



STATUTORY INSTRUMENTS.

S.I. No. 505 of 1998.

EUROPEAN COMMUNITIES (ACCESS TO THE
GROUNDHANDLING MARKET AT COMMUNITY
AIRPORTS) REGULATIONS, 1998.

(Pn. 6591)

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I, MARY O’ROURKE, Minister for Public Enterprise, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive 96/67/EC of 15 October 1996,¹ hereby make the following Regulations:

1. These Regulations may be cited as the European Communities (Access to the Groundhandling Market at Community Airports) Regulations, 1998.

2. In these Regulations—

“airport” means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services, including the installations, needed to assist commercial air services;

“airport system” means 2 or more airports grouped together to serve the same city or conurbation, as referred to in Annex II to Council Regulation (EEC) No. 2408/92 of 23 July 1992²;

“airport user” means any person responsible for the carriage of passengers, mail or freight by air from, or to an airport;

“airport users’ committee” means a committee of airport users or representatives of airport users set up by the managing body of an airport under Regulation 6;

“approved supplier” means a supplier of groundhandling services approved under Regulation 12;

“approved self-handler” means a self-handler approved under Regulation 12;

¹O.J. No. L272/36 25/10/96.

²O.J. No. L240, 24.8.1992, Regulation as amended by the 1994 Act of Accession.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 22nd January, 1999.

“The Commission” means the Commission of the European Communities;

“the Directive” means Council Directive 96/67/EC of 15 October 1996;

“groundhandling services” means the services provided to airport users at airports as described in Schedules I and II;

“managing body of an airport” means a body which, in conjunction with other activities or not, as the case may be, has as its objective the administration and management of the infrastructures, at the airport or airport system concerned, and the coordination and control of the activities of the different operators present in the airport or airport system concerned;

“the Minister” means the Minister for Public Enterprise;

“self-handler” means an airport user who engages in self-handling;

“self-handling” means a situation in which an airport user directly provides for himself or herself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; and, for the purposes of this definition, airport users shall not, among themselves, be deemed to be third parties where:

(a) one holds a majority holding in the other, or

(b) a single body has a majority holding in each;

“supplier” or “supplier of groundhandling services” means any person supplying third parties with one or more categories of groundhandling services.

(2) A word or expression that is used in the Directive and is also used in these Regulations shall, unless the contrary intention appears, have in these Regulations the meaning it has in the Directive.

(3) (a) A reference in these Regulations to a Regulation or Schedule is to a Regulation of, or Schedule to, these Regulations, unless it is indicated that reference to some other Regulations is intended.

- (b) A reference in these Regulations to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

3. (1) These Regulations apply to any airport open to commercial traffic.

(2) When an airport reaches the passenger or freight thresholds set out in these Regulations, the appropriate provisions shall apply to that airport from the end of the following year.

(3) Where an airport reaches one of the freight traffic thresholds set out in these Regulations without reaching the corresponding passenger movement threshold, the provisions of these Regulations shall not apply to categories of groundhandling services reserved exclusively for passengers.

4. (1) Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of these bodies shall be considered part of the managing body of the airport for the purposes of these Regulations.

(2) Similarly, where only a single managing body is set up for several airports or airport systems, each of those airports or airport systems shall be considered separately for the purposes of these Regulations.

5. (1) Where the managing body of an airport, an airport user or a supplier of groundhandling services provides groundhandling services to third parties, that body shall separate the accounts of its groundhandling activities from the accounts of its other activities, and shall produce audited annual accounts in respect of its groundhandling activities which shall be submitted to the Minister within 6 months of the end of the body's accounting year.

(2) The Minister shall cause to have examined, on an annual basis, the said accounts to ensure that a separation of accounts has been carried out.

6. (1) At each airport the managing body of the airport shall set up a committee ("airport users' committee") of representatives of airport users or organisations representing airport users.

(2) All airport users shall have the right to be on an airport users' committee, or, if they so wish, to be represented on it by an organisation appointed by them to that effect. The managing body of an airport shall inform all airport users of their rights in this respect.

(3) The managing body of an airport shall ensure that the airport users' committee set up by it shall be consulted, together with the undertakings providing groundhandling services, at least once a year, by the managing body, in relation to the application of these Regulations regarding, *inter alia*, the price of those groundhandling services for which an exemption has been granted pursuant to paragraph (1) (b) of Regulation 10, should such an exemption be granted, and the organisation of the provision of those groundhandling services at the airport. The Minister shall be informed by the managing body of the airport of the time and date of such consultation.

(4) An airport users' committee shall meet at least once a year and shall, otherwise, establish its own rules of procedure.

7. (1) The provisions of this Regulation shall apply from 1 January, 1999, at any airport whose annual traffic is not less than 3 million passenger movements or 75,000 tonnes of freight and, as from 1 January, 2001, at any airport whose annual traffic is not less than 2 million passenger movements or 50,000 tonnes of freight.

(2) Subject to paragraph (3), there shall be free access to approved suppliers, established in the Community, to provide at an airport any of the groundhandling services mentioned in Schedules I and II.

(3) The managing body of an airport may apply in writing to the Minister to limit the number of approved suppliers at an airport or part of an airport to such number as requested in the application, being not less than 2, for any or all of the groundhandling services mentioned in Schedule II.

(4) Pursuant to an application under paragraph (3), the Minister may limit the number of approved suppliers at the airport to such number as the Minister sees fit, being not less than 2, and shall specify:

- (a) the airport and, where appropriate, the part of the airport to which it applies,
- (b) the category of service to which it relates,
- (c) the number of suppliers of groundhandling services authorised to supply such services,
- (d) the period for which it shall apply, and
- (e) that, as from 1 January, 2001, at least one of the authorised suppliers may not be directly or indirectly controlled by:
 - (i) the managing body of the airport,
 - (ii) any airport user who has carried more than 25 per cent. of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected, and
 - (iii) a body controlling or controlled directly or indirectly by that managing body or any such user.

(5) Where the Minister so limits the number of suppliers of groundhandling services, an airport user, whatever part of the airport is allocated to him or her, shall not be prevented from having, in respect of each category of groundhandling service subject to restriction, an effective choice between at least 2 approved suppliers.

8. (1) Subject to Regulation 12, there shall be freedom to self-handle by airport users in respect of the groundhandling services mentioned in Schedule I, at any airport regardless of its volume of traffic.

(2) Subject to paragraph (3), at an airport whose annual traffic is not less than 1 million passenger movements or 25,000 tonnes of freight and for the categories of groundhandling services mentioned in Schedule II, there shall be freedom to self-handle by approved self-handlers.

(3) The managing body of an airport may apply in writing to the Minister to limit the number of approved self-handlers at an airport or part of an airport to such number as

requested in the application, being not less than 2, for any or all of the groundhandling services mentioned in Schedule II.

(4) Pursuant to an application under paragraph (3), the Minister may limit the number of approved self-handlers at an airport to such number as the Minister sees fit, being not less than 2, and shall specify:

- (a) the airport and, where appropriate, the part of the airport to which it applies,
- (b) the category of service to which it relates,
- (c) the number of airport users who may exercise the right to self-handle in relation to those services, and
- (d) the period for which it shall apply.

(5) Where the Minister so limits the number of approved self-handlers, the managing body of the airport shall select the limited number of such who may exercise the right to self-handle on the basis of relevant, objective, transparent and non-discriminatory criteria, which criteria shall first be seen and approved by the Minister.

9. (1) Notwithstanding the application of Regulations 7 and 8, the managing body of an airport may apply in writing to the Minister to reserve for the managing body of the airport or for another person, insofar as may from time to time appear necessary to him or her, the management of any centralised infrastructures used for the supply of groundhandling services, the complexity, cost or environmental impact of which does not allow of division or duplication, such as baggage sorting, de-icing, water purification and fuel-distribution systems.

(2) Where the Minister decides, pursuant to an application under paragraph (1), to reserve the management of a centralised infrastructure at an airport, a supplier or self-handler at that airport shall use that centralised infrastructure and shall not use alternative equipment, save with the consent of the managing body of the airport concerned.

(3) Where the management of a centralised infrastructure has been reserved, the person for whom it has been so

reserved shall manage that infrastructure in a transparent, objective and non-discriminatory manner and, in particular, shall ensure that access by suppliers or self-handlers to that infrastructure is not hindered within the limits provided for in these Regulations.

10. (1) Where at an airport, specific constraints of available space or capacity, arising in particular from congestion and area utilisation rate, make it impossible to open up the market or implement self-handling to the degree provided for in these Regulations, the managing body of the airport may apply to the Minister for an exemption in order to:

- (a) limit the number of suppliers for one or more categories of groundhandling services mentioned in Schedule I in all or part of the airport; in this case, the provisions of paragraph (3), (4) and (5) of Regulation 7 shall apply,
- (b) reserve to a single supplier one or more of the categories of groundhandling services mentioned in Schedule II,
- (c) reserve self-handling to a limited number of airport users for categories of groundhandling services mentioned in Schedule I provided that those users are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria, or
- (d) ban self-handling or to restrict it to a single airport user for the categories of groundhandling services referred to in Schedule II.

(2) An application for an exemption under paragraph (1) and an exemption under this Regulation shall—

- (a) specify the category or categories of groundhandling services for which the exemption is sought or granted, as the case may be, and the specific constraints of available space or capacity which justify it, and
- (b) be accompanied by a plan of appropriate measures to overcome the constraints.

(3) Where the Minister decides to grant an exemption under this Regulation, the exemption shall not enter into force until the Commission has examined the decision to make the exemption and has approved or opposed it or required it to be amended or restricted in accordance with Article 9 of the Directive, and, accordingly, the Minister shall grant or refuse such an exemption or grant it subject to such amendment or restriction as the Commission requires.

(4) Except for exemptions granted in respect of paragraph (1) (b), exemptions granted by the Minister under this Regulation may not exceed a period of 3 years. Not later than 6 months before the end of that period, the managing body of the airport may submit an application to the Minister for extension of the exemption. Any such extension shall be decided by the Minister in accordance with paragraph (3).

(5) Exemptions in respect of paragraph (1) (b) may not exceed a period of 2 years. However, not later than 6 months before the end of that period, the managing body of the airport may, on the basis of paragraph (1), submit an application to the Minister for this period to be extended by a single period of 2 years, which shall be decided upon by the Commission in accordance with Article 9 of the Directive.

11. (1) Where the number of suppliers of groundhandling services authorised to provide groundhandling services at an airport is limited in the cases provided for in Regulation 7 or 10, the body for the selection of suppliers of groundhandling services (“the selecting body”) shall be—

(a) the managing body of the airport, provided the managing body of the airport does not provide similar groundhandling services and has no direct or indirect control over, nor any involvement in, any undertaking which provides such services,

or

(b) in any other case, the Minister.

(2) The selecting body shall consult with the airport users’ committee at the airport concerned and, where the selecting body is the Minister, shall also consult with the managing body of the airport concerned.

(3) (a) The selecting body shall, following consultation with the airport users' committee, establish a set of selection criteria, including standard conditions or technical specifications, to be met by suppliers of groundhandling services.

(b) These selection criteria, including the standard conditions or technical specifications, and any subsequent amendments thereto, shall be relevant, objective, transparent and non-discriminatory.

(c) Where the selecting body is the managing body of the airport, the selection criteria shall be subject to prior approval by the Minister.

(d) Following approval of the selection criteria, where appropriate, an invitation to tender shall be launched and published in the *Official Journal of the European Communities*, to which any interested supplier of groundhandling services may reply.

(e) An invitation to tender shall specify:—

(i) that the criteria for selection of suppliers of groundhandling services will be made available on request to any interested supplier of groundhandling services,

(ii) the duration for which suppliers of groundhandling services will be selected, and

(iii) the latest date for submission of completed tenders (which shall be not less than one month from the date the invitation to tender is published).

(3) Suppliers of groundhandling services shall be selected for a maximum period of 7 years.

(4) Where a supplier of groundhandling services ceases its activity before the end of the period for which it was selected, it shall be replaced on the basis of the same procedure.

(5) Where the number of suppliers of groundhandling services is limited in accordance with Regulation 7 or 10, the

managing body of an airport may itself provide groundhandling services without being subject to the selection procedure laid down in this Regulation. Similarly, it may, without submitting it to the said procedure, authorise an undertaking to provide groundhandling services at the airport in question:

(a) if it controls that undertaking directly or indirectly,
or

(b) if the undertaking controls it directly or indirectly.

(6) The managing body of the airport concerned shall inform the airport users' committee of decisions taken under this Regulation.

12. (1) The provisions of this Regulation shall apply at any airport whose annual traffic is not less than 1 million passenger movements or 25,000 tonnes of freight.

(2) Subject to paragraph (4), prior to engaging in groundhandling activities at an airport referred to in paragraph (1), each supplier of groundhandling services and each self-handler (each henceforth known as the applicant) shall apply in writing to the Minister for approval in that behalf.

(3) The Minister shall grant an approval under this Regulation where the applicant:—

(a) is competent, as respects experience, financial resources, equipment, organisation, staffing, maintenance and operating procedures to ensure the security and safety of installations, of aircraft, of equipment and of persons,

(b) is adequately insured to cover liability in respect of employees, passengers, luggage, cargo, mail and third parties, and

(c) in respect of its employees, complies with the requirements of the Acts mentioned in Schedule III.

(4) Suppliers of groundhandling services and self-handlers who are engaged in groundhandling activities at an airport at the time of the making of these Regulations shall be deemed to be approved suppliers or approved self-handlers

at that airport, for the range of groundhandling services in which they engage at that time, for a period of 2 years.

(5) The Minister shall withdraw an approval under this Regulation when the holder fails to satisfy any of the conditions referred to in paragraph (3).

(6) Whenever the Minister withholds or withdraws approval under this Regulation, the grounds for such withdrawal or withholding shall be notified in writing to the supplier of groundhandling services or self-handler concerned and to the managing body of the relevant airport.

13. (1) The managing body of an airport may establish rules of conduct to ensure the proper functioning of the airport which—

(a) must be applied in a non-discriminatory manner to the various suppliers and self-handlers, and

(b) may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in these Regulations.

(2) The Minister may, where appropriate following a proposal from the managing body of an airport, prohibit a supplier of groundhandling services or a self-handler from supplying groundhandling services or self-handling, if that supplier of groundhandling services or self-handler fails to comply with the rules imposed upon him or her by the managing body of the airport.

14. (1) Subject to the provisions of Regulations 7, 8, 9, 10 and 12, suppliers and self-handlers shall have access to airport installations to the extent necessary for them to carry out their activities. If the managing body of an airport places conditions upon such access, those conditions shall be relevant, objective, transparent and non-discriminatory. The Minister shall be informed in writing of these conditions prior to their imposition.

(2) The space available for groundhandling at an airport shall be allocated by the managing body of the airport among the various suppliers and self-handlers, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on

the basis of relevant, objective, transparent and non-discriminatory rules and criteria.

(3) Where access to airport installations gives rise to the collection of a fee, the latter shall be determined by the managing body of the airport and approved by the Minister in advance in accordance with relevant, objective, transparent and non-discriminatory criteria.

15. Any party with a legitimate interest shall have the right to appeal against the decisions or individual measures taken pursuant to these Regulations.

16. (1) An appeal against decisions and individual measures taken by the managing body of an airport pursuant to these Regulations may be made in writing to the Minister. The notice of appeal shall be served promptly and in any event within one month from the date on which grounds for such appeal first arose.

(2) The appellant shall serve the notice of appeal on—

(a) the Minister, and

(b) the managing body of the airport concerned.

(3) Where, pursuant to paragraph (2), the managing body of an airport receives notice of an appeal it shall, within 14 days of the receipt of such notice, serve on the Minister and the appellant any submission that it may wish to make in connection with the appeal.

(4) Within 14 days after the expiry of the 14 days referred to in paragraph (3) the appellant may serve on the Minister a reply to any submission made pursuant to paragraph (3) and shall within such period serve a copy of any such reply on the managing body of the airport.

(5) Before deciding an appeal, the Minister may seek from the appellant or the managing body such further information which appears to the Minister necessary to enable him or her to determine the appeal.

(6) The Minister shall decide to—

(a) dismiss the appeal, or

(b) make such direction in relation to the decision or individual measure concerned as he or she sees fit.

(7) Any person to whom a direction made pursuant to paragraph 6 (b) is addressed shall give effect to that direction.

(8) The Minister shall notify the appellant and the managing body of the airport of his or her decision and the reasons for it.

(9) Subject to paragraph (11), a decision or an individual measure taken by the managing body of an airport pursuant to these Regulations may take effect pending the outcome of an appeal under this Regulation.

(10) A decision of the Minister on an appeal under paragraph (1) shall be final save that an appeal from the decision shall lie to the High Court on a specified question of law.

(11) Where an appeal is made under paragraph (10) on a specified point of law, the appellant may make an application to the High Court, that the decision shall stand suspended, until the appeal is determined or withdrawn.

17. (1) Whenever the Minister proposes to make a decision (other than in respect of an appeal to the Minister under Regulation 16) pursuant to these Regulations, he or she shall notify in writing the body to whom the decision relates of the proposal and the reasons therefor, and shall, if any representations are made within 28 days after the date of the notice, consider the representations.

(2) Whenever the Minister, having considered the representations (if any) that may have been made, makes a decision, he or she shall notify in writing the body to whom the decision relates accordingly, and that body may, within 21 days after the date of such notice, appeal to the High Court against the decision on a specific question of law.

(3) On the hearing of an appeal pursuant to paragraph (2), the High Court, subject to any decision of the Commission under Article 9 of the Directive, may either confirm the decision of the Minister, or may allow the appeal, and if the appeal is allowed, the Minister shall thereupon reverse or vary his or her decision.

(4) Where an appeal is made under paragraph (2), the appellant may make an application to the High Court, that the decision shall stand suspended until the appeal is determined or withdrawn.

18. (1) The managing body of an airport shall, before the 1st day of May in each year, forward to the Minister a statistical return which shall include:—

- (a) passenger and freight traffic at the airport in the previous calendar year,
- (b) the number and names of suppliers to operate at the airport and the categories of groundhandling services which each provides,
- (c) the number and names of self-handlers at the airport and the categories of groundhandling services which each undertakes,
- (d) a list of the airport users indicating the percentage of the airport's annual passenger and freight traffic carried by each,
- (e) a list of the members of the airport users committee, and
- (f) any other information which is needed for the purposes of the Directive.

19. (1) The Minister shall, with the consent of the Minister for Finance, from time to time specify the scale of fees payable in respect of an application for approval pursuant to Regulation 12.

(2) The Minister shall make such charges in relation to any matter connected with an approval under Regulation 12 as are determined by the Minister, after consultation with the Minister for Finance.

(3) The Public Offices Fees Act, 1879, shall not apply in respect of fees payable pursuant to these Regulations.

SCHEDULE I

Regulations 7, 8 and 10.

1. *Ground administration and supervision, comprising:*
 - 1.1 representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;
 - 1.2 load control, messaging and telecommunications;
 - 1.3 handling, storage and administration of unit load devices;
 - 1.4 any other supervision services before, during or after the flight and any other administrative service requested by the airport user.
2. *Passenger handling* comprising any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.
3. *Freight and mail handling comprising*
 - 3.1 for freight: handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required in the circumstances;
 - 3.2 for mail: handling of related documents and implementation of any security procedure between the parties or required by the circumstances.
4. *Aircraft services, comprising:*
 - 4.1 the external and internal cleaning of the aircraft, and the toilet and water services;
 - 4.2 the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft;
 - 4.3 the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.
5. *Aircraft maintenance, comprising:*
 - 5.1 routine services performed before flight;
 - 5.2 non-routine services requested by the airport user;
 - 5.3 the provision and administration of spare parts and suitable equipment;
 - 5.4 the request for or reservation of a suitable parking and/or hangar space.
6. *Flight operations and crew administration, comprising:*
 - 6.1 preparation of the flight at the departure airport or at any other point;
 - 6.2 in-flight assistance, including re-dispatching if needed;
 - 6.3 post-flight activities;
 - 6.4 crew administration.

7. *Surface transport comprising:*
 - 7.1 the organisation and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;
 - 7.2 any special transport requested by the airport user.
8. *Catering services comprising:*
 - 8.1 liaison with suppliers and administrative management;
 - 8.2 storage of food and beverages and of the equipment needed for their preparation;
 - 8.3 cleaning of this equipment;
 - 8.4 preparation and delivery of equipment as well as of bar and food supplies.

SCHEDULE II

Regulations 7, 8 and 10.

1. *Baggage handling*, comprising handling baggage in the sorting area, sorting it, preparing it for departure, loading it onto and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.
2. *Freight and mail handling as regards:*

the physical handling of freight and mail whether incoming, outgoing or being transferred, between the air terminal and the aircraft.
3. *Ramp handling comprising:*
 - 3.1 marshalling the aircraft on the ground at arrival and departure;*
 - 3.2 assistance to aircraft parking and provision of suitable devices;*
 - 3.3 communication between the aircraft and the air-side supplier of services;*
 - 3.4 the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal;
 - 3.5 the provision and operation of appropriate units for engine starting;
 - 3.6 the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;
 - 3.7 the transport, loading on to and unloading from the aircraft of food and beverages.
4. *Fuel and oil handling, comprising:*
 - 4.1 the organisation and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries;
 - 4.2 the replenishing of oil and other fluids.

*Provided that these services are not provided by the air traffic service.

SCHEDULE III

Regulation 12

Social Welfare Acts

Safety Health & Welfare at Work Act, 1989

Industrial Relations Acts, 1946 to 1990

Holidays (Employees) Acts, 1973 to 1991

Redundancy Payments Acts, 1967 to 1991

Minimum Notice and Terms of Employment Acts, 1973 to 1991

Unfair Dismissals Acts, 1977 to 1993

Maternity Protection Act, 1994

Protection of Employees (Employers' Insolvency) Acts, 1984 to 1991

Workers Protection (Regular Part-Time Employees) Act, 1991

Payment of Wages Act, 1991

Terms of Employment (Information) Act, 1994

Adoptive Leave Act, 1995

Protection of Young Persons (Employment) Act, 1996

Organisation of Working Time Act, 1997

Parental Leave Act, 1998



GIVEN under my Official Seal, this 16th day of
December, 1998.

MARY O'ROURKE,
Minister for Public Enterprise.

EXPLANATORY NOTE.

*(This note is not part of the Instrument and does not pur-
port to be a legal interpretation.)*

The purpose of the Regulations is to give legal effect to
Council Directive 96/67/EC of 15 October 1996 in so far as
it relates to access to the groundhandling market at Com-
munity airports.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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