



Consultation
Options for Timeline and Period in Force
of the third
Interim Review of the 2019 Determination

Commission Paper 6/2022

28 October 2022

Commission for Aviation Regulation

3rd Floor,

6 Earlsfort Terrace

Dublin 2

Ireland

Tel: +353 1 6611700

E-mail: info@aviationreg.ie

1. Options: Timeline and Period in Force of amended Determination

- 1.1 This year, we are conducting a comprehensive review of the 2019 Determination on the maximum level of Airport Charges at Dublin Airport. We started the process of engagement with stakeholders in February, running a public consultation on the issues and methodologies. In July, we published the Draft Decision, CP4/2022, which set out our proposal to extend the 2019 Determination by two years to 2026 and proposed price caps for each year from 2023 to 2026. That draft decision gave notice of our intention to make a decision later this year, and was the subject of a consultation period from 22 July 2022 to 16 September 2022.
- 1.2 The 2019 Determination, published in October 2019, set the maximum level of Airport Charges at Dublin Airport for 2020-2024. In early 2020, the onset of the COVID-19 pandemic had an unprecedented impact on the aviation industry, including Dublin Airport.
- 1.3 The outbreak of the pandemic led to our decision to carry out the first Interim Review of the 2019 Determination in 2020, in which sought to address the impact of the pandemic on the regulatory settlements for 2020 and 2021 in a targeted and proportionate manner.
- 1.4 In 2021, we carried out a second Interim Review which broadly continued this approach into 2022. The scope of both reviews did not include reopening all the underlying assumptions and forecasts to derive new base price caps, however in our decision on the second review we committed to carrying out a full review in 2022. We proposed that the 2022 review would also extend the length of the regulatory period by two years. Thus, in our July draft decision we proposed revised regulatory settlements for 2023 and 2024 and new settlements for 2025 and 2026.
- 1.5 In summary, we proposed a 4-year period for an amended determination as it would give the airport, and airlines, certainty on pricing for the recovery phase post Covid 19 pandemic. It would also assist with the funding of the capital investment plan, giving the airport more certainty on medium-term pricing to bring to the financial markets.
- 1.6 The proposed two-year extension is contingent on the enactment of the Air Navigation and Transport Bill, 2020 (ANTB). Section 98 of the Air Navigation and Transport Bill, 2020 sets out provisions that amend s.32 of the Aviation Regulation Act, 2001, such that section 32(14) would be amended at points (a) and (b) and thereafter would read:

(14) (a) The Commission may after the making of a determination—

(i) at its own initiative, or

(ii) at the request of an airport authority or user concerned in respect of the determination, if it considers that there are substantial grounds for so doing, review the determination and, if it sees fit, amend the determination or extend the period referred to in subsection (5)(a) by not more than 2 years

(b) An amendment made under paragraph (a) shall be in force for the remainder of the period of the determination referred to in subsection (5)(a) or as extended under paragraph (a)

(c) Subsection (5)(b) and subsections (7) to (13) shall apply to an amendment made under paragraph (a).

- 1.7 Accordingly, under the proposed amended section 32(14), upon a review the Commission may amend a determination, extend its period in force by up to two years and determine the day upon which the amendment comes into effect. However, prior to the enactment of the ANTB and the commencement of the relevant sections the proposed two year extension cannot be made.
- 1.8 At the time of our draft decision in July this year, we highlighted the risk that the ANTB may not be commenced in time for our decision in late 2022. In that paper, paragraphs 5.3 to 5.5, we sought stakeholder views on various options in such a scenario. This risk remains.
- 1.9 The legislation that would allow this extension is, at the time of writing, at Report Stage in Seanad Eireann. In 2021, it passed all stages of Dáil Eireann. We understand that it is now likely that the Bill will be enacted and the relevant sections commenced by mid-December 2022. On the assumption that this occurs, then the proposal set out by the Commission in its consultation document of July 2022 does not change; namely the publication of a four-year decision, from 2023-2026, published by the end of this year. In this scenario, the Commission still anticipates publishing its final decision on the review by December 2022, as proposed.
- 1.10 However, given that the Commission does not control the timing of the enactment of legislation, and given the fact that the ANTB has not yet been enacted, it is prudent for the Commission to refine the proposals it made in paragraph 5.4 of the draft decision of 22 July 2022. Accordingly, the Commission hereby further gives notice to interested parties of a further limited consultation on the time period for amendments to be in force by reference to the following three options which we have identified:

Option 1: Provided that the ANTB is enacted and the relevant sections commenced prior to 23 December 2022, we will publish our decision by 23 December 2022. The decision will cover the period 1 January 2023 to 31 December 2026. This remains our preferred option.

Option 2: Provided that the ANTB is enacted, and the relevant sections commenced between 23 December 2022 and the 28 February 2023, we will make our decision by the end of February 2023. The decision would also cover the period 1 January 2023 to 31 December 2026. Thus, Option 2 would be similar to Option 1, with the exception of a delay to the publication date of the Final Decision.

Option 3: We make a decision covering the period 1 January 2023 to 31 December 2024 only, and under the existing legislative framework. This could occur in two ways:

- **Option 3(a):** following this consultation, in a situation where the ANTB is not commenced before 23 December 2022 and thus Option 1 falls away, Option 3 could be deemed preferable to Option 2. In this case the decision would be made by 23 December 2022.

- **Option 3 (b):** if Option 2 is deemed preferable, but the ANTB is still not enacted and the relevant section commenced by 28 February 2023, Option 3 would then become necessary, and we would make the decision by 28 February 2023 for 2023 and 2024 only.

- 1.11 This supplementary consultation does not reopen the consultation on the substantive aspects of our detailed proposals in relation to the regulatory building blocks used to calculate the price caps, as set out in July. Our forecasts for expenditure, commercial revenues, and passenger numbers in 2023/2024 do not depend on the forecasts for 2025/2026. Thus, in all scenarios, our consultation from July remains valid, as the underlying issues and subject matter have not changed, only the possible duration of the determination following the review. These specific proposals have been the subject of a consultation, and the Commission is currently considering how they may change in response to the representations already received by 16 September.
- 1.12 We have identified one potential adjustment to the building blocks which might be warranted by making a two-year decision rather than a four-year decision. In the view of the Commission, under Option 3, the shorter regulatory period would reduce the risk exposure of Dublin Airport. That is, the passenger volume and cost risk would be held by Dublin Airport for a shorter period before the next regulatory reset. This would potentially result in a lower cost of capital, all else equal. We seek views on this point. We also seek views on any other aspects of our July proposals for the years 2023 and 2024 which should, all else equal, be adjusted in the event of Option 3, ie that the Final Decision were to be made in relation to these years only.
- 1.13 In making, or amending, a determination on the maximum level of Airport Charges at Dublin Airport, we are guided by a range of Statutory Objectives and due regard factors. The thrust of these objectives relates to economic efficiency and seeking to maximise the value that Dublin Airport provides to current and future users. Our objectives will be amended by the ANTB. Our economic efficiency related objectives will remain in place, with an additional focus given to promotion of sustainability and climate change related policy. In Section 5 of the draft decision we discussed our statutory objectives.
- 1.14 We invite comments on the three proposed options, the impact of a change of regulatory period, and on our statutory objectives by **5.00 PM, 29 November 2022**. **The deadline will be strictly applied without exception.** Details on how to respond are in the next section.

2. Notice of Making a Determination

- 2.1 In accordance with Section 32 (7) of the 2001 Aviation Regulation Act, we hereby give notice of our intention to review the Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024, Commission Paper 8/2019 of 24 October 2019, as amended, by reference to the three different options as detailed above.¹
- 2.2 Pursuant to the 2001 Act, we must allow a statutory consultation period of no less than one month from the date of publication of this notice. We gave notice by way of publishing a Draft Decision in July 2022, and this paper further gives notice under three different timelines and period in force options (see 1.10). The deadline for receipt of representations is **5pm, 29 November 2022. The deadline will be strictly applied without exception.**
- 2.3 Responses should be titled “Submission on Consultation: Options for Timeline and Period in Force of Amended Determination (CP5/2022)” and sent:
- By email to: Info@aviationreg.ie (preferable); or
 - By post to: 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin 2, D02 W773
- 2.4 We may correspond with interested parties who make submissions, seeking clarification or explanation of their submissions.
- 2.5 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.² 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.
- 2.6 We do not ordinarily 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.

¹ As amended by the Varied Determination on the Maximum Level of Airport Charges at Dublin Airport 2020-2024, Commission Paper 5/2020, and the Decision on an Interim Review of the 2019 Determination in relation to 2020 and 2021, Commission Paper 12/2020 and the Decision on an Interim Review of the 2019 Determination in relation to 2022, Commission Paper 3/2021. See <https://www.aviationreg.ie/regulation-of-airport-charges-dublin-airport/2019-determination.841.html>

² While we endeavour to ensure that information on our website is up to date and accurate, we accept no responsibility in relation to the accuracy or completeness of our website and expressly exclude any warranty or representations as to its accuracy or completeness.