

STATUTORY INSTRUMENTS

S.I. No. 226 of 2003

European Communities (Civil Aviation Security) Regulations 2003

Prn. No. 345

S.I. No. 226 of 2003**European Communities (Civil Aviation Security) Regulations 2003**

I, Séamus Brennan, Minister for Transport, in exercise of the powers conferred to me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Regulation (EC) No. 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security¹, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Civil Aviation Security) Regulations 2003.

2. (1) In these Regulations -

“authorised person” means-

- (a) a member of the Garda Síochána, or
- (b) a person who, for the time being, stands appointed under Regulation 7;

“cargo” includes courier and express parcels;

“Council Regulation” means Regulation (EC) No. 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security²;

“known consignor” means a consignor of cargo, express or courier items or mail for carriage on an aircraft who has satisfied the Minister as to compliance by that person with the criteria for a known consignor specified in point 6.4 of the Annex to the Council Regulation together

¹ O.J. No. L355, 30.12.2002, p.1.

² O.J. No. L355, 30.12.2002, p.1.

with such other criteria as may be specified by the Minister in the national civil aviation security programme;

“Minister” means the Minister for Transport;

“national civil aviation security programme” means the measures adopted by the Minister, as the appropriate authority in the State, to ensure that the common standards referred to in Article 4 of the Council Regulation and the Annex to that Regulation are given effect in the State, and includes a national civil aviation security training programme.

- (2) A word or expression which is used in these Regulations has, unless the contrary intention is shown, the same meaning in these Regulations as it has in the Council Regulation.
- (3) In these Regulations -
 - (a) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulations is intended, or
 - (b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.
3. For the purposes of the Council Regulation the Minister is the appropriate authority in the State responsible for the coordination and monitoring of the implementation of the national civil aviation security programme.
4. The Minister shall adopt a national civil aviation security programme in accordance with the Council Regulation.
5. The Minister shall ensure the development and implementation of a national civil aviation security quality control programme in accordance with the Council Regulation.
6. (1) An airport within the State shall establish, implement and maintain an airport security programme in respect of that airport.

- (2) An air carrier providing service from the State shall establish, implement and maintain an air carrier security programme.
 - (3) A security programme referred to in paragraphs (1) and (2) shall comply with the terms of the national civil aviation security programme.
 - (4) An airport security programme and an air carrier security programme referred to in this Regulation shall be submitted to the Minister for approval.
7. (1) The Minister may appoint such and so many persons as he or she thinks fit to be authorised persons for the purposes of these Regulations and the Council Regulation.
- (2) An authorised person appointed pursuant to paragraph (1) shall be furnished with a warrant of his or her appointment.
 - (3) When exercising a power conferred on him or her under this Regulation an authorised person appointed pursuant to paragraph (1) shall, if requested by any person thereby affected, produce the warrant to that person for inspection.
 - (4) An authorised person may for the purposes of these Regulations and the Council Regulation:
 - (a) enter any premises for the purposes of carrying out on-the-spot checks and inspections under the Council Regulation;
 - (b) examine any equipment, apparatus at the premises or procedure connected with the duties and obligations set out in the Council Regulation;
 - (c) require the owner, occupier or any person employed by such person at the premises or any person in charge thereof to give 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 under this Regulation;

- (d) at such premises, inspect and take copies of, or extracts from any books, records, manuals or other documents;
 - (e) to take and remove for inspection any records, data, equipment, or apparatus;
 - (f) inspect and copy or extract information from any data (within the meaning of the Data Protection Act 1988);
 - (g) 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 economic 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 thereto;
 - (h) carry out such examinations, tests, inspections and checks as he or she considers reasonably necessary for the purposes of these Regulations or the Council Regulation.
- (5) An authorised person, in exercising a power under these Regulations, may be accompanied by and assisted in the exercise of the power by one or more members of the Garda Síochána.
8. (1) A person referred to in Regulation 9 shall when requested to do so by an official mandated by the Commission to carry out an inspection on its behalf under Article 9 of the Council Regulation assist such official as if that official were an authorised person appointed under these Regulations by the Minister.
- (2) In this section “person” includes a person for the time being at the premises or aircraft concerned engaged by a person referred to in Regulation 9 under a contract of service or a contract for services.
9. (1) Without prejudice to the Air Navigation and Transport Act 1988 (No. 15 of 1988), the Minister may, for the purposes of these Regulations, the Council Regulation or the national civil aviation security programme issue a direction in writing to any person who -

- (a) is the operator of an aircraft registered or operating in the State,
 - (b) is the owner or manager of an airport in the State,
 - (c) is the owner or occupier of a premises in or on which there is apparatus relating to radar or air navigation,
 - (d) for the purposes of carrying on a business is permitted to have access to a security restricted area of an airport,
 - (e) is permitted to have access to a security restricted area of an airport and in that area has control over baggage, cargo, stores, supplies and spare parts,
 - (f) is a regulated agent, or
 - (g) is a known consignor.
- (2) The Minister may direct a person referred to in paragraph (1)-
- (a) to undertake modifications or alterations to premises or security procedures, and
 - (b) to operate particular apparatus, equipment or procedures,
- for the purposes of the Council Regulation, these Regulations and the national civil aviation security programme.
- (3) The Minister may give a direction in writing to the operator of an aircraft registered or operating in the State requiring that operator not to cause or permit the aircraft to fly unless such modifications or alterations to the aircraft concerned or of any apparatus or equipment installed in the aircraft, as are specified in the direction, have been made.
- (4) A direction referred to in paragraph (3) may relate to a particular aircraft or to aircraft of a particular class or description.
- (5) Before giving a direction under paragraph (3) the Minister shall consult with the Irish Aviation Authority regarding his or her intention to issue

the direction and shall consider any advice given to him or her by that Authority relating to such matter.

- (6) A direction under this Regulation shall -
 - (a) be in writing,
 - (b) specify the date from which it is to operate, and
 - (c) subject to paragraph (10), be addressed to the person concerned.
- (7) The Minister may at any time vary or rescind a direction made under these Regulations.
- (8) A direction (including a variation of a direction) under these Regulations may be served on or given to a person to whom it is directed by -
 - (a) delivering it to the person,
 - (b) leaving it at the address at which the person ordinarily resides, or in a case where an address for service has been furnished to the Minister, at that address,
 - (c) sending it by fax, where a number has been furnished to the Minister for the receipt of fax messages, to that number,
 - (d) where an electronic mail address has been furnished to the Minister, sending it by electronic mail to that address, or
 - (e) sending it by prepaid registered post to the address at which the person ordinarily resides, or in a case in which an address for service has been furnished, to that address.
- (9) For the purpose of this Regulation -
 - (a) a company within the meaning of the Companies Acts 1963 to 2001 is deemed to ordinarily reside at its registered office, and

- (b) a body corporate (other than a body to which subparagraph (a) refers) and an unincorporated body is deemed to reside at its principal office or place of business.
- (10) Where a direction or other document under this Regulation is to be served on or given to a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words “the owner” or “the occupier”, as the case may require.
- (11) A person to whom a direction is given may within 3 weeks of the date on which the direction is given to that person serve a notice in writing on the Minister objecting to the direction, which notice shall set out the grounds of objection.
- (12) The only grounds on which a person may object to the making of a direction by the Minister are -
 - (a) that the actions required to be taken are unnecessary, or
 - (b) that the actions required to be taken, or not taken, are excessively onerous or inconvenient on the person to whom it is directed.
- (13) Where, pursuant to paragraph (11), the Minister receives an objection to a direction the Minister shall consider the matter having regard to the grounds of objection set out in the notice of objection, but shall determine the matter having regard to the primary objective of ensuring civil aviation security.
- (14) In determining the matter the Minister may -
 - (a) confirm the direction,
 - (b) confirm the direction subject to one or more modifications, or
 - (c) may rescind the direction,

and shall notify in writing the person objecting to his or her decision and the decision shall be given or served in accordance with paragraph (12).

- (15) A direction takes effect from the date stated thereon as the date from which it is to take effect, and a direction shall continue to have effect notwithstanding that an objection has been made to the Minister in respect of that direction.
10. A person who wilfully obstructs or impedes an authorised person acting in the exercise of any power conferred on him by these Regulations is guilty of an offence and is liable on conviction to a fine not exceeding €2,000 or to a term of imprisonment not exceeding 3 months, or to both.
11. A person who refuses or fails to comply with a direction issued to that person under Regulation 9 is guilty of an offence.
12. A person who -
- (a) falsely represents himself or herself to be an authorised person by words, conduct, demeanour or by the assumption of the name, designation or description of an authorised person, or
 - (b) holds himself or herself out as being an authorised person,
- is guilty of an offence.
13. A person who obstructs an official of the Commission in carrying out an inspection referred to in Regulation 8 is guilty of an offence.
14. A person who, where required to do so under or by virtue of these Regulations, the Council Regulation or the national civil aviation security programme, furnishes information to the Minister or an authorised person pursuant to a requirement made of him or her under these Regulations, the Council Regulation or the national civil aviation security programme, regarding the security of an aircraft or the security of an airport which information is false or misleading in a material respect, knowing it to be so false or misleading or being reckless as to whether it is so false or misleading, is guilty of an offence.
15. A person who falsely represents that he or she is a regulated agent or a known consignor is guilty of an offence.

16. Where an offence under these Regulations is committed by a body corporate and is proved to have been committed by a body corporate with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, or secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she was guilty of the first mentioned offence.
17. A person guilty of an offence under Regulations 11 to 15 is liable on summary conviction to a fine not exceeding €3,000 or to a term of imprisonment not exceeding 12 months, or to both.
18. An offence under these Regulations may be prosecuted by the Minister.

GIVEN under my Official Seal,

3rd June, 2003

L.S.

Séamus Brennan
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to facilitate the implementation and enforcement of EU Regulation No. 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security.