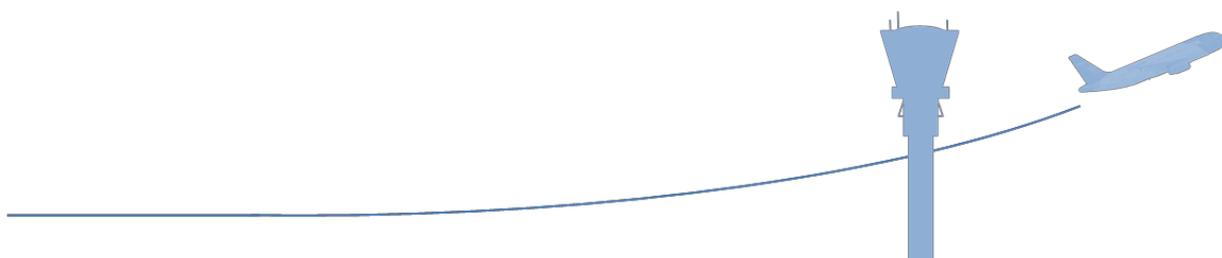


# **GUIDELINES FOR THE ADMINISTRATION OF SANCTIONS AGAINST SLOT MISUSE IN IRELAND**

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**Version 2**



## 1. BACKGROUND

- 1.1 Article 14.5 of Council Regulation (EEC) No 95/93, as amended by Regulation (EC) No 793/2004 (the “**Council Regulation**”) requires Member States to ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional slot misuse.
- 1.2 The European Communities (Airport Slots) Regulations 2013, Statutory Instrument No 460 of 2013, which took effect on 6 December 2013 (the “**Irish Regulation**”), implements Article 14.5 of the Council Regulation, and is applicable at coordinated airports in the Republic of Ireland. Dublin Airport is currently the only Irish airport designated as coordinated under the Council Regulation.
- 1.3 Airport Coordination Limited (“**ACL**”) is the coordinator of Dublin Airport, appointed by the Commission for Aviation Regulation (the “**Commission**”) under the Council Regulation.
- 1.4 These guidelines set out how the Irish Regulations will be applied by the coordinator.

## 2. TYPES OF SLOT MISUSE

- 2.1 Regulation 3(1) of the Irish Regulation sets out the types of slot misuse as:

*Where the coordinator is of the opinion that an air carrier has contravened or is contravening Article 14 of the Council Regulation by repeatedly and intentionally–*

- (a) operating air services at times significantly different from the allocated slots, or*
- (b) using or having used slots in a significantly different way from that indicated at the time of allocation and thereby has caused or is causing prejudice to airport or air traffic operations*

- 2.2 Examples of slot misuse covered by Regulation 3(1)(a) are:

- a) The operation of scheduled or programmed non-scheduled air services at times significantly different from the allocated slots.
- b) The repeated operation of ad hoc air services, including operations by General and Business Aviation operators (“**GA/BA**”), at times significantly different from the allocated slots.
- c) The operation of an air service without a slot allocated for that air service, as this constitutes operating at a time different from the slots allocated to all airlines at the airport.

- 2.3 Examples of slot misuse covered by Regulation 3(1)(b) are:

- a) The operation of air services with a larger seat capacity aircraft from that indicated at the time of allocation, as such operations cause prejudice to airport operations as they are likely to cause additional congestion or queuing for passengers using the terminal building.

- b) The operation of air services with an aircraft requiring a larger parking stand from that indicated at the time of allocation, as such operations cause prejudice to airport or air traffic operations as they necessitate last-minute changes to the stand allocation plan for the airport.
- c) The operation of air services on a route different from that indicated at the time of allocation, as such operations cause prejudice to airport operations by placing unexpected demands on airport facilities and infrastructure.

### **3. DEFINITIONS**

3.1 Words defined in the Council Regulation and Irish Regulation shall have the same meaning in these guidelines. Particular expressions in the Council Regulation and Irish Regulation call for comment:

3.2 Air carrier is taken to include all aircraft operators using the airport.

3.3 Operation is taken to mean the landing or take-off of an aircraft at the airport. Slot times are based on the time that an aircraft is scheduled to arrive at its parking stand following a landing, or the time that an aircraft is scheduled to push-back from its parking stand prior to a take-off.

3.4 Slot is defined in Article 2(a) of the Council Regulation as:

*‘slot’ shall mean the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation*

3.5 Repeatedly is taken to mean:

- a) For a scheduled or programmed non-scheduled air service, more than one operation in the past 12 months of that particular air service by that air carrier.
- b) For ad hoc air services, more than one operation at the airport in the past 12 months by that particular air carrier.

3.6 Intentionally is taken to mean:

- a) That, from the circumstances, the carrier intended to land or take-off an aircraft at or about the time that it did land or take off, if this is different from the allocated slot time – e.g. most obviously, published flight times on the internet or a differently filed flight plan time, except for air services suffering on-the-day operational delays outside the reasonable control of the carrier. In the case of operating a slot in a significantly different way from that indicated at the time of allocation, it is sufficient to show that the air carrier planned to operate with the aircraft actually used.
- b) For operations without an allocated slot, that the air carrier intended to land or take-off at the airport, excluding diversions and emergency landings.
- c) For the operation of a larger aircraft type, that the air carrier intended to use the aircraft type operated, excluding an on-the-day substitution of an aircraft due to

operational or technical reasons beyond the reasonable control of the air carrier.

3.7 Significantly is taken to mean:

- a) For operations at times different from the allocated slots, any time difference that constitutes a different slot based on the time intervals of the airport's declared coordination parameters.
- b) For the operation of a larger aircraft type, that the number of passengers carried exceeds the capacity of the aircraft type indicated at the time of allocation, and/or that the external dimensions of the aircraft type operated requires a larger parking stand than the aircraft type indicated at the time of allocation.
- c) For the operation of a different route, an air service arriving from a non-EU point of origin where an intra-EU point of origin was indicated at the time of allocation as this is likely to cause queuing and congestion in the immigration area.

3.8 Outside the reasonable control of the carrier

- a) This is taken to encompass exceptional weather conditions or third party industrial action, air traffic control regulations/CTOTs and exceptional/unexpected technical issues which could not reasonably have been foreseen or mitigated and (in all cases) which are demonstrated to have caused the apparent slot misuse. Note that the examples given will not automatically be valid reasons just by virtue of being listed in this definition; and
- b) The burden of proof is on the carrier to demonstrate that the apparent misuse was outside its reasonable control. Exactly what evidence is required will depend on the circumstances, but a mere assertion that a particular issue arose will, in most circumstances, not be enough. The carrier will need to explain to the coordinator what the issue was, where and when on route it arose, how that issue caused the apparent misuse and why the carrier could not reasonably have prevented the issue from causing the misuse. The carrier will be expected to adduce satisfactory evidence to back up its explanations (for example official weather warnings issued by the affected airport or ATC and/or airport/ATC imposed weather regulation, flight logs and tech reports).
- c) The individual causes of each slot misuse may be relevant to demonstrating that the failure not to repeatedly misuse slots was beyond the carrier's control. But, depending on the wider evidence available to the coordinator, this may not be sufficient, for example, where the evidence available points to a carrier's operational set up (e.g. flight schedules or planned turnaround times) not being sufficiently robust to cope with normal and foreseeable operational challenges.
- d) For the avoidance of doubt an air carrier's reliance on incorrect information (about slots allocated by the Coordinator) which is given by an agent of the air carrier is not a matter beyond its reasonable control.

3.9 Uncontested Sanction is taken to mean a financial sanction applied by the coordinator following the procedure described in section 4.4 of these guidelines and Regulation 4 of the Irish Regulation.

3.10 Court Decision is taken to mean a decision of the Court under Regulation 3(4) of the Irish Regulation.

#### 4. PROCESS FOR APPLYING SANCTIONS FOR SLOT MISUSE

4.1 In accordance with Article 4.6 of the Council Regulation, it is a duty of the coordinator to monitor the conformity of air carriers' operations with the slots allocated to them. If in the course of this slot monitoring, or as a result of a complaint or other source of relevant information, the coordinator is of the opinion that possible slot misuse has occurred or is occurring, then it will take the following actions:

##### 4.2 Stage 1: Investigation

4.2.1 The coordinator will contact the air carrier concerned with details of the alleged slot misuse and the data supporting the coordinator's opinion, and will request information and/or an explanation from the air carrier.

4.2.2 The coordinator will give the air carrier a reasonable deadline to respond, which will normally be 7 days but may be less in urgent cases. Correspondence between the coordinator and air carrier will be in writing, normally by email.

4.2.3 If the air carrier fails to respond by the deadline date, or provides an incomplete response or a response which fails to adequately address the issues raised by the coordinator, or supplies information which is false or misleading in any material particular, then the coordinator may rely on the best information available.

##### 4.3 Stage 2: Decision on Further Action

4.3.1 After investigation, the coordinator may take one of the following actions:

- a) Notify the air carrier concerned that the investigation has been satisfactorily concluded with no further action.
- b) Issue a warning that, in the opinion of the coordinator, a slot misuse has occurred or is occurring and that further slot misuse may be liable for a financial sanction.
- c) Notify the Commission that, in the opinion of the coordinator, a slot misuse has occurred or is occurring and that a financial sanction is appropriate.

##### 4.4 Stage 3: Uncontested Sanction

4.4.1 Under Regulation 4 of the Irish Regulation, the coordinator, with the consent of the Commission, will give notice to the air carrier concerned that a slot misuse has occurred or is occurring and specify an amount (not exceeding €3000 per repeated incidence of slot misuse) to be paid to the Commission by a date 7 days from the date of service of the notice or by a later date specified by the coordinator in the notice (the "**Due Date**").

4.4.2 The notice will also indicate the amount of the financial sanction (not exceeding €6000 per repeated incidence of slot misuse) that the coordinator intends to recommend to the Court if the matter is dealt with under Regulation 3(4) of the Irish Regulation.

4.4.3 Within 7 days of the notice, the air carrier may make representations and request that the coordinator lower the amount of the financial sanction. The coordinator will take

into account any submissions made with the request and any other matters it considers relevant. The coordinator will make a determination and notify the air carrier to pay either the original amount notified or a lower amount within 7 days from the date of this notice or by a later date specified by the coordinator in the notice (the revised “**Due Date**”).

4.4.4 If the air carrier has paid the amount specified by the coordinator under paragraph 4.4.1 or 4.4.3, as the case may be, by the Due Date, the coordinator shall not apply to the Court under Regulation 3(2) of the Irish Regulation.

#### 4.5 Stage 4: Application to the Court

4.5.1 Where an air carrier fails to pay an Uncontested Sanction by the Due Date, Regulation 3(2) of the Irish Regulation states that the coordinator, with the consent of the Commission, may:

*...apply to the Court for:*

- a) a determination that a contravention of Article 14 of the Council Regulation as referred to in paragraph (1) has occurred or is occurring, and*
- b) an order imposing financial sanction on the air carrier*

4.5.2 In making its application, the coordinator will recommend to the Court the amount of financial sanction which the coordinator considers appropriate to the circumstances, as was notified to the air carrier concerned in the notice referred to in paragraph 4.4.2 or 4.4.3, as the case may be.

4.5.3 Regulation 3(4) and (5) of the Irish Regulation states that:

*(4) The Court, on an application made to it by the coordinator–*

*(a) may do one or more of the following:*

- (i) make a determination that the air carrier concerned has contravened or is contravening Article 14 of the Council Regulation as referred to in paragraph (1);*
- (ii) order the air carrier concerned to pay the Commission a financial sanction (not exceeding €6000) in respect of the contravention;*
- (iii) make such other order as it considers appropriate,*

*or*

*(b) may dismiss the application.*

*(5) The Court may make such order as to costs as it thinks fit in respect of the application*

## 5. PUBLICITY

5.1 The Commission or the coordinator may publish details relating to any Uncontested

Sanction, including but not limited to the name of the operator, the slot misuse(s) in question, and the amount fined.

- 5.2 Court Decisions will be published on the Commission's website and on the coordinator's website.

## **6. FACTORS TO BE CONSIDERED IN SETTING FINANCIAL SANCTIONS**

- 6.1 In setting a financial sanction, the coordinator will have regard to:

Regulation 5 of the Irish Regulation, which states:

*5. In considering the amount of any financial sanction the Court or the coordinator, as the case may be, shall take into account the circumstances of the contravention or any failure by the air carrier to cooperate with the coordinator and shall, where appropriate in the circumstances, have regard to—*

*(a) the need to ensure that any financial sanction imposed—*

*(i) is appropriate and proportionate to the contravention, and*

*(ii) will act as a sufficient incentive to ensure future compliance in respect of the contravention*

*(b) the seriousness and frequency of the contravention or its continuation, and*

*(c) the turnover of the air carrier concerned.*

To assess the above it may also be necessary to have regard to:

- whether the misuse is blatant.
- the extent to which the coordination parameters were broken, including over a particular scheduling period in respect of a series of slots.
- the extent to which airport or air traffic operations and/or other air carriers or passengers were or were likely to have been prejudiced by the misuse taking into account all technical, operational and environmental constraints
- previous and current slot performance; other behaviour and misuse by the same air carrier will be taken into account, i.e. whether this is this a first case of misuse or a "second offence".
- whether sanctions have been imposed on the air carrier for previous breaches
- the carrier's conduct following the misuse or earlier sanction for similar off slot operations, including action taken to correct the misuse and degree of cooperation of the carrier during the investigation.
- the possible benefits to the carrier from the misuse.
- the size of aircraft used and the number of passengers generally carried on it.

- 6.2 For an Uncontested Sanction the maximum amount per repeated incident of misuse is €3000, and for a Court Decision the maximum amount per repeated incident of misuse is €6000. The minimum total amount that the coordinator will apply for an Uncontested Sanction is €1000 and the minimum total amount that the coordinator will recommend to the Court is €2000, unless exceptional circumstances exist.
- 6.3 In general, the financial sanction that the coordinator will recommend to the Court will be twice the amount applied as an Uncontested Sanction.
- 6.4 Financial sanctions are payable by the air carrier concerned to the Commission. In accordance with Regulation 6 of the Irish Regulation, all financial sanctions received by the Commission are paid to the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

## **7. OTHER ADMINISTRATIVE SANCTIONS**

7.1 The Irish Regulation and these guidelines provide for the application of financial sanctions for repeated and intentional slot misuse, implementing the Article 14.5 of the Council Regulation. Article 14 of the Council Regulation also provides for other administrative sanctions and enforcement measures, specifically:

- Article 14.1 provides for the competent air traffic management authorities to reject an air carrier's flight plan if it intends to operate at a coordinated airport without a slot allocated by the coordinator.
- Article 14.4 states that air carriers that repeatedly and intentionally misuse slots as part of a series of slots shall lose 'historic rights' to those slots, and that the coordinator may withdraw the series slots for the remainder of the scheduling period after issuing a single warning.

These provisions of the Council Regulation are directly applicable, and the competent air traffic management authority (in the case of Article 14.1) and the coordinator (in the case of Article 14.4) may apply such administrative sanctions independently of any sanctions applied under the Irish Regulation and these guidelines.

## **8. AMENDMENT OF THESE GUIDELINES**

8.1 These guidelines may be amended and updated from time to time by the coordinator following consultation with the Commission and the Dublin Airport Coordination Committee.