



Process for Determination of Aviation Terminal Services Charges

Commission Paper CP4/2001

Process leading to a Determination on Aviation Terminal Services Charges

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## 1. Introduction

Under the Aviation Regulation Act, 2001 (“the Act”), a principal function of the Commission is the regulation of aviation terminal services charges and in this regard the Commission is required to make a determination specifying the maximum levels of aviation terminal services charges to be recovered by the Irish Aviation Authority.

Under the Act, the Commission is required to make its determination not more than 12 months after its establishment. In setting maximum aviation terminal services charges, the Commission must aim to facilitate the development and operation of safe, cost-effective terminal services which meet international standards. Section 36 of the Act requires the Commission in arriving at its determination to have due

regard to seven factors.

The purpose of this paper is to give notice of how the Commission intends to manage the process leading to its determination. Separately, the Commission has published CP5/2001, Economic Regulation of Aviation Terminal Service Charges in Ireland, which deals with substantive issues connected with the Commission's determination.

In administering the process, the Commission is eager to ensure the widest possible input into its deliberations, as well as the fullest possible access to information bearing on its determination. The attention of interested parties and the public is also drawn to the timetable that is required in order for a determination to be reached within the statutory period.

Finally, the Commission wishes to point out that the process proposed in this paper is unique to aviation terminal services charges. Different processes may be required for other activities falling within its remit.

**William Prasifka**

**Commissioner**

## **2. Executive Summary**

The Act requires that the Commission make a determination on aviation terminal services charges no later than 12 months from its establishment. It also requires that during those 12 months, the Commission must give notice of its determination and allow interested parties and the public an opportunity to make representations. The Act does not specify when that notice or the representations should take place, nor the form of notice, save for requirements as to publicity.

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.

### **3. Statutory Context**

#### ***3.1 Statutory Function***

Under the Act, the Commission is responsible for making a determination in respect of the maximum levels of aviation terminal services charges, which may be imposed by the Irish Aviation Authority. Under the Act, terminal services are defined with reference to the Irish Aviation Authority Act, 1993. The 1993 Act defines terminal services as "*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 or taking off from that aerodrome*".

It is the charges for these services that the Commission is obliged to regulate under Section 35 of the Act. In doing so, it must aim to facilitate the development and operation of safe, cost effective terminal services which meet international standards, while having due regard to all of the factors specified in Section 36 of the Act.

#### ***3.2 Statutory Procedures***

The Act requires the Commission to issue a determination in respect of aviation terminal services charges not more than 12 months after its establishment. Prior to this, notice must be given specifying the Commission's intention to make a determination, and in doing so, the Commission must provide for a minimum period of two months during which interested parties may make representations. A report must also be made giving an account of the Commission's reasons for making the determination, together with reasons for accepting or rejecting any representations made. That report must then be furnished to the Minister, as well as to interested parties and the public.

#### ***3.3 Statutory Powers***

Section 35(11), Section 39 and Part 4 of the Act set out the powers available to the Commission in the discharge of its statutory functions. Included within those powers is an entitlement to request information. The general power to request information as provided for by section 35(11) is supplemented by more detailed powers set out in Part 4 of the Act.

## **4. Devising a Process**

In adopting a process for the determination of aviation terminal services charges, the Commission has had regard to a number of issues; specifically, the statutory objective and specified factors, the procedures specified in the Act, and procedural matters which fall to be determined by the Commission. The Commission has attempted to devise a process that complies not just with the statutory requirements, but also with the need for procedural fairness in what is a complex area of economic regulation.

### ***4.1 The Nature of Economic Regulation***

In making a determination on aviation terminal services charges, the objective, which the Commission must aim to facilitate, is the development and operation of safe, cost-effective terminal services which meet international standards. In doing so, it must have due regard to seven factors.

The Act requires the Commission to specify the levels of maximum charges, which may be imposed, and in so doing, it is empowered, among other things, to adopt a formula or series of formulae to restrict increases in the charges or to require reductions in them. In addition the Commission may provide for different limits to apply in relation to different periods of time during which the determination has effect.

In order to make its determination, the Commission must first of all identify an approach which achieves the statutory objective, having due regard to the specified factors. That approach will then be used to arrive at a formula or series of formulae, from which maximum charges may be derived. In order to arrive at actual figures, data will then be inserted.

### ***4.2 Matters not prescribed by the Act***

As discussed, the Act requires that the Commission give notice of its intention to make a determination, and that a period of two months be allowed for receipt of representations by interested parties and the

public. The timing of this statutory consultation within the twelve-month period is not specified in the legislation. If it takes place too early in the process, this may mean that interested parties and the public may not be able to make useful and relevant submissions. Similarly, if the two month period takes place too late in the process, then the risk is that it may present logistical difficulties for the Commission in revising its methodology.

Equally, the Act does not stipulate what form notice of the Commission's determination should take. For example, it does not explicitly require that the Commission publish a draft determination. However, the Act does envisage that the Commission's approach to aviation terminal services charges will evolve over the period of 12 months, and that a period of statutory consultation is essential once that thinking has evolved to a certain point, albeit not to a conclusion.

#### ***4.3 Supplementing the Statutory Consultation***

Clearly, interested parties as well as the public may wish to make observations not just on the approach to regulation, but also on the Commission's use of that approach in arriving at a formula, or series of formulae, from which charges may be calculated. In addition, interested parties may wish to comment on the figures or other inputs, which will be used by the Commission to calculate maximum charges. Based on this, the Commission is of the view that interested parties and the public should be consulted not only on the approach to be adopted by the Commission in regulating aviation terminal service charges, but also on the Commission's interpretation of the statutory requirements in order to arrive at a formula or series of formulae.

Therefore, while the Act only requires a single period of statutory consultation, it is proposed to supplement this by a more general consultation exercise. This is not a substitute for the period of statutory consultation. However, it is to the advantage of interested parties as well as the public to make as comprehensive representations as possible during the initial more general consultation exercise, to ensure that the Commission is fully apprised when developing the regulatory approach for making a determination on aviation terminal services charges.

#### ***4.4 Notice by way of draft Determination***

The Act requires the Commission to receive and consider representations with respect to the proposed determination. It would be possible for the Commission to make an announcement, without more, that it was proposing to make a determination. However, the Commission is of the view that ensuing consultation should be meaningful. Therefore it will publish a notice of its intention to make a determination that contains an appropriate level of detail. This will enable interested parties and the public to ascertain in general terms the impact or effect of the proposed determination. Otherwise, the

rights of interested parties as well as the public to make representations could be rendered nugatory.

Accordingly, the Commission will publish a draft determination and explanatory memorandum.

## 5. Process

### Process Leading to a Determination on Airport Charges

Stage	Activity Type	Date(s)
1.	Publication of Consultation Paper	3 May 2001
2.	Open Forum	18 May 2001
3.	Responses to Consultation Paper due	3 July 2001
4.	Comments by interested parties and the public on Responses due	7 August 2001
5.	Notice of Determination	17 October 2001
6.	Statutory Representations due	21 December 2001
7.	Making of Determination & Report	22 February 2002

Table. 1.1

#### 5.1 Process Timetable

Table 1.1 is a proposed schedule leading to the Commission's determination on aviation terminal services charges. It identifies the major milestones leading to the determination, but it is not exhaustive as to the elements of the process. This timetable is indicative only of how the Commission proposes to approach the determination. It may be necessary to lengthen or shorten the periods, except of course, for periods prescribed by the Act.

#### 5.2 Elements of the Process

##### 5.2.1 Publication & Responses to Consultation Paper

The Commission has commenced its consultation with the publication of a Consultation Paper,



CP5/2001, Economic Regulation of Aviation Terminal Services Charges in Ireland, which will discuss economic, regulatory and accounting issues connected with its determination on aviation terminal services charges. This will be followed, on 18 May 2001, by a public forum, at which the Commission will explain the process leading to its determination.

Included in CP5/2001, Economic Regulation of Aviation Terminal Services Charges in Ireland, is a description of the range of approaches to the economic regulation of aviation terminal services charges, as well as preliminary discussion of the factors to which the Commission must have due regard under Section 36 of the Act in order to achieve the statutory objective. That Consultation Paper, CP5/2001 is posted on the Commission's website, [www.aviationreg.ie](http://www.aviationreg.ie), and includes an invitation to interested parties as well as the public, to respond in writing by 3 July, 2001. The Commission would request that particular attention be given to responding to questions posed in the Consultation Paper.

In order to assist with relevant debate, the Commission intends posting all of the submissions it receives on its website. It is open to an interested party as well as to members of the public to request that certain information in their submission be treated as confidential. Such information should be included in a separate schedule. Further guidance on the treatment of confidential information is contained in Section 5.3.

### **5.2.2 Invitation to Comment on Responses**

Given that the Commission proposes to publish submissions which it receives, on its website, the Commission also proposes that any person should be free to comment in writing on any or all of the written submissions received in response to the Consultation Paper CP5/2001. A period of at least one month will be allowed for making such comments. Any person may make a written comment, irrespective of whether or not they have responded to the Consultation Paper. These written comments will be published on the Commission's website. Again, interested parties are referred to Section 5.3 of this paper in relation to treatment of confidential information.

### **5.2.3 Publication of Notice**

For the reasons mentioned in Section 4.4, by way of notice, the Commission will publish a draft determination as well as an explanatory memorandum. Collectively, both documents will be such as to allow an interested party to estimate the likely financial and other effects, in general terms, of the determination, which the Commission proposes making in relation to aviation terminal services charges.

## **5.2.4 Receipt and consideration of Representations**

In accordance with the statutory requirement the Commission will then allow a period of two months in order to receive representations on its proposed determination from interested parties as well as the public.

## **5.2.5 Determination and Report**

Subsequent to the statutory consultation period the Commission will make its determination and report available in accordance with the Act. The report will contain the reasons for the determination together with reasons for accepting or rejecting any representations made during the statutory consultation stage.

## **5.3 *Conditions of Process***

### **5.3.1 Timing**

The timetable is based on what the Commission considers to be the likely chain of events leading up to its determination. As such, it is a statement of intention on the part of the Commission. The Commission reserves the right to adopt or amend elements of the consultation process (including their timing) in the light of changes in circumstances, unforeseen developments in the process, or so as to ensure the fairness and integrity of the consultation process.

### **5.3.2 Deadlines**

Given the 12-month period for making a determination, the Commission wishes to emphasise the importance of making submissions and representations in good time. Where a date is expressly or impliedly stipulated, then the closing time for receipt of submissions by the Commission will be 5.00 pm on the day in question.

### **5.3.3 Delivery of Documents**

All correspondence, in response to requests for views must be received in electronic format. In all cases the sender shall have an obligation to ensure that the information is actually received by the Commission on or before the specified deadline.

### **5.3.4 Information**

The Commission is eager to ensure that the process leading to its determination is administered in an open, accessible manner. This is reinforced by the requirements contained in Section 5(4) of the Act that the Commission ensure that its determinations and requests be objectively justified, non-discriminatory, proportionate and transparent. To that end, details of all statutory requests for information by the Commission will be posted on its website.

The Irish Aviation Authority will be the source of much of the information that will be needed by the Commission to make a determination on the maximum levels of aviation terminal services charges. It is vital that all interested parties as well as the public, have sight of all relevant information relied upon by the Commission in making its determination, otherwise their ability to fully participate in both the initial consultation as well as the statutory consultation could be impeded.

While parties are free to designate part or all of their submissions as confidential (and should do so clearly, given that the onus rests with them to do so) this may create difficulties for the Commission. If the Commission is to make available the record leading to its determination, then all of the information that it relies upon for the purpose of its determination should, insofar as possible and as a general rule, be put into the public domain. As a result, the Commission proposes the following to counteract the information asymmetry, which may otherwise arise.

### **5.3.5 Confidential Information**

The Commission acknowledges that circumstances may arise where the disclosure of highly sensitive confidential information may cause damage to the party supplying the information. Clearly, the Commission will have access to and will analyse all information, but it is also desirable that interested parties as well as the public know what information is relied upon by the Commission in making its determination. The Commission has a statutory obligation to give reasons for its determination. Consequently, as a general rule, unless the Commission is able to put all of the information that it is relying on into the public domain, it will be reluctant to rely on that information for the purpose of making its determination. This is something which parties making a submission in response to either the initial or the statutory consultation should have particular regard to. Nonetheless, the Commission is of the view that even where information is regarded as highly sensitive by the disclosing party, it may be possible, whether by means of aggregation or otherwise, to disclose the information in a modified

manner. Where justified, the process of aggregation or restatement will be performed by the disclosing party in consultation with the Commission, after the Commission has seen all of the information in original form.

Notwithstanding the possibility of aggregating information in the manner outlined above, circumstances may arise when the Commission considers it necessary, having regard to its statutory obligations, to disclose to interested parties and the public confidential information, including highly sensitive confidential information. In this event the Commission will notify the party who has furnished the information in advance of any such disclosure.

It should be noted that the mere labelling or designation of information as confidential or highly sensitive confidential information shall not necessarily, afford it any particular treatment by the Commission. Any such designation must be accompanied by reasons as to why the information should be treated as confidential.

### **5.3.6 Use of the Commission's website**

As indicated, the Commission proposes to place all of the submissions and representations that it receives in response to requests, on its website. Ordinarily, the Commission will not be editing this material. As a result, the content of any submission is solely a matter for the submitting party, and in that regard, interested parties are referred to the legal notice and indemnity concerning use of the Commission's website which is contained in Annex I to this paper.

## **Annex I**

# **LEGAL NOTICE**

**While the Commission for Aviation Regulation (“the Commission”) at all times uses its best endeavours to ensure that all of the information on its website is up to date and accurate, the Commission accepts no responsibility in relation to and expressly excludes any warranty or representation as to the accuracy or completeness of the contents of its website.**

#### INDEMNITY

Any party submitting information of any type or from any source to the Commission for Aviation or Regulation (“the Commission”) in response to a document inviting submissions acknowledges that the Commission intends to publish that information on the website of the Commission, in reports of the Commission and elsewhere as required or appropriate. Parties submitting such information to the Commission consent to such publication. Any party submitting information to the Commission shall have sole responsibility for the contents of such information and shall indemnify the Commission in relation to any loss or damage of whatsoever nature and howsoever arising suffered by the Commission as a result of publication or dissemination of such information either on its website, in its reports or elsewhere.

