

SUBMISSION TO THE COMMISSION FOR AVIATION REGULATION

by

THE ASSOCIATION OF FLYING GROUPS AT DUBLIN AIRPORT

following the publication of CP6/2001

1 PURPOSE

This submission is made to the Commission for Aviation Regulation in response to Commission Paper CP6/2001 by an association representing the operators of ten single-engined light aircraft (the “Association”), primarily engaged in flying training, based at Dublin Airport. Its purpose is to familiarise the Commission with the operations of these aircraft and present the case in favour of a sub-cap within the proposed fees regulations in relation to non-commercial fixed-based light aircraft operations at Aer Rianta airports.

It was initially not intended to make such a submission, because the Association, being non-commercial, did not think that there would be a role for the regulator with regard to the Association’s operations. However, there have been recent major changes made to the existing charging structure applied to the Association’s members by Aer Rianta. These changes have coincided with the Commission’s consultation process and combined with the lack of specific recognition for non-commercial fixed-based light aircraft operations in CP6/2001, have prompted the Association to bring their situation to the attention of the Commission for consideration.

It is the view of the Association that special provision must be made for Dublin-based light aircraft engaged in non-commercial operations. The Association’s members are non-commercial, non-profit making minimalist service users, who have contributed greatly to the development of aviation in Ireland over the last 40 years. All time given by officers and flying instructors is on a voluntary basis with cost to pilots being kept to a minimum to encourage the development of general aviation operations. Whilst previously the cost of being located at Dublin Airport could be budgeted within a reasonable cost to members, the revised Aer Rianta charging structure, based upon the full implementation of the rates published in AIP Ireland, will make continued operation of the Association’s member organizations unviable and will ultimately result in their closure.

The Association therefore calls upon the Commission to establish, by means of a sub-cap, a charging structure which reflects the special status of its members.

2 CASE OUTLINE

2.1 Parties Represented by the Association

This submission is made on behalf of the following operators and aircraft:

Airport Flying Club with Cessna 150 EI-BYF and Cessna 172 D-EOFM
Dublin Flying Club with Piper Cherokee EI-CMB and Piper Arrow EI-EDR
Leinster Flying Club with Cessna 152 EI-BJM and Grumman AA-5 EI-BJS
Westpoint Flying Group with Cessna 182 EI-GSM
337 Flying Group with Cessna 177RG EI-BHC
Phil Morrissey with Cessna 206 EI-SBP
The Mooney Flying Group with Mooney M20R G-JAKI

2.2 Location at Dublin Airport

Flying training has existed in Dublin Airport since its foundation. Several of the groups party to this submission have provided flying training at Dublin Airport for over 40 years.

Historically, the majority of flying training at Dublin Airport was undertaken by the Irish Aero Club/Iona as a commercial flying training organisation, with a number of smaller flying clubs, operating private or non-commercial training, using the Iona facility for aircraft parking and maintenance. Iona charged operators for the use of their parking and hangarage facilities.

In 1991, Iona terminated the parking agreements with the flying clubs, who were then facilitated by Aer Rianta by the provision of grass parking adjacent to Taxiway R at Westlands. One aircraft moved to the Irish Helicopters Westpoint Apron, whilst a small number of former Iona-based aircraft relocated to Weston Aerodrome. The liquidation of Iona in 1992 left the Westlands and Westpoint aircraft as the only Dublin Airport-based light general aviation and flying training organisations.

The Westlands-based groups use three 'Portakabin' buildings as clubhouses, paid for and maintained by themselves. Having initially been at the location currently occupied by the Bond Aviation hangar, these clubhouses were relocated in 1999, at the request of Aer Rianta, to the west of Taxiway R, the airport operator allocating space approximately 50 metres from the end of this taxiway.

Since 1991, there have been a number of changes in the specific aircraft based at Westlands and Westpoint but the operators are the same as those relocated in 1991. The Association's members account for almost 200 pilots.

Parking at Westlands is primarily on grass, with each aircraft allocated a specific parking location. Apart from the provision of an electronic security gate, no other specific facilities (running water, toilets etc.) are provided to the Associations members. Each club is responsible for organizing its own provision of electricity and telephone connections with the relevant service providers, and for cutting the grass around their parking area.

It is the Association's view that no demand is made on Aer Rianta in relation to the upkeep of the Association's premises, nor parking positions, and hence their presence at Dublin Airport is without any marginal cost to Aer Rianta.

2.3 Operations

The Association's members do not make significant demands on the infrastructure of Dublin Airport nor do they hold any priority in relation to the availability or otherwise of this infrastructure.

The majority of operations use Runway 11/29, for which entry and exit procedures from the Dublin Control Zone and operation of circuit training are set out by the Irish Aviation Authority and facilitated by Air Traffic Control without any interference with commercial traffic (which almost exclusively uses Runway 10/28). Simultaneous operations on Runway 11/29 and 10/28 are permitted at Dublin (subject to ATC approval).

The Association's aircraft share the use of Runway 11/29 with an increasing number of commuter aircraft. However, at all times priority is given to this commercial traffic by Air Traffic Control, a situation the Association has no desire to seek to change.

Access from Westlands to Runway 11/29 does not interfere with the normal manoeuvring area of commercial operations, with normal taxi routes being via Runway 34 and taxiways P2 or G/D2 to J1. Similar routing is taken to Light Aircraft Park A to utilize the Avgas facilities provided by Fingal Aviation. Since the installation of self-fuelling facilities at this location, the need for tankers to transit the apron to service light aircraft at Light Aircraft Park A has been eliminated.

During periods when Runway 16/34 is in operation (and Dublin Airport effectively becomes a single-runway operation), operations from Westlands are generally greatly reduced as (correctly) ATC priority is given to commercial operations on the runway. The Association does not seek any priority over commercial operations and fully recognizes that its sharing of facilities such as Runway 10/28, as needed, is on a low priority basis.

The Association contends that the competency of its pilots and the integrity of Dublin Air Traffic Control facilitate the smooth integration of its operations into the overall traffic flows at Dublin Airport without interfering in any way with the commercial capacity of the airport infrastructure nor driving any incremental cost to Aer Rianta. It is also felt that such operations can continue irrespective of the slot co-ordination status of the airport, as the facilities utilized by the association do not include any of the drivers of such co-ordination (runway capacity, terminal usage etc.).

2.4 Statutory Basis for Submission – the case for a sub-cap and special status

The Association has noted the Commission's observations concerning the statutory objective. It is noted in particular that the term "users" is not defined in the Act and that the Commission will attribute the common sense meaning to this term, namely all users of the Airports, such as passengers, cargo shippers, airlines and ground handlers. We submit that in addition flying groups and flying clubs and operators of private aircraft clearly come within the term "users".

Section 33 of the Act sets out 10 factors to which the Commission shall have due regard in aiming to -

"Facilitate the development and operation of cost effective airports which meet the requirement of users ..."

The Association has noted the detailed analysis and commentary outlined by the Commission in CP6 in respect of these 10 factors.

However, for the purpose of this submission, the Association wishes to address one factor in particular which it believes is particularly relevant to the determination by the Commission of "airport charges" in respect of its status as a "user" at Dublin Airport.

The Association notes the provisions of Section 33(g) which calls upon the Commission to have due regard to -

"the level and quality of services offered at the Airport by the Airport Authority and the reasonable interests of the users of the services"

The Association has also noted the observations made by the Commission at page 17 of CP6 as follows:

"The Commission has noted that different airport users make different demands on the infrastructure at the Airport and may find that facilities of a lower standard adequately meet both their needs and the needs of their customers. In a competitive market, with ease of entry, it would be expected that lower cost facilities would be available to users at a lower price. The Commission is considering the feasibility of addressing this issue in the context of sub-caps within the overall price cap on particular services-facilities at Dublin Airport. The Commission requests all interested parties to address this point in their representations."

The Association wishes to address these observations by the Commission as follows:

1. The Commission has noted that there are different airport users. The Association submits that as a "user" it is distinctly different from other airport users. The Association is comprised of non-profit making and non-commercial voluntary clubs and flying groups whose activities are directed towards training and pleasure flying. Other users at the Airport comprise of, inter alia, cargo shippers, ground handlers, airlines and their passengers.

These are commercial operators and users and can clearly be distinguished from the users which the Association represents.

2. The Commission notes that different users *may “make different demands on the infrastructure at the airport”*. The Association would submit that there are clear differences between the demands of commercial operators at the Airport and the demands of the users represented by the Association. The commercial users at the Airport demand access to passenger terminal facilities, airbridge facilities, immigration and INS, security, runways, taxiways, apron and hard-stand space. Users such as those represented by the Association make almost no demand on the infrastructure at the Airport. They do not require terminal access. Access to taxiways and runways is required but is usually, though not exclusively, limited to the secondary runways and subject always to the priority needs of commercial operators. The demands made by the users represented by the Association have little if any impact on the Airport infrastructure. In terms of wear and tear or the necessity for capital investment their demands are inconsequential.
3. The Commission has noted that different users may find that *“facilities of a lower standard adequately meet both their needs, and the needs of their customers”*. The users represented by the Association have been given no choice but to accept “facilities”, if they might be called that, of a “lower standard”. However, for the most part the users represented by the Association consider that the facilities which have been made available to them are “adequate” for their purposes. These users are limited to parking in the open air without cover (generally on grass areas adjoining the apron space) Since the closure of the “Iona” facility at the Airport some years ago, the users, who are represented by the Association, have fought long and hard to remain at the Airport. As a consequence the users represented by the Association have accepted facilities of a lower standard than would be offered by most Airport Authorities in Europe and the United States.
4. The Commission has noted that *“It would be expected that lower cost facilities would be available to users at a lower price”*. Having regard to the nature of the facilities provided by Aer Rianta to the users represented by the Association it is submitted, and common sense dictates, that those facilities should be available to users at a price lower than that charged to other users at the Airport who have access to more enhanced facilities, including transient General Aviation operators, who are provided with apron-based hard-standing, etc.
5. The Association notes that the Commission is considering the feasibility of addressing this issue in the context of “sub caps” within the overall price cap. The Association submits that having regard to the factors which have been identified in the preceding paragraphs, and throughout this submission, the users which it represents should be considered as a special case and entitled to avail of such a “sub cap” within the overall price cap on particular services/facilities at Dublin Airport.

The Association notes that under the provisions of Section 32(6) a determination of the Commission may -

“(a) provide -

- (i) an overall limit on the level of Airport charges,*
- (ii) for limits to apply to particular categories of such charges...”*

The Association submits that the Commission, in making a determination, should make provision for limits to apply to the categories of charges, specifically landing and parking charges, which should be applied to the users represented by the Association for the reasons set out in the foregoing paragraphs. Regard must also be had in the Association's submission to the fact that the users which it represents are long-established at the Airport and should be regarded as fixed base operators. As such, the Association submits that they would attract “grandfather” rights and should be entitled to avail of the special provisions of Section 32(6)(a)(ii). Aer Rianta has, de facto, recognised the special status of the users represented by the Association for several years and has done so by issuing to those users ‘landing permits’ on an annual basis. The withdrawal of such permits was arbitrary and unfair. Notwithstanding their withdrawal, the status of the users represented by the Association remains the same and it is submitted that a ‘special case’ still exists which should be addressed in the context of Section 32(6)(a)(ii)

The Association has noted the charging mechanism proposed by the Commission in CP6 based on a “work load unit”. Whilst this may be a recognised mechanism for the measurement of charges, the Association considers that it is not an appropriate mechanism for measuring charges in respect of general aviation users. It is quite clear from CP6 Section 4 - Draft Determination - that the “work load unit” is a concept suited to commercial operators being based on passenger and cargo throughput. The users represented by this Association are non-commercial and are neither concerned with the carriage of passengers nor the carriage of cargo. A charging mechanism based on a “work load unit” is accordingly totally unsuitable for the measurement of charges in respect of the users represented by the Association.

We have grave concerns that the application of the WLU measure is not a suitable basis for establishing maximum charges for our utilisation of the Dublin airport infrastructure.

We are non-commercial users- we have no fee-paying passengers, we carry no freight, we do not hold Public Transport Certificates of Airworthiness, and we are not allowed to work for hire or reward. We therefore have no method for establishing the equity of any charges levied by Aer Rianta, under the WLU measure.

Given the monopoly position held by Aer Rianta, and their treatment of us with regard to charges in the last few months, we feel that we have justifiable cause for concern.

However, we will have no choice but to comply with any demands made by Aer Rianta unless the Commission sets a sub-cap for our particular usage of the airport facilities.

Because we are such small users and would have no statistical impact on the WLU calculations, the application of the WLU will have no effect on the charges which Aer Rianta may levy on us in the future.

For Aer Rianta to charge us in accordance with the AIP is also not an appropriate method to reflect our utilisation of the airport infrastructure. This is recognised by Aer Rianta in Cork and Shannon. For an aircraft of one tonne to be charged on the same basis as a 300 tonne aircraft is not appropriate, particularly as a minimum charge of approximately four and a half times the one tonne rate currently applies.

We note that Aer Rianta, in its submission to the Commission, Section 12.6, paragraph 5, states that “Aer Rianta feels that it is appropriate to apportion charges to all users of airport infrastructure, on a basis which relates more closely to their consumption of these resources.” We therefore see no conflict between Aer Rianta’s stated intention and our requirements for equity in charges, controlled by the Commission.

Aer Rianta in Cork and Shannon have indicated that they will be reinstating the landing permit system. In the interim, Aer Rianta Cork has levied a charge of one euro per landing (79 pence). This contrasts dramatically with the AIP figure of a minimum charge of £17.51 per landing, which Aer Rianta Dublin appears to be demanding. Such inconsistencies might well be the hallmark of a monopoly service provider.

Aer Rianta also states in Section 12.4 of their submission to the Commission, their basic principles for a charging structure. We contend that the charges which have been levied on us, as from 1st July 2001, prior to any determination by the Commission, do not accord with any of the four principles outlined.

We note that Section 39(1) of the Air Navigation and Transport (Amendment) Act of 1998 clearly states that charges may be levied only with the approval of the Minister.

Section 34 of the Aviation Regulation Act of 2001 amended this, substituting “...With the approval of the Minister” with the words “...Subject to Section 32 of the Aviation Regulation Act, 2001”.

Section 32, paragraph (15) clearly states that “...Any airport charges imposed by an airport authority, which are in force immediately before the establishment day, shall continue in force until any determination has been made.” We therefore believe that, in radically changing our charging structure, Aer Rianta has clearly not acted in the spirit of the Act in their dealings with us. This adds to our concern that we need the assistance of the Commission in our dealings with Aer Rianta.

We believe that the charging structure, which was in place- i.e. fixed annual charges- was appropriate to our utilisation of the airport facilities; conformed with the General Duties of the Company, as set out in Section 24 of the 1998 Act; conformed with the Objects of the Company, as set out in the Memorandum of Association of 15th December 1999; and conformed with the Regulatory objectives in respect of airport charges, as set out in Section 33 of the 2001 Act.

In terms of our utilisation of airport capacity, we request that the Commissioner note that, where there is any question of capacity constraint, Air Traffic Control will not accept the lodgement of flight plans from us. Thus we are effectively removed from the equation and thereby can never utilise capacity at peak periods.

We ask the Commission to impose a sub-cap, under Section 33(g) of the 2001 Act, for aircraft weighing less than two metric tonnes, in order to reinstate the charging system which had been in place, prior to 1st July, 2001, when it was unilaterally withdrawn by Aer Rianta, without any consultation.

Furthermore, we ask that the minimum charges should not be applied to Dublin Airport fixed based operators of light aircraft.

2.5 Charging Structure

Each of the organizations represented by the Association have historically paid for both parking facilities and landing charges.

Landing charges at all three Aer Rianta airports were covered by a single Landing Carnet per aircraft, costing between £250 and £800 per annum, based on the annual number of landings expected.

Aer Rianta set a parking fee of £1,000 per group per year for the use of the Westlands apron. This has been intermittently billed to the clubs involved. The aircraft based at Westpoint rents its location from Irish Helicopters, for a similar amount.

Thus, for a high-activity training aircraft based at Westlands, Aer Rianta charges could be budgeted annually as follows:

Parking	£1,000
Landing Permit	<u>£500</u>
Total	£1,500

All members of the Association were advised of Aer Rianta's intention to review the landing permit system and were invited to apply for a six-month landing permit, expiring on June 30, 2001. In May, 2001, Aer Rianta informed us, without any consultation, that no new permits would be issued. Aer Rianta has quoted the Commission's desire for transparency in charging structures as being the motivation for this change.

A number of the operators also began receiving invoices from Aer Rianta in relation to aircraft parking (without any formal notification of the termination of the previous arrangement), amounting to £7.83 per *movement*, not per 24-hour period. This is based on the AIP Ireland rate of £0.56 per metric tonne, subject to a minimum of £7.83. Thus, a training aircraft used for four student flights, in a single day, would incur four 24-hour parking charges totaling £31.32!

From July 1, 2001, operators began to be billed for each landing per the AIP Ireland rates. This amounts to £4.04 per metric tonne, subject to a minimum of £17.51 per landing, with training flights receiving a discount of 80%, subject to a minimum charge of £2.00 per landing.

These minima are thus extremely discriminatory to the members of the Association, whose aircraft are well below the two tonne weight.

Minimum charges for landing and parking should not apply to fixed-base operators. The rationale for these minimum charges is generally on the basis of recovering the additional expenses involved in collecting them from transient traffic.

Thus for a typical training aircraft weighing less than one tonne, annual costs based on operating 400 flights requiring 900 training landings (based on a percentage of the flights being circuit training) and 100 non-training landings would be:

400 movements at £7.83 per 'parking fee'	£3,132
900 training landings at £2.00	£1,800
100 non-training landings at £17.51	<u>£1,751</u>
Revised estimated annual cost	£6,683

Thus, for the example above, the charges currently in effect by Aer Rianta which treat the based aircraft as 'visiting aircraft' applying the published rates, represents an increase of over 500% on the previous rates.

It should be noted that Aer Rianta – Cork have adopted a training landing rate of one Euro (£0.79) from July 1, 2001 to December 31, 2001 and intend to re-introduce a landing permit system beyond this date. Therefore it is evident that the principle of landing permits is still considered valid by some corporate sections of Aer Rianta.

The Association submits that neither the parking rates nor landing charges now being applied are representative of the costs incurred by Aer Rianta in the provision of service to the Association's members. The Association seeks that the Commission recognize this fact and sets a sub-cap which may be applied to their operations, such sub-cap to be based on the reinstatement of the principle of a fixed annual parking fee and the landing permit system in line with the past practice.

2.6 Summary of Case

This submission is made on behalf of the operators of ten light aircraft based at Dublin airport, operating on non-commercial basis primarily for the provision of flying training.

Several of these operators have been based at Dublin for over 40 years.

The Association has made a major contribution to the aviation industry in Ireland, through the training of pilots, a large number of whom now work for Irish airlines.

Airport facilities required and provided are minimalist as demonstrated by the current status and locations at Dublin Airport. Current facilities drive no incremental cost to Aer Rianta.

Operations do not interfere with commercial operations at Dublin Airport and do not require the use of facilities such as airbridges, passenger access gates, INS, immigration, hangarage or apron parking. Combined with the fact that the majority of the Association's operations use Runway 11/29, its overall operations therefore do not impact on any of the elements of infrastructure of concern to commercial operators.

Aer Rianta has previously operated a charging system based on a fixed annual parking fee and landing permit based on the predicted number of annual landings. Based partially on its view of the Commission's requirements, Aer Rianta has recently amended this policy to one of applying the full AIP rates to Dublin Airport based aircraft, resulting in an estimated 500% increase in costs to Dublin Airport based light aircraft.

This overwhelming increase in charges results primarily from the application of the minimum rates specified in the AIP. Were these minima not to be applied, for fixed based light aircraft, the landing charge for a one tonne aircraft would be £4.04, instead of £17.51; and the parking charge would be £0.56 per tonne, instead of the minimum of £7.83 per 24 hour period, or part thereof.

The Association seeks action, in the form of a sub-cap from the Commission, to establish a framework within which the Association's status be recognized, the principle of fixed and reasonable annual charges be reinstated and protection be afforded from pricing policy changes being applied by Aer Rianta.

For and on behalf of the Association of Flying Groups at Dublin Airport,

ROBIN MANDAL

GERARD CARROLL

25TH JULY 2001