

Air Navigation and Transport Bill 2020

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Abstract

The [Air Navigation and Transport Bill 2020](#) provides for significant institutional changes to how aviation is regulated in Ireland. Specifically, it provides for the separation of the Irish Aviation Authority (IAA), with the safety regulation side of the IAA to be merged with the Commission for Aviation Regulation (CAR) to create a standalone aviation regulator, whilst the ‘for-profit’ air navigation side of the IAA will become a separate commercial agency, to be known as the Irish Air Navigation Service (IANS). The Bill also proposes amending the regulation of airport charges in Ireland.



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Introduction

The [Air Navigation and Transport Bill 2020](#), which was published in November 2020¹, provides for significant institutional changes to how aviation is regulated in Ireland. Specifically, it provides for the separation of the Irish Aviation Authority (IAA), with the safety regulation side of the IAA to be merged with the Commission for Aviation Regulation (CAR) to create a standalone aviation regulator, whilst the 'for-profit' air navigation side of the IAA will become a separate commercial agency, to be known as the Irish Air Navigation Service (IANS). The Bill also proposes amending the regulation of airport charges in Ireland. The [Explanatory Memorandum](#) outlines the purpose of the Bill as follows:

This Bill supports the regulatory reform programme. It creates a single aviation regulator for safety, security, economic regulation and consumer protection. It separates out for-profit air navigation services into a new commercial state company (IANS). The regulator will remain as the Irish Aviation Authority (IAA) and will encompass the functions of the Commission for Aviation Regulation (CAR). In addition, the Bill updates elements of the regulatory regime used to set passenger charges at Dublin Airport.

The Bill contains a total of 110 sections across 10 Parts and 3 Schedules. In respect of these sections, 47 are based on existing powers based on the equivalent sections in the Irish Aviation Authority Act, 1993. Part 2 proposes the formation and administration of the IANS, whilst Part 10 provides for the dissolution of the CAR.

Part 1- Preliminary and General (sections 1-8) provides for the short title, commencement, collective citation and interpretation, regulation making, directions, repeals and other technical matters.

Part 2- Formation and Administration of Irish Air Navigation Service (Sections 9-38)

provides for establishment of the Irish Air Navigation Service (IANS) and its administrative arrangements. It provides standard and established governance measures that include conditions that apply to board members, the chief executive and members of staff. It provides the financial framework including the reporting requirements to the Minister and to the Oireachtas. In addition, it provides for the transfer of staff to the IANS from the IAA, and terms and conditions on superannuation and remuneration.

Part 3 Fees and Charges of IANS (Sections 39-42) deals with the IANS charging - for air navigation, communication and other services. It also provides enforcement powers to the IANS to collect charges.

¹ Department of Transport, [Minister Ryan announces appointment of interim Chair of the Board of the Irish Aviation Authority](#), 13 January 2021

Part 4 Provisions in relation to Eurocontrol, International Agreements and Certain Organisations (Sections 43-46) deals with provides for the International obligations of the IANS. These relate to Eurocontrol, international agreements and organisations. It also protects the staff of the IANS while performing their duties.

Part 5 - Miscellaneous (Sections 47-48) provides for offences for aircraft and a transitional provision related to local authority rates.

Part 6- Transitional Provisions (Sections 49-55) contains provisions related to legal instruments, legal proceedings, land, property, legal claims, rights and liabilities which are transferring from the IAA to the IANS. It also provides for the appropriate transition of financial matters.

Part 7 - Amendment of Irish Aviation Authority Act 1993 (Sections 56-78) these amend the *Irish Aviation Authority Act 1993* and cover governance, funding and enforcement arrangements for the IAA. It also has some technical amendments.

Part 8 - Restructuring of IAA - Supplementary Provisions (Sections 79-80) provides for the restructuring of the IAA with a range of enabling provisions covering the powers which may be required to give effect to the restructuring.

Part 9 - Amendment of Aviation Regulation Act 2001, etc. (Sections 81-98) provides for amendments to the *Aviation Regulation Act 2001*. This is a preparatory section to ensure that the functions and protocols currently assigned to the CAR are merged seamlessly into the new IAA. It aligns the current governance arrangements of the CAR with that of the IAA and strengthens the enforcement powers related to CAR functions. It provides that the IAA (with the CAR functions merged) may review the market power of airport authorities. It places the interests of users at the top of the hierarchy of objectives in regulating airport charges and it removes the redundant provisions relating to a legacy role for CAR in regulating terminal service charges. **Following commencement of Part 10 any references to CAR will be construed as a reference to the IAA.**

Part 10 - Dissolution of Commission for Aviation Regulation (Sections 99-110) provides for the dissolution of the Commission for Aviation Regulation and for the transfer of its functions, staff, property, rights and liabilities to the IAA. It provides for the continuation of legal instruments and superannuation arrangements.

Not all sections in the Bill are dealt with in the Digest

47 sections of the Bill are based on existing powers in the equivalent sections in the *Irish Aviation Authority Act 1993* and are not discussed outside of the table of provisions. 9 sections have been identified as new and are discussed below.

Background

On publication of the [General Scheme of the Air Navigation and Transport Bill 2019](#) in June 2019, the then Minister for Transport, Tourism and Sport, Mr. Shane Ross, TD, stated that:

Civil Aviation is a global industry that is in a constant state of evolution and technological advances. We need to make sure that our regulatory regime is strong and responsive to the many challenges in relation to safety, security, consumer protection and connectivity. It is widely accepted that the Government's aviation regulation reform initiative, which is set out in the National Aviation Plan, is an important part of securing Ireland's prominent place on the global stage. The Bill will establish a new, modern regulator which will act as a "one stop shop" for safety, security, economic and consumer regulation requirements, providing cleaner and more efficient lines of communication and customer service for both the travelling public, industry, and workers within the aviation sector.²

According to a [briefing](#) prepared by officials at the Department of Transport for the incoming Minister (June 2020), the Air Navigation and Transport Bill:

.. provides for the institutional reorganisation of how aviation regulation is provided in Ireland. It is part of a reform programme that will support global connectivity and futureproof aviation regulation. It will contribute to best practice approaches and ensure that the Regulator is fit purpose for emerging challenges over the following decades.³

Further, the opening statement of Department officials to the Joint Committee on Transport, Tourism and Sport during its pre-legislative scrutiny (PLS) of the Bill noted that:

The dual commercial/regulatory mandate of the IAA, as it is currently structured, is largely an outlier in a European and international context, notwithstanding the company's high international reputation ... it is very difficult to argue for no change, where we have a State body that has important non-commercial oversight functions, and at the same time a commercial mandate to run a service on a for-profit basis. This leads it to have a regulatory oversight and enforcement relationship with the airlines and at the same time a commercial relationship as a provider to the airlines of air traffic control services. If we look across Europe, that model is now hard to find ... Some 23 of the 27 member states have separated air navigation services from aviation regulatory oversight, which leaves four countries which have not, namely, Ireland, Cyprus, Greece and France. We are an outlier in that sense.⁴

² Department of Transport, Tourism and Sport, [Minister Ross publishes draft laws to reform Ireland's Aviation Regulation Regime](#), 21 June 2019

³ Department of Transport, [Briefing for Minister 27 June 2020](#) (Published 25 September 2020)

⁴ Department of Transport, Tourism and Sport, [Opening Statement to the Joint Oireachtas Committee for Transport, Tourism and Sport](#), 10 July 2019

More recently, the Minister for Transport, Mr. Eamon Ryan, TD, outlined the purpose of the Bill in a recent [PQ \(27 January 2021\)](#) as follows:

As provided for in the published Bill, the proposed institutional reforms will create a single national aviation regulator responsible for safety, security and economic regulation (including consumer affairs) by combining the regulatory functions of the Irish Aviation Authority (IAA) and the Commission for Aviation Regulation. It will also separate out the for-profit air traffic control services functions of the IAA and place them in a newly formed commercial semi-state company, the Irish Air Navigation Service. Importantly, in the context of the structural changes required, it guarantees the terms and conditions of all current staff.

The Bill seeks to modernise and strengthen the regulation and oversight of the Irish aviation industry in order to secure - for the long term - Ireland's position as global leader in aviation (which demands best practice regulatory structures and enforcement) and to advance and protect consumer interests. I believe this Bill lends itself to broad, cross-party support. I welcome the scrutiny and contribution of Oireachtas members to come, and ultimately I am hopeful for its safe passage through the Houses in the coming months.⁵

Timeline

The following is a timeline of recent publications/resources and events relevant to this Bill:

Table 1: Recent developments related to this Bill

Date	Detail
August 2015	The National Aviation Policy (NAP), which commits to an independent review of airport charges regulation and a restructuring of the functions of the Irish Aviation Authority and the Commission for Aviation Regulation, is published.
December 2015	Indecon Economic Consultants, who were engaged by the Department to undertake this work, completed its review of airport charges regulation in Ireland in December 2015.
December 2015	Section 32 report of the Irish Aviation Authority produced by Helios.
March 2016	Review of the Regulatory Regime for Airport Charges in Ireland is published.
July – September 2016	DTTAS conducted a Consultation on the Independent Review of Airport Charges Regulation in Ireland , seeking submissions from stakeholders.
September 2017	The National Policy Statement on Airport Charges Regulation is published.

⁵ PQ, [Irish Aviation Authority](#) (Wednesday, 27 January 2021)

November 2018	The General Scheme of the Aviation Regulation Amendment Bill is published.
May 2019	The Joint Committee on Transport, Tourism and Sport undertakes PLS of the General Scheme of the Aviation Regulation Amendment Bill, with the transcript of the meeting constituting the Committee's report.
June 2019	The General Scheme of the Air Navigation and Transport Bill 2019 is published.
July 2019	The Joint Committee on Transport, Tourism and Sport undertakes PLS of the General Scheme of the Air Navigation and Transport Bill 2019, with the transcript of the meeting constituting the Committee's report.
March 2020	Section 32 report of the Irish Aviation Authority produced by Helios.
November 2020	The Air Navigation and Transport Bill 2020 is published.

Table 2 below sets out the principal provisions of the Bill

Table of Provisions

Section	Title	Effect
Part 1: Preliminary and General		
1.	Short title, commencement, collective citations and construction	<p>This Act can be cited as the Air Navigation and Transport Act 2020, and different parts of the Act can be commenced at different times by the Minister.</p> <p><i>The Air Navigation and Transport Acts 1936 to 1998 and this Act (other than Parts 7 and 9 and Schedules 2 and 3) can be cited together as the Air Navigation and Transport Acts 1936 to 2020 and read as one Act. The Aviation Regulation Acts 2001 to 2004 and s.98 may be cited together as the Aviation Regulation Acts 2001 to 2020.</i></p>
2.	Interpretation – general	<p>In the Bill references to the “Act of 1993” means the Irish Aviation Authority Act 1993; to the “Act of 1998” means the Air Navigation and Transport (Amendment) Act 1998; the “Act of 2014” means the Companies Act 2014. Many of the definitions such as aerodrome, aircraft, and airspace have the same meaning as under the <i>Irish Aviation Authority Act 1993</i>.</p> <p>It also provides that if a function of the IANS or the IAA is a function of its subsidiary the provisions of this and any other enactment apply to the subsidiary as they apply to the IANS or the IAA, respectively.</p>
3.	Application to state aircraft	<p>The Bill does not apply to state aircraft or aerodromes under the control of the Minister for Defence. State aircraft are defined as aircraft used in the military, customs or police service of any state. The Minister for Transport can make an order to apply provisions of this Bill to state aircraft of other States. (This section is the equivalent of s.3 of the <i>Irish Aviation Authority Act 1993</i>)</p>

4.	Regulations, etc	Any orders or regulations made under this Act, except those made under s.1(2) (commencement orders) or s.14 (conferral of additional functions on IANS), must be laid before the Houses of Oireachtas.
5.	Directions by Minister to IANS	The Minister for Transport can give general policy directions to the IANS relating to the performance of its functions; matters in the national interest or regarding the State's international obligations. The IANS is required to comply with any such direction. (This section is the equivalent of s.7 of the <i>Irish Aviation Authority Act 1993</i>)
6.	Disposal of moneys received by Minister	This is a standard provision setting out that any moneys received by the Minister for Transport under this legislation will be paid to the Exchequer in a manner directed by the Minister for Public Expenditure and Reform. (This section is the equivalent of s.8 of the <i>Irish Aviation Authority Act 1993</i>)
7.	Expenses	This is a standard provision. Any expenses incurred by the Minister in the administration of this Act will, where sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas. (This section is the equivalent of s.9 of the <i>Irish Aviation Authority Act 1993</i>)
8.	Repeals	This provides for the repeal of s.23 of the <i>Aviation Regulation Act 2001</i> which gives regulation-making powers to the Commission for Aviation Regulation to provide for a levy to fund its functions. This repeal is subject to s.68 of this Act to continue any regulations that exist. It also repeals s.43 of the <i>Aviation Regulation Act 1993</i> related to charges by the company in respect of air navigation and aeronautical communications services.

Part 2: Formation and Administration of Irish Air Navigation Service

Sections 9-38

9.	Definition – Part 2	'Superannuation benefits' in Part 2 is defined as pensions, gratuities or other allowances payable on resignation, retirement or death.
10.	Formation of Irish Air Navigation Service	This provides that the Minister for Transport, after consultation with the Minister for Public Expenditure and Reform, can form a Designated Activity Company limited by shares for the provision of air navigation services in line with the conditions set out in this legislation. The name of the company will be the Irish Air Navigation Service (IANS). A Designated Activity Company or "DAC limited by shares" has the same meaning as it has in s.963 of the <i>Companies Act 2014</i> .
11.	Capital formation	This provides for the determination of the authorised share capital of the IANS by the Minister for Public Expenditure and Reform and provides that s.969(1) of the <i>Companies Act 2014</i> relating to the naming of a DAC will not apply to the IANS. This simply exempts the IANS from the naming requirements of a DAC. (This section is the equivalent of s.12 of the <i>Irish Aviation Authority Act 1993</i>)
12.	Form of memorandum	The Constitution or Memorandum of Association of the IANS and any subsidiary will be consistent with the Act and shall be approved by the Minister for Transport with the consent of the

	of association of IANS, etc.	Minister for Public Expenditure and Reform. (This section is the equivalent of s.13 of the <i>Irish Aviation Authority Act 1993</i>)
13.	Objects of IANS	<p>Section 13 of the Bill sets out the purpose of the IANS and lists its main objectives.</p> <p>These include to:</p> <ul style="list-style-type: none"> • provide, operate and manage air navigation and communication services safely and efficiently; • operate and manage terminal services; impose charges; • give effect to the purposes of the Eurocontrol Convention and any other international agreement; • undertake research; • provide consultancy advisory and training; attend meetings of international governments or organisations as they pertain to its functions; and • to advise the Minister and/or Government. <p>This section further provides that any function given to the IANS under this legislation which was previously a function of the Irish Aviation Authority (IAA) will cease to be a function of the IAA. (This section is the equivalent of s.14 of the <i>Irish Aviation Authority Act 1993</i>)</p>
14.	Conferral of additional functions on IANS	The Minister for Transport may assign any additional functions related to civil aviation to the IANS but must consult with IANS in advance. (This section is the equivalent of s.15 of the <i>Irish Aviation Authority Act 1993</i>)
15.	General duty of IANS	This is a standard provision providing that the IANS must manage its assets and operations appropriately to ensure its revenues cover its costs and to conduct its business at all times in the most cost-effective and efficient manner. (This section is the equivalent of s.16 of the <i>Irish Aviation Authority Act 1993</i>)
16.	Articles of association	<p>This provides that the articles of association of the IANS will be in line with this legislation as approved by the Minister for Transport with the consent of the Minister for Public Expenditure and Reform.</p> <p>It provides that the number of directors shall be 7, 8 or 9 including the chairperson. It also provides for conditions such as the appointment, removal and the length of term of directors. Other standard conditions include remuneration for the board, appointment of an auditor and principles for the negotiations on pay, conditions and service of staff. It also provides for the assignment of functions to subsidiaries and the level of investment through shares or loans. (This section is the equivalent of s.17 of the <i>Irish Aviation Authority Act 1993</i>)</p>
17.	Restriction on alteration of memorandum or articles of association	Any amendment to the memorandum of association or articles of association of the IANS or subsidiary can only be made with the prior approval of the Minister for Transport with the consent of the Minister for Public Expenditure and Reform. (This section is the equivalent of s.18 of the <i>Irish Aviation Authority Act 1993</i>)
18.	Issue of shares, and creation of	The IANS will issue shares to the Minister for Public Expenditure and Reform. It provides that the value of property transferred to the IANS will become a debt of the IANS to the Minister for

	debt due, to Minister for Public Expenditure and Reform in consideration of transfer of property	Public Expenditure and Reform. The terms and conditions of repayment of any such debt due by the IANS will be determined by the Minister for Public Expenditure and Reform. (This section is the equivalent of s.19 of the <i>Irish Aviation Authority Act 1993</i>)
19.	Issue of share to Minister for Transport	Share capital of €1 will be issued to the Minister for Transport by the IANS. The Minister may exercise all rights and powers of a shareholder in respect of this share. The Minister is not permitted to transfer or alienate this share.
20.	Issue of shares to subscribers to memorandum of association of IANS	Share capital of €1 will be issued to all subscribers to the memorandum of association by the IANS, and will come from the Central Fund. (This section is the equivalent of s.21 of the <i>Irish Aviation Authority Act 1993</i>)
21.	Exercise of powers by Minister for Public Expenditure and Reform in respect of shares	The Minister for Public Expenditure and Reform may exercise all the rights and powers of a shareholder. (This section is the equivalent of s.22 of the <i>Irish Aviation Authority Act 1993</i>)
22.	Transfer by Minister for Public Expenditure and Reform of shares	The Minister for Public Expenditure and Reform can transfer shares only for the purpose of meeting the requirements in the <i>Companies Act 2014</i> relating to ensuring a minimum number of members. (This section is the equivalent of s.23 of the <i>Irish Aviation Authority Act 1993</i>)
23.	Obligation of certain shareholders to hold shares in trust	<p>Any member of the IANS that holds a share holds it in trust for the Minister for Public Expenditure and Reform and is bound to pay all dividends and any other monies received in respect of the share to the Exchequer.</p> <p>The share must only be transferred to the Minister for Public Expenditure and Reform (or to a person nominated by that Minister). If a member holding a share passes away that share will automatically be vested in the Minister for Public Expenditure and Reform without the need for a transfer. (This section is the equivalent of s.24 of the <i>Irish Aviation Authority Act 1993</i>).</p>
24.	Payment of dividends, etc., into Exchequer	Any dividends or other monies received by the Minister for Public Expenditure and Reform in respect of his or her share of the IANS will be paid to the Exchequer. (This section is the equivalent of s.25 of the <i>Irish Aviation Authority Act 1993</i>)

25.	Borrowing by IANS and subsidiaries	The IANS or its subsidiaries may borrow monies for capital purposes with the consent of the Minister for Transport and the Minister for Public Expenditure and Reform. The amount of all borrowings cannot exceed €127m at any given time. Borrowings can be in a foreign currency but are subject to the same conditions and equivalent limit. The Minister and the Minister for Public Expenditure and Reform may, by order, specify a different limit. (This section is the equivalent of s.26 of the <i>Irish Aviation Authority Act 1993</i>).
26.	Guaranteeing by Minister for Public Expenditure and Reform of borrowing by IANS	The Minister for Public Expenditure and Reform may guarantee loans of the IANS up to €102 million. That Minister must report to the Oireachtas on any such guarantees. The IANS is required to repay the Minister for Public Expenditure and Reform any monies paid under such a guarantee and when it fails to do so the monies may be paid to the Central Fund by the Oireachtas, however the IANS will remain liable. The Minister for Public Expenditure and Reform must consult with the Minister for Transport in relation to borrowing.
27.	Provision of money for payments out of Central Fund	Any monies due for payment by the Minister for Public Expenditure and Reform on foot of a guarantee providing for borrowings by the IANS may be taken as an advance from the Central Fund. That Minister is also permitted to borrow on the security of the Central Fund to secure such borrowing and may create and issue securities and charge interest to repay the Exchequer all sums borrowed. (This section is the equivalent of s.29 of the <i>Irish Aviation Authority Act 1993</i>)
28.	Accounts and audits	The IANS must keep and submit annual, audited accounts to the Minister for Transport for approval and to lay before each House of the Oireachtas. (This section is the equivalent of s.30 of the <i>Irish Aviation Authority Act 1993</i>).
29.	Annual report and giving of information to Minister	The IANS must submit an annual report to the Minister for approval and to lay before each House of the Oireachtas. (This section is the equivalent of s.31 of the <i>Irish Aviation Authority Act 1993</i>)
30.	Disclosure by directors of certain interests	This is a requirement for a director of the IANS or subsidiary to declare an interest in any contract, agreement or arrangement and procedures. Such declarations must be recorded in the minutes of the meetings and should a director fail to comply with this provision, the Minister for Transport has the power to remove that director from the board. Any person that does not declare an interest and follow the procedures shall be guilty of an offence. The requirements of s.231 of the <i>Companies Act 2014</i> are replaced by this section. (*93 S33) (This section is the equivalent of s.33 of the <i>Irish Aviation Authority Act 1993</i>)
31.	Disclosure by members of staff of certain interests	Staff members of IANS or a subsidiary must declare if they have interest in any contract, agreement or arrangement and procedures. Failure to do so is an offence. (This section is the equivalent of s.34 of the <i>Irish Aviation Authority Act 1993</i>)
32.	Prohibition on	A staff member, advisor, consultant or director of the IANS or subsidiary must not disclose confidential information, received

	unauthorised disclosure of information	while performing their role, except where authorised to do so by the IANS or subsidiary. Any person that does not comply with this provision will be guilty of an offence. (This section is the equivalent of s.35 of the <i>Irish Aviation Authority Act 1993</i>).
33.	Membership of either House of Oireachtas or European Parliament	A director of the IANS or subsidiary who is elected to political office, either at national or European level, will cease to be a director. Similarly an employee will be considered seconded until the political position ceases. The period of secondment for such an employee is not reckonable for pension purposes. (This section is the equivalent of s.37 of the <i>Irish Aviation Authority Act 1993</i>)
34.	Chief Executive	The first Chief Executive of the IANS will be the existing Chief Executive of the IAA for the period remaining as Chief Executive of the IAA. That Chief Executive may be appointed and removed by the Minister for Transport. Subsequent Chief Executives will be appointed and be removed by the board, in consultation with the Minister for Transport. The functions of the Chief Executive are listed and the terms and conditions that the Chief Executive is subject to are determined by the board, in consultation with the Minister and with the consent of the Minister for Public Expenditure and Reform. (This section is the equivalent of s.38 of the <i>Irish Aviation Authority Act 1993</i>)
35.	Remuneration , etc., of staff	<p>The terms and conditions, remuneration, allowances or expenses for staff of the IANS must have regard to any Government or nationally agreed guidelines which are in force or to Government policy concerning remuneration and conditions of employment also in force.</p> <p>The IANS must comply with any directive in relation to those terms and conditions, remuneration, allowance or expenses given by the Minister for Transport, with the consent of the Minister for Public Expenditure and Reform. (This section is the equivalent of s.39 of the <i>Irish Aviation Authority Act 1993</i>).</p>
36.	Transfer of staff of IAA to IANS	Existing IAA staff, working mainly on air navigation services provision, will transfer to the IANS on no lesser terms and conditions as they currently have. Where a dispute arises or it cannot be determined if a person works mainly or wholly in air navigation services provision, the IAA will determine whether a person transfers or not, in consultation with staff representatives. S.36 also provides that any previous service in the civil service or IAA will be reckonable subject to the relevant legislation listed. (This section is the equivalent of s.40 of the <i>Irish Aviation Authority Act 1993</i>)
37.	Superannuation	<p>The IANS must prepare and submit a scheme to the Minister for Transport for the purpose of providing pension benefits. The benefits of any pension scheme provided to staff of the IAA transferring to the IANS must be not less favourable than their current pension benefits. Any dispute in relation to pension benefits will be determined by the Minister for Public Expenditure and Reform</p> <p>It provides for the period between vesting day of the IANS and approval of the new pension scheme and requires any scheme made to be laid before each House of the Oireachtas. (This</p>

		section is the equivalent of s.41 of the <i>Irish Aviation Authority Act 1993</i>)
38.	Acquisition of land and entry onto land by IANS	The IANS can acquire land or a right over land (other than land owned by the State or a State Authority) either by agreement or compulsorily in order to carry out its functions under this legislation. It provides that the powers under s.19 and the Second Schedule of the <i>Air Navigation and Transport (Amendment) Act 1998</i> will apply to the IANS. This relates to the right of entry on land by the company and provisions relating to compulsory acquisitions. (This section is the equivalent of s.42 of the <i>Irish Aviation Authority Act</i>)
Part 3: Fees and Charges of IANS (Sections 39-42)		
39.	Charges by IANS in respect of air navigation and aeronautical communications services	IANS can make regulations, with the consent of the IAA, requiring fees for air navigation or communication services to be paid to itself, Eurocontrol or the Minister for Transport. Regulations can provide that the charge is made and recoverable outside the State, and can specify the liability for such charges be it aircraft owners or, in the case of leased aircraft, the aircraft operator and also managers of aerodromes. The payments to Eurocontrol will be set by international agreements and payments to the Minister for Transport will be set by the IANS with the agreement of the Minister. The charges may be different depending on the class or use and may be subject to interest. The regulations may require aircraft operators or aerodrome managers to keep and produce for inspection records to enable assessment and collection. The IAA will continue to collect fees until the regulations and the IANS can recover its costs from the IAA. (This section is the equivalent of s.43 of the <i>Irish Aviation Authority Act 1993</i>)
40.	Other charges by IANS	The IANS can charge for its functions under any legislation, for any other service it provides and for property it provides. The IANS may charge for its functions under the European Union Regulations set out in Schedule 1. The amount charged for these functions must be considered appropriate by the IAA. (This section is the equivalent of s.44 of the <i>Irish Aviation Authority Act 1993</i>)
41.	Recoupment by Minister of certain costs of IANS	The Minister for Transport, with the consent of the Minister for Public Expenditure and Reform, can issue directions to the IANS exempting certain classes of users from fees for its services and the IANS must comply with these directions. The Minister, with sanction from the Minister for Public Expenditure and Reform, must pay the costs of providing these services to the IANS from the Exchequer. (This section is the equivalent of s.45 of the <i>Irish Aviation Authority Act 1993</i>).
42.	Detention and sale of aircraft by IANS for unpaid air navigation and	The IANS has the power to detain aircraft under s.40 of the <i>Air Navigation and Transport Act 1998</i> for failure to pay for services. (This section is the equivalent of s.45A of the <i>Irish Aviation Authority Act 1993</i>)

	aeronautical communications services charges	
Part 4 Provisions in relation to Eurocontrol, International Agreements and Certain Organisations (Sections 43-46)		
CHAPTER 1 <i>Provisions in relation to Eurocontrol</i>		
43.	Venue for proceedings for recovery of sums due to Eurocontrol	This sets out the jurisdiction for the recovery of amounts due to Eurocontrol for air navigation services or aeronautical communications. It can be the state of residence, place of business, place of assets of the person or the state of the headquarters of Eurocontrol. In addition, proceedings may be taken within the State by Eurocontrol, the IANS or the Minister for Transport. (This section is the equivalent of s.49 of the <i>Irish Aviation Authority Act 1993</i>).
CHAPTER 2 Provisions in relation to the International Civil Aviation Organisation, International Agreements and certain organisations		
44.	Expenses of international organisations	The Minister for Transport will pay for membership, organisation and operation of international organisations, including Eurocontrol, the European Civil Aviation Conference or any other international organisation, from monies provided by the Oireachtas. The Minister will consult with the IANS on other international organisations whose functions relate to the IANS functions. The IANS will reimburse the Minister for these payments. (This section is the equivalent of s.61 of the <i>Irish Aviation Authority Act 1993</i>)
45.	Attendance of IANS at meetings of or organised by certain international organisations	The IANS may attend meetings of or arranged by Eurocontrol or any other international organisation of which the State is a member, and where the meeting relates to the functions of the IANS. The consent of the Minister for Foreign Affairs is required if matters other than civil aviation are to be discussed. The IANS may also attend meetings of international organisations of which the State is not a member, as an observer, if directed by the Minister for Transport and the meeting relates to the functions of the IANS. The IANS will provide a report of the proceedings of any such meeting to the Minister where requested. (This section is the equivalent of s.62 of the <i>Irish Aviation Authority Act 1993</i>)
46.	Indemnification of staff	The IANS will indemnify staff of the IANS against actions or claims while staff are discharging their duties carried out in a <i>bona fide</i> manner.
Part 5 Miscellaneous (Sections 47-48)		
47.	Offences	It is an offence for an aircraft and therefore the pilot or operator of an aircraft (where the operator is not the State) to contravene a provision of this Act or other listed instruments.

		<p>The penalty for such an offence can be either:</p> <ul style="list-style-type: none"> • on summary conviction, a class A fine (up to €5,000) and/or imprisonment for up to 6 months; or • on indictment a fine of up to €500,000 and/or imprisonment for up to 3 years. <p>An offence related to either charges under s.51 or obstructing an officer of the IANS or Eurocontrol attracts a class A fine and/or imprisonment for up to 6 months, on summary conviction.</p> <p>It also provides that following conviction on indictment, the court may order that anything used to commit the offence may be forfeited, other than the aircraft. It further provides that the offence applies to the body corporate and the person associated with that body. (This section is the equivalent of s.74 of the <i>Irish Aviation Authority Act 1993</i>)</p>
48.	Charge of rates on property of IANS	Liability for local authority rates will transfer from the IAA to the IANS from the beginning of the financial year following vesting day. (This section is the equivalent of s.69 of the <i>Irish Aviation Authority Act 1993</i>)
Part 6 Transitional Provisions (Sections 49-55)		
49.	Continuance of certain instruments	Listed instruments will continue in force after vesting day and responsibility to move to the IANS where it is related to an IANS function. Any other legislation referring to the IAA for an IANS function, will after vesting day, be construed as referring to the IANS. (This section is the equivalent of s.75 of the <i>Irish Aviation Authority Act 1993</i>)
50.	Continuance of pending legal proceedings	Legal proceedings will continue after vesting day with the IANS being substituted in the proceedings for any party where the proceedings relate to an IANS function. (This section is the equivalent of s.76 of the <i>Irish Aviation Authority Act 1993</i>)
51.	Transfer of land	<p>Land and associated rights may be designated by the Minister for Transport, and be transferred to the IANS on vesting day or within a year without conveyance.</p> <p>The Minister requires the consent of the Minister for Public Expenditure and Reform and the Commissioners of Public Works Ireland to designate such land. In addition, the land may be leased, let or licenced to the IANS or a subsidiary. (This section is the equivalent of s.77 of the <i>Irish Aviation Authority Act 1993</i>)</p>
52.	Transfer of other property	Property other than land related to a function of the IANS shall transfer to the IANS. The Minister for Transport may certify such a transfer. The IANS may exercise every property right so transferred. (This section is the equivalent of s.78 of the <i>Irish Aviation Authority Act 1993</i>)

53.	Transfer of rights and liabilities	Any rights or liabilities arising from an IAA contract or commitment related to a function of the IANS will transfer to the IANS. The Minister for Transport may certify such a transfer. (This section is the equivalent of s.79 of the <i>Irish Aviation Authority Act 1993</i>)
54.	Transitional financial provisions	The IANS is responsible for any payments due to staff transferred from the IAA which were unpaid on the vesting day. Similarly, it is responsible for payments due for goods and services related to its functions. It may recover the cost of such payments from the IAA with the consent of the Minister for Transport and the Minister for Public Expenditure and Reform. It also sets out the arrangements for advance payments, collections and exchanging records. The Minister for Transport with the consent of the Minister for Public Expenditure and Reform will adjudicate any disagreement between the IANS and IAA. (This section is the equivalent of s.80 of the <i>Irish Aviation Authority Act 1993</i>)
55.	Liability for loss occurring before vesting day	Any claim related to the functions of the IANS that is in existence or made after vesting day will lie with the IANS except where the IAA is insured for such damages or costs. Any outstanding judgments related to the functions of the IANS shall be enforceable against the IANS. The IAA shall reimburse the IANS for any existing claims or agreements satisfied by the IANS. This section does not apply to claims between State authorities. (This section is the equivalent of s.81 of the <i>Irish Aviation Authority Act 1993</i>)
Part 7 Amendment of <i>Irish Aviation Authority Act 1993</i> (Sections 56-78)		
56.	Amendment of s.2 of the Act of 1993	This updates the definition of a record to include electronic media. In addition, it adds the definitions of an electronic device and an electronic record, for clarity.
57.	Amendment of section 14 of Act of 1993	This is technical amendment to the <i>Irish Aviation Authority Act 1993</i> to refer to the first Schedule (“Schedule 1”) now that the Act will have two schedules.
58.	Amendment of s.16 of Act of 1993	The IAA shall assist and advise the Minister for Transport in relation to the Minister’s civil aviation functions. It further provides that the IAA will provide access to documents under its control relating to this advice.
59.	Amendment of s.17 of Act of 1993	The number of directors of the IAA will be 7,8 or 9 and the Directors will serve terms of up to 5 years except for the ex-officio director, the Chief Executive.
60.	Amendment of s.26 of Act of 1993	The IAA can borrow up to €40m and this limit can be amended by the Minister for Transport with the consent of the Minister for Public Expenditure and Reform.
61.	Amendment of s.27 of Act of 1993	The Minister for Finance may guarantee borrowings of the IAA up to €32m and this limit can be amended by the Minister for Transport with the consent of the Minister for Public Expenditure and Reform.

62.	Advances and grants by Minister to the company	The Minister for Transport may advance money to the IAA with the consent of the Minister for Public Expenditure and Reform. The amount is repayable with interest.
63.	Amendments of Act of 1993 - insertion of new sections 29A and 29B	The proposed new s.29A provides that IAA will prepare a statement of strategy every 3 years and submit it to the Minister for Transport to lay before the Houses of the Oireachtas. It lists the conditions that apply to the statement of strategy including that it must comply with any directions of the Minister and set out key objectives, outputs and strategies. It must also have regard to the IAA's resources. In addition, the IAA shall prepare an annual business plan (s.29B) having regard to the statement of strategy.
64.	Amendment of s.32 of Act of 1993	The Minister for Transport, at least every 5 years (increased from every 3 years), must examine the performance of the IAA in relation to aircraft and air navigation technical and safety standards. The Minister can make regulations to specify an aspect, the scope and form of the examination and report. The Minister may publish a form of the report.
65.	Annual aviation safety performance statements	This section proposes to insert a new s.32A into the Act of 1993. Under this new section, the IAA must submit to the Minister for Transport an annual report on its performance in regulating aviation safety. The report will include planned activity for the coming year and a review of the past year's activity. It shall include details of activities of the past year and outcome of the external oversight related to the listed programmes, plan and review. The Minister may direct the form of the report and matters to which it relates and it shall be laid before the Houses of the Oireachtas.
66.	Amendment of s.38 of Act of 1993	<p>The first Chief Executive appointed after this section is commenced shall be appointed for a period of not more than 7 years by the Minister for Transport and may be removed by the Minister.</p> <p>The Minister must consult with the directors of the IAA before removing the Chief Executive. Every following Chief Executive shall be appointed again by the Minister for a period not more than 7 years, however, the Minister must consult with the directors before appointing or removing the Chief Executive. Additionally, every Chief Executive will be an ex-officio director of the IAA.</p>
67.	Remuneration , etc., of staff	The IAA can appoint staff members on agreed terms and conditions. The terms and conditions, remuneration, allowances or expenses for staff of the IAA must have regard to any Government or nationally agreed guidelines which are in force or to Government policy concerning remuneration and conditions of employment also in force. Furthermore, the IAA must comply with any directive in relation to those terms and conditions, remuneration, allowance or expenses given by the Minister for Transport, with the consent of the Minister for Public Expenditure and Reform. This section also introduces a requirement that the IAA submit annually a three-year workforce plan to the Minister.

68.	Other charges by company	The IAA can charge for its functions under any legislation, any services provided or property sold, hired or leased. It can also charge for its functions under the European Legislation listed in Schedule 2. Regulations related to a levy made under s.23 of the <i>Aviation Regulation Act of 2001</i> will continue until the IAA revokes them.
69.	Amendment of Act of 1993 - substitution of section 58	The IAA must consult with the Minister for Transport when making an order to give effect to the Annexes to the Chicago Convention.
70.	Amendment of s.59 of Act of 1993	This is a technical amendment to change “the Schedule” to “Schedule 1” as there will now be two schedules to the <i>Irish Aviation Authority Act 1993</i> .
71.	Amendment of section 60 of Act of 1993	The IAA can require the payment of fees for its functions under any Act and that it can recover that debt as a simple contract debt. It also has a technical amendment to change “the Schedule” to “Schedule 1” as there will now be two schedules to the <i>Irish Aviation Authority Act, 1993</i> .
72.	Amendment of Act of 1993 - insertion of Part IVA	<p>This is a substantial new section dealing with enforcement. It proposes to insert a new Part IVA into the Act of 1993.</p> <p>Part IVA provides powers to authorised officers of the IAA for the purpose of enforcement of the company’s functions under legislation. It provides that an authorised officer can enter premises and require records and information to be produced, maintained or retained. It also provides powers for an authorised officer to take copies and remove such records or information. It lists the categories of persons to which this section applies and provides that an authorised officer can apply for a warrant to the District Court when prevented from entering a premise. It sets out a list of actions that may result in a Class A fine on summary conviction for a person. It provides for search warrants and the conditions that apply to such warrants and it indemnifies a person performing their duties against all actions and claims. It further provides that fixed charge offences may be declared by Regulations drafted by the Minister for Transport in consultation with the Minister for Justice. It provides that a prosecution for the alleged offence shall not be instituted if the payment of the fixed charge is made within the period specified in the notice of the charge.</p>
73.	Amendment of s.67 of Act of 1993	This is a technical amendment to the <i>Irish Aviation Authority Act 1993</i> to reflect that there is now more than one schedule to that Act.
74.	Accountability of company, etc., to Committees of Oireachtas	This section proposes to insert a new s.71A into the Act of 1993. This new section will oblige the IAA Chief Executive (or a relevant officer) to appear before Oireachtas Committees when required, in relation to appropriation accounts and reports of the Comptroller and Auditor General. The Chief Executive (or a relevant officer) must also appear before Oireachtas Committees when requested to account for the performance of

		the IAA in its functions, and the IAA must have regard to any resulting recommendations from those Committees.
75.	Amendment of section 72 of Act of 1993	This is a technical amendment to reflect the fact that the Act of 1993 will now have two schedules.
76.	Amendment of Act of 1993 - insertion of new sections 74A to 74D	This provides that the IAA can issue an enforcement notice giving a direction to the IANS for failing to comply with legislation relating to the functions of the IANS. It provides that the IANS can apply for the cancellation of such a direction to the High Court. This is a new provision.
77.	Substitution of Schedule to Act of 1993	Schedule 2 of this Bill is inserted as Schedule 1 of the Act of 1993.
78.	Amendment of Act of 1993 - insertion of Schedule	Schedule 3 of this Bill is inserted as Schedule 2 of the <i><u>Irish Aviation Authority Act 1993</u></i> .
Part 8: Restructuring of IAA - Supplementary Provisions (Sections 79-80)		
79.	Definitions – Part 8	Sets out the two definitions used in this Part: “assets” includes any property (real or personal), subsidiaries (within the meaning of section 7 of the Act of 2014) and any direct or indirect shareholdings of the IAA or of any such subsidiaries; “restructuring” means the doing of all things as are necessary or convenient for the purposes of giving effect to the other Parts of this Act in providing for full legal autonomy and independence in each of the IAA and the IANS.
80.	Restructuring of IAA	Provides for the making of orders and directions which may be required to give effect to the restructuring. It provides for arrangements between the IAA and the IANS with the consent of the Minister for Transport and it provides that the IAA, CAR and the IANS shall provide information and assistance to the Minister for Transport.
Part 9 Amendment of <u>Aviation Regulation Act 2001</u>, etc. (Sections 81-98)		
81.	Definition - Part 9	In Part 9 the ‘Act of 2001’ means the <u>Aviation Regulation Act 2001</u> ,
82.	Amendment of Act of 2001	This is a technical amendment where the Act of 2001 is amended by the substitution of “Regulations of 2011” for “European Communities (Dublin Airport Charges) Regulations 2011” in each place where it occurs in sections 8A and 32(2).
83.	Amendment of s.2 of Act of 2001	This amends s. 2 of the Act of 2001 (a) by the deletion of the definition of “terminal services”, and (b) by the insertion of the following definitions: “ ‘Regulations of 2011’ means the European Communities (Dublin Airport Charges) Regulations 2011 (S.I. No. 116 of 2011);

		'statement of strategy' means a statement of strategy prepared and submitted under s.27A;".
84.	Amendment of s.7 of Act of 2001	This deletes the reference to aviation terminal services charges in s.7 of the <i>Aviation Regulation Act 2001</i> , as these are no longer regulated by Irish authorities and instead fall under the auspices of Eurocontrol.
85.	Commission to review market power of airport authorities	This inserts a new s.8B into the <i>Aviation Regulation Act 2001</i> . The IAA (having absorbed the functions of the CAR) will have the power to carry out an assessment of market power held by an airport authority. If the Minister for Transport requests such a review then the IAA must then carry it out. It provides the process for carrying out such a review and that a report will be provided to the Minister with recommendations on the regulation of airport charges. There is an obligation on the airport authority to provide information to the IAA for the purpose of the review.
86.	Amendment of s.10 of Act of 2001	The Minister for Transport will no longer be able to give a policy direction regarding the principal function of the Commission set out in section 7 of the Act of 2001. The principal function of the Commission is to regulate airport charges and aviation terminal services charges.
87.	Amendment of s.17 of Act of 2001	This removes the reference to an aviation terminal services provider from the list of interests.
88.	Amendment of s.26 of Act of 2001	The Commission is will report annually on the implementation of its strategy statement. This is aligned with the IAA governance reporting arrangements and facilitates separate reporting for its powers under the 2001 Act.
89.	Amendment of s. 27 of Act of 2001	This removes statements of strategy from the general reports provided for in s.27.
90.	Amendment of Act of 2001 - insertion of new sections 27A and 27B	This aligns the governance arrangements of the Commission with that of the IAA in relation to the preparation of a strategy statement and a business plan. The Commission must prepare a strategy statement every 3 years and lists the information to be provided. It provides that the Minister for Transport can specify the form and any matters that should be included in the statement. The Minister will lay the statement before the Houses of the Oireachtas and publish it on the internet.
91.	Amendment of s.32 of Act of 2001	This provides that the Commission may extend the period of a determination of airport charges by up to 2 years.
92	Amendment of section 33 of the Act of 2001	Amends the principal objectives of the Commission when making a determination on airport charges to include the promotion of safety and security at Dublin Airport, and the promotion of high-quality and cost-effective airport services at Dublin Airport. It also inserts a number of additional considerations to which the Commission must have regard when making a determination. These new considerations relate to the policies of Government

		on aviation and climate change, as well as the need to encourage competition at Dublin Airport.
93.	Minister may review regulation of airport charges by Commission	This section proposes to insert a new s.33A into the 2001 Act. It provides that the Minister for Transport may carry out a review of the regulation of airport charges. It provides a number of conditions and procedures that must be met. A report of the review shall be submitted to Government, laid before the Houses of the Oireachtas and published on the internet.
94.	Appeal to High Court	This is a new provision which inserts a new s.39A into the Act of 2001 and provides that if a person is aggrieved by a determination of the Commission they can appeal to the High Court. The High Court may make an order including that it affirms, sets aside, amends or sends a determination for review to the Commission. An appeal does not affect the operation of a determination unless so specified by the court.
95.	Amendment of section 42 of Act of 2001	Paragraph (b) of Section 42(4) of the Act of 2001 is deleted. This removes the reference to a supplier of aviation terminal services provider from the list of persons/bodies to which that section applies.
96.	Amendment of section 45A of Act of 2001	This is a new provision amending s.45A of the Act of 2001. It provides that where an air carrier has committed an offence it commits a further offence for each day that it fails to comply with the direction to which the offence relates.
97.	Directions - Regulations of 2011	This section proposes to insert a new s.45B into the Act of 2001. It means that the Commission may direct the DAA (Dublin Airport Authority) if it is of the opinion that the DAA has not complied with the regulations of 2011. The DAA can make representations on the direction and the Commission must respond to any such representations. The DAA may also appeal the direction to the High Court. If the DAA fails to comply with a direction the DAA commits an offence and it commits a further offence for each day that it fails to comply.
98.	Repeals and savings	This provides that sections 35,36, 38 and 40 of the Act of 2001 are repealed. However any s.40 appeal may still be requested for any determination made prior to this section commencing. A person may appeal either through s.40 or s.39A but not both.
Part 10 Dissolution of Commission for Aviation Regulation (Sections 99-110)		
99.	Definitions - Part 10	In Part 10 of the Bill references to the "Commission" mean the Commission for Aviation Regulation; and "dissolution day" means the day appointed under s.100.
100.	Dissolution day	The Minister for Transport will set the day for the dissolution of the Commission for Aviation Regulation by order.
101.	Dissolution of Commission	The Commission will be dissolved on dissolution day.
102.	Transfer of functions to IAA	On dissolution day all functions of the Commission transfer to the IAA and all references to the Commission in legislation will mean a reference to the IAA.

103.	Transfer of staff to IAA	All staff of the Commission will transfer to the IAA on dissolution day on no less beneficial terms and conditions than they enjoyed in the Commission. Any previous service of a person transferred from the Commission to the IAA will be reckonable for pension purposes and other relevant purposes such as the <i>Minimum Notice and Terms of Employment Acts</i> ; <i>Parental Leave Acts</i> , the <i>Unfair Dismissals Acts</i> and the <i>Organisation of Working Time Act 1997</i> .
104.	Transfer of land and other property of Commission	All land, other property and property rights of the Commission will transfer to the IAA on dissolution day.
105.	Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by Commission	Any rights or liabilities arising from a contract or commitment entered into by the Commission will transfer to the IAA. Any legal action taken against the Commission in relation to a contract will be addressed by the IAA. Every lease, licence, way leave or permission granted by the Commission in relation to property will continue in force as if granted by the IAA.
106.	Liability for loss occurring before the dissolution day	<p>Any claim against the Commission for loss or injury alleged to have been suffered by a person arising out of the Commission carrying out its functions will now be against the IAA and any pending legal proceedings will continue with IAA substituted for the Commission.</p> <p>Any agreement or judgment reached but not implemented may be enforced against the IAA after the dissolution day. Any claim made by the Commission before dissolution against a person will be deemed to be a claim made by the IAA.</p>
107.	Provisions consequent upon transfer of functions, assets and liabilities to IAA	Anything commenced by the Commission before dissolution day may be carried on and completed by the IAA. It further provides that every instrument or document granted by the Commission will remain in effect as if granted by the IAA. Any reference to the Commission will be a reference to the IAA. Any money, stocks, shares, securities or sureties in the name of the Commission will transfer to the IAA at its request.
108.	Saving for certain acts	Nothing in Part 10 of the Act will invalidate any actions undertaken by the Commission in carrying out its functions and following dissolution day any such actions will be deemed to have been undertaken by the IAA.
109.	Final accounts and final annual report of Commission	The IAA must prepare final accounts for the Commission and submit them to the Comptroller and Auditor General within 12 months. The IAA will also prepare a final annual report for the Commission and submit it to the Minister for Transport within 6 months.
110.	Continuation in force of Commission superannuation	Any pension scheme currently in operation by the Commission will continue in force as if it was made by the IAA. Any liabilities, duties, obligations and funding requirements in relation to a Commission pension scheme will transfer to the IAA.

	on schemes or arrangements	Any legal action in relation to rights and liabilities in relation to Commission pensions will be taken against the IAA and arrangements for staff who were not a member of a pension scheme immediately before dissolution day.
Schedule 1		
<p style="text-align: center;">European Regulations under which IANS may impose charges</p> <p>Schedule 1 lists the European regulations under which IANS may impose charges. These relate to air navigation service provision and communications</p>		
Schedule 2		
<p>Schedule 2 becomes the first schedule to the Act of 1993. It lists the Annexes to the <u>Chicago Convention</u> that are conferred on the IAA.</p>		
Schedule 3		
<p style="text-align: center;">SCHEDULE 3</p> <p>Schedule 3 becomes the second schedule to the Act of 1993 and lists EU Regulations under which the IAA is the competent authority. It includes EU Regulations relating to Air Carriers, Air Navigation, Air Passengers, Airports, Aircraft, Aviation Safety, Pilots and Cabin Crew Security and Slot Coordination.</p>		

Policy Context

Institutional reorganisation of aviation regulation

The institutional reorganisation of aviation regulation in Ireland has been the subject of discussion and consideration in recent policy documents and examinations of the sector. The nature of this consideration is outlined below in respect of a range of relevant documents/reports. In addition, this section details some considerations in respect of the transition phase of this institutional reorganisation of aviation regulation.

A National Aviation Policy for Ireland (NAP) (August 2015)

[A National Aviation Policy for Ireland](#) (NAP), which was published in August 2015, considered the role of aviation regulatory bodies. It committed to restructuring the functions of the [Irish Aviation Authority](#) (IAA) and the [Commission for Aviation Regulation](#) (CAR) with a view to “continuing to seek the optimum means of delivering public services.”⁶ The NAP described the IAA as follows:

The IAA is a profitable, commercial State-owned company with three main functions: (i) the provision of air traffic management and related services in Irish controlled airspace and on the North Atlantic ..; (ii) the safety regulation of the civil aviation industry in Ireland; and (iii) the oversight of civil aviation security in Ireland ... In addition, the Safety Regulation Division (SRD) of the IAA has been designated as the National Supervisory Authority (NSA) for Ireland under the EU SES legislation, responsible, inter alia, for the certification and supervision of all Air Navigation Service Providers (ANSPs) in Ireland.⁷

In respect of the CAR, it noted that:

The CAR is a non-commercial, public body which regulates certain aspects of the aviation and travel trade sectors in Ireland. The CAR was established under the Aviation Regulation Act 2001 and its principal function as set down in the Act is price regulation. It sets the maximum level of airport charges at Dublin Airport ..⁸

Concerning the restructuring of the aviation regulatory sector, the NAP indicated that:

The Government’s overall objective of restructuring the functions of the aviation regulatory bodies is twofold. Firstly, to put in place appropriate organisational arrangements to provide for effective and efficient safety and economic regulation of the sector and secondly to ensure the effective and efficient provision of air navigation services. These arrangements should reflect best practice internationally and developments in EU SES legislation.⁹

⁶ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.58

⁷ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.58

⁸ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.58

⁹ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.58

In respect of the regulation of air navigation services (ANS)¹⁰, the NAP observed that the typical model in Europe includes the institutional separation between service provision and regulation. Further, the NAP indicated that developments at EU level were likely to impact on the National Supervisory Authority (NSA) role¹¹ of the IAA's Safety Regulation Division (SRD). For instance, the NAP referenced proposals for SESII+¹² and advised that this has resulted in an "ongoing debate" at EU level concerning the necessary requirements to ensure that NSAs "are appropriately distinct and independent of ANSPs"¹³. In respect of these developments, the NAP advised that:

Ireland supports the measures to strengthen national regulatory authorities and will make the necessary legislative changes to support any SES requirement to separate out the functions of the NSA concerning regulatory oversight of ANSPs.¹⁴

Box 1 below sets out the policy position, and related action, contained within the NAP in respect of the restructuring of aviation regulation.

Box 1 – Policy position and action in respect of aviation regulation

POLICY POSITION

The Department will ensure that the organisational arrangements and structures for economic and safety regulation of the Irish aviation sector are effective and appropriate.

ACTION

5.2.1 The organisational arrangements for provision of safety and economic regulatory oversight will be restructured taking account of the review of the appropriate model for airport charges regulation (see Action 5.1.1¹⁵) and of developments and timelines under the SES legislation. In advance of any restructuring options being pursued, there will be full consultation with impacted parties.

Reproduced from [A National Aviation Policy for Ireland](#), p.60

The [Second Progress Report](#) of the NAP (February 2019) advised the following in respect of this policy position:

¹⁰ Further details in respect of this can be found [here](#).

¹¹ In this context, the Safety Regulation Division (SRD) of the IAA has been designated as the NSA for Ireland under the EU [Single European Sky](#) (SES) legislation, which includes responsibility for the certification and supervision of all Air Navigation Service Providers (ANSPs) in Ireland. (p.58)

¹² The proposed revision of the Single European Sky (SES) legal framework, which involves merging the four SES Regulations into one and amending the European Aviation Safety Agency (EASA) Regulation, is known as SES II+. [\[Source\]](#) In respect of the independence of NSAs, SES II+ requires "more separation of NSAs from the ANSPs they supervise in order to ensure truly independent oversight, such as is found for example in the oversight of airline". [\[Source\]](#)

¹³ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.59

¹⁴ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.59

¹⁵ Action 5.1.1 states that "An independent review of airport charges regulation will be completed by end-2015. The review will deliver options and recommendations for a future regulatory system for airport charges. The process will involve full consultation with impacted parties." (p.57)

Following its consideration of the Review of Airport Charges Regulation, the Government Decision of 1 September 2017 (S180/20/10/2003) expressly approved:

- a) A merger of the Safety Regulatory Division's (SRD) functions of the IAA with the existing functions of CAR; Preparation of a General Scheme of a Bill to give effect to the necessary legislative changes to the Aviation Regulation Act 2001 and the Irish Aviation Act, 1993 to facilitate this structural reform.
- b) In collaboration with the IAA and CAR, the Department has begun work on the implementation of the Government Decision.

Reproduced from [The National Aviation Policy Second Progress Report](#), p.26

State Plan for Aviation Safety in Ireland (SPAS)

As part of the State Safety Programme, the IAA produces the *State Plan for Aviation Safety in Ireland* (SPAS)¹⁶. The SPAS 2019-2022 outlines the background to the separation of the safety regulation and service provision functions of the IAA:

In accordance with European requirements, there is strong functional separation in place between the IAA's safety regulatory and service provision functions. Notwithstanding this, the Government has decided to legally separate the IAA's functions. This decision is outlined in the National Policy Statement on Airport Charging Regulation – September 2017, where it is proposed that the regulatory and safety functions of the IAA will be merged with the regulatory and consumer protection functions of the Civil Aviation Regulator (CAR) to form a new aviation regulatory authority and the air navigation services functions of the IAA will be retained as a regulated State-owned enterprise.¹⁷

As referenced above, the [National Policy Statement on Airport Charges Regulation](#) (2017) considered the IAA's dual mandate, that of safety regulation and commercial interests. It highlighted that the IAA has built up a "high performing safety/security regulatory and inspection capacity", whilst at the same time having "been diligent" in respect of "appropriate internal corporate structures" to separate this regulatory function from its for-profit interests.¹⁸ Notwithstanding this, it highlighted concerns about the "inherent conflict" of this dual mandate, stemming from the fact that it had a commercial relationship with entities for which it was also responsible for being a regulator (see Box 2 overleaf).

¹⁶ The purpose of the SPAS is to communicate to all stakeholders how the IAA Safety Regulation Division will target resources over a four-year period to fulfil the State Safety Programme objective of improving safety performance. The two most recent SPAS cover the periods 2020-2023 and 2019-2022 respectively.

¹⁷ Irish Aviation Authority, [State Plan for Aviation Safety in Ireland 2019 – 2022](#), p.7

¹⁸ Department of Transport, Tourism and Sport, [National Policy Statement on Airport Charges Regulation](#), September 2017, p.14-15

Box 2 – Concerns in respect of dual mandate of the IAA

.. there is inherent conflict in IAA’s dual role which requires it to have, on the one hand, a commercial relationship with airports and airlines, and on the other hand be an independent safety inspectorate and regulator of the same companies. Moreover, the IAA’s safety remit – which is implemented by its safety division - extends to regulating the company’s own for-profit air traffic control operations. The Department has for some time considered this dual mandate as sub-optimal, a position that is reinforced by the most recent Section 32 audit , which highlighted the lack of legal separation between the IAA’s regulatory and service provider functions as an anomaly, with potential conflicts.

Having reflected on this, the Minister for Transport, Tourism and Sport is of the view that there is an opportunity to create a stronger, legal separation of these functions.

Reproduced from [National Policy Statement on Airport Charges Regulation](#), p. 15

Section 32 reports examining the IAA

As noted in Box 2 above, concerns in respect of this dual mandate were raised during a Section 32 audit¹⁹ of the IAA. This [report](#), released under a Freedom of Information request²⁰, was conducted by [Helios](#), an aviation consultancy company. One recommendation contained in the report concerned the Safety Regulation Division (SRD) and the “Separation of IAA regulator and ANS provision”. Specifically, the Section 32 report advised that:

..it is key to have safety processes which allow regulatory compliance “warning signs” to be picked up and independently considered by the regulator, and to recognise that the “production versus protection” trade-off inherent in this scenario must be managed.”

Further, the Section 32 report noted that the issue of the separation of the National Supervisory Authority (NSA) from the air navigation service provider (ANSP) has “long been a topic of discussion within the EU”. On that basis, it highlighted that the IAA maintained “integrated responsibility” for both the NSA and ANSP “at the highest level, whilst acknowledging that “functional separation”²¹ existed at operational level²². However, the report observed that the

¹⁹ The [Department of Transport](#) advises that Section 32 of the Irish Aviation Authority Act requires periodic appointment of a person to carry out an examination of the performance by the IAA of its functions in so far as they relate to the application and enforcement of technical and safety standards in relation to aircraft and air navigation.

²⁰ Department of Transport, Tourism and Sport, [Fol 2016.071 Section 32 Report](#), 7 March 2017; Initially, this FOI request was [refused](#) by the Department, a decision which was later [annulled](#) by the Office of the Information Commissioner, who directed the release of the records. Further details are available [here](#).

²¹ The report noted that the SRD (responsible for the functions of the NSA) was functionally separated from the ANSP in accordance with the EU regulatory requirements (Regulation (EC) 549/2004) in place at the time as demonstrated at the last EASA Standardisation Audit. (p.6) For instance, it noted that SRD has its own “high level safety regulation procedure (including guiding principles, organisation, legal compliance, etc.) ... to ensure that separation and appropriate reporting lines are in place between the SRD (regulatory) and the ANSP function (service provision).” (p.41)

²² The report noted the functional separation of the SRD and the ANSP functions in accordance with the EU regulatory requirements (Regulation (EC) 549/2004). The report described as the “the minimum requirement of functional separation”, noting that Article 4 requires that “NSAs shall be independent of air navigation service providers. This independence shall be achieved through adequate separation, at the

majority of other EU states are “perceived to have achieved a higher degree of separation than this”²³, whereby the regulator and service provider reside in “legally separate organisations”.²⁴ Specifically, the report noted that:

European common practice is to establish separate organisations. This establishes a fully independent regulator whose role is not only to check that standard processes are working well, but also to ensure that the processes themselves are not missing anything or being subverted by commercial pressures.²⁵

Further, the report highlighted that:

..it has been agreed in principle at EU level for a proposed requirement for an increased level of transparency, justification and demonstration of how functional separation is achieved, including the extent and effectiveness of NSA independence, especially in relation to budget decisions. This requirement will be achieved through the proposed revision of the SES Regulations (the so-called SES II+).²⁶

The report cautioned that some potential conflicts might arise where a functional – but not legal – separation exists between these functions, including those outlined in Box 3 overleaf. The report stated that procedures were in place at the IAA to “manage these risks”. However, it cautioned that the continuous review and monitoring of these arrangements, and their effectiveness, was “critical”.²⁷

functional level at least, between the national supervisory authorities and such providers’. (p.47,48). Similarly, the report referenced an CAO recommendation in article 2.4.9 of [ICAO Doc 9734 Safety Oversight Manual Part A](#), which states that:

In those States where the State is both the regulatory authority and an air traffic service provider, aerodrome operator, air operator, manufacturer or maintenance organization, the requirements of the Convention will be met, and public interest will be served, by clear separation of the authority and responsibility between the State operating agency and the State regulatory authority. The approval, certification and continued surveillance procedures should be followed as though the operating agency were a non-governmental entity. [Reproduced from [Section 32 report](#), p.49]

²³ The report provided an overview of the different financial models in use throughout Europe to support separate NSA. (p.52-53)

²⁴ Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.6

²⁵ Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.49

²⁶ Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.6

²⁷ Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.47

Box 3 – Potential conflicts arising from integrated organisational structure

- the IAA regulating itself insofar as the safe provision of air navigation services is concerned, which potentially give rise to a conflict between safety expenditures and profitability; and
- the role of the IAA in regulating the safety of airlines which are customers of the air navigation services function: the two largest airlines based in Ireland are among the top six customers for air navigation services.

Reproduced from [Section 32 report](#), p.47

The Section 32 report observed that, whilst the “organisational separation model” might demonstrate a greater level of transparency and NSA independence²⁸, a “practical balance” was required between the transparency of organisational separation and the recruitment/competency benefits²⁹ facilitated through integration (taking account of the existing situation, size and other parameters of a State). On that basis, the report recommended that the best way to achieve this “practical balance” should be kept under review, with a variety of factors (incl. evolving global practices, principles of the SES II+ legislative proposal³⁰) taken in account. The capacity for “warning signs” to be recognised and acted upon was identified as of particular importance. Thus, in the event that an integrated model was retained, the report stated that appropriate safeguard measures to maintain best possible levels of safety oversight were “essential”. In addition, the report advised that the organisational structure and hierarchy of the organisation (particularly at higher levels) should be more clearly defined and documented, thus ensuring that relevant responsibilities and accountabilities are “clearly demonstrable” to the industry and wider public.³¹ For instance, the report noted that:

Views have also been expressed from some stakeholder feedback that the IAA needs to further ‘demonstrate’ functional separation. Whilst functional separation exists throughout the departments, it is recommended that policy and structure more clearly define this at the highest level in the organisation and that the responsibilities and accountabilities are more clearly defined to the public. For example, the separation of the ANSP and SRD at senior

²⁸ For instance, the report stated that “separation can further ensure transparency and effective independent oversight to ensure that safety risks are not missed”. (p.47)

²⁹ The report further considered some of these advantages (incl. recruitment and retention of personnel with adequate technical knowledge, expertise and skill) later in the report. (p.48)

³⁰ The report highlighted the proposals contained in the SES II+ proposal, including that:

- a) The NSAs shall be either legally or functionally distinct from the ANSPs;
- b) In the case where NSAs are not legally distinct from the ANSPs, the Member States shall inform the Commission on the measures they have taken to ensure that they meet the requirements and shall document how this separation is achieved, showing effectiveness of the authorities’ independence”;
- c) To this end, where the NSA and the ANSP are part of the same administration, the NSA shall not seek nor take instructions from a hierarchical level of that administration having authority over the ANSPs as far as their tasks referred to in Article 4 and related decisions are concerned;
- d) In addition, the ANSP shall have no decision-making power over the allocation of budget of the NSA. [Reproduced from [Section 32 report](#), p.48]

³¹ Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.7

level is not explicitly clear in the IAA organisation structure ... In addition, the IAA should maintain a close view and emphasis on the situation as the SES II+ principles become more prevalent.³²

Notwithstanding these comments, the report did advise that:

The solution should not need to impact the strong working output of the current functional separation arrangement, giving benefits in resourcing the regulator financially and with competent individuals. Therefore the recommendation is for clearer structures and reporting lines, and for clearer definition to the public of functional separation in line with SES II+ principles.³³

To conclude, in respect of this “integrated responsibility” on the part of the IAA for both NSA and ANSP functions, the recommendation of the Section 32 report is set out in Box 4 below. This recommendation was marked as ‘high’, meaning it was deemed as requiring “immediate attention and planning for improvement”.³⁴

Box 4 – Recommendation of Section 32 report re “integrated responsibility”

It is recommended that whereas EASA has not questioned the effectiveness of the functional, as distinct from legal, separation of the IAA regulator and the IAA ANSP at the highest level in the organisation, such responsibility and accountability for certain independent decisions should be kept under review to ensure that appropriate safeguards in relation to safety oversight are in place. The objective should be to ensure that there is demonstrable transparency regarding the independence of safety regulation and that potential “conflict of interest” issues are managed in line with the principles underpinning the emerging regulations within the framework of SES II+ and with best practice globally.

Reproduced from [Section 32 report](#), p.7

A subsequent [Section 32 report](#) was produced by Helios in March 2020. It noted that the decision of the Government in 2017 towards the legal separation of the IAA ANSP and SRD is “consistent with best practices as recommended by ICAO and provides the regulator with a greater independence..”.³⁵ It also included a high-level review of the preparation and progress for the separation, with a view to understanding the impact the pre-separation, transition and post-separation phases would have on the regulator and ANSP’s ability to deliver their safety statutory functions.³⁶ In terms of the benefits of the separation project, the report advised that the decision to

³² Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.54

³³ Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.54

³⁴ Helios, [Provision of an examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), December 2015, p.156

³⁵ Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.ii,iii

³⁶ Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.24

separate these functions “provides a greater independence for the new regulator”. Further, it noted that all but one of the consulted stakeholders characterised separation as a positive step “to bring Ireland in line with other EU countries and provide added transparency”. However, concerns were raised by stakeholders that this restructuring of the IAA might lead to increased charges, thus impacting on their perception of ‘value for money’.³⁷

Transition period

The most recent SPAS, covering the period 2020-2023, provides relevant details concerning the institutional reorganisation of aviation regulation in Ireland:

The IAA is currently undertaking the most significant structural change in several years through the aviation regulation reform project. The IAA has been engaged with the Department of Transport, Tourism and Sport (DTTaS) and the Commission for Aviation Regulation (CAR) on this project which will see the IAA Safety Regulator split from the IAA Air Navigation Services Provider and merge with CAR. In order to progress the project, DTTaS formed a number of sub-committees reporting to a ‘High-Level Steering Group’ chaired by the Director General of Civil Aviation ... In early December 2019, the Minister for Transport, Tourism and Sport issued a direction to the Chairperson of the IAA Board to the effect that as an interim measure to facilitate full formal separation at a later date, the IAA air navigation service function should be established as a subsidiary company of the IAA. Work is ongoing in respect of developing a subsidiary model in line with the Ministerial Direction.”³⁸

Further, both the [SPAS 2019-2022](#)³⁹ and [SPAS 2020-2023](#)⁴⁰ contain actions focused on underpinning the legal separation of the safety regulation and service provision functions of the IAA and ensuring the delivery of services during the transition period and beyond⁴¹ (see Box 5 overleaf for an overview of actions from SPAS 2020-2023).

³⁷ Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.24

³⁸ Irish Aviation Authority, [State Plan for Aviation Safety in Ireland 2020 – 2023](#), p.13

³⁹ Irish Aviation Authority, [State Plan for Aviation Safety in Ireland 2019 – 2022](#), p.24-25

⁴⁰ Irish Aviation Authority, [State Plan For Aviation Safety in Ireland 2020 – 2023](#), p.32-33

⁴¹ Irish Aviation Authority, [State Plan for Aviation Safety in Ireland 2019 – 2022](#), p.8

Box 5 – Detailed action in respect of legal separation (SPAS 2020-2023)**M.014 Legal separation of IAA safety regulation and service provision functions****Safety issue**

In accordance with a decision by the Irish Government the safety regulation and air navigation services provision functions of the Irish Aviation Authority will be legally separated in the next few years. This major organisational change impacts the State Safety Programme and robust change management procedures must be applied to ensure there is no disruption to regulatory or air navigation services functions, during or after the change.

Safety objective

To ensure there is no disruption to regulatory functions and provision of air navigation services during the transformational project to separate the functions of safety regulation and air navigation service provision (ANSP) of the Irish Aviation Authority.

Actions

The IAA (Regulator) will apply change management and risk management processes to ensure that there is no loss or reduction of regulatory function during the transformation project to legally separate from the IAA ANSP and merge with CAR.	Q4 2021
The IAA (Regulator) will target ANSP change management and risk management processes as part of safety oversight planning, during the transformation project to legally separate the IAA ANSP from the regulator	Q4 2021

Status

Detailed work is ongoing to implement the government decision to separate the safety regulation and air navigation services provision functions of the Irish Aviation Authority. Project governance includes a high level steering group chaired by the Director General of Civil Aviation and reporting sub-committees as well as IAA Separation Working Group comprising eight workstreams (IT, Finance, HR, Procurement, Legal, Property, Branding & Communications) and reporting to an IAA Board sub-committee.

Legislative actions by way of a Heads of Bill (Air Navigation and Transport Bill 2019) to give effect to the Government policy, was approved by the Cabinet in June 2019. Further amendments to primary legislation is in preparation by the Department of Transport, Tourism and Sport.

The IAA Separation Working Group has been working on documenting the scope, timelines, costs and risks associated with the project, and conducted a number of individual and cross-functional workshops to assess alternative separation models including “Full Separation” and ‘Shared Services’. Following ministerial direction in December 2019, a subsidiary model is being developed as an interim measure pending enabling legislation to facilitate full separation.

Whereas the delivery of the transformation project itself is outside the scope of this document, the SPAS actions focus on the availability and continuity of regulatory functions and air navigation services during the transition period to the fully separated organizations and beyond.

The latest [Section 32 report](#) (March 2020) advised that, in the context of the Section 32 examination of the IAA, the relevance of the decision to legally separate was to ensure that no loss of safety performance occurred during the transition to the new regulator. The report indicated that, at the time of examination (Q2 and Q3 2019), both the IAA and consulted stakeholders indicated that no degradation of safety levels as a result of preparations being made for the separation had been noted.⁴² On foot of this, the report advised that:

To ensure that this remains the case, staff in charge of separation activities will need to remain conscious of the primacy of maintaining high safety standards as the project proceeds into implementation and transition.⁴³

In terms of progress, the report indicated that, at time of examination, the IAA and CAR were jointly devising a proposed organisational structure for the new regulator, to identify which roles could be filled with existing personnel as well as gaps that will need to be filled through external recruitment. However, concerns were noted that:

..competent inspectors on the regulator side may 'jump' to the ANSP or the wider industry post separation, leading to a shortage in knowledge and expertise. If it materialises, this could have a significant impact on the regulator, especially in SRD divisions where shortages of resources have been observed..⁴⁴

Further, in terms of communication, the report indicated that "most stakeholders" felt that (at time of examination) the IAA had not adequately engaged with them in respect of the separation process. To that end, the report stated that, whilst confidentiality is necessary at different stages of the separation process, the process itself would be "better served by more active and constructive engagement and communication by the IAA with its stakeholders".⁴⁵

In addition, the report referenced that the pace of the separation project was slower⁴⁶ than some in the Department of Transport, Tourism and Sport and IAA had expected, whilst acknowledging that some of the timescales associated with the transition were dependent on legislation and, thus, outside the direct control of the IAA. Nonetheless, the report advised that this should not impede the development of "detailed transition arrangements". Further, the report highlighted that the impact on safety regulation (both now and in the future) must be considered in the context of all

⁴² Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.iii

⁴³ Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.iii

⁴⁴ Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.24-25

⁴⁵ Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.25

⁴⁶ For instance, it was noted in [LSSIP Year 2019 for Ireland: Level 1 - Implementation Overview](#) that 2019 marked the beginning of a process to formally separate the regulatory function (NSA) and the service provision function of the IAA, with this separation planned to be officially completed by July 2020. (p.3)

decision-making. However, it did observe that there were “uncertainties within the IAA over the transition towards the new regulator”.⁴⁷

In respect of the separation project, the Section 32 report recommended that it be expedited (see Box 6 below).

Box 6 – Recommendation of Section 32 report re timeline of separation project

We recommend that the separation project is concluded quickly along agreed timelines and that meaningful transition arrangements are agreed and implemented by the IAA and the Commission for Aviation Regulation (CAR) – including in respect of preparing for the transfer of statutory responsibilities – while ensuring that safety levels are maintained throughout that process. We also recommend that clarity is provided on the legislative timetable.

Reproduced from [Section 32 report](#), p.25

Economic Regulation

One of the principal functions of the Commission for Aviation Regulation (CAR) is to “regulate the level of revenues that the Dublin Airport Authority may collect in airport charges levied on users at Dublin airport”.⁴⁸ This economic regulation of charges at Dublin Airport occurs under the [Aviation Regulation Act 2001](#) and in accordance with the [Airport Charges Directive](#). [Directive 2009/12/EC](#)⁴⁹ (Airport Charges Directive) concerns the charges paid by airport users (i.e. airlines) for the use of airport facilities, charges related to the landing, take-off, lighting and parking of aircraft, as well as to the processing of passengers and freight.⁵⁰ The main objectives of the Directive, which applies to all EU airports handling more than five million passengers per year and to the largest airport in each Member State, are set out in Box 7 below. In respect of this Directive, CAR is Ireland’s designated Independent Supervisory Authority and thus “responsible for ensuring parties comply with their obligations regarding consultation about airport charges and service quality and the provision of information”⁵¹.

Box 7 – Key measures of the Airport Charges Directive

- Non-discrimination between airport users, but allowing for modulation of charges on the basis of public and general interest (e.g. environmental issues) (Article 3);
- Allowance of common and transparent charging systems across airport networks (Article 4) and across airports serving the same city or conurbation (Article 5);
- Regular consultation of airport users by airport managers on the operation of the system of charges, the level of charges and quality of service; the right to seek intervention of the independent

⁴⁷ Helios, [Provision of an Examination of the Irish Aviation Authority in accordance with Section 32 of the Irish Aviation Authority Act, 1993](#), March 2020, p.iii

⁴⁸ Commission for Aviation Regulation, [Airport Charges](#) [last accessed 2 February 2021]

⁴⁹ This Directive was adopted on 11 March 2009 and transposed by Member States into national legislations in the period 2011-14. In the case of Ireland, the Directive was transposed in 2011 [[Source](#), p.20].

⁵⁰ European Parliament (2020) [Airport Charges Directive - Evaluation And Possible Legislative Action/After 2016](#). Legislative Train 12.2020

⁵¹ Commission for Aviation Regulation, [Airport Charges](#) [last accessed 2 February 2021]

supervisory authority (ISA), with the option to select alternative measures, equally involving the ISA (Article 6);

- Transparency by the airport manager over the basis for setting charges including requirements for information flow to and from the airport users (Article 7);
- Consultation of airport users on new infrastructure (Article 8);
- Flexibility to allow agreements relating to quality standards between airport managing body and the airport users (Article 9);
- Flexibility to allow airport managers to offer differentiated services to airlines (Article 10);
- The establishment of an independent supervisory authority (ISA) to ensure the correct application of the Directive's measures (Article 11).

Reproduced from [Commission Staff Working Document](#), p.12–13⁵²

An [evaluation](#) of the impact of the Directive noted that in the case of a large number of European airports, Member States apply economic regulation (such as light-handed economic regulation⁵³ and price cap regulation⁵⁴) which goes beyond the requirements of the Directive. This is in keeping with Article 1(5) of the Directive, which provides that the Directive is without prejudice to the rights of the Member States to apply additional regulatory measures that are not incompatible with the Directive – such measures might include economic oversight measures like approval of charging systems or level of charges.⁵⁵

Turning to the Irish context, [A National Aviation Policy for Ireland \(NAP\)](#) noted Dublin Airport is the only Irish airport which is currently subject to economic regulation of the airport charges it levies⁵⁶. Details in respect of the Further, it observed that the economic regulation of airport charges in Ireland involves “heavier regulatory intervention” than set down by [Airport Charges Directive](#), which provides for direct consultation between airports and airlines on airport charges, with disputes referred to an independent supervisory body. By contrast, the model utilised in Ireland involves the independent supervisory body taking on range of functions, including:

- Approving the maximum level of airport charges;
- Supervising the consultation process;

whilst being subject to specific statutory appeal procedures.⁵⁷

⁵² European Commission (2019) [Commission Staff Working Document - Evaluation of the Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges](#), July 2019

⁵³ This is characterised as a regulatory regime which encourages voluntary agreements between airports and airlines and allows the airport discretion in how it meets the regulatory targets. ([Source](#), p.90)

⁵⁴ This is characterised as a regulatory regime in which an airport is allowed to recover its forecast, efficient costs through the regulated charges, plus an additional return as a profit or reserve component. ([Source](#), p.90)

⁵⁵ Maurizio C, Leandro E, Leandro F, *et al.* (2018) [The Airport Charges Directive and the level of airport charges](#). JRC Technical Reports. Luxembourg: European Commission. (p.18,19)

⁵⁶ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.56

⁵⁷ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.56

CAR advises that, to date, it has chosen to employ price-cap regulation⁵⁸, which is underpinned by three statutory objectives:

- the efficient and economic development of Dublin Airport;
- the ability of the Dublin Airport Authority to operate in a financially viable manner;
- the protection of the interests of users and potential users of the airport.⁵⁹

The NAP observed that the subject of airport charges regulation featured in “many” of the submissions received⁶⁰, with issues raised ranging from the necessity of the regulation of airport charges to the nature of the funding and cost of regulation. Further, the NAP highlighted that difficulties with the current regulatory regime, which dates from 2001, have been identified on a consistent basis, with successive Ministers issuing Policy Directions to CAR in relation to its airport charges determinations and also that each of the airport charges determinations made by CAR has been subject to appeals and/or legal challenge.⁶¹ Noting that a number of submissions referred to difficulties concerning the regulation of airport charges, the NAP indicated that it was considered timely to conduct a comprehensive review of the airport charges regulatory regime – which was commenced in May 2015 by independent consultants.⁶²

This [report](#), produced by Indecon in March 2016, examined the regulatory regime for airport charges to ensure that it was “fit for purpose”.⁶³ It made recommendations across a range of areas – a summary of these are presented in Box 8 overleaf.

⁵⁸ CAR advises that the price cap is derived from a series of inputs known as ‘regulatory building blocks’, which are calculated at the time of a price cap determination. These building blocks are

- The regulatory asset base which in any given year is the sum of existing capital stock and a forecast of efficiently incurred new capital stock
- A return on an efficient capital stock
- Plus a depreciation charge on that capital stock
- Plus an estimate of efficiently incurred future operating expenditures
- Less an estimate of future commercial revenues.

The sum of these building blocks is divided by a forecast of passengers (also a building block) to give the maximum per passenger airport charge. [\[Source\]](#) Details of the 2019 Determination, which governs the maximum level of airport charges that daa may levy at Dublin Airport during the period 1 January 2020 - 31 December 2024, are available [here](#) (including an [interim review](#) published in December 2020 which takes account of the COVID-19 pandemic).

⁵⁹ Commission for Aviation Regulation, [Airport Charges](#) [last accessed 2 February 2021]

⁶⁰ An invitation for submissions formed part of the development of [A National Aviation Policy For Ireland](#), with 74 submissions received in response to an Issues Paper published by the Department of Transport, Tourism and Sport in February 2013 and over 70 submissions received in response to a draft National Aviation Policy which was published in May 2014 (p.4)

⁶¹ Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.56

⁶² Department of Transport, Tourism and Sport, [A National Aviation Policy For Ireland](#), August 2015, p.57

⁶³ Indecon, [Review of the Regulatory Regime for Airport Charges in Ireland](#), March 2016, p.i

Box 8 – Summary of recommendations from *Indecon report***Recommended Principles of Airport Regulation**

1. Only airports which hold significant market power should be subject to economic regulation.
2. Dublin Airport is the only airport in Ireland which is deemed to hold significant market power and as a result continued economic regulation is recommended.
3. The Airport Regulator and Policymakers should promote competition in the Airport market.
4. Periodic Assessments of the market power of Dublin Airport should be undertaken and if competition intensifies consideration could be given by the Regulator to change the regulatory approach.

Specific Form of Regulation

5. The Airport Regulator should continue to apply a price cap regime to airport charges.
6. A single till approach to the determination of airport charges as currently exists is recommended.
7. Changes within the Airport Regulatory Regime should be implemented to incentivise efficiency at Dublin Airport, to increase flexibility to changes in market conditions and to ensure capital investment proposals are warranted.

Alignment of Policy and Regulatory Objectives

8. A statutory basis for independent Airport Regulation should continue.
9. Amendments to the statutory objectives should be implemented to ensure a stronger focus is on interests of existing and future airport users.
10. Changes should be made to the scope of Ministerial Directions to focus on key issues of national importance which cannot be addressed within statutory objectives.
11. Any proposed Ministerial Direction on Capital Investment should ensure projects are first subject to rigorous cost benefit appraisals and evaluated as part of a consultation process.

Accountability and Appeals Process

12. Changes should be made in the regulatory regime in order to incentivise constructive engagement and more extensive consultation prior to the submission of proposals to the Regulator. The objective is to encourage bi-lateral negotiations and agreements between the airport and airline users within a regulatory regime.
13. Consideration should be given by the airport and users to a new consultative group with an independent chair prior to commencement of any determination process.
14. Additional research should be undertaken by the regulator on the views and preferences of passengers and cargo users on aspects of airport regulation.
15. The existing appeals process involving Ministerial appointments to *ad hoc* appeals panels should be abolished.
16. A strengthened independent appeals process should be established with powers to confirm or set aside and refer decisions back to the Regulator and with independent appointment of members.

Appropriate Organisational Structures

17. Further evaluation of options for a strengthened organisational structure for airport regulation should be undertaken.
18. A strengthened joint regulators network should be established with the objective of enhancing regulatory expertise.

Reproduced from [Indecon report](#), p.x

Following this independent review, the Department of Transport, Tourism and Sport conducted a stakeholder consultation process, with a view to preparing a policy statement on airport charges for

submission to Government before the end of 2016.⁶⁴ Subsequent to this, the [National Policy Statement on Airport Charges Regulation](#) was published in September 2017. It outlined proposed legislative amendments to the [Aviation Regulation Act, 2001](#) to give effect to changes to the current regulatory regime for setting airport charges at Dublin airport. Further, it advised that these changes had been informed by a review of the current regime, which included an independent assessment of its effectiveness and industry and public consultation.⁶⁵ The policy statement underpinning this [National Policy Statement](#) was set out as follows:

The overriding strategic objective of the economic regulation of airport charges in Ireland is to ensure that current and future airport customers are presented with **choice, value** and **quality services** which also meet the highest international **safety** and **security** standards.

Customers' interests shall be the primary concern of price regulation.

Regulation policy also recognises the importance of the timely provision of **capacity**, enhanced **connectivity**, strong **competition** and the financial **sustainability** of the aviation sector more generally, each of which is key to ensuring that the primary **interests** of the **customer** are served and that national economic **competitiveness** is advanced.

Reproduced {bold in original} from [National Policy Statement on Airport Charges Regulation](#), p.7

The key summary points from this policy statement are presented in Box 9 below.

Box 9 – Key summary points - [National Policy Statement on Airport Charges Regulation](#)

- Dublin Airport will continue to be subject to price regulation in recognition of its significant market power.
- Shannon and Cork airports face effective competition and therefore there is no basis for applying economic regulation of charges at these two airports.
- The primary purpose of the regulation shall be to protect and advance the best interests of current and future customers who use Dublin Airport.
- The Regulator shall no longer be mandated to have specific regard to the financial sustainability viability of the regulated entity in making a Determination.⁶⁶
- There will be a single stage appeals process which will involve taking appeals directly to the High Court or Commercial Court.⁶⁷

⁶⁴ Department of Transport, Tourism and Sport, [Review of Regulatory Regime of Airport Charges In Ireland](#), July 2016

⁶⁵ Department of Transport, Tourism and Sport, [National Policy Statement on Airport Charges Regulation](#), September 2017, p.3

⁶⁶ The [Policy Statement](#) advises that this is because the “need for an efficient, commercially viable airport company is intrinsic in the primary objective of protecting the interests of current and future customers”. [p.13]

⁶⁷ The [Policy Statement](#) advises that this reform is in keeping with the Government’s policy statement on economic regulation. [p.13]

- The statutory basis for Ministerial Directions in relation to the price determination process will be removed and replaced with a requirement on the Regulator to have regard to current Government aviation and airport policy.

Reproduced from [National Policy Statement on Airport Charges Regulation](#), p.3

In addition to these measures, other changes in the [Policy Statement](#) to the regulatory regime included:

- a statutory basis for the periodic review of the regulatory regime⁶⁸;
- the requirement for the Regulator to produce Strategy Statements and to report annually on progress against agreed performance indicators to be put on a statutory footing; and
- the establishment of a working group of key stakeholders “to examine and report on options to allow the regulated entity and its airline customers to reach price agreements amongst themselves, subject to Regulatory oversight”.⁶⁹

The [Second Progress Report](#) of the NAP (February 2019) advised the following in respect of the policy position of economic regulation⁷⁰:

- A revised Policy Statement on Airport Charges Regulation was published in 2017. This statement draws on an independent expert assessment by Indecon International Economic Consultants, as part of a public consultation process with inputs by the NCADF. The Policy Statement sets out the overriding strategic objective of the economic regulation of airport charges in Ireland, which is to ensure airport customers, are presented with choice, value and quality services that also meet the highest international safety and security standards. The Minister for Transport, Tourism and Sport is planning amendments to the Aviation Regulation Act, 2001 to give effect to these policy provisions, and the required work on this is now underway.
- In terms of economic regulation of Dublin Airport, the Department’s role is to ensure that a robust legal framework is in place which is sufficiently flexible to ensure that the Airport is able to grow its business, whilst also allowing CAR to undertake its functions to regulate the level of revenues that the airport authority may collect in conjunction with its role as the independent supervisory authority under the EU Airport Charges Directive. The Department has consulted with all interested parties in relation to the current regime and held a workshop specifically to allow stakeholders to explore the options to allow Dublin Airport and its airline customers to reach price agreements amongst themselves, subject to regulatory oversight. The results of these consultations will feed into the amendments to the Aviation Regulation Act, 2001.

Reproduced from [The National Aviation Policy Second Progress Report](#), p.25-26

⁶⁸ This is in accordance with [Regulating for a Better Future: A Government Policy Statement on Sectoral Economic Regulation](#) (July 2013).

⁶⁹ Department of Transport, Tourism and Sport, [National Policy Statement on Airport Charges Regulation](#), September 2017, p.13

⁷⁰ This policy position was set out as follows: “The system of airport charging for Ireland should be fit-for-purpose and appropriate to the Irish aviation market and allow that market to develop in line with the objectives of this Policy, while also taking into account the Government’s statement of general principles for sectoral economic regulation and requirements of the EU Airport Charges Directive.” [[Source](#), p.57]

Provisions in the Bill

New provisions

The following sections have been identified as new sections in the Explanatory Memorandum.

Enforcement powers

Section 72 of the Bill inserts a new Part IVA after [Part IV](#) into the *Irish Aviation Authority Act 1993*. It gives powers to authorised officers of the IAA for the purpose of enforcement of the company's functions under legislation. It provides that an authorised officer can enter premises and require records and information to be produced, maintained or retained. It also provides powers for an authorised officer to take copies and remove such records or information.

This section applies to the following persons:

- (a) an airport authority;
- (b) an air navigation service provider;
- (c) any person responsible for the carriage of passengers, mail or freight by air;
- (d) a supplier of ground handling services;
- (e) a tour operator or a travel agent;
- (f) a trader within the meaning of section 2 of the *Package Holidays and Travel Trade Act 1995*;
- (g) an aerodrome operator;
- (h) a person carrying on the business of the design, manufacture, maintenance, repair or modification of aircraft or parts for aircraft;
- (i) a person carrying on the business of the production of material (including fuel) for aircraft;
- (j) a person carrying on the activity of the operation of aircraft;
- (k) a person engaged in the training of persons engaged in any activities referred to in paragraphs (a) to (d) or (g) to (j)

The new Part IVA also provides that an authorised officer can apply for a warrant to the District Court when prevented from entering a premise. It sets out a list of actions that may result in a Class A fine on summary conviction for a person. It provides for search warrants and the conditions that apply to such warrants and it indemnifies a person performing their duties against all actions and claims. It further provides that fixed charge offences may be declared by Regulations drafted by the Minister for Transport in consultation with the Minister for Justice. It provides that a prosecution for the alleged offence will not be instituted if the payment of the fixed charge is made within the period specified in the notice of the charge.

Enforcement notice giving a direction

Section 78 of the Bill inserts new sections 74A to 74D into [s.74](#) of the *Irish Aviation Authority Act 1993* which deals with offences under the Act. It provides that the Irish Aviation Authority can issue an enforcement notice giving a direction to the IANS for failing to comply with legislation relating to the functions of the IANS. It also provides that the IANS can apply for the cancellation of such a direction to the High Court.

Review of market power of airport authorities

Section 85 of the Bill inserts a new section 8B into the [Aviation Regulation Act 2001](#) which allows the Commission (CAR) to review market power of airport authorities. The IAA (having absorbed the functions of the CAR) will have the power to carry out an assessment of market power held by an airport authority. The Minister for Transport may request such a review and the IAA must then carry it out. It provides the process for carrying out such a review and that a report will be provided to the Minister with recommendations on the regulation of airport charges. There is an obligation on the airport authority to provide information to the IAA for the purpose of the review.

Determination of airport charges.

Section 91 of the Bill amends [section 32](#) of the [Aviation Regulation Act 2001](#) to provide that the Commission may extend the period of a determination of airport charge by up to 2 years.

Section 92 of the Bill amends [section 33](#) of the [Aviation Regulation Act 2001](#) which deals with regulatory objectives in respect of airport charges. The objective of the Commission in making a determination on airport charges is to promote the reasonable interest of the users of the Dublin airport. It will also seek to promote safety, security and facilitate the efficient and economic development of the airport and its operation. In addition, it will seek to promote high quality and effective services. Furthermore, this section adds that the Commission will have regard to Government policy on aviation and climate change and the need to encourage competition.

Section 93 of the Bill inserts a new section 33A into the [Aviation Regulation Act 2001](#). It provides that the Minister may, at any time, carry out a review of the regulation of airport charges by the Commission under this Act. When carrying out a review under subsection the Minister, among other things, must consider any submissions made to him or her, the policies of the Government on aviation, and assess the effectiveness of the regulation of airport charges by the Commission under this Act. The Minister can make recommendations to the Government on legislative change or any other policy matters concerning the regulation of airport charges, following the review.

Section 94 of the Bill inserts a new Section 39A into the [Aviation Regulation Act 2001](#) after s.39⁷¹ to for an appeal to the High Court where a person is aggrieved by a determination on airport charges of the Commission. The High Court may make an order including that it affirms, sets

⁷¹ Which deals with an application to the High Court.

aside, amends or sends a determination for review to the Commission. An appeal does not affect the operation of a determination unless so specified by the court.

Further offences

Section 96 of the Bill amends [s.45A](#) of the *Aviation Regulation Act 2001* which allows the Commission to issue a direction to an operating air carrier to comply with [Regulation \(EC\) No. 261/2004](#). It is an offence not to comply with the direction and section 96 provides that where an air carrier has committed an offence it commits a further offence for each day that it fails to comply.

Directions to the daa

Section 97 provides that the Commission may direct the daa if it is of the opinion that the daa has not complied with Regulation 6, 9, 10 or 11 of the European Communities (Dublin Airport Charges) Regulations 2011 ([S.I. No. 116 of 2011](#)), to comply with them. It provides that the daa can make representations on the direction and that the Commission shall respond to any such representations. The daa may appeal the direction to the High Court. If the daa fails to comply with a direction the daa commits an offence and it commits a further offence for each day that it fails to comply.

Pre-legislative scrutiny (PLS)

In a letter to the Joint Committee on Transport, Tourism and Sport ('Committee') dated 24 June 2019, the Department of Transport, Tourism and Sport ('Department') requested that the Committee scrutinise the General Scheme of the Air Navigation and Transport Bill for the purposes of pre-legislative scrutiny (PLS).⁷² The Committee undertook scrutiny on 10 July 2019, meeting officials from the Department. At the conclusion of this meeting, the Committee agreed that the [transcript](#) of the meeting would constitute the report the Committee in respect of this matter.

A range of issues were discussed in the course of this engagement with Department officials, including:

- Costs⁷³ involved in separation of functions (e.g. nature/amount of costs; ultimate payee of costs; cost-benefit analysis);

⁷² Joint Committee on Transport, Tourism and Sport, [Committee Debate](#), 26 June 2019

⁷³ Financial considerations in respect of this legal separation are available in a [consultation document](#) (August 2019) produced by the Safety Regulation Division of the IAA, acting in its capacity as the National Supervisory Authority (NSA) for Ireland, which sought stakeholders' views on the contents of the draft Irish Performance Plan for [Reference Period 3 \(RP3\) \(2020 – 2024\) of the Single European Sky \(SES\)](#)

- Possible transition of staff and related HR issues (incl. working conditions; pensions and pension funds);
- Ultimate staffing/resource requirements to cover necessary functions (e.g. consumer protection/passenger rights);
- Oversight⁷⁴;
- Nature of engagement with relevant stakeholders;
- Economic regulation of Dublin Airport (incl. 2019 Determination); and
- Practicalities involved in separating out functions (e.g. security access within building).

[Performance Scheme](#), in line with the obligations outlined in Commission Implementing Regulation (EU) No 2019/317. Of relevance in the context of this Digest is *Appendix C – Institutional Separation* (p.120-123).

⁷⁴ Department officials noted that the commercial IAA company is not audited by the Comptroller and Auditor General but has its own auditors, with the Minister is represented as a shareholder at the AGM. With this proposed Bill, the IAA will fall under the remit of the Comptroller and Auditor General's remit.

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