

Opening Statement to Oireachtas Joint Committee on Transport, Tourism and Sport

15 May 2019

Introduction

Chairman, the Minister has asked me to thank you and the Committee Members for setting aside the time to facilitate pre-legislative scrutiny of the General Scheme for the Aviation Regulation (Amendment) Bill 2018.

The Government agreed, in November 2018, to the drafting of legislation to give effect to the objectives of the National Policy Statement on Airport Charges Regulation. Under the Aviation Regulation Act 2001, the Commission for Aviation Regulation (CAR) regulates airport passenger charges levied at by *daa* at Dublin Airport. Under the regulatory process set out in the current Act, CAR establishes the maximum charge per passenger that the *daa* can levy at Dublin Airport over the following five-year period. This is effectively a price cap on what the *daa* can charge airlines for various services provided by the *daa*.

Within the limits of this overall price cap, daa sets variable annual charges in respect of specific services, such as aircraft landing and parking.

In 2015, the Department initiated a review of this regulatory model, involving an independent economic assessment and report by Indecon International Economic Consultants and a public and industry consultation process in 2016. As a result, the revised regulatory policy - *the National Policy Statement on Airport Charges Regulation* - was devised and approved by Government and was published in September 2017. The General Scheme contains the necessary legal amendments required to give full effect to the revised policy, as set out in the Statement.

The key points of that Policy Statement, which this General Scheme addresses, are:

- Dublin Airport will continue to be subject to price regulation in recognition of its significant market power.
- The primary purpose of the regulatory regime shall be to protect and advance the best interests of current and future customers who use Dublin Airport.

- CAR shall no longer be mandated to have specific regard to the financial sustainability and viability of the daa in making a Determination.
- There will be a single stage appeals process which will involve taking appeals directly to the High Court.
- The statutory basis for Ministerial Directions in relation to the price determination process will be replaced with a requirement on CAR to have regard to current Government aviation and airport policy and other relevant stated policy positions, including national economic development and climate change. While Ministerial Directions are justified to ensure alignment with Government policy and issues of national significance, Ministerial Directions on issues already incorporated into or – potentially – at odds with statutory objectives may undermine the independence and authority of CAR.

Furthermore, it is proposed to:

- Provide CAR with the powers of direction to in its relationship with daa to ensure there is effective consultation and transparency in setting the

individual airport charges within the overall price cap; and that the charges do not unfairly discriminate between airport users. CAR currently has a similar power of direction in its relationship with the Irish registered airlines under Section 45A of the Aviation Regulation Act 2001. That section applies where an airline is failing to comply with EU Regulations on passenger compensation and assistance for delayed flights.

- It is also proposed to transfer the existing Ministerial functions relating to transparency of air fares to CAR;
- To provide a statutory basis for the periodic review of the regulatory regime;
- To require CAR to produce Strategy Statements and provide a statutory basis for performance reporting against published objectives and goals by CAR; and, finally
- To provide CAR with the power to make regulations to allow the daa and airlines to make some commercial agreements - in a fair and transparent manner – on a bi-lateral basis without direct regulatory instruction.

Taken together, the proposed amendments represent a strengthening of CAR's hand in its relationship with the daa. It is fair to say that daa would probably prefer a different policy direction, but the approach is in keeping with the Government's broader regulatory reform agenda. That agenda – which is set out in the Government Policy Statement on Sectoral Economic Regulation - represents a meaningful change in the overarching purpose of economic regulation, whereby it places the rights and interests of the consumer formally ahead of those of the regulated industry – in this instance the airport company. The focus of these reform proposals is to secure -through price regulation - outcomes that are in the best interests of the people who use the airport, rather than necessarily the airport itself. However, of course, a highly connected, financially stable, service focused airport – with a properly funded medium term investment plan – is in the interests of both airport users and the company.

General Scheme

If it is agreeable to the Committee, I propose now give a brief overview of the main parts of the General Scheme.

It comprises 10 Heads.

- Head 1 is a standard provision providing the short title and commencement.
- Head 2 is a standard provision setting out the interpretation.
- Head 3 amends the ability for the Minister to make a Direction to CAR where that direction relates to its decision making around airport charges. In its place, Head 6 will expand on the criteria that CAR will need to regard in making a Regulatory Determination.
- Head 4 puts the requirement for CAR to produce and publish a Statement of Strategy on a statutory footing, and requires it to report on progress.
- Head 5 enables CAR to provide, through Regulations, for regulatory flexibility.
- Head 6 outlines the hierarchy of objectives that the CAR must strive to achieve. It sets the **primary objective as being to protect and advance the best interests of users of the airport**. It sets out that CAR must have due regard to Government Aviation Policy,

Government policy on **climate change** and the **promotion of competition**.

- Head 7 replaces the appeal process - whereby the Minister would appoint a panel of aviation experts to review a determination of CAR - with an appeal directly to the High Court.
- Head 8 provides for a review of the airport charges regulatory regime, at least every seven years. This is in line with the Government Policy Statement on Sectoral Economic Regulation from 2013.
- Head 9 provides the power of direction to CAR to ensure there is effective consultation, there is transparency in setting airport charges and that the charges do not discriminate amongst airport users.
- Head 10 transfers the functions relating to transparency of air fares to CAR, from the Minister. There is an obligation on carriers to make prices of air fares more transparent - for example - making information on the full price of an airline ticket to be paid available (including all taxes and charges) at all stages of the booking process, and also in advertisements. These functions are currently with

the Minister. However, the Department considers that Commission for Aviation Regulation is the appropriate body for this function, given its existing consumer protection roles relating to air passengers.

The General Scheme set out the proposed changes to the current regulatory regime for setting airport charges at Dublin Airport, as set out in the *National Policy Statement on Airport Charges Regulation*. The measures will enhance regulatory performance and oversight, and it will strengthen both the authority and the independence of CAR. It will also streamline the appeals process, which is in everyone's interest. The overall approach, and many of the measures proposed in the General Scheme, is – as I have said - also in keeping with the principles set out in the Government Policy Statement on Sectoral Economic Regulation which was published in 2013.

In summary, the proposed amendments:

- Strengthen the Regulator's hand in its relationship with the daa; and
- Refocus the overarching purpose of economic regulation, placing the rights and interests of the

consumer formally ahead of those of the airport company.

It is intended that the General Scheme will form the basis of the Aviation Regulation (Amendment) Bill, to be drafted with the Legal advice of the Office of the Attorney General.

To assist the Committee with its consideration of the General Scheme, I have provided a number of documents which outline the policy context and implications. These include the National Policy Statement on Airport Charges 2017, the Government Policy Statement on Economic Regulation 2013, a Departmental briefing document and a Regulatory Impact Assessment.

I and my colleagues look forward to assisting the Committee in your consideration of this General Scheme.

Thank You.