source of the information.

6.3 Slot Allocation and Co-ordination

The Commission's expenditure on slot-allocation matters broadly falls into two categories. First, costs incurred by the Commission in the performance of its functions and, second, the cost of payment of any appointed schedules co-ordinator.

In the Commission's view there are a number of possible methods by which this expenditure can be recovered:

- a. Allocate the part of the levy associated with slot allocation proportionally between the Airport Operator and the Airlines;
- b. Allocate the levy entirely to the Airport Operator;
- c. Allocate the levy in line with airport activity, for instance on a per tonnage of landing basis; or

- d. Only charge those airlines, which individually account for 5% or more of Air Traffic Movements at Dublin Airport

Submissions are invited on which is considered to be the most appropriate allocation method.

6.4 Ground handling

The beneficiaries of the work of the Commission in respect of Groundhandling are the approved groundhandlers operating at Dublin, Shannon and Cork airports. The Commission proposes that an annual administration charge, which reflects the costs of this cost centre be levied on these operators.

6.5 Air Carrier Licensing

The beneficiaries of the work of the Commission in respect of air carrier licensing are licensed air carriers. The current system entails a once-off application fee and there is sometimes relatively little administrative activity associated with the licensed carrier in subsequent years. However, there is a legal requirement to monitor the financial status of the carrier during the period of validity of its licence and the Commission therefore proposes charging an administrative fee on an annual basis. This fee will cover the costs incurred in this cost centre and it is proposed that it be levied on licensed air carriers.

6.6 Travel Trade Licensing

The beneficiaries of the work of the Commission in respect of travel trade licensing are licensed travel agents and tour operators. The current system entails an annual licence fee charged to Tour Operators and Travel Agents. The Commission proposes increasing these fees so that the income received from tour operators and travel agents covers the costs and expenses of this cost centre. It is proposed that the levy in respect of this cost centre will be imposed on applicants for travel agent's and tour operator's licences.

7 Projected Costs of the Commission for the Year 2002

In addition to the costs for 2001 set out in Appendix II, the initial levy will also cover the estimated operating costs and expenses for all of or some of 2002².

The Commission has prepared a budget estimate based on the Income and Operational Costs for the year 2002. These figures are set out in Appendix III.

One new element of cost reflected in the estimate for 2002 is the Commission's need for new premises. Section 29 of the Act 2001 states "The Commission may, for the purposes of providing premises necessary for the performance of its functions, lease, equip and maintain offices and premises with the consent of the Minister and the Minister for Finance." The premises currently occupied by the Commission were only ever intended as a temporary arrangement (as mentioned throughout the passage of the Act through the Oireachtas). The building does not have the necessary space or facilities required by a statutory body to discharge its duties appropriately. Considerable efforts have been made over the past year to locate suitable premises. This matter is now being progressed and it is the Commission's intention to move from its current location on the finalisation of the outstanding issues and subject to all matters being agreed satisfactorily. The estimated costs associated with the move and the new property charges have been included in the current year's budget.

² To smoothen the impact of the levy on the cash flow of companies that may be deemed to have a significant levy liability, it is proposed that the initial levy in the respect of the Airport Charges and Airport Terminal Services Charges cost centres cover the first 6 months of 2002, and be invoiced quarterly thereafter.

8 Proposed Payment Terms

The Commission proposes that 30 (calendar) days credit will be allowed to all parties to discharge their commitments under the levy.

The Commission proposes issuing invoices relating to expenditure for 2001 as a lump sum payable by each undertaking. In respect of the cost centres of Airport Charges and Aviation Terminal Services Charges, the Commission proposes invoicing quarterly in advance for the current and future years.

The Commission proposes that interest on unpaid levies shall be payable at a rate equivalent to the rate imposed by the Courts Acts – currently 8% per annum, upon the expiry of the 30 day period.

The Commission proposes that payments are made to the Commission electronically, directly into the Commission's bank account.

9 Submissions on the Consultation Paper

The Commission invites submissions from interested parties on the issues set out in the foregoing consultation paper, which should be forwarded to the Commission so as to reach it no later than 5:00 pm on 26 April 2002. The Commission's standard procedure for treatment of submissions will be as laid down in CP1/2001.

Submissions should be sent to:

Anne Moloney
Deputy Head of Economic Affairs
Commission for Aviation Regulation
36 Upper Mount Street
Dublin 2

e-mail - info@aviationreg.ie

10 Action on Receipt of Submissions

On receipt of submissions from interested parties, on these and any other proposed allocation methods, and having considered all of the submissions, the Commission will decide upon the method of imposing the levy and will finalise the allocation method and consequently the amounts due under each class of undertaking and will make the necessary regulations.

11 Glossary of Terms

- (i) "Undertaking" – An undertaking is generally taken to mean any natural person, any legal person, whether profit-making or not, or any official body whether having its own legal personality or not, engaged in some form of economic or commercial activity.
- (ii) "Classes of undertaking" – The different categories of undertakings, organised according to a common commercial activity.
- (iii) The "Act" – The Aviation Regulation Act, 2001.
- (iv) The "Commission" – The Commission for Aviation Regulation.
- (v) "Cost Centres" – This term describes the functional areas to which relevant operating costs and expenses are posted.

Appendix I – The Act

Section 23 of the Aviation Regulation Act, 2001 (the "Act") provides that

"(1) For the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions under this Act, the Commission shall make regulations imposing a levy ("levy"), to meet but not to exceed the estimated operating costs and expenses of the Commission, to be paid each year beginning with such year as specified in regulations on such classes of undertakings as may be specified by the Commission in the regulations.

(2) Levy shall be payable to the Commission at such time and at such rates as may be prescribed in regulations by the Commission and different rates may be prescribed in respect of different classes of undertaking liable to pay levy.

(3) The Commission may make regulations to provide for the following;
(a) the keeping of records and the making of returns by persons liable to pay levy,
(b) the collection and recovery of levy, and
(c) such other matters as are necessary or incidental to the procurement of the payment of levy.

(4) An increase in levy may only take effect in the year after the year in which the increase is made in regulations.

(5) The Commission may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to it under this section.

(6) Every regulation made by the Commission under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) The Commission shall ensure that its own costs of operations are kept to a minimum and are not excessive.”

Appendix II – Income and Expenditure

Income and Expenditure from 27/02/01 to 31/12/01 (10 months)

INCOME

Airline Licence Fees	€3,000
Travel Trade & Tour Operator Licence Fees	€389,000
TOTAL INCOME	€392,000

EXPENDITURE

Staff Costs - includes Basic pay, Superannuation, Employers PRSI	€865,000
Travel & Subsistence - includes Flights, Accommodation & Training	€101,000
Central Costs, includes Stationery, Postage, Insurance	€69,000
Accommodation - e.g. Rent, Rates, Utilities	€56,000
Finance Costs - Interest due to the Department for Cash Advances	€18,000
Equipment & Software	€47,000
Communications and Media Relations, includes Advertising, Web set-up & maintenance, Notices in the Newspapers, design for stationery.	€209,000
Professional advisors	€1,266,000
Depreciation	€1,000
TOTAL EXPENDITURE	€2,632,000
DEFICIT OF EXPENDITURE OVER INCOME	(€2,240,000)

Apart from those costs which have been accrued, repayable advances from the Minister for Public Enterprise, as provided for in the Act, have temporarily met the deficit between income and expenditure.

Appendix III – Budget Income & Expenditure

Budget Income & Expenditure for the year ended 2002

INCOME

Airline Licence Fees	€3,000
Travel Trade & Tour Operator Licence Fees	€393,000
TOTAL INCOME	€396,000

EXPENDITURE

Staff Costs	€1,007,000
Travel & Subsistence	€70,000
Central Costs	€126,000
Accommodation	€165,000
Finance Costs	€50,000
Equipment & Software	€52,000
Communications and Media Relations	€144,000
Other Professional Fees, e.g. legal, & consultants	€192,000
Depreciation	€3,000
ACL Slot Co-ordination	€140,000
<i>Non-Recurring costs</i>	
Judicial Review costs	€1,735,000
TOTAL EXPENDITURE	€3,684,000
To be recovered by the Levy	(€3,288,000)