

DÁIL ÉIREANN

AN COMHCHOISTE UM IOMPAR, TURASÓIREACHT AGUS SPÓRT

JOINT COMMITTEE ON TRANSPORT, TOURISM AND SPORT

Dé Céadaoin, 3 Deireadh Fómhair 2018

Wednesday, 3 October 2018

The Joint Committee met at 1.30 p.m.

MEMBERS PRESENT:

Deputy Mick Barry,	Senator Frank Feighan,
Deputy Kevin O’Keeffe,	Senator John O’Mahony.
Deputy Robert Troy,	

In attendance: Deputy Josepha Madigan.

DEPUTY FERGUS O’DOWD IN THE CHAIR.

Business of Joint Committee

Chairman: I remind members to turn off their mobile phones as they cause interference with the broadcasting equipment. I propose that we go into private session. Is that agreed? Agreed.

The joint committee went into private session at 1.34 p.m. and resumed in public session at 1.35 p.m.

Chairman: Before we commence the main business, I wish to turn to correspondence No. 2013/330, an email from Deputy Browne stating he was recently in contact with the Sports Horse Alliance group, which is seeking an opportunity to appear before this committee. It is proposed to consider this request on our work programme. Is that agreed? Agreed.

Nos. 2018/331(a) and 2018/331(b) are emails from Deputy Ryan on the proposed Metro-Link project, requesting that, if possible, the National Transport Authority, NTA, be invited to return.

On Nos. 2018/336(a) and 2018/336(b), an email dated 21 September was received from the NTA attaching a letter concerning proposed changes to the Dublin core bus network and a letter concerning BusConnects Dublin network redesign. It is proposed to revisit this issue once the NTA report on its consultation is available and published. Is that agreed? Agreed.

Nos. 2018/332(a) and 2018/332(b) concern an email from Mr. Caoimhghín Whyte, dated 5 September, attaching a letter on concerns about the state of the driving school industry, and a letter from Mr. Caoimhghín Whyte concerning the state of the driving school industry. I propose to consider this in the context of our work programme for 2019. Is that agreed? Agreed.

Nos. 2018/333(a) and 2018/333(b) concern an email from Mr. Shane Bradley, dated 14 September, attaching a letter from the general manager of Aer Rianta. It is proposed to note this correspondence. Is that agreed? Agreed.

No. 2018/334 is an email from Ms Cindy Barry dated 11 September, to me, as Chairman. I have forwarded it to Irish Rail. We will just see what the reply is. It has to do with a timetabling issue.

No. 2018/335 is a letter from Bus Éireann concerning the safety of Bus Éireann contracted school bus services. It is proposed to convene a meeting on this matter as soon as the committee schedule permits. Is that agreed? Agreed. It is an important issue.

General Scheme of the Airport Noise Regulation Bill 2018: Discussion

Chairman: The purpose of today's meeting is the pre-legislative scrutiny of the general scheme of the airport noise regulation Bill 2018. In this regard, I welcome the following officials: Mr. Ronan Gallagher and Mr. Michael O'Connor, Department of Transport, Tourism and Sport; and Mr. Gabriel O'Duffy, Department of Housing, Planning and Local Government. They are all very welcome.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by

the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I invite Mr. Ronan Gallagher, principal officer at the Department of Transport, Tourism and Sport, to make his opening statement.

Mr. Ronan Gallagher: The Minister for Transport, Tourism and Sport has asked me to thank the committee for setting aside the time – at relatively short notice – to facilitate pre-legislative scrutiny of the general scheme for the airport noise regulation Bill 2018. One will recall the Minister’s appearance before the committee in July on this subject, where he explained that the Government has approved a process that envisages enactment of this Bill by the end of the year. That reflects recognition of the urgency required to implement the regulation, which came into effect more than two years ago. We are hopeful that the approach set out in this general scheme will provide us with a comprehensive and cohesive Bill later this month that will find favour with the Oireachtas. To reach that point, namely, a finalised draft Bill, this general scheme will be thoroughly reviewed by the professional drafting and legal advisory services in the Office of the Attorney General over the coming weeks.

The general scheme provides for all of the requirements contained in Regulation No. 598. In that respect, it introduces, for the first time, a bespoke and robust airport noise regulatory regime for Ireland. As the regulation applies only to major EU international airports, in Ireland it will apply only to Dublin Airport. That is highly unlikely to change for the far foreseeable future.

The general scheme sets out the process for the introduction of noise mitigation measures at Dublin Airport from the perspective of a custom-built legislative framework for noise impact and noise management, and it integrates this with existing environmental and planning and development laws and procedures. The regulatory process conceived in Regulation No. 598 and reflected in this general scheme is evidence-based and transparent, is subject to public consultation and includes provision for a robust appeals process.

Regarding noise regulation, to characterise Regulation No. 598 is to say that it sets out a structured approach to assessing and addressing noise at airports with the objective of facilitating airport development in a way that minimises, as far as is practicable, the noise impact of that expansion. It is intended to ensure that major European airports are developed in a sustainable manner and are subject to oversight and scrutiny, not just in terms of planning and environmental laws but, in the case of airports, specifically noise levels.

The regulation and, therefore, the general scheme, provides for the so-called balanced approach, which was conceived and developed at the International Civil Aviation Organization, ICAO, the UN body that governs global aviation under the Chicago Convention. The balanced approach is about ensuring airport noise is managed by applying a whole range of measures, and that the impact of these measures is fully realised before recourse is made to operating

restrictions. Under the UN's balanced approach, operation restrictions are considered as a last resort for airport noise management; to be applied when all other measures have been exhausted. In that respect, the balanced approach is designed to ensure that airports can still grow and that air connectivity can continue to be improved, as a key enabler of international trade and in the general interest of global access. What is proposed in this general scheme, therefore, is an airport noise regulatory regime that has been developed as international best practice and adopted as EU law.

Based on the regulation, the general scheme sets out a noise regulation regime that has not been in place heretofore, providing certainty to stakeholders and a framework for managing the often conflicting interests of those stakeholders in a fair and balanced way. It is careful to provide for public consultation. It sets out requirements for non-technical summaries of key documents, submissions and decisions during the process, and for the open, transparent publishing of applications and decisions throughout.

If it is agreeable to the committee, I propose to give a brief overview of the main parts of the general scheme. It comprises eight parts. Part 1 designates Fingal County Council as the competent authority, that is, the airport noise regulator, which has exclusive competence regarding operating restrictions at Dublin Airport, subject to an appeal. This part also outlines the funding arrangements for Fingal in its role as the airport noise regulator.

Part 2 outlines the regulatory process, which includes public consultation. Part 3 sets out the process to be followed when a noise problem has been identified and the powers of the airport noise regulator to act in such circumstances. It also makes provision for the airport authority to make an application to have current operating restrictions reviewed under the new system, and for the competent authority to make a regulatory decision under Regulation No. 598 on the most appropriate noise management measures for the next five years. These, in turn, will be reviewed in five years' time. It includes the facility for submissions from interested parties and for an appeal to An Bord Pleanála. Both the board and Fingal County Council must have regard to the ICAO balanced approach in coming to a decision.

Part 4 provides for ongoing monitoring, review and enforcement of the noise mitigation measures at the airport. The regulator will have the power to enforce compliance with such measures. Part 5 sets out the obligation of the airport authority, the DAA, to engage with the regulator on noise implications when considering development at the airport.

Part 6 sets out the operating restrictions notification requirements to the European Commission and the European Aviation Safety Agency, as provided for in Regulation No. 598. Part 7 sets out the obligation of the aircraft operator to provide information to the European Commission and the European Aviation Safety Agency as requested. This part also declassifies development at Dublin Airport as strategic infrastructure development for the purposes of planning applications. It will no longer be possible for the airport authority to apply directly to An Bord Pleanála for permission for development. It will have to, in the first instance, make an application to Fingal County Council, as used to be the case. The purpose of this is to align the planning and development process for the airport with the noise regulation process, that is, Fingal County Council as the first port of call and An Bord Pleanála as the appeals body. It disadvantages the DAA in terms of planning and development timelines, but it is necessary.

Part 8 also sets out the steps that must be undertaken as part of the Regulation No. 598 decision-making process to comply with any appropriate assessment requirements. An appropriate assessment is an assessment of the implications of a project on a site's conservation objectives.

This part of the Bill is modelled largely on Part XAB of the Planning and Development Act 2000.

I wish to draw the committee's attention to a number of documents submitted in advance of today's meeting, specifically the background briefing paper, which I hope has provided a useful initial guide to the proposed legislation which we are discussing, a copy of Regulation No. 598, upon which the general scheme is based, and two versions of the general scheme. One version is the clean version and the other version is a colour coded version, the purpose of which is to signpost for the committee all of the text in the general scheme which is either directly from Regulation No. 598, in other words, pretty much non-discretionary in terms of complying with EU law, or directly from existing domestic legislation related to planning, development and environmental protection, which is intended to make sure that the approach to implementing Regulation No. 598 is properly aligned and integrated with those areas, as necessary. The text which is not coloured is our draft text and describes how we see the Regulation No. 598 process working in an Irish context. It is our proposed implementation element. I hope members will find this coding useful during our discussion.

Chairman: I thank Mr. Gallagher for that and I appreciate his analysis. I now turn to the members and ask them to try to confine their comments to questions. I will start with the Fine Gael members, as is normal. Does Deputy Troy have any queries or questions?

Deputy Robert Troy: I welcome the opportunity to have this pre-legislative scrutiny of this legislation. Giving effect to the EU directive is long overdue.. It is more than two years since we commenced this process. Many bodies have been considered in terms of whether they would be more appropriate to be designated as the competent authority. Despite the Government taking this decision, there are still question marks as to whether Fingal County Council is the appropriate competent authority to deal with this EU directive. How does this proposal compare with other European countries? Has a single other local authority been appointed? The Minister alluded to the fact that this was happening in many European countries, but that is not the case. When one reads down the list of the various European countries, the competent authority tends to be their respective Department with responsibility for transport or an aviation agency. Does Mr. Gallagher consider that Fingal County Council is the appropriate body and has it the appropriate skills to deal with the complexities that this will entail?

Chairman: I would add a further question. As Fingal County Council gets an income from rateable valuation and from premises, how will the decision making be seen to be independent of that council in its role as a beneficiary of airport income?

Mr. Ronan Gallagher: To take Deputy Troy's question first, in terms of other member states, there is a mixed bag of how this has been implemented and, in a way, it reflects how member states organise their aviation policy and regulation. In some jurisdictions it is true that the transport department has taken responsibility for this. That tends to be in member states where the transport department directly regulates aviation as well, which is what was the practice in the 1990s when the Department was directly responsible for aviation regulation, but that is mostly done now by the Irish Aviation Authority, IAA, and the Commission for Aviation Regulation. I understand that Germany and the UK have gone down the road of local authorities. During the summer the UK implemented Regulation No. 598 in that way. We are confident in an Irish context that this makes sense. We have engaged with the European Commission to check that our ground on this is safe and it has not raised any issues on that and, in many respects, it has reinforced the idea that Fingal County Council is a sensible choice by virtue of the very strong relationship between Regulation No. 598 and a previous noise directive,

No. 2002/49, which is a much broader environmental noise directive for which Fingal County Council already has responsibility. The Commission views Regulation No. 598 as a top-up of that regulation. Much of the work done under the 2002 directive in terms of noise mapping and the preparation of a noise action plan, on which Fingal County Council has already been working this year, lead into Regulation No. 598. Therefore, there is a high level of synergy on that front. We are confident that Fingal County Council has expertise on the environmental side, but it will have to build up additional expertise in this area. However, it is already involved in monitoring and measuring noise levels in Fingal, specifically around the site of Dublin Airport. While giving it these new functions will certainly add extra work, it will be an extension of work it is already doing.

The issue of conflict has come up a few times at Question Time in the Dáil Chamber. As the Minister explained, rates revenue from Dublin Airport is approximately 15% of Fingal County Council's total rates income, but when all of the council's income is considered, the figure is about 8%. It is not an insignificant amount, but at the same time the council has many other sources of income, including local property tax from residents. We were very careful to examine the issue of conflict, but we are clear that given the way local authorities work, they often need to issue planning permission for commercial or residential properties and make decisions on zoning and planning, all of which give rise in due course to an income stream. Therefore, they have existing systems to ensure there are no undue influences or conflicts in that regard. We are confident in building on this.

Chairman: The Department is appointing the chief executive or his agent as the deciding person. I can understand that if I had professional knowledge of all of these issues, I would have to be an expert. Therefore, I presume the chief executive would have to be advised by an expert. Could he ignore that advice in the context of this legislation or would he be bound by it? If somebody were to make a recommendation, how could he overrule it if he were not an expert in the area? What factors would he take into account?

I call Senator Frank Feighan who will be followed by Deputy Robert Troy. People should feel free to come in and out.

Senator Frank Feighan: Mr. Gallagher talked about a bespoke noise regulation. It is encouraging that Fingal County Council has the expertise and competence for it. What other options did the Department consider? Were there other options? I understand that in areas throughout Europe local authorities have also been used. Were other options open to the Department, other than using Fingal County Council?

Deputy Robert Troy: I come back to what Mr. Gallagher said about how we compared with other European cities. How exactly have the other European countries transposed the directive into their national legislation? What competent bodies have been put in place for this purpose? Mr. Gallagher cited as examples countries that used their respective Department of transport as a competent authority. He has said they are more capable of doing it as the competent authority because their Department of transport is responsible for aviation. He has pointed out that in this country that responsibility lies with the Irish Aviation Authority. However, one of the reasons the authority was deemed not to be suitable to be the competent authority was a perceived conflict interest. If it is acceptable in another country, what was the problem here?

Head 3 states the provision designates the competent authority for the purposes of regulation and aligns the functions already undertaken by Fingal County Council under the environmental noise directive with the functions of the competent authority. Is it referring to the 2002

directive? What is the difference between that directive and Regulation No. 598/2014?

Mr. Ronan Gallagher: In response to Senator Frank Feighan, I would not like to characterise Fingal County Council as having full resources and expertise. It has made it quite clear that it will need to acquire some expertise. The benefit of the council in general is having institutional knowledge of how to run many of the processes that will be required to be run in putting Regulation No. 598/2014 out for public consultation, including the submission of data and that kind of thing. It does considerable work in meeting existing noise level requirements, a matter to which I will return.

What was the other part of the Senator's question?

Senator Frank Feighan: What other options did the Department consider?

Mr. Ronan Gallagher: I believe Deputy Robert Troy alluded to our track record in that regard. Our first option was to use the Irish Aviation Authority. While I was not there at the time, my sense is that the authority put up its hand. It is well resourced and competent. Therefore, we went a long way down the road, supported at the time by legal advice that it could be done. There were developments in case law at European level, but largely the issue of conflict came from the fact that the authority, as well as being regulator, also had a commercial wing that was providing air traffic control services. Therefore, in the end the conflict arose from it having a commercial interest in traffic levels at the airport. On the one hand, it regulates and, on the other, has a skin in the game in the development of the airport. It was felt that would be too much.

Reverting back to why the Department would not be an option, the State owns Dublin Airport. Therefore, in a way the Minister, with the Minister for Finance, is a shareholder. We might also have been facing the same questions about conflicts in that respect.

Other options were quite limited. Given the amount of time and resources put into exploring the IAA option and given the timeframes, we did not have much time for an extended beauty contest to see who might want this. In a way, there was a limited field. We looked at a few existing agencies, including the Environmental Protection Agency which was quickly ruled out by its line Department and the agency, I suppose, because of its inability to step up to the plate.

We also looked at the Commission for Aviation Regulation, but it is a small body. As it is an economic regulator, the very technical noise and environmental aspects, the scope of the mapping required and the carrying out of a public consultation process were beyond its capability within any reasonable timeframe. In the light of that, Fingal County Council became a very clear candidate.

Deputy Robert Troy asked about the 2002 directive. It is an important factor. The directive requires Fingal County Council to map noise levels in its area. As I am not an expert, committee members will need to cut me some slack in giving what will be a non-technical explanation. Part of it specifically relates to mapping noise levels and their impact at Dublin Airport. It is required to come up with a noise action plan. I believe last week or the previous week it published a draft noise action plan for Dublin Airport. Therefore, it does much of the groundwork. It measures noise levels at Dublin Airport and identifies the people living in the area who are affected by them. It identifies the scale in different estates and areas in Fingal. It also identifies the drivers behind it. It does all of this under the 2002 directive.

Regulation No. 598/2014 is an extra piece specifically related to airports. With the 2002 directive, Fingal County Council takes account of Dublin Airport, but it also considers the M50

and other generators of noise. Regulation No. 598/2014 specifically refers to the mapping of noise levels at the airport and then applies a balanced approach to identify how we can manage and mitigate noise levels at the airport using the International Civil Aviation Organization, ICAO, scheme which involves a series of measures, land use, aircraft technology and aspects such as landing patterns and traffic movements around the airport. A combination of things can be done to manage noise levels and if at the end of them they are not sufficient to bring the noise down to a reasonable level, operating restrictions, the levels at which they might be and how they might function at the airport, will be considered. Regulation No. 598 provides for that but the 2002 directive does not. The latter is a much more general piece about measuring and monitoring noise whereas Regulation No. 598 has a suite of actions that can be taken in response to it.

Deputy Robert Troy: In terms of the 2002 regulation, perhaps I misunderstood, but was a noise action plan not published recently?

Mr. Ronan Gallagher: A draft plan, yes.

Deputy Robert Troy: Is that the first one? Is there a requirement to do that annually, bi-annually or every three to four years?

Mr. Ronan Gallagher: It is to be done every five years, as far as I understand it. The time-lines actually fit in with Regulation No. 598/20014. What we are trying to do in this Bill is to have these two processes running in parallel and feeding into one another. It is a recurring piece and the 2002 directive and Regulation No. 598 both provide for periodic reviews, with monitoring in between. Assessments are made of the current position as well as the future position, particularly in the context of development plans at the airport and in the region as a whole, the noise implications of same and the steps that need to be taken to manage that into the future.

Deputy Robert Troy: Obviously, if the directive came into force in 2002, this must be the fourth mapping exercise. Is that right?

Mr. Ronan Gallagher: I do not know. The directive dates from 2002 but I am not quite sure when it came into effect and was implemented. I am not sure about that.

Deputy Robert Troy: Do any of Mr. Gallagher's colleagues know?

Mr. Gabriel O'Duffy: I think the regulations date from 2006.

Mr. Ronan Gallagher: The regulations came into force in 2006 so-----

Deputy Robert Troy: On that basis, this is the second or third report.

Mr. Ronan Gallagher: At least the second iteration, I would have said, although I am not sure what form it took.

Deputy Robert Troy: Can the witnesses confirm whether it is the first or second mapping exercise?

Mr. Ronan Gallagher: I cannot say for sure but I can find out for the Deputy.

Deputy Robert Troy: The directive dates from 2002 and was commenced in 2006, as per what Mr. O'Duffy said. It requires a periodic review every five years and we need to determine how well that is being implemented. The directive is 16 years old but was commenced 12 years

ago. It would be important to scrutinise how the directive was implemented before giving further responsibility to the organisation in terms of implementing Regulation No. 598. That is the rationale for my question.

My questions are very basic. We are aligning this new regulation with an earlier one and I would have expected-----

Mr. Ronan Gallagher: There are a couple of points there. In our dealings with the European Commission in particular, my sense is that Regulation No. 598 was introduced because despite the 2002 directive, noise management at EU airports was not as proactive as it should be. I do not know the details of the 2002 directive but I know it is not as prescriptive as Regulation No. 598. The regulation is very prescriptive in terms of what is done at airports. There is no doubt about the fact that it is an extra layer of regulation that was not there previously. In terms of the performance of Fingal in the context of the effectiveness of the regulation, it can be a difficult thing to measure. It lends itself to subjectivity too but from our perspective, introducing another party into this space would have created a very complex administrative space.

Chairman: Does Senator O'Mahony wish to ask a question?

Senator John O'Mahony: I do not want to jump ahead but Mr. Gallagher said that the planning application will have to go to Fingal County Council rather than directly to An Bord Pleanála. Does that have implications for development timelines or the growth of the airport? Perhaps this is not relevant, but in terms of the working through of this Bill, will there be implications for night time flights and a possible reduction in the number of same?

Mr. Ronan Gallagher: With regard to the planning piece, the decision to go back to the previous arrangement whereby the Dublin Airport Authority is not involved in the strategic development piece may seem, on the face of it, to be counter intuitive but is due to the fact that An Bord Pleanála is the appeals body under our planning structures. We did not want the situation to arise where An Bord Pleanála would be dealing with the planning application first time out and would also be the appeals body for that application. We had to do it through Fingal. In terms of whether it extends the timelines, we have been advised that it will not affect them materially. Even if it does affect them, we can feed that into our planning process and provide for it.

In terms of the night time flights, the Deputy is no doubt aware of the existing permission for a second runway. It includes operating restrictions which the DAA has said are deeply problematic for the airport in terms of its long-term development. In that context, the Bill proposes to allow for those operating restrictions to be run back through this new regulatory regime to see if there are alternative ways of mitigating noise at the airport. At the moment, those restrictions exist until such time as an alternative is found. The question of whether there is another way of managing noise at the airport that is not as prohibitive as the current operating restrictions will be posed through this Bill. That is part of what we are trying to provide for here.

Senator John O'Mahony: Is Mr. Gallagher saying that there cannot be negative unintended consequences as a result of this Bill that would affect the growth of the airport?

Mr. Ronan Gallagher: To be clear, the purpose of the regulation is to facilitate the development of airports in a way that properly balances out the noise impact. The aim is to find ways to allow airports to grow, within reason, while also taking steps to ensure that the impact of noise on those who live in the vicinity of airports is managed properly and does not get out of hand.

In terms of the outcome, it will be matter for the regulator to determine what is appropriate. I do not have any view on whether the current operating restrictions are too much or too little. All that will be put into the mix again but this time there will be a broader consideration of other measures that may be taken to manage noise.

Chairman: I want to be devil's advocate now and go back to a point I raised earlier. I see the potential for significant conflict between the views of communities, elected members and the chief executive, or his or her nominee, of the county council because the legislation as proposed does not allow the council to "influence or seek to influence". Does that preclude a debate in a council chamber? The statutory body has a view but when it meets the corporate body it cannot raise the issue with it. That is problematic.

Mr. Gallagher mentioned a number of bodies that were approached with a view to taking on this role. It is my view that regardless of whether those bodies wished to take it on, if it is the view of the Minister that they should do so, then they should. I do not think any body, whether it is the EPA or another body, should have a choice in that. It should be the most independent, qualified and competent authority, in my view. Was An Bord Pleanála considered in this context? Could An Bord Pleanála be the authority? In that way, people who live in the area, as well as those who work in the airport, could engage with a democratic debate in the council chamber, with the manager not being pulled one way or the other.

Mr. Ronan Gallagher: The Chairman has raised a number of issues. I will take them in reverse order and deal with the question about An Bord Pleanála first. The issue with An Bord Pleanála is that it makes decisions whereas what we need is a regulator that will also monitor and manage noise proactively. It does not have such executive functions and is not, therefore, appropriate.

In addition to that, because Regulation No. 598 needs an appeals mechanism it seemed obvious it would provide it. With regard to the choice of other agencies, I would not characterise it as people being able to step out of the limelight by choice. When we sat down with officials and the agencies and worked through it, it did not need a huge amount of in-depth analysis to work out the obvious problems and capacity issues. It lent itself to Fingal County Council being the competent authority. There is certainly no attempt in the general scheme of the Bill to cut across local democracy or the role of council members. That part reflects the norm in the planning process. It prevents - "interference" is not the right word - that type of link to specific decisions in the council's work on local area development planning. That will all be the big picture stuff.

Chairman: I appreciate that. What I am saying is the corporate body will meet and there is an agenda item on a recommendation on the regulation. Can they discuss it?

Mr. Ronan Gallagher: I do not know how a local authority works at that level. It is not my intention in the Bill to prevent discussions happening in the chambers. It is more about the distinctions between executive functions and the role of the elected members.

Chairman: What it says in the explanatory note is it will divorce the functions of the competent authority from any control or influence. The issue is how they are defined.

Mr. Ronan Gallagher: Sure.

Chairman: I think it is fine.

Mr. Ronan Gallagher: We will look at it.

Mr. Gabriel O'Duffy: With regard to the existing arrangements under the planning system, planning authority decisions on individual applications are made by the manager and he or she has to comply with the development plan adopted by the elected members. He or she can consider submissions made by the public, prescribed bodies, elected members, Deputies or whoever decides to put in a submission. Ultimately, he or she has to make the decision and if he or she wants to give a permission that is not in compliance with the development plan he or she has to go back to the elected members and they have to make that decision. The Bill provides that on any development that is part of a Regulation No. 598 decision, the manager can only make a decision about that element of development in his or her decision, which is in compliance with the development plan.

Chairman: The question is that this is outside the development plan because it concerns the regulator. It is to do with technology and noise as opposed to physical structures.

Mr. Gabriel O'Duffy: No. One element is that part of the solution to deal with the noise problem is that things to reduce noise might be built. Berms can be built. Measures such as that will be treated, in making the Regulation No. 598 decision, in the same way the manager would treat them if he or she got a planning application for them as a development.

Chairman: I recognise and support the principle of what the Department is doing but I just want to make sure that elected members have a clear authoritative voice in their chamber, whatever that voice is. I see huge conflicts there which I do not think are absolutely necessary.

Mr. Ronan Gallagher: We will pick up on that issue.

Chairman: It is really about how it will actually work.

Mr. Ronan Gallagher: There is no intention on our part to establish any precedents.

Chairman: I acknowledge that.

Deputy Robert Troy: I am sorry to return to this point but we need further clarification on the noise directive of 2002, which was implemented in 2006, in terms of how it has operated. I accept that greater regulation of noise at our airports was not a decision of the Irish Government but of the EU. It is a directive that has been imposed on all EU countries. From what the witnesses have said today, we need to make sure we get this right. We have to ensure it is the right body and that it has the capabilities to implement this directive. I have a worry because the directive is 17 pages long. One might talk about it being cumbersome, but the heads of the Bill is 73 pages long. In certain areas there seems to be duplication. I will give an example of that. Head 9.3 requires a parallel planning application with a noise assessment process. The application is to the same body. The planning application is submitted to Fingal County Council with the CEO as the line manager. The line manager for the noise assessment process is also Fingal County Council. Head 26 requires all development in the airport to be considered by the competent authority to assess the likely effect of the proposed development on the noise situation in the airport in addition to going through the ordinary planning process. We seem to have parallel procedures. We have talked about ensuring efficiency and ensuring it is non-cumbersome, which is the word Mr. Gallagher used, but it appears to be very cumbersome. It will be problematic. It will lead to significant delays. It is a worry in terms of the long-term sustainable development and growth of Dublin Airport. The Bill removes Dublin Airport from strategic infrastructure zoning. This has the potential to slow down the national aviation policy

and the long-term objectives and plans for Dublin Airport to grow as an international hub for transatlantic flights from mainland Europe. Can the witnesses please supply the committee with a list of countries and the competent authorities they have used? Will the witnesses supply the committee with information on how the EU noise directive of 2002 has been managed and rolled out by Fingal County Council since it was taken on board?

I have a number of other questions but perhaps the witnesses will answer those questions first.

Mr. Ronan Gallagher: The Deputy made a valid point about the Bill being cumbersome. The purpose of the duplication is to ensure that when the current operating restrictions, which are a result of planning permissions, are put through this new regulatory regime if there is cause to change them as a result of the application of the noise regulation it is safe to do so and that it can be done without being seen to undermine the planning process. Essentially what we are doing is looking again at the second runway through the prism of Regulation No. 598 and acknowledging there are planning related restrictions. The reason for that clunky bit to make sure we are not seen as just scratching off planning related pieces that the airport or the Department did not like. It is clunky to start with. That is not how it will happen in future. All that stuff will fall off. There is still some work to be done in getting to a Bill to put to the House which is clear about that interplay between planning and Regulation No. 598. The Deputy is right to identify it as a bit clunky. It will be necessarily clunky at the start and we hope it will be a bit less clunky when we get to the Bill stage.

Deputy Robert Troy: Nowhere in the directive is there a mention of a planning process. The whole purpose of the directive is to identify a competent authority that can deal with noise regulation. The airport needs certainty to deal with those two planning conditions. The residents also need certainty. That is supposed to be the purpose of the independent authority. We will have a parallel process by the same body, reporting to the same person, which seems bizarre.

Mr. Ronan Gallagher: Under primary legislation, decisions on what is allowed will be made based on what is in the Statute Book and in accordance with European law. The clunky bit to which the Deputy referred is meant to ensure the DAA and local residents will have certainty that a three-card trick is not being played and that the existing operating restrictions will be applied to the new regime. If it is subsequently decided that other measures must be introduced, they will be but subject only to public consultation. That is why it is clunky.

The regulation does not speak to planning and development issues. Some of the complexity in adapting it for use in Ireland stems from the fact that we are introducing it in the middle of Dublin Airport's development. No other member state is developing in that space. The directive envisaged being let loose for the future; it did not envisage any legacy issue.

Without speaking ill of a European regulation, when read from cover to cover, it does not move seamlessly from one step to the next. Frankly, it has been a job trying to interpret in what order things are to happen and when. That has also caused us a significant amount of grief. This is a much larger Bill than we ever would have liked, but we are trying to be as honest and transparent as we can, which is why we have ended up with it.

Deputy Robert Troy: I have a certain degree of sympathy for the officials. The captain of the ship has moved the goal posts a number of times; a great deal of time has been expended on the IAA and we are now trying to develop a robust authority within a tight timeframe. I respect

the fact that the Department is working within a timeframe, but we must get the Bill right. We do not need a complex authority or a parallel process. Mr. Gallagher should revisit these matters before the Bill is published. It is cumbersome and overly bureaucratic and will not be of benefit to the residents who have fears about noise regulation or the DAA which needs certainty in determining how the airport is to develop and grow. A key component is the noise abatement objective, but even in head 6 there is no clear timeframe. It is meant to happen “as soon as practicable after the commencement day”. One would have thought it would be the starting point of the process and that a clear timeframe would be set out in order that the process could be kept on track, that residents with concerns could feed into it and be aware of the timeframe and that the DAA could develop and grow its business. The wording “As soon as practicable” is vague and not good enough.

Mr. Ronan Gallagher: I need to revert to the Deputy on his point about other member states. We have some information with us. Does the Chairman wish me to read it or just provide it?

Chairman: As I do not know whether further issues will arise, it would be helpful if Mr. Gallagher were to take away the issues raised at the meeting and circulate his response.

Mr. Ronan Gallagher: On the particular points raised.

Deputy Robert Troy: It is fine to revert to me with information on what is being done in other member states. I expect Mr. Gallagher to be able to identify everything being done in all of them.

Chairman: Including on the models they use and how they work.

Mr. Ronan Gallagher: It will be different. For instance, in the United Kingdom there is an existing domestic piece-----

Chairman: I understand that. If Mr. Gallagher supplies the committee with the information it wants, we will not have a problem. I presume the Department will return when it is publishing the Bill.

Mr. Ronan Gallagher: Sure.

Chairman: The objective is to inform members. We are having a useful debate and want to facilitate the legislation, but, as Deputy Robert Troy stated, it has to be fit for purpose. Is that everyone’s opinion?

Deputy Robert Troy: Yes.

Chairman: Do members agree to conclude our consideration on the basis of those comments?

Deputy Robert Troy: Mr. Gallagher indicated that he wanted to reply to the question about the timeframe for meeting the noise abatement objective.

Chairman: I am sorry.

Deputy Robert Troy: Head 6 reads, “as soon as practicable”, but the wording is vague and gives no clear timeframe for how it will be implemented-----

Chairman: The Deputy is right.

Deputy Robert Troy: -----yet it is one of the main considerations. Head 8 - review of the noise abatement objective, states the “noise abatement objective for the airport shall be published with the noise action plan for the airport on the website of the Competent Authority once it has been defined”. Anyone watching this meeting would ask when that might be. How long is a piece of string? When will we know? It gives no certainty and does not alleviate the anxiety and worry.

Mr. Ronan Gallagher: Assuming we have an establishment day, the intention is for the noise abatement objective to kick off from then. There will be a period of eight weeks in which to produce one. The intention of the Bill is for there to be a noise abatement objective within eight weeks of it being enacted. Part VI explains how Fingal County Council will arrive at that objective, including the information to which it will refer in bringing the objective to fruition. The Deputy is right about the objective being the key first step, but we would not include a calendar date in primary legislation. It depends on when the Bill is enacted, but the intention is for it to happen within eight weeks of establishment. If we say that and then-----

Deputy Robert Troy: No. I am sorry, but, according to the explanatory note, it will not be within eight weeks of establishment. The explanatory note reads: “The Competent Authority shall invite submissions in relation to the draft noise abatement objective. Following the public consultation-----”

Mr. Ronan Gallagher: I am sorry. The Deputy is right.

Deputy Robert Troy: The explanatory notes continue: “and having considered any submissions, the Competent Authority shall define the noise abatement objective”. How long will it take to publish the draft noise abatement objective? My understanding is it will be not later than eight weeks after the process I have outlined. That is my reading of it, but perhaps I am wrong.

Mr. Ronan Gallagher: No. It was my mistake.

Deputy Robert Troy: We have no timeframe for how long it will take to reach that point.

Mr. Ronan Gallagher: We will examine the issue. The Deputy is right. We will see if we can define it. The Department’s intention is for it to happen without any delay, as everything will derive from it.

Chairman: Do members wish to ask further questions?

Deputy Robert Troy: On funding, is there a reason for the vagueness? It will be funded by the industry. What level of engagement has the Department had with the CEO of Fingal County Council? To be fair, Mr. Gallagher has acknowledged that an increase in the council’s capacity will be required. Have the additional resources that will be needed been identified? What is the ballpark figure for the funding that will have to be levied from the DAA?

I identified a further point while going through the documentation last night, but I cannot find it now. It was related to someone making an objection. In any fair process it is right and proper for someone with a legitimate objection be able to make it, but the fee remains to be set. I have found the relevant part. It reads: “Any submission must be made within a period of five weeks and must be accompanied by the appropriate fee which will be set out in regulations”. We might be waiting until the regulations are made. No one would have an issue with the making of a legitimate observation on a planning file or, in this case, noise regulation, but

are measures being taken to mitigate against persons who make objections that are not legitimate? I am thinking of what happened in Athenry. A significant development in this country was held up because of somebody on the far side of the country on the east coast, on whom the development was having no impact. Legitimate concerns need to be dealt with in a fair, open and transparent manner. We need to ensure that but we also want to prohibit any possibility of somebody putting in an objection illegitimately.

Chairman: I want to mention the finances. If the organisation is part of Fingal, will it be separately audited or how will it account for itself?

Mr. Ronan Gallagher: There are a couple of issues in this regard. On Deputy Troy's point on the right to make observations, how we strike that balance is the issue of the day. Mr. O'Duffy advised me that is being looked at in the planning context. In respect of the fees, we will mirror what happens in planning. It is €20 as far as I understand.

I have a couple of points on funding. Fingal has been asked to go off and work out what level of funding it will need. I do not want to give a ballpark figure and create a floor. For example, if it is a full review, there will be consultancy costs and, in the interim, there will be monitoring costs. We could speculate on a figure between €500,000 and €1 million. It might be less. I do not know but we will know before we get to the final stage.

We will look to provide accountability. Dublin Airport will be entitled to that and there will have to be engagement. The fees will be reflected in the regulations on publication and in consultation with the industry. That would be pretty normal for regulators. It is standard right across the Irish system that regulators impose an industry fee. The Exchequer does not fund them. We mirror whatever the normal practices are on accountability, transparency and reporting.

Deputy Robert Troy: I appreciate the witnesses' forbearance with this. They may need to come back in respect of a timeframe for the noise abatement objective, which is important. It is a critical component of this legislation. I would like that as quickly as possible. I cannot think of the wording but it is vague.

Mr. Ronan Gallagher: That is fine.

Deputy Robert Troy: A clear timeframe needs to be inserted. Proceeding with a a planning application running at the same time as an application to remove a condition on noise is again cumbersome. That has been acknowledged by Mr. Gallagher. I think he used the word "clunky" but clunkiness can cost money and cause delay. That needs to be revisited and the need for it examined. I am not a technical expert but reading through EU Regulation 598/2014, there does not appear to be any planning requirements. The appeal will be made to the one body.

Mr. Ronan Gallagher: Yes, that is the case.

Deputy Robert Troy: It appears that is unnecessary duplication. I would appreciate it if Mr. Gallagher would also examine that. We mentioned this earlier, and perhaps I missed it, but why was a decision taken to remove Dublin Airport from strategic infrastructure development? It certainly is of strategic importance in national policy, SID.

Mr. Ronan Gallagher: That took a bit of explaining to the Government as well and to officials. It is the natural fallout of what we are doing. The idea was not to have a situation where

we would have a planning application for a significant development at Dublin Airport directly to An Bord Pleanála and then appeals on noise at the airport also going to An Bord Pleanála. The board is supposed to be the independent appeals body for development at the airport in respect of noise and also the planning decision body for development. The only option was to revert to a two-step process for both where they needed to be aligned. Where development and noise were happening at the same time, they could go in tandem. In discussions on this with our colleagues in the Department of Housing, Planning and the Local Government and the DAA, we have a view that it should not make a material difference. There were not evidentially huge advantages to the DAA in respect of SID. It works differently for different areas but this is a one site one company issue and there was a feeling that the other system would work as well. We are, however, conscious of it.

We will endeavour to address the timeframe as Deputy Troy has suggested. We will try to be specific on that front. On the dual process, it is essentially a case of risk. We need to make sure we have as much cover as possible in the system for all parties, the DAA and the stakeholders. When we are looking at the legacy issue, we have to make sure there are not any chinks or avenues where people can say the process is not right and proper. That is what it is trying to do. Hopefully, over the next few weeks when we get into further detailed legal consideration, if we can find a more streamlined way that is legally sound, we will certainly go for it. We may end up, though, with something that is slightly suboptimal. The two Departments are clear on the general point about Fingal. The Government has decided it is the only game in town. Our challenge now is to make it work and give it the resources to make it work. It is in everybody's interest to have a process that is transparent but also comes to a decision in good time.

Deputy Kevin O'Keeffe: The big question is whether the witnesses are confident that the programme will be brought in at the end of the year as promised. Will the EPA have a role to play or has it been scratched from the entire process? Can it be used as a reference body for any issues that arise?

Mr. Ronan Gallagher: The EPA will not have a role specifically in respect of noise. It does have a broader role in respect of the environmental aspects. It is not scratched from the airport site, I imagine, but it will not have any role under EU Regulation 598/2014. We are at the mercy of this committee and the Dáil on the legislative framework. The Government has agreed a timeframe that is challenging but it is dictated by the certainty that needs to be given to the airport and to the residents in Fingal. That is where the urgency is. We are certainly planning for it but we are passengers on that front. We can only do so much.

Chairman: We certainly will facilitate, if we agree to go ahead. We will conclude our considerations subject to the officials taking on board the clearly expressed concerns of members when it comes to drafting the Bill and also that the witnesses supply the committee with the information requested by Deputy Troy, and others, in advance of the Bill being introduced.

Mr. Ronan Gallagher: Yes, that is fine. I thank the committee.

Chairman: I thank the witnesses.

The joint committee adjourned at 2.40 p.m. until 1.30 p.m. on Wednesday, 17 October 2018.