

Aviation Act 2006



Number 7 of 2006

AVIATION ACT 2006

ARRANGEMENT OF SECTIONS

Section

- [1. Definition.](#)
- [2. Miscellaneous amendments of Act of 1993.](#)
- [3. Amendment of Part III \(Eurocontrol Convention\) of Act of 1993.](#)
- [4. Amendment of Aer Lingus Act 2004.](#)
- [5. Amendment of Aviation Regulation Act 2001.](#)
- [6. Repeal.](#)
- [7. Short title.](#)

[SCHEDULE 1](#)

[SCHEDULE 2](#)

Acts Referred to

[Aer Lingus Act 2004](#)

2004, No. 10

[Air Companies \(Amendment\) Act 1993](#)

1993, No. 38

[Aviation Regulation Act 2001](#)

2001, No. 1

[Data Protection Act 1988](#)

1988, No. 25

[Irish Aviation Authority Act 1993](#)

1993, No. 29



Number 7 of 2006

AVIATION ACT 2006

AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION RELATING TO CO-OPERATION FOR THE SAFETY OF AIR NAVIGATION SIGNED AT BRUSSELS ON 13 DECEMBER 1960, AS CONSOLIDATED BY THE PROTOCOL SIGNED AT BRUSSELS ON 27 JUNE 1997 AND FOR THAT PURPOSE TO AMEND THE IRISH AVIATION AUTHORITY ACT 1993, TO AMEND THE AVIATION REGULATION ACT 2001, TO AMEND THE AER LINGUS ACT 2004 AND TO PROVIDE FOR RELATED MATTERS.

[4th April, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definition.

1.— In this Act “ the Act of 1993 ” means the [Irish Aviation Authority Act 1993](#) .

Miscellaneous
amendments of
Act of 1993.

2.— The Act of 1993 is amended—

(a) in section 2(1)—

(i) by substituting for the definition of “contracting state” the following:

“ ‘ contracting state ’ means a state, including the State, which is a party to Annex IV of the Eurocontrol Convention;”,

(ii) by substituting for the definition of “Eurocontrol” the following:

“ ‘ Eurocontrol ’ means the European Organisation for the Safety of Air Navigation (Eurocontrol) established by the Eurocontrol Convention and references to Eurocontrol include references to the General Assembly and the Council comprised in Eurocontrol and to the Agency;”,

(iii) by substituting for the definition of “the Eurocontrol Convention” the following:

“ ‘ Eurocontrol Convention ’ means the International Convention relating to Co-operation for the Safety of Air Navigation signed at Brussels on 13 December 1960, as amended by the Additional Protocol signed at Brussels on 6 July 1970, the Protocol signed at Brussels on 21 November 1978 and the Protocol signed at Brussels on 12 February 1981, as consolidated by the Protocol signed at Brussels on 27 June 1997, (the consolidated text of which is set out for convenience of reference in the English language in [Schedule 1](#) to the *Aviation Act 2006*), the Final Act and Protocol on the accession of the European Community to the Eurocontrol Convention signed at Brussels on 8 October 2002 (the text of which is set out for convenience of reference in the English language in [Schedule 2](#) to the *Aviation Act 2006*), and by any other protocol or other instrument which may be signed after the passing of the *Aviation Act 2006*;”,

(iv) by substituting for the definition of “the Minister” the following:

“ ‘ The Minister ’ means the Minister for Transport;”,

(v) by deleting the definition of “the Multilateral Agreement”,
and

(vi) by deleting the definition of “Statute of the Agency”,

(b) in section 14(1)(j), by substituting for subparagraph (i) the following:

“(i) the Eurocontrol Convention,”,

and

(c) in section 74—

(i) in subsection (3)(b)(i), by substituting “€5,000” for “£1,000”
and “6 months” for “12 months”,

(ii) in subsection (3)(b)(ii), by substituting “€500,000” for
“£100,000”,

(iii) in subsection (4), by substituting “€5,000” for “£1,000”, and

(iv) by substituting for subsection (5), the following:

“(5) A person who obstructs or impedes an authorised officer, an authorised officer of the company, a member of the staff of the company or an officer of Eurocontrol in the performance of any function conferred on him or her by or under this Act or fails to furnish to such a member information to which he or she is entitled under section 57B or an order under section 65 is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both.”.

Amendment of
Part III
(Eurocontrol
Convention) of
Act of 1993.

3.— (1) Part III of the Act of 1993 is amended—

(a) in section 46, by deleting “and the Statute of the Agency annexed thereto”,

(b) in section 47, by deleting “and the Statute of the Agency annexed thereto”,

(c) by substituting for section 57 the following:

“Parties to Eurocontrol Convention.

57.— (1) The Minister, after consultation with the Minister for Foreign Affairs, may by order declare that any state specified in the order is a party to the Eurocontrol Convention.

(2) An order that is in force under subsection (1) shall be evidence that any state specified in the order is a party to the Eurocontrol Convention.

Regulations.

57A.— The Minister may make regulations to—

(a) give effect to a common European air traffic flow management system established by Eurocontrol under Articles 2(1)(e), 7(2)(d) and 19 of the Eurocontrol Convention, and

(b) ensure compliance with that system.

Random checks and inspections.

57B.— (1) For the purposes of ensuring compliance with this Part and the Eurocontrol Convention an authorised person may—

(a) enter any premises of an aircraft operator for the purpose of carrying out random checks and inspections,

(b) require the owner or any person employed at the premises or any person in charge of the premises to give to him or her such information in the

person's power or control that the authorised person may reasonably require and to produce to him or her any records (in whatever form kept) or books or documents found by or produced to the authorised person,

- (c) at such premises, inspect and take copies of, or extracts from any books, records or other documents (including in the case of information in non-legible form a copy of or extract from such information in permanent legible form),
- (d) inspect and copy or extract information from any data (within the meaning of the [Data Protection Act 1988](#)) found or produced to the authorised person,
- (e) require any person by or on whose behalf data equipment is or has been used on the premises in relation to the business of the aircraft operator concerned or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised person all reasonable assistance in relation to its use,
- (f) secure for later inspection the premises or any records, books, documents or products found in the premises.

(2) Where an authorised person carries out any random check or inspection under this section, he or she shall, if requested by a person affected, produce his or her authorisation showing his or her identity and position.

(3) An authorised person shall not, in order to carry out a random check or inspection under this section, other than with the consent of the occupier, enter a private dwelling unless a warrant under this section has been obtained authorising such entry.

(4) An authorised person shall be accompanied by a member of the Garda Síochána where, in the course of carrying out or attempting to carry out a random check or inspection under this section a premises is required to be broken open for that check or inspection or the use of force is necessary.

(5) If a judge of the District Court is satisfied on the sworn information of an authorised person that there are reasonable grounds for suspecting that there is information required by an authorised person held on any premises or any part of any premises or there is anything which an authorised person requires to inspect for purposes of enforcing this Part, the judge may issue a warrant authorising an authorised person, accompanied, if appropriate, by other authorised persons or by a member or members of the Garda Síochána, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if necessary by reasonable force, the premises and to carry out a random check or inspection under this section.

(6) An application under subsection (5) shall be made to the judge of the District Court in whose district court district the premises is situated.

(7) In this section—

‘ authorised person ’ means—

(a) an authorised officer,

(b) an authorised officer of the company, or

(c) an officer of Eurocontrol;

‘ premises ’ includes an aircraft.

Evidence in proceedings.

57C.— For the purposes of this Act, a document purporting to be published by Eurocontrol shall be admissible in any proceedings, without further proof, as evidence of the matters mentioned in the said document, unless the contrary is shown.”.

(2) Section 1(2) of the Act of 1993 does not apply to an amendment to that Act provided for in *subsection (1)(c)* of this section.

Amendment of
Aer Lingus Act
2004.

4.— The [Aer Lingus Act 2004](#) is amended by inserting, after section 7, the following new section:

“Confirmation of certain matters.

7A.— (1) Notwithstanding section 13(2) and the [Aer Lingus Act 2004](#) (Commencement of Certain Provisions) Order 2005—

(a) section 2 (in so far as it relates to section 5(2) of the [Air Companies \(Amendment\) Act 1993](#)), and

(b) section 7,

are deemed to have come into operation on 19 August 2004.

(2) Without prejudice to the generality of subsection (1), the issue of shares in Aer Lingus Group public limited company on 20 August 2004 is confirmed and deemed always to have had full effect.

(3) Nothing in this section shall affect any proceedings commenced in any court concerning the validity of the issue of shares in the Company under section 7 where those proceedings were commenced before 8 March 2006.”.

Amendment of
Aviation
Regulation Act
2001.

5.— (1) The [Aviation Regulation Act 2001](#) is amended—

(a) in section 2(1), by inserting after the definition of “organiser” the following:

“ ‘Regulation (EC) No. 261/2004’ means Council Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004¹, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;”,

(b) in section 8, by inserting after subsection (3) the following:

“(4) The Commission is designated for the purposes of Article 16 of Regulation (EC) No. 261/2004.”,

(c) in section 13, by inserting “, except in accordance with section 40(8B),” after “functions of the Commission”,

(d) in section 40—

(i) in subsection (5), by substituting “3 months” for “2 months”, and

(ii) in subsection (8), by substituting “2 months” for “one month”, and

(iii) by inserting after subsection (8) the following:

“(8A) Where a referral is made under subsection (5), whether before or after the passing of the *Aviation Act 2006*, and there is no person holding office as a commissioner, then a decision under subsection (8) may only be made (other than a decision made before the passing of that Act) within the period referred to in that subsection—

(a) where a commissioner is appointed within the period of 6 months of the referral, by the commissioner from the time he or she is appointed,

(b) where a commissioner is not appointed within the period referred to in paragraph (a), from the end of that period by the deputy commissioner, unless a commissioner is appointed, or

(c) where a commissioner is appointed within the period referred to in paragraph (a) but due to his or her incapacity to act as a commissioner or ceasing to be a commissioner before making the decision within the period of 2 months referred to in subsection (8)—

(i) within that period of 2 months, by the deputy commissioner, or

(ii) if another commissioner has been appointed within the period referred to

in subsection (8), by the other commissioner within that period.

(8B) A decision under subsection (8) shall only be made by a commissioner, other than in the circumstances mentioned in subsection (8A)(b) or (c)(i) where no commissioner has been appointed.”

and

(e) in section 41(1), by substituting for paragraph (e) the following:

“(e) in any case where the Commission considers that the immediate giving of the notice is required, by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender’s—

- (i) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
- (ii) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.”

(f) by inserting after section 45 the following:

“Directions— Regulation (EC) No. 261/2004.

45A.— (1) Where the Commission either on its own initiative or following a complaint by a passenger is of the opinion that an operating air carrier is failing to comply with or is infringing Regulation (EC) No. 261/2004, it may issue a direction to the carrier to comply with the Regulation or cease the infringement and to comply with any instructions contained in the direction. The carrier may, within 14 days of the issue of the direction, make representations to the Commission, which the Commission shall consider. The Commission shall, where it has received such representations, reply in writing to the carrier within 2 months of such receipt. The Commission in its reply may confirm, vary or withdraw the direction. Where the direction is confirmed (with or

without variation) the direction takes effect on the date the reply is given.

(2) Where a direction has been issued to an operating air carrier who—

- (a) has not made representations to the Commission within the period of 14 days of the issue of the direction to the carrier, after such period, or
- (b) has made such representations and the Commission has replied to the carrier confirming the direction with or without variation, after the reply is given,

fails to comply with the direction, the carrier commits an offence and is liable—

- (i) on summary conviction, to a fine not exceeding €5,000, or
- (ii) on conviction on indictment, to a fine not exceeding €150,000.

(3) Where a direction or reply is required to be given to an operating air carrier, the direction or reply shall be addressed to the carrier and shall be given to the carrier in one of the following ways—

- (a) by delivering it to the carrier,
- (b) by leaving it at the address at which the carrier carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the carrier at the address at which the carrier carries on business,
- (d) if an address for the service of a direction or reply has been furnished by the carrier, by leaving it at, or sending it by pre-paid registered post addressed to the carrier to, that address,

- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the carrier carries on business or, if an address for the service of a direction or reply has been furnished by the carrier, that address:

provided that—

- (i) the sender's—

- (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
- (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or reply,

and

- (ii) the direction or reply is also given in one of the other ways mentioned in any of the preceding paragraphs.

(4) For the purposes of subsection (3), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(5) A copy of a direction or reply, which has endorsed on it a certificate purporting to be signed by a commissioner, the deputy commissioner or an officer of the Commission (authorised in that behalf by the Commission) stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

(6) In this section—

