



**Consultation on the Scope
of the Interim Review
of the
2014 Determination of the
Maximum Level of Airport Charges at Dublin Airport
Relating to the Northern Parallel Runway**

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Commission for Aviation Regulation

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Information Page

In October 2014, we made a regulatory decision to allow Dublin Airport start recovering the capital costs of the planned Northern Parallel Runway once more than 25 million passengers were served by the airport in a 12 month period. In December 2015 we decided to review the timing of the cost recovery. This consultation looks at the scope of that review. We do not intend to review the need for the additional runway capacity.

This consultation paper is for the attention of Dublin Airport, current and future users of the airport, passengers and other interested parties.

Related Publications:

[Maximum level of Airport Charges at Dublin Airport, 2014 Determination Decision on Conducting an Interim Review of the 2014 Determination](#)
Requests for scope expansion: [Aer Lingus](#), [Dublin Airport](#) and [Ryanair](#)

Freedom of Information

Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. We intend to publish all submissions received and 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.

Indemnity

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.

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.

1. Introduction

Background

- 1.1 In October 2014 the Commission for Aviation Regulation made a Determination on Airport Charges at Dublin Airport. This Determination included a trigger to remunerate the capital costs of the Northern Parallel Runway. This trigger adds €0.59 to the price cap in the year after 25 million passengers were served in a 12 month period. This level of demand was hit in 2015.
- 1.2 In December 2015 the Commission reviewed the number of passengers served by Dublin Airport and noted that the 25 million target was likely to be reached 4 to 5 years earlier than expected by any party. On 22 December 2015 we published a decision paper indicating that there are substantial grounds for conducting an interim review of the runway trigger, with a view to potentially re-aligning remuneration to more closely match the expected timeline for delivery of the project. At that time, we indicated that the scope of the review would be limited to the definition of the trigger, that is, the timing of the remuneration of the project via the price cap on airport charges.¹
- 1.3 In recent months, the Commission has received three representations, from Aer Lingus, Dublin Airport and Ryanair, requesting that the review be expanded to include additional aspects of the regulatory treatment of the runway project. The cost allowance and the risk sharing mechanism for cost over or under runs are the main aspects which parties requested the Commission review.

Review Process

- 1.4 This paper represents the next stage in the process and consults on the scope of the Commission's pending review of the regulatory treatment of the planned Northern Parallel Runway project at Dublin Airport to include consideration of the three submissions received and any other views on these requests submitted in response to this paper.
- 1.5 After making a determination of the maximum level of airport charges at Dublin Airport, the Commission can review it and if it sees fit, amend the determination. This can be at its own initiative or at the request of a concerned party. Before doing so, the Commission needs to establish if there are substantial grounds for conducting a review.²
- 1.6 When deciding whether to review the 2014 Determination on these additional points, the Commission will assess whether there are substantial grounds for each element.
- 1.7 Following this consultation, we will publish a decision on the scope of the review in September. In October we will publish a draft decision on the regulatory treatment which will be subject to a statutory public consultation. A final decision on the regulatory treatment of the runway will be published

¹ <http://www.aviationreg.ie/fileupload/2015/review/2015-12-22%20Decision%20on%20Conducting%20Review.pdf>

² Pursuant to Section 32(14) of the Aviation Regulation Act 2001, as amended by the State Airports Act, 2004.

before the end of the year.

- 1.8 In the next section we discuss the substantial grounds test. Section 3 outlines the submissions received on the scope of the review and Section 4 gives our initial thoughts on whether there are substantial grounds to include additional aspects of the project within the scope of the review. Section 5 concludes with details of how to respond to the consultation.
- 1.9 The deadline for responses to this consultation is **5pm Friday 26th August 2016**.

2. Establishing Substantial Grounds

- 2.1 This section outlines the Commission's views on when a review of a determination should be conducted and on what constitutes substantial grounds.
- 2.2 The Commission has previously outlined its view that interim reviews of an Airport Charges determination should only be conducted in exceptional circumstances to avoid the weakening of incentives and the erosion of certainty in the regulatory process.³
- 2.3 Where a review is warranted, the Commission will seek to limit the scope of that review to preserve these incentives where possible.
- 2.4 In assessing whether there are substantial grounds to review other elements of the runway trigger, we will look to the following tests:
- Are the circumstances exceptional?
 - Are the circumstances generally outside the control of the regulated company?
 - Are the effects of those circumstances liable to be significant enough to compromise the objectives of the original decision without a review (taking into account the incentive and any other detriments that would in general also arise from a review)?
- 2.5 The Commission will also have regard to its statutory objectives as set out in section 33 of the Aviation Regulation Act 2001, namely:
- to facilitate the efficient and economic development and operation of Dublin Airport to meet the requirements of current and prospective users.
 - to protect the reasonable interests of current and prospective users of Dublin Airport in relation to Dublin Airport.
 - to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner.

³ <http://www.aviationreg.ie/fileupload/2015/2015-11-13%20Consultation%20on%20Conducting%20a%20Review.pdf>

3. Submissions Received on the Scope of the Review

- 3.1 Aer Lingus, Dublin Airport, and Ryanair have made submissions on the scope of the review. All three submissions are published on our website alongside this paper.⁴
- 3.2 Aer Lingus suggested that we engage independent consultants to review all aspects of the North Runway Project, including length, cost, associated infrastructure and the business case for the runway. Aer Lingus also suggests that remuneration for the runway should be linked to the delivery of other capital projects designed to maximise current runway capacity and address other capacity constraints.
- 3.3 Dublin Airport proposed two options:
- A review to take place in the third quarter of this year, focusing on the timing of remuneration and the treatment of over/underspends. On this latter point, Dublin Airport stated that we should be guided by the principle that all efficiently incurred capital expenditure should enter the RAB.
 - A later review (Q4 2016/Q1 2017) to take place at a time of greater certainty on costs and planning conditions pertaining to the runway. This review could then additionally consider the appropriate cost allowance.
- 3.4 Ryanair asked us to review:
- the policy of 50/50 risk sharing of cost over/underspends with a view to placing the risk in its entirety on Dublin Airport.
 - the need to build a runway of length 3.1km, and if Dublin Airport is to proceed with this length that a separate regulatory till be applied to the length over 2.1km.
 - the cost allowance for the project, given that Dublin Airport has revised the cost estimate from €247m to €320m.
 - the inclusion of stronger measures to ensure cost efficiency, for example, by involving users in the tender process.

⁴ <http://www.aviationreg.ie/regulation-of-airport-charges-dublin-airport/2014-determination.576.html>

4. Initial Thinking on Scope

- 4.1 For guidance, here we give our current thinking on the requests for expansion of scope. These are given merely to inform parties of our current position, we are not committed to these opinions and are open to evaluate them depending on the submissions we receive as part of this consultation.

Cost Allowance

- 4.2 Dublin Airport has revised its cost estimate for the Northern Parallel Runway from €247m to €320m. Dublin Airport states that the cost increase of around €70m is due to a number of reasons including:

- A different profile of use during the construction period than was previously expected.
- Additional EASA requirements.
- Increased construction inflation.

The Commission has **not** examined the new cost estimates at this time.

- 4.3 As it currently stands the amount to enter the RAB on completion of the project is €247m plus 50% of any cost overrun or less 50% of any cost underrun. If the project, as consulted on with users, is delivered for €320m then €283.5m would be remunerated via the RAB.⁵
- 4.4 In general, where Dublin Airport knows a project will cost more than previously anticipated, it is the Commission's preference that it consults with users on the reasons for the overrun and to give users the opportunity to reassess the project given the new cost. In the RAB roll forward principles, Annex 1 of the 2009 Draft Determination, we stated that for additional cost to enter the RAB arising from specification changes we "would expect supporting evidence from the DAA demonstrating that users were aware that the changes would result in higher costs and that the generality of users supported the changed specification."⁶ In this case, given the size of the project and the size of the anticipated increased cost it may be useful to include the estimate as part of the formal interim review of the Determination to allow for a full statutory consultation.
- 4.5 In addition, it is the view of the Commission that it may be preferable to review the cost allowance prior to construction rather than treat a significant proportion of the cost as an overspend, and then uniformly apply a 50/50 split between airlines and the airport.
- 4.6 The Commission could review the cost allowance through a process similar to that undertaken in the 2014 Determination. We would expect the Airport to consult with users initially, we would engage consultants to estimate an efficient cost allowance, and then consult on this as part of our draft decision

⁵ €247m is in July 2014 prices. The €320m has not been examined by the Commission but we understand it includes a substantial amount of construction price inflation. These two figures are not directly comparable as we have not converted them to the same price base. If we are to examine the cost allowance as part of the pending review, we would untangle inflation from real price changes.

⁶ http://www.aviationreg.ie/fileupload/2009_07_06_draft_determination_redacted_version.pdf

on the review.

- 4.7 In any event, we are strongly of the view that any review should consider the inclusion by Dublin Airport of specific milestone deliverables within the project and enhanced reporting and monitoring processes.

Risk Sharing

- 4.8 In the 2014 Determination, the Commission introduced a 50/50 split of cost over or underruns between Dublin Airport and users for triggered projects. If Dublin Airport spends under the allowance it will retain 50% of the underspend while 50% will be clawed back. If Dublin Airport overspends 50% of the overspend will be passed on to users. This mechanism provides Dublin Airport with a strong incentive to maintain control of costs. This treatment is applied to trigger projects only.
- 4.9 This treatment was introduced as a way of dealing with cost overruns on Terminal 2. The cost of Terminal 2 was 20% higher than the allowance.
- 4.10 The key difference between T2 and the Northern Runway Project is that prior to construction commencing Dublin Airport anticipates that the cost will be 30% higher than the allowance for the runway, whereas the cost overrun on T2 was only fully known after completion of the project.
- 4.11 It is not clear that the 50/50 risk sharing mechanism is appropriate to deal with a cost overrun of this scale which is known prior to the project commencing.
- 4.12 The appropriateness or otherwise of the 50/50 risk sharing mechanism will partly depend on whether the cost allowance is up for review. A cost allowance which more closely reflects the anticipated efficient cost of the project reduces the need to review the risk sharing element. On the other hand, if the cost allowance is not reviewed, applying a crude rule on €70m of additional expenditure without consulting with users on the cost overrun may not be in the interest of current or prospective users. In addition, disallowing €35m of expenditure may cause financial viability issues for the regulated entity.

Cost Efficiencies - Tendering Process

- 4.13 Ryanair suggested that Dublin Airport could include users in the preparation of terms of reference for a tender for construction of the runway. We would be interested in views on this suggestion, and also whether users would be willing to commit to the outcome of such a tender.
- 4.14 We could envisage a situation where tendered cost could be set as the cost allowance for the runway if, for example, users representing 80% of passengers were to agree terms of reference with Dublin Airport. Users would need to commit to accepting that, following their participation in the process, the tendered cost is the efficient cost and therefore enters the RAB. Dublin Airport would need to involve users fully in drafting the terms of reference including the specification of the project.

Length of Runway

- 4.15 Ryanair suggested that the length of the runway should be examined as part of the review. The length was examined and consulted on in detail as part of the 2009 Determination process and again in 2014. In the 2009 Determination, the Commission set an allowance sufficient to cover the cost of a 3.1 km runway, rather than 3.7 km as was proposed by Dublin Airport or a shorter runway as was preferred by certain users.⁷ It was the view of the Commission that a 3.1 km runway struck an appropriate balance between facilitating the efficient and economic development of the airport and protecting the interests of users. This length is sufficient for direct flights to certain key destinations, while ensuring that users do not pay more than required.
- 4.16 The trigger was not hit during the period 2009-2014. In the 2014 Determination, users again had the opportunity to make submissions regarding the length of the runway. We would need to be convinced of the merit in reopening this discussion given that it has already been subject to extensive consultation and circumstances do not appear to be different to when previously consulted on.

Capacity Assessments

- 4.17 Aer Lingus suggested the Commission assesses the overall infrastructure and resulting capacity at Dublin Airport and that the trigger should incentivise Dublin Airport to address other capacity constraints.
- 4.18 While we see merit in Dublin Airport maximising the use of existing infrastructure and to add capacity in the most economically advantageous way, we do not believe that there have been any substantial changes since the 2014 Determination which merit adding these items to a review of the Determination. Dublin Airport is incentivised to grow traffic beyond our forecasts, and thereby is incentivised to maximize the use of existing infrastructure.
- 4.19 Separately, it is worth noting that we will shortly be consulting on a flexible process that can be used to allow for approval of a degree of capital expenditure between determinations. The processes around this and future determinations will hopefully address some of the issues raised here by Aer Lingus.

⁷ http://www.aviationreg.ie/fileupload/2009_CP4_Final%20Determination_4DEC.pdf

5. Responding to the Consultation

- 5.1 The Commission requests the views of interested parties on expanding the review of the 2014 Determination to include the aspects discussed above.
- 5.2 The review will examine the timing of the remuneration of the runway project and not on the need for its construction. That has already been decided and is not being consulted on here.
- 5.3 When making a submission, interested parties should base their arguments on the questions outlined in Paragraph 2.4.
- 5.4 In particular, any party seeking to broaden the scope of the review to include aspects other than the timing of the remuneration must clearly show:
- that some exceptional event or set of circumstances has materialised since publication of the 2014 Determination.
 - that this was outside the control of the regulated entity.
 - that the effect of this is likely to compromise the objectives of the original decision regarding the aspect in question.
- 5.5 We may correspond with interested parties who make submissions, seeking clarification or explanation of their submissions. Such correspondence will not be an invitation to make further submissions.
- 5.6 Responses should be titled "Response to Consultation on the Scope of the Interim Review" and sent:
- by email to: info@aviationreg.ie (preferable); or
 - by post to: Commission for Aviation Regulation, 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin D02 W773
- 5.7 The closing date for receipt of submissions is **5pm Friday 26th August 2016.**