

*3 September 2021*

The Commission for Aviation Regulation (“CAR”), by virtue of Section 8(1) of the Aviation Regulation Act 2001, is the competent authority in Ireland for certain purposes arising pursuant to Council Regulation 95/93 (as amended) (“the Slot Regulation”) on common rules for the allocation of slots at Community Airports. In that regard, Article 6 of the Slot Regulation provides that the Member State shall ensure the determination of the parameters for slot allocation twice yearly, while taking into account all relevant technical, operational and environmental constraints, and any changes thereto, for the relevant scheduling season. Proposals and advice from the Dublin Airport Coordination Committee (also referred to below as the Coordination Committee) inform this process.

Under Article 5 of the Slot Regulation, the Coordination Committee is tasked with certain matters including making proposals concerning or advising CAR on: the possibilities for increasing the capacity of the airport determined in accordance with Article 3 of the Slot Regulation or for improving its usage; the coordination parameters to be determined in accordance with Article 6; and all questions relating to the capacity of the airport.

In this note we set out our Draft Decision on the Dublin Airport parameters for the Summer 2022 season, which runs from 27 March to 29 October 2022, and on a proposed extension to Local Rule A at Dublin Airport to the end of the Summer 2022 season. This note is published alongside the advice we have received from the Dublin Airport Coordination Committee.

### *Proposed Decision*

Our proposed approach to the capacity declaration for Summer 2022 is as follows:

- Declare runway limits on the basis of single runway operations for Summer 2022. The North Runway will not be operational until, at least, the last quarter of the season, when the peak traffic period has already passed. On that basis, consistent with our previous capacity decisions, the declared limits should reflect the operational situation which will prevail for most of the season. Thus, we do not take account of the potential additional runway capacity that the North Runway might provide from September 2022.
- Apply no increases to the hourly or 10 minute limits currently in place for Summer 2021. This reflects the uncertainty regarding traffic recovery and difficulty with assessing traffic demand, and also ensures that the achievable capacity already in place for Summer 2021 with single runway operations cannot be exceeded.
- As the North Runway will be completed no earlier than late August of 2022, Condition 5 will not serve to reduce runway capacity relative to the 2021 capacity parameters, in Summer 2022, as discussed below.
- Make no changes to the terminal, stand, and referral limits relative to Summer 2021.

### *Coordination Parameters for Summer 2022*

The Coordination Committee has provided its advice to the Commission in relation to the Summer 2022 coordination parameters, and has also provided the minutes of the meeting at which the 2022 parameters were discussed. The unanimous view of the Coordination Committee is that all parameters for 2021 should be rolled forward, i.e. that there should be no changes to the parameters relative to those which have been in place since Summer 2020. This is in line with the approach which has been taken for the Winter 2020, Summer 2021, and Winter 2021 parameters, due to the COVID-19 pandemic. Given the impact of COVID-19 on the aviation industry and the short-term uncertainty surrounding scheduling, it remains unfeasible to attempt to develop any demand led adjustments to the parameters. In any case, the level of demand is forecast to remain depressed in 2022 compared to 2019, meaning that demand led adjustments are not warranted.

In a letter to the Coordination Committee members on 9 August 2022, CAR set out a proposed approach to the declaration of Summer 2022 coordination parameters, including in relation to the specific interpretation of Condition 5 (as discussed below) for the purposes of making this declaration, whereby all coordination parameters would be unchanged relative to the Summer 2021 parameters. The published Coordination Committee advice references this letter and notes that no Committee member objected to the proposal at the Coordination Committee AGM. This proposal now informs our Draft Decision.

As part of our analysis of constraints that might apply, we have considered the likely completion of the North Runway, and the associated crystallisation of Condition 5 of the Planning Permission for the runway (referred to in this document as “Condition 5”) which is contained in the planning permission for the North Runway that was granted by Fingal County Council to daa.<sup>1</sup> The runway is expected to be completed before the end of Summer 2022, although we are informed by Dublin Airport that it will not be completed sooner than late August 2022.

Condition 5 states as follows:

*‘On completion of construction of the runway hereby permitted, the average number of night time aircraft movements at the airport shall not exceed 65/night (between 2300 hours and 0700 hours) when measured over the 92 day modelling period as set out in the reply to the further information request received by An Bord Pleanála on the 5th day of March, 2007.’*

The original purpose of Condition 5, which dates from 2007, was to prevent the North Runway leading to an increase in night flights and consequently an increase in night noise, relative to an estimated counterfactual constrained traffic scenario where the North Runway would not be built.

As a potential constraining factor to take into account for the purposes of setting coordination parameters, we have carefully considered whether Condition 5 is likely to crystallise with a constraining effect on air traffic during Summer 2022, and if so, what this specific constraining effect might be.

We have reviewed certain available planning materials relevant to the interpretation of Condition 5, and consulted with and sought the views of relevant parties, including daa, airlines, and a noise expert. Our view is that there is uncertainty regarding Condition 5, and how it should be interpreted and applied.

As the runway is not expected to be completed before late August 2022, approximately 75 of the 92 days in the modelling period referred to in Condition 5 will already have elapsed in Summer 2022 before Condition 5 is expected to crystallise. Thus, the first full and relevant 92 day compliance period over which the average specified in Condition 5 could be calculated would be no sooner than Summer 2023.

This interpretation would ensure full consistency with the actual wording of Condition 5, given that Condition 5 does not expressly address a situation where completion of the runway occurs within the 92 day period. It is consistent with the start and end dates of the specified period, the specified duration of the averaging period, and the prospective applicability of the condition only on completion of the runway, each of which together determine the level of restrictiveness the condition would place on air traffic.

We consider that the materials we have reviewed and the views expressed by relevant parties suggest that Condition 5 is only applicable as a single average measurement to be taken in each year over the specific 92 day modelling period referenced in Condition 5. This modelling period, which is derived from the noise measurement methodology used in the initial planning process, spans the period from 16 June to 15 September. The terms of Condition 5 do not reference any restriction on the level of

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<sup>1</sup> <https://planning.agileapplications.ie/fingal/application-details/37968>

night time aircraft movements other than by way of an average to be calculated over this 92 day period.

We note, in particular, that this view is aligned with what has been suggested through the ongoing consideration by the Aircraft Noise Competent Authority (“ANCA”)<sup>2</sup> of an application submitted by daa to replace the condition with an annual noise quota system.<sup>3</sup>

We do not consider that the interpretation set out above is the only possible interpretation, but rather that it is the only one which is in line with the express wording of the Condition. Given the uncertainty, we sought views from the Coordination Committee members (which includes daa and airlines) as to how the scope of constraint in Condition 5 ought to be interpreted. No respondent proposed that an alternative interpretation to that put forward by CAR above should be adopted for the purpose of the Summer 2022 parameters. In the absence of further clarity in relation to how Condition 5 might be interpreted and applied, we consider that alignment with the express wording of the Condition is the most appropriate way in which CAR should take account of the constraining factor represented by Condition 5, for the purpose of declaring scheduling parameters under the Slot Regulation.

We consider that our proposed interpretation is in line with the obligations imposed on CAR under the Slot Regulation for the setting of capacity limits, discharging those obligations having regard to the advice received from the Coordination Committee.

Furthermore, this consultation provides respondents with the opportunity to submit views, ensuring that CAR has full clarity and information before it when taking a final and objective view of Condition 5.

We will, in addition, keep this under review for future scheduling seasons and as consideration by ANCA and Fingal County Council of daa’s proposal to modify certain conditions to its planning permission, including Condition 5, continues.

We also note that, given the continued impact of COVID-19 on the aviation industry, even with an anticipated recovery to circa 20-21 million annual passengers for 2022, the average number of aircraft movements in the relevant hours from September 2022 is forecast to be at 65 or lower in any case. This is therefore a different scenario from 2019, in which 33 million passengers were processed, with a correspondingly higher level of movements between 2300 to 0700.

### *Local Rule A*

In line with the advice of the Coordination Committee, we also propose to roll forward Local Rule A until the end of Summer 2022.<sup>4</sup> This provides a mechanism for implementing a temporary capacity reduction if there are any measures imposed by Government or regulatory authorities to reduce the spread of COVID-19 which significantly reduce the processing capacity of the airport below the level of demand. It has not been activated to date but we consider that it is prudent to roll it forward to the end of Summer 2022. We do not propose any adjustment to the Local Rule other than to amend the date it applies as set out in Section 10, such that it will remain in effect for the Winter 2021 and Summer 2022 seasons. The revised version would then be communicated to the European Commission, as required by Article 8(5) of the Slot Regulation.

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<sup>2</sup> Available here: <https://planning.agileapplications.ie/fingal/application-details/88548>

See for example ‘Appendix A ANCA Direction to Tom Phillips’, in particular request number 38; ‘Noise Problem Advice Report’, page 61; ‘DAA OP Restriction Report ANCA’, page 9.

<sup>3</sup> <https://www.fingal.ie/aircraftnoiseca>

<sup>4</sup> Local Rule A is published here:

[https://www.aviationreg.ie/fileupload/LOCAL%20RULE%20A%20\(Dublin\)%20Final%20\(1\).pdf](https://www.aviationreg.ie/fileupload/LOCAL%20RULE%20A%20(Dublin)%20Final%20(1).pdf)

### *Draft Decision*

Therefore, our Draft Decision is to roll forward the Summer 2021 limits to Summer 2022, which is in line with the advice from the Coordination Committee. The Summer 2021 limits can be viewed in the appendix of the Summer 2021 decision [here](#).

We also propose to roll forward Local Rule A to the end of Summer 2022.

This is a consultation document, interested parties are invited to provide their views on all aspects of this proposed decision. Responses should be sent to [info@aviationreg.ie](mailto:info@aviationreg.ie) no later than 5 pm, Friday 17 September 2021.<sup>5</sup>

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<sup>5</sup> Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. Ordinarily we place all submissions received on our website. We may include the information contained in submissions in reports and elsewhere as required. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided. We do not edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.