



An Bille Aerloingseoireachta agus Aeriompair, 2020
Air Navigation and Transport Bill 2020

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE AERLOINGSEOIREACHTA AGUS
AERIOMPAIR, 2020
AIR NAVIGATION AND TRANSPORT BILL 2020**

EXPLANATORY MEMORANDUM

Purpose of the Bill

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.

Provisions of the Bill

The Bill contains 110 sections in 10 Parts and 3 Schedules. Of these, 47 sections are based on existing powers based on the equivalent sections in the Irish Aviation Authority Act, 1993. These sections have been indicated with an asterisk following the section number (*93 SX). 12 sections (Part 10) provide for the dissolution of the Commission for Aviation Regulation. Nine sections provide new powers and these have been indicated by (New). There are 15 sections dealing with governance indicated by (Governance) and the remaining sections are technical or transitional.

Part 1

Preliminary and General (Sections 1-8)

Part 1 provides for the short title, commencement, collective citation and interpretation, regulation making, directions, repeals and other technical matters.

Section

- 1. Short title and commencement and collective citation** provides the short title of the Bill which is the Air Navigation and Transport Act 2020. It also provides the commencement and citation provisions. The Minister for Transport can commence different provisions of the Bill on different dates.
- 2. Interpretation -general** is a standard provision that defines common terms used throughout the Bill. 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.

3. **Application to state aircraft** makes it clear that the Bill will not apply to state aircraft or aerodromes under the control of the Minister for Defence. It defines the term “state aircraft” to mean 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. (*93 S3)
4. **Regulations, etc.** provides that orders or regulations made under this Act must be laid before the Houses of Oireachtas except those made under sections 1(2) or 14.
5. **Directions by Minister to IANS** provides that the Minister for Transport may give general policy directions to the IANS relating to the performance of its functions and also in relation to matters in the national interest or regarding the State’s international obligations. The IANS is required to comply with any such direction. (*93 S7)
6. **Disposal of monies received by Minister** is a standard provision setting out that any monies 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. (*93 S8)
7. **Expenses** is a standard provision regarding expenses incurred by the Minister for Transport in the administration of the Act. (*93 S9)
8. **Repeals** provides for the repeal of section 23 of the Aviation Regulation Act 2001. Section 23 provides regulation-making powers to the Commission for Aviation Regulation to provide for a levy to fund its functions. This repeal is subject to section 68 of this Act to continue any regulations that exist. It also repeals section 43 of the Aviation Regulation Act 1993 related to charges by the company in respect of air navigation and aeronautical communications services.

Part 2 (Sections 9-38)

Formation and Administration of Irish Air Navigation Service

Part 2 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.

9. **Definition - Part 2** provides a definition for the term ‘superannuation benefits’ in this Part.
10. **Formation of Irish Air Navigation Service** 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.
11. **Capital formation** provides for the determination of the authorised share capital of the IANS by the Minister for Public Expenditure and Reform and provides that section 969(1) of the Act of 2014 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. (*93 S12)

- 12. Form of memorandum of association of IANS, etc.** provides that 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 Minister for Public Expenditure and Reform. (*93 S13)
- 13. Objects of IANS** provides the purpose of the IANS and lists its main objectives. These include to 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.
- 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. (*93 S14)
- 14. Conferral of additional functions on IANS** provides that the Minister for Transport may assign any additional functions related to civil aviation to the IANS. The Minister must consult the IANS in advance. (*93 S15)
- 15. General duty of IANS** is a standard provision setting out 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. (*93 S16)
- 16. Articles of association** provides that the articles 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. It provides that the number of directors shall be 7, 8 or 9 including the Chairman. It also provides a number of 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. In addition, it provides for the assignment of functions to subsidiaries and the level of investment through shares or loans. (*93 S17)
- 17. Restriction on alteration of memorandum or articles of association** provides that 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. (*93 S18)
- 18. Issue of shares, and creation of debt due, to Minister for Public Expenditure and Reform in consideration of transfer of property** provides that the IANS will issue shares to the Minister for Public Expenditure and Reform. It provides that the value of property transferred to the IANS shall become a debt of the IANS. 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. (*93 S19)
- 19. Issue of share to Minister** for Transport provides that share capital of €1 will be issued to the Minister for Transport by the IANS.

This will come from the Central Fund. 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** provides that share capital of €1 will be issued to all subscribers to the Memorandum of Association by the IANS, this will come from the Central Fund. (*93 S21)
- 21. Exercise of powers by Minister for Public Expenditure and Reform in respect of shares** provides that the Minister for Public Expenditure and Reform may exercise all the rights and powers of a shareholder. (*93 S22)
- 22. Transfer by Minister for Public Expenditure and Reform of shares** provides that the Minister for Public Expenditure and Reform can transfer shares only for the purpose of the Companies Act 2014 minimum number of members. (*93 S23)
- 23. Obligation of certain shareholders to hold shares in trust** provides that 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. The share must only be transferred to the Minister for Public Expenditure and Reform (or 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. (*93 S24)
- 24. Payment of dividends, etc., into Exchequer** provides that 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. (*93 S25)
- 25. Borrowing by IANS and subsidiaries** provides that 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. (*93 S26)
- 26. Guaranteeing by Minister for Public Expenditure and Reform of borrowing by IANS** provides that the Minister for Public Expenditure and Reform may guarantee loans of the IANS up to €105 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** provides that any monies due for payment by the Minister for Public Expenditure and Reform on foot of a guarantee provided 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. (*93 S29)

28. **Accounts and audits** provides that 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. (*93 S30)
29. **Annual report and giving of information to Minister** for Transport provides that the IANS must submit an annual report to the Minister for approval and to lay before each House of the Oireachtas. (*93 S31)
30. **Disclosure by directors of certain interests** provides a requirement to declare an interest in any contract, agreement or arrangement and procedures for a director of the IANS or subsidiary. 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 section 231 of the Companies Act 2014 are replaced by this section. (*93 S33)
31. **Disclosure by members of staff of certain interests** provides a requirement to declare an interest in any contract, agreement or arrangement and procedures for a staff member of the IANS or subsidiary. Any person that does not declare an interest and follow the procedures shall be guilty of an offence. (*93 S34)
32. **Prohibition on unauthorised disclosure of information** provides that a staff member, advisor, consultant or director of the IANS or subsidiary shall not disclose confidential information, received 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. (*93 S35)
33. **Membership of either House of Oireachtas or European Parliament** provides that a director of the IANS or subsidiary that 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. (*93 S37)
34. **Chief Executive** provides that first Chief Executive of the IANS shall 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 shall 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. (*93 S38)
35. **Remuneration, etc., of staff** provides that 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. Furthermore, 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. (*93 S39)

- 36. Transfer of staff of IAA to IANS** provides that 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 shall determine whether a person transfers or not, in consultation with staff representatives. It also provides that any previous service in the civil service or IAA will be reckonable subject to the relevant legislation listed. (*93 S40)
- 37. Superannuation** provides that 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. The resolution of any dispute in relation to pension benefits will be determined by the Minister for Public Expenditure and Reform. 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. (*93 S41)
- 38. Acquisition of land and entry onto land by IANS** provides that the IANS may 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 section 19 and the Second Schedule of the Air Navigation and Transport (Amendment) Act, 1998 shall apply to the IANS. This relates to the right of entry on land by the company and provisions relating to compulsory acquisitions. (*93 S42)

Part 3 (Sections 39-42)

Fees and Charges of Ians

Part 3 provides the IANS charging structure for air navigation, communication and other services. It also provides enforcement powers to the IANS to collect charges.

- 39. Charges by IANS in respect of air navigation and aeronautical communications services** provides that the IANS may make regulations requiring fees for air navigation or communication services to be paid to itself, Eurocontrol or the Minister for Transport. These regulations must have the consent of the IAA and may provide that the charge is made and recoverable outside the State. The regulations 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. Any such records may be used in any court action to recover fees. Until

regulations are made the IAA will continue to collect fees and the IANS can recover its costs from the IAA. (*93 S43)

40. **Other charges by IANS** provides that the IANS may 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. (*93 S44)
41. **Recoupment by Minister of certain costs of IANS** provides that the Minister for Transport may issue directions to the IANS exempting certain classes of users from fees for its services. The IANS must comply with these directions and 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. (*93 S45)
42. **Detention and sale of aircraft by IANS for unpaid air navigation and aeronautical communications services charges** provides that the IANS has the power to detain aircraft under section 40 of the Air Navigation and Transport Act 1998 for failure to pay for services. (*93 S45A)

Part 4 (Sections 43-46)

Provisions in relation to Eurocontrol, International Agreements and Certain Organisations

Part 4 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.

CHAPTER 1

Provisions in relation to Eurocontrol

43. **Venue for proceedings for recovery of sums due to Eurocontrol** provides the jurisdiction that applies for the recovery of amounts due to Eurocontrol for air navigation services or aeronautical communications. It may 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. (*93 S49)

CHAPTER 2

Provisions in relation to the International Civil Aviation Organisation, International Agreements and certain organisations

44. **Expenses of international organisations** provides that the Minister for Transport shall pay, from monies provided by the Oireachtas, for membership, organisation and operation of international organisations, including Eurocontrol, the European Civil Aviation Conference or any other international organisation. The Minister will consult with the IANS on other international organisations whose functions relate to the IANS functions. The IANS shall reimburse the Minister for these payments. (*93 S61)
45. **Attendance of IANS at meetings of or organised by certain international organisations** provides that the IANS may attend meetings of or arranged by Eurocontrol or any other international organisation of which the State is a member. The meeting must relate to the functions of the IANS. Where matters in addition to

civil aviation are to be discussed, the consent of the Minister for Foreign Affairs is required. The ANS provider 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 report to the Minister on those meetings whenever requested by the Minister. (*93 S62)

- 46. Indemnification of staff** provides that the IANS shall indemnify against actions or claims staff of the IANS while discharging their duties carried out in a bona fide manner.

Part 5 (Sections 47-48)

Miscellaneous

Part 5 provides for offences for aircraft and a transitional provision related to local authority rates.

- 47. Offences** provides it is an offence for an aircraft and hence the pilot or operator of an aircraft to contravene a provision of this Act or other listed instruments. The penalty for such an offence can be either on summary conviction a class A fine and/or imprisonment for up to 6 months or on indictment a fine of up to €150,000 and/or imprisonment for up to 3 years. An offence related to either charges under section 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. It also provides that on indictment 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. (*93 S74)
- 48. Charge of rates on property of IANS** provides that liability for local authority rates will transfer from the IAA to the IANS from the beginning of the financial year following vesting day. (*93 S69)

Part 6 (Sections 49-55)

Transitional Provisions

Part 6 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.

- 49. Continuance of certain instruments** provides for listed instruments to 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. (*93 S75)
- 50. Continuance of pending legal proceedings** provides for legal proceedings to continue after vesting day and responsibility to move to the IANS where it is related to an IANS function. (*93 S76)
- 51. Transfer of land** provides that land and associated rights may be designated by the Minister for Transport, to be transferred to the IANS on vesting day or within a year without conveyance. 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. (*93 S77)

52. **Transfer of other property** provides that 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. (*93 S78)
53. **Transfer of rights and liabilities** provides that any right or liabilities from an IAA contract or commitment related to a function of the IANS shall transfer to the IANS. The Minister for Transport may certify such a transfer. (*93 S79)
54. **Transitional financial provisions** provides that 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. (*93 S80)
55. **Liability for loss occurring before vesting day** provides that any claim related to the functions of the IANS that is in existence or made after vesting day shall lie with the IANS except where the IAA is insured for such damages or costs. Any outstanding judgements 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. (*93 S81)

Part 7 (Sections 56-78)

Amendment of Irish Aviation Authority Act 1993

Part 7 provides for amendments to the Irish Aviation Authority Act 1993. These amendments cover governance, funding and enforcement arrangements for the IAA. It also has some technical amendments.

56. **Amendment of section 2 of the Act of 1993** provides that in the Irish Aviation Authority Act, 1993 the definition of a record includes 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** provides a technical amendment to the Irish Aviation Authority Act, 1993 to refer to the first Schedule (“Schedule 1”) now that the Act will have two schedules.
58. **Amendment of section 16 of Act of 1993** provides that 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. (Governance)
59. **Amendment of section 17 of Act of 1993** provides that the number of directors of the IAA shall be 7,8 or 9 and shall serve terms of up to 5 years except for the ex-officio director, the Chief Executive. (Governance)

- 60. Amendment of section 26 of Act of 1993** provides that 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. (Governance)
- 61. Amendment of section 27 of Act of 1993** provides that the Minister for Transport may guarantee borrowings of the IAA up to €32m and this limit can be amended by the Minister with the consent of the Minister for Public Expenditure and Reform. (Governance)
- 62. Advances and grants by Minister to the company** provides that 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. (Governance)
- 63. Amendments of Act of 1993 - insertion of new sections 29A and 29B** provides that the 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 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 having regard to the statement of strategy. (Governance)
- 64. Amendment of section 32 of Act of 1993** provides that the Minister for Transport, at least every 5 years, shall 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. (Governance)
- 65. Annual aviation safety performance statements** provides that the IAA shall 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. (Governance)
- 66. Amendment of section 38 of Act of 1993** provides that 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. 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. (Governance)
- 67. Remuneration, etc., of staff** provides that 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. (Governance)

- 68. Other charges by company** provides that the IAA may charge for its functions under any legislation, any services provided or property sold, hired or leased. Furthermore it may charge for its functions under the European Legislation listed in Schedule 2. Regulations related to a levy made under section 23 of the Aviation Regulation Act of 2001 shall continue until the IAA revokes them.
- 69. Amendment of Act of 1993 - substitution of section 58** provides that the IAA must consult with the Minister for Transport when making an order to give effect to the Annexes to the Chicago Convention. (Governance)
- 70. Amendment of section 59 of Act of 1993** is a technical amendment to change “the Schedule” to “Schedule 1” as there will now be two schedules to the Irish Aviation Authority Act, 1993.
- 71. Amendment of section 60 of Act of 1993** provides that 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 Irish Aviation Authority Act, 1993.
- 72. Amendment of Act of 1993 - insertion of [new] 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. (New)
- 73. Amendment of section 67 of Act of 1993** is a technical amendment to the Irish Aviation Authority Act, 1993 required as there is now more than one schedule to that Act.
- 74. Amendment of section 72 of Act of 1993** is a technical amendment to the Irish Aviation Authority Act, 1993 required as there is now more than one schedule to that Act.
- 75. Substitution of Schedule to Act of 1993** provides that Schedule 2 of this Bill is inserted as Schedule 1 of the Irish Aviation Authority Act, 1993.
- 76. Amendment of Act of 1993 - insertion of Schedule** provides that Schedule 3 of this Bill is inserted as Schedule 2 of the Irish Aviation Authority Act, 1993.

- 77. Accountability of company etc., to Committees of Oireachtas** requires the IAA and its Chief Executive to appear before a Committee of the Houses of the Oireachtas. They shall account for the performance of the IAA's functions, when requested, and have regard to any recommendations of the Committee. (Governance)
- 78. Amendment of Act of 1993 - insertion of new sections 74A to 74D** 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. (New)

Part 8 (Sections 79-80)

Restructuring of IAA - Supplementary Provisions

Part 8 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.

- 79. Definitions – Part 8** sets out the two definitions used in this Part.
- 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 (Sections 81-98)

Amendment of Aviation Regulation Act 2001, etc.

Part 9 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.

- 81. Definition - Part 9** provides a definition for the Act of 2001 in this Part.
- 82. Amendment of Act of 2001** is a technical amendment to replace the full title of the Regulations of 2011 with a reference.
- 83. Amendment of section 2 of Act of 2001** inserts definitions into the Act of 2001 for the Regulations of 2011 and for a strategy statement.
- 84. Amendment of section 7 of Act of 2001** deletes the reference to aviation terminal services charges in the Act of 2001 section 7. 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** provides 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. (New)

- 86. Amendment of section 10 of Act of 2001** provides that 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. (Governance)
- 87. Amendment of section 17 of Act of 2001** removes the reference to an aviation terminal services provider from the list of interests.
- 88. Amendment of section 26 of Act of 2001** provides that the Commission 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.(Governance)
- 89. Amendment of section 27 of Act of 2001** removes statements of strategy from the general reports provided for in that section.
- 90. Amendment of Act of 2001 - insertion of new sections 27A and 27B** 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. It provides that the Commission shall 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. (Governance)
- 91. Amendment of section 32 of Act of 2001** provides that the Commission may extend the period of a determination by up to 2 years. (New)
- 92. Amendment of section 33 of Act of 2001** provides that 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 shall also seek to promote safety, security and facilitate the efficient and economic development of the airport and its operation. In addition, it shall 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. (New)
- 93. Minister may review regulation of airport charges by Commission** 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. It provides that a report of the review shall be submitted to Government, laid before the Houses of the Oireachtas and published on the internet. (New)
- 94. Appeal to High Court** 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. (New)
- 95. Amendment of section 42A of Act of 2001** removes the reference to a supplier of aviation terminal services provider from the list that the section applies.

96. **Amendment of section 45A of Act of 2001** provides that where an air carrier has committed an offence it commits a further offence for each day that it fails to comply. (New)
97. **Directions - Regulations of 2011** provides that the Commission may direct the daa if it is of the opinion that the daa has not complied with the regulations of 2011. It provides that the daa can make representations on the direction and that the Commission shall respond to any such representations. Furthermore 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. (New)
98. **Repeals and savings** provides that sections 35,36, 38 and 40 of the Act of 2001 are repealed, however any section 40 appeal may still be requested for any determination made prior to this section commencing. A person may appeal either through section 40 or section 39A but not both.

Part 10 (Sections 99-110)

Dissolution of Commission for Aviation Regulation

Part 10 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.

99. **Definitions - Part 10** provides definitions to be used in Part 10.
100. **Dissolution day** provides that the Minister for Transport shall set the day for dissolution of the Commission for Aviation Regulation.
101. **Dissolution of Commission** provides that the Commission shall be dissolved on dissolution day.
102. **Transfer of functions to IAA** provides that, on dissolution day, all functions of the Commission shall transfer to the IAA and all references to the Commission in legislation shall mean a reference to the IAA.
103. **Transfer of staff of Commission to IAA** provides that all staff of the Commission shall transfer to the IAA on dissolution day on no less beneficial terms and conditions. Any previous service of a person transferred from the Commission to the IAA will be reckonable for pension purposes and subject to other relevant legislation listed.
104. **Transfer of land and other property of Commission** provides that 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** provides that 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** provides that that 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. Any agreement or judgement 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.

- 107. Provisions consequent upon transfer of functions, assets and liabilities to IAA** provides that 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** provides that nothing in this part 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** provides that the IAA shall 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 schemes or arrangements** provides that 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. 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

European Regulations under which IANS may impose charges

Schedule 1 lists the European regulations under which IANS may impose charges. These relate to air navigation service provision and communications.

SCHEDULE 2

Schedule 2 becomes the first schedule to the Act of 1993. It lists the Annexes to the Chicago Convention that are conferred on the IAA.

SCHEDULE 3

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.

Nollaig, 2020.