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**AVIATION REGULATION ACT, 2001**

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Local Government Act, 1941	1941, No. 23
Package Holidays and Travel Trade Act, 1995	1995, No. 17
Transport (Tour Operators and Travel Agents) Act, 1982	1982, No. 3



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*Number 1 of 2001*

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**AVIATION REGULATION ACT, 2001**

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AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE COMMISSION FOR AVIATION REGULATION OR, IN THE IRISH LANGUAGE, AS AN COIMISIÚN UM RIALÁIL EITLÍOCHTA, TO DEFINE ITS FUNCTIONS, TO AMEND THE IRISH AVIATION AUTHORITY ACT, 1993, THE FREEDOM OF INFORMATION ACT, 1997, THE AIR NAVIGATION AND TRANSPORT (AMENDMENT) ACT, 1998, AND THE AIR NAVIGATION AND TRANSPORT ACT, 1973, AND TO PROVIDE FOR CONNECTED MATTERS. [21st February, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

- Short title.           **1.**—This Act may be cited as the Aviation Regulation Act, 2001.
- Interpretation.       **2.**—(1) In this Act—
- “Act of 1998” means Air Navigation and Transport (Amendment) Act, 1998;
- “airport” has the meaning assigned to it by the Act of 1998;
- “airport authority” has the meaning assigned to it by the Act of 1998;
- “airport charges” has the meaning assigned to it by the Act of 1998;
- “authorised officer” means a person appointed under *section 42* to be an authorised officer;
- “Commission” means Commission for Aviation Regulation established under *section 5*;
- “commissioner” means a member of the Commission;

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“Council Regulation (EEC) No. 95/93” means Council Regulation (EEC) No. 95/93 of 18 January 1993<sup>1</sup>;

“deputy commissioner” means a member of the staff of the Commission appointed as a deputy member of the Commission under *section 13*;

“establishment day” means the day appointed under *section 3* to be the establishment day;

“functions” includes powers and duties, and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

“local authority” has the meaning assigned to it by the Local Government Act, 1941;

“Minister” means Minister for Public Enterprise;

“organiser” has the meaning assigned to it by section 3 of the Package Holidays and Travel Trade Act, 1995;

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death;

“terminal services” has the meaning assigned to it by the Irish Aviation Authority Act, 1993;

“tour operator” and “travel agent” have the meanings assigned to them, respectively, in the Transport (Tour Operators and Travel Agents) Act, 1982.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,
- (c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act, and
- (d) a reference to a statutory instrument shall be construed as a reference to that instrument as amended, adapted or extended by any subsequent statutory instrument.

Establishment day.

**3.**—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

Expenses of Minister.

**4.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.

<sup>1</sup>O.J. No. L14, 22.1.93, p.1

PART 2

THE COMMISSION FOR AVIATION REGULATION

5.—(1) There shall stand established on the establishment day a body to be known as the Commission for Aviation Regulation or, in the Irish language, An Coimisiún um Rialáil Eitlíochta to perform the functions assigned to it under this Act.

Establishment of Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this Act.

(4) In carrying out its functions, the Commission shall ensure that all determinations, conditions attaching thereto, amendments thereof and requests shall be objectively justified and shall be non-discriminatory, proportionate and transparent.

6.—Subject to this Act, the Commission shall be independent in the exercise of its functions.

Independence of Commission.

7.—The principal function of the Commission shall be to regulate airport charges and aviation terminal services charges.

Principal function of Commission.

8.—(1) The Commission shall be the competent authority in the State for the purposes of Council Regulation (EEC) No. 95/93 other than the functions of the coordinator.

Functions of Commission under certain Council Regulations.

(2) The Commission shall have the function of appointing a coordinator under Article 4 of Council Regulation (EEC) No. 95/93.

(3) The Commission shall have the function of licensing of air carriers under Council Regulation (EEC) No. 2407/92 of 23 July 1992<sup>1</sup>.

9.—(1) The administration and business in connection with the exercise, performance or execution of any of the functions transferred by *subsection (2)* are hereby transferred, on the establishment day, to the Commission.

Transfer of functions.

(2) There are hereby transferred, on the establishment day, to the Commission the functions vested in the Minister by or under each of the following—

(a) the Transport (Tour Operators and Travel Agents) Act, 1982,

(b) the Package Holidays and Travel Trade Act, 1995,

(c) the European Communities (Access to the groundhandling

<sup>1</sup>O.J. No. L240, 24.8.92, p.1

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market at Community airports) Regulations, 1998 (S.I. No. 505 of 1998), and

(d) the Air Navigation and Transport Act, 1965 (Section 8) Regulations, 1993 (S.I. No. 323 of 1993).

(3) References to the Minister contained in any Act or instrument relating to any functions transferred by *subsection (2)* shall, on the establishment day, be construed as references to the Commission.

(4) Anything commenced before the establishment day by or under the authority of the Minister may, in so far as it relates to functions transferred by this section, be carried on or completed on or after such day by the Commission.

(5) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is the plaintiff or the prosecutor and the proceedings have reference to functions transferred by this section to the Commission, the name of the Commission shall, in so far as the proceedings relate to any functions transferred by this section, be substituted in those proceedings for that of the Minister, or added in those proceedings as may be appropriate, and those proceedings shall not abate by reason of such substitution.

(6) Where, immediately before the establishment day, any legal proceedings are pending to which the Minister is a defendant and the proceedings have reference to any functions transferred to the Commission by this section, the Commission shall not be substituted for the Minister in those proceedings notwithstanding the transfer of functions under this Act.

(7) Every document (including any certificate or licence) granted or made in the exercise of a function transferred by this section shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by the Commission.

Directions by  
Minister to  
Commission.

**10.—(1)** The Minister may give such general policy directions (including directions in respect of the contribution of airports to the regions in which they are located) to the Commission as he or she considers appropriate to be followed by the Commission in the exercise of its functions.

(2) The Commission shall comply with any direction given under *subsection (1)*.

Members of  
Commission.

**11.—(1)** The Commission shall consist of at least one but not more than 3 members, each of whom shall be appointed by the Minister on such terms and conditions of appointment, including remuneration, as the Minister may fix, with the consent of the Minister for Finance, to hold office in a full-time capacity for a period of not less than 3 and not more than 5 years.

(2) Each member of the Commission shall be known as a commissioner for Aviation Regulation and is in this Act referred to as a “commissioner”.

(3) Where there is more than one commissioner, the Minister shall appoint one of them to be chairperson of the Commission on such terms and conditions of appointment, including remuneration, as the Minister may fix, with the consent of the Minister for Finance, to hold office in a full-time capacity for a period of not less than 3 and not more than 5 years.



(4) A person shall not be appointed as a commissioner unless the Civil Service Commissioners, after holding a competition, have selected him or her for appointment as a commissioner. Pr.2 S.11

(5) A commissioner, including the chairperson, whose term of office expires by effluxion of time shall be eligible for re-appointment to serve a second term, subject to a limit of serving no more than 10 years on the Commission.

(6) A commissioner shall not be entitled to serve more than 2 terms of office.

(7) A commissioner may—

(a) at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon receipt of the letter by the Minister, whichever is the later, and

(b) be removed from office by the Minister if, in his or her opinion, the member has become incapable through ill-health of effectively performing his or her duties or for stated misbehaviour and the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for such removal.

(8) Where the chairperson of the Commission ceases to be a commissioner he or she shall also thereupon cease to be chairperson of the Commission.

(9) The chairperson of the Commission may at any time resign his or her office as chairperson by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon receipt of the letter by the Minister, whichever is the later.

(10) The Commission may act notwithstanding a vacancy in its membership.

(11) A commissioner shall not hold any other office or employment in respect of which emoluments are payable.

(12) A commissioner shall not, for a period of 12 months following his or her resignation, removal or retirement from the office of commissioner, hold any office or employment or act as a consultant where he or she may be likely to use or disclose information acquired by him or her in the exercise of the functions of the Commission.

(13) No action or other proceedings shall lie or be maintainable (except in the case of wilful neglect or default) against any commissioner arising from a failure to perform or to comply with any of the functions conferred on the Commission by this Act.

**12.—**(1) The Commission may, subject to the consent of the Minister and the Minister for Finance, appoint such and so many persons to be members of its staff as it considers necessary to assist it in the performance of its functions on such terms and conditions including terms and conditions as to remuneration and grading as may be agreed. Staff of Commission.

(2) The Commission may perform such of its functions as it may deem proper through or by any member of its staff.

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Deputy  
commissioner.

**13.**—The Commission shall designate a member of its staff as a deputy member of the Commission (“deputy commissioner”) who shall assume and carry out with the authority of the Commission all of the functions of the Commission in the absence of the commissioners or when the membership of the Commission is vacant.

Consultants.

**14.**—The Commission may, from time to time, engage such consultants or advisers as it may consider necessary to assist it in the discharge of its functions and any fees due to a consultant or adviser engaged under this section shall form part of the expenses of the Commission.

Codes of conduct.

**15.**—(1) The Commission shall, following consultation with the Minister, draw up a code of conduct in respect of controls on staff interests and ethical behaviour to apply to each member of its staff.

(2) The Commission shall publish any code of conduct drawn up under *subsection (1)*.

Membership of  
Houses of  
Oireachtas,  
European  
Parliament and  
local authorities.

**16.**—(1) Where a commissioner is—

- (a) nominated as a member of Seanad Éireann,
- (b) nominated to stand as a candidate for election as a member of either House of the Oireachtas or to the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority,

he or she shall thereupon cease to be a member of the Commission.

(2) Where a person employed by the Commission—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or to the European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority,

he or she shall thereupon stand seconded from his or her employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission, remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either such House or such Parliament.

(3) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of, or a member of the staff of, the Commission. Pr.2 S.16

(4) A person who is a member of a local authority shall be disqualified from becoming a member of the Commission.

(5) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Commission for the purposes of any superannuation benefits.

**17.—(1)** On his or her offer of appointment, each commissioner shall make a declaration in writing of his or her interests to the Minister, in such form as the Minister, following consultation with the Minister for Finance, may specify. Declaration of interests.

(2) On his or her offer of appointment, each consultant and adviser and each member of the staff of the Commission at a grade or level specified before the appointment by the Commission, following consultation with the Minister, shall declare his or her interests in writing to the Commission and, within one month of such declaration, the Commission shall inform the Minister of the interests declared and the names of those making the declarations.

(3) A person to whom *subsection (1)* or *(2)* applies shall, throughout the tenure of his or her appointment, amend and update his or her declarations of interests as required by the Minister or the Commission, as the case may be, in respect of any changes in the interests held by the person.

(4) (a) A statement of the interests declared under *subsection (1)* shall be included in the next report prepared in accordance with *section 26(c)* following the making of the declaration and any subsequent change in a declaration shall also be included in a statement in the next available report.

(b) The form and content of the statement to be included in such report shall be agreed between the Commission, the Minister and the Minister for Finance.

(c) Notwithstanding *paragraph (b)*, it shall not be necessary to specify in a statement in such report the amount or monetary value of any interest, or the remuneration of any trade, profession or employment included in the statement.

(5) Where a person to whom *subsection (1)* applies, fails to make a declaration in accordance with that subsection, the Minister shall decide the appropriate action (including removal from office) to be taken.

(6) Where a person to whom *subsection (2)* applies, fails to make a declaration in accordance with that subsection, the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(7) In this section—

“employment” includes—

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- (a) full-time employment,
- (b) part-time paid employment, where such employment is ongoing in the year of appointment or which arises in subsequent years,
- (c) temporary paid employment, being for a period of 16 weeks or more in the year of appointment or in subsequent years, or
- (d) being retained under contract, directly or indirectly, in any capacity as an adviser, consultant or lobbyist, or for the provision of services;

“interests” includes—

- (a) employment by or on behalf of—
  - (i) an airline,
  - (ii) an airport authority,
  - (iii) an aviation terminal services provider,
  - (iv) a provider of groundhandling services,
  - (v) a travel agent or tour operator,
  - (vi) an organiser,
  - (vii) a coordinator under Article 4 of Council Regulation (EEC) No. 95/93,
- (b) shares in, bonds or debentures of, or other like investments in an undertaking mentioned in *paragraph (a)*, where the aggregate of such holdings exceeds £10,000,
- (c) a directorship or shadow directorship (within the meaning of the Companies Acts, 1963 to 1999), in such an undertaking, held currently or during the previous two years, or
- (d) gifts of travel, holidays, transport, money (in excess of £500) or other benefits, including benefits from any beneficial interest in or connected with such an undertaking, during the previous two years which were received by the person being appointed or by his or her spouse.

Disclosure of interests.

**18.—(1)** Where a commissioner, a member of the staff of the Commission, or a consultant, adviser or other person engaged by the Commission, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Commission, he or she shall—

- (a) disclose to the Commission, or where there is only one commissioner, that commissioner shall disclose to the Minister, the nature of his or her interest in advance of any consideration of the matter,
- (b) neither influence nor seek to influence a decision in relation to the matter,

- (c) take no part in any consideration of the matter,
- (d) if he or she is a commissioner or a member of the staff of the Commission, withdraw from the meeting for so long as the matter is being discussed or considered by the Commission, and shall not vote or otherwise act as such member in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or she or any member of his or her household, or any nominee of his or her's or any member of his or her household, is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection, or
- (b) he or she or any member of his or her household is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter, or
- (c) he or she or any member of his or her household is in the process of acquiring land or property to which such a matter relates.

(3) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter, by reason only of an interest of his or her's or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Commission, or, where there is only one commissioner, in the case of that commissioner, by the Minister.

(5) Where a disclosure is made to the Commission, particulars of the disclosure shall be recorded in the minutes of any meeting concerned.

(6) Where a person, other than a commissioner, referred to in this section fails to make a disclosure in accordance with this section, the Commission shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(7) Where a commissioner fails to make a disclosure in accordance with this section, the Minister shall decide the appropriate action (including removal from office) to be taken.

**19.—(1)** Save as otherwise provided by law, a person shall not disclose confidential information obtained by him or her while performing duties as a commissioner, member of the staff of, or an adviser or consultant to, or as an authorised officer of, the Commission, unless he or she is duly authorised by the Commission to do so.

Prohibition on unauthorised disclosure of information.

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(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 6 months, or to both.

(3) (a) In this section, “confidential information” means that which is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description.

(b) In expressing information to be confidential, the Commission shall have regard to the requirement to protect information of a confidential commercial nature.

Superannuation  
(commissioners).

**20.**—(1) The Minister may, with the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of a commissioner ceasing to hold office or for the making of contributions to a pension scheme approved of by the Minister with the consent of the Minister for Finance which has been entered into by a commissioner.

(2) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section, including a scheme under this subsection.

(3) If any dispute arises as to the claim of a commissioner to, or the amount of, any pension, gratuity or other allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(4) A scheme under this section shall be carried out by the Minister in accordance with its terms.

(5) No pension, gratuity or other allowance shall be granted by the Minister to or in respect of any commissioner ceasing to hold office otherwise than in accordance with a scheme under this section or as otherwise may be approved of by the Minister with the consent of the Minister for Finance.

(6) A scheme under this section shall be laid before each House of the Oireachtas by the Minister as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Superannuation  
(staff).

**21.**—(1) The Commission may prepare and submit to the Minister a scheme or schemes or may make such other arrangements with the approval of the Minister given with the consent of the Minister for Finance, for the granting of superannuation benefits to or in respect of such members of staff of the Commission, including the deputy commissioner, as he or she may think fit.

(2) Every scheme made under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) Every scheme made under *subsection (1)* may, with the consent of the Minister for Finance, be amended or revoked by a subsequent scheme prepared, submitted and approved under *subsection (1)*. Pr.2 S.21

(4) A scheme made under *subsection (1)* submitted by the Commission to the Minister shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

(5) No superannuation benefits shall be granted by the Commission nor shall any other arrangements be entered into by the Commission for the provision of such a benefit to or in respect of a member of the staff of the Commission otherwise than in accordance with a scheme under *subsection (1)* or otherwise as may be approved of by the Minister with the consent of the Minister for Finance.

(6) If any dispute arises as to the claim of any person to, or the amount of any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(7) As soon as may be, the Commission shall establish a fund administered by trustees who shall be appointed by the Commission from which superannuation benefits payable in respect of a member of the staff of the Commission ceasing to hold office, under a scheme under *subsection (1)* shall be paid.

(8) A scheme under this section shall be laid before each House of the Oireachtas by the Commission as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

**22.—**(1) The Minister may make available to the Commission, on a request being made by the Commission, such staff, premises, equipment, services and other resources as the Minister may determine from time to time in consultation with the Minister for Finance. Resources made available by Minister.

(2) The Commission shall pay to the Minister such sum or sums as the Minister may specify to be the expenses incurred by the Minister in establishing the Commission and in making available to the Commission such staff, premises, equipment, services and other resources under *subsection (1)*.

(3) Where the Minister makes available to the Commission under *subsection (1)* any officer of the Minister, that officer shall remain an officer of the Minister and shall not be considered to be a member of the staff of the Commission.

**23.—**(1) For the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions under this Act, the Commission shall make regulations imposing a levy (“levy”), to meet but not to exceed the estimated operating costs and expenses of the Commission, to be paid each year beginning with such year as specified in the regulations on such classes of undertakings as may be specified by the Commission in the regulations. Levy.

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(2) Levy shall be payable to the Commission at such time and at such rates as may be prescribed in regulations by the Commission and different rates may be prescribed in respect of different classes of undertaking liable to pay levy.

(3) The Commission may make regulations to provide for the following—

- (a) the keeping of records and the making of returns by persons liable to pay levy,
- (b) the collection and recovery of levy, and
- (c) such other matters as are necessary or incidental to the procurement of the payment of levy.

(4) An increase in levy may only take effect in the year after the year in which the increase is made in regulations.

(5) The Commission may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to it under this section.

(6) Every regulation made by the Commission under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) The Commission shall ensure that its own costs of operations are kept to a minimum and are not excessive.

Advances by  
Minister to  
Commission.

**24.—**(1) The Minister may, from time to time, with the consent of the Minister for Finance, advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may determine for the purposes of expenditure by the Commission in the performance of its functions.

(2) The sums to be advanced under *subsection (1)* shall be expended solely for the purpose and exercise of the functions conferred on the Commission by this Act.

(3) The Commission shall pay to the Minister, on every sum advanced to the Commission under this Act, interest from the date of the advance of such sum until the same is repaid at such rate and in such manner as shall be appointed by the Minister at the time of the advance and at such rate as may be determined from time to time, and such rate of interest shall not at any time exceed that fixed by an order under section 20 of the Courts Act, 1981.

Borrowings.

**25.—**The Commission may, for the purpose of the performance of its functions, borrow money, but shall not do so without the consent of the Minister and the Minister for Finance.

Accounts.

**26.—**The Commission shall—

- (a) keep in such form as may be approved by the Minister, with the concurrence of the Minister for Finance, all proper and usual accounts of all moneys received or expended by it including an income and expenditure account and balance sheet,



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- (b) submit accounts kept under *paragraph (a)* in respect of each year to the Comptroller and Auditor General for audit and those accounts when so audited, shall, together with the report of the Comptroller and Auditor General thereon, be presented within 6 months of the end of the financial year, to the Minister, who shall cause copies of the accounts and report to be laid before each House of the Oireachtas, and
- (c) within the first 3 months of each year make a report to the Minister in relation to the performance of its functions in the previous year and its proposed work programme for the following year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas as soon as practicable.

**27.—**(1) The Commission shall, whenever so requested by the Minister, furnish to the Minister information in relation to such matters as the Minister may specify concerning the scope of its activities generally or in respect of any account or report prepared by the Commission.

(2) The Commission may publish such reports (including statements of strategy) on matters related to its activities and functions as may from time to time be considered relevant and appropriate by the Commission.

(3) From time to time, and whenever so requested, the Commission shall account for the performance of its functions to a Joint Committee of the Oireachtas and shall have regard to any recommendations of such Joint Committee relevant to its functions.

**28.—**(1) The Commission may seek that a person in respect of whom it has been given a function under this Act shall keep accounts in such manner as the Commission may determine, in respect of the activities regulated by the Commission, separate from its other activities, and shall produce audited annual accounts in respect of its regulated activities which shall be submitted to the Commission within 6 months of the end of the accounting year.

(2) The Commission may arrange to have examined, on an annual basis, the aforesaid accounts to ensure that a separation of accounts has been carried out.

**29.—**The Commission may, for the purposes of providing premises necessary for the performance of its functions, lease, equip and maintain offices and premises with the consent of the Minister and the Minister for Finance.

**30.—**(1) The Commission shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal shall be authenticated by the signature of—

- (a) a commissioner, or
- (b) a member of the staff of the Commission, authorised by the Commission to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Commission and every document purporting to be an instrument made by and to

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be sealed with the seal of the Commission (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

### PART 3

#### REGULATION OF AIRPORT AND AVIATION TERMINAL SERVICES CHARGES

Application.

**31.—**(1) This Part applies to any airport in the State open to commercial traffic and having an annual passenger throughput of in excess of one million passengers in the previous calendar year.

(2) The Minister, after consultation with the Commission, may, by regulations, vary the annual passenger throughput mentioned in *subsection (1)*.

(3) Every regulation made by the Minister under *subsection (2)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Airport charges.

**32.—**(1) In this section and *section 33*, “determination” means a determination under *subsection (2)*.

(2) Not more than 6 months after the establishment day and at the end of each succeeding period of 5 years, the Commission shall make a determination specifying the maximum levels of airport charges that may be levied by an airport authority.

(3) In a determination the Commission may provide for a different maximum level of airport charges at different airports.

(4) Where it appears to the Commission that two or more airports are either—

(a) managed by the same airport authority, or

(b) that they are owned by the same person and operate as a group of airports whose activities are co-ordinated by that person,

any determination in relation to any one of those airports may be made by reference to the aggregate of amounts levied by way of airport charges at that airport and amounts so levied at the other airports.

(5) A determination shall—

(a) be in force for a period of 5 years, and

(b) come into operation not later than 30 days after the making of such determination.

(6) A determination may—

(a) provide—

(i) for an overall limit on the level of airport charges,

(ii) for limits to apply to particular categories of such charges, or

(iii) for a combination of any such limits,

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(b) operate to restrict increases in any such charges, or to require reductions in them, whether by reference to any formula or otherwise, or

(c) provide for different limits to apply in relation to different periods of time falling within the period to which the determination relates.

(7) Prior to making a determination the Commission shall—

(a) give notice to any person concerned stating that it proposes to make a determination,

(b) publish such notice in a daily newspaper published and circulating in the State, and

(c) specify the period (being not less than one month from the publication of the notice) within which representations with respect to the proposed determination may be made by interested parties or the public.

(8) The Commission—

(a) shall consider any representations which are made under *subsection (7)* and not withdrawn, and

(b) may either accept or reject any representations made under *subsection (7)*.

(9) On making a determination the Commission shall make a report on the determination giving an account of its reasons for making that determination together with its reasons for accepting or rejecting any representations made under *subsection (7)*.

(10) A report under *subsection (9)* shall be sent by the Commission to the Minister and to the airport authority concerned.

(11) The Commission shall as soon as may be—

(a) give notice that it has made a report under *subsection (9)*, and

(b) make the report available on request to interested parties or to the public.

(12) A notice under *subsection (11)* shall be given by publishing the notice in a daily newspaper published and circulating in the State and by such other means as the Commission may determine.

(13) For the purposes of this section, the Commission may request an airport authority in writing to provide information (including accounts, estimates, returns, projections or any other records) to it which is in the possession of or which can be obtained by the airport authority.

(14) (a) The Commission may on or after the expiration of a period of 2 years after the making of a determination—

(i) at its own initiative, or

(ii) at the request of an airport authority or user concerned in respect of the determination,

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if it considers that there are substantial grounds for so doing, review the determination and, if it sees fit, amend the determination.

(b) An amendment made under *paragraph (a)* shall be in force for the remainder of the period of the determination referred to in *subsection (5)(a)*.

(c) *Subsection (5)(b)* and *subsections (7) to (13)* shall apply to an amendment made under *paragraph (a)*.

(15) Any airport charges imposed by an airport authority, which are in force immediately before the establishment day, shall continue in force until any determination has been made.

Regulatory objectives in respect of airport charges.

**33.**—In making a determination the Commission shall aim to facilitate the development and operation of cost-effective airports which meet the requirements of users and shall have due regard to—

- (a) the level of investment in airport facilities at an airport to which the determination relates, in line with safety requirements and commercial operations in order to meet current and prospective needs of those on whom the airport charges may be levied,
- (b) a reasonable rate of return on capital employed in that investment, in the context of the sustainable and profitable operation of the airport,
- (c) the efficient and effective use of all resources by the airport authority,
- (d) the contribution of the airport to the region in which it is located,
- (e) the level of income of the airport authority from airport charges at the airport and other revenue earned by the authority at the regulated airports or elsewhere,
- (f) operating and other costs incurred by the airport authority at the airport,
- (g) the level and quality of services offered at the airport by the airport authority and the reasonable interests of the users of these services,
- (h) the cost competitiveness and operational efficiency of airport services at the airport with respect to international practice,
- (i) imposing the minimum restrictions on the airport authority consistent with the functions of the Commission, and
- (j) such national and international obligations as are relevant to its functions.

Amendment of section 39 of Act of 1998.

**34.**—Section 39(1) of the Act of 1998 is amended by the substitution of “subject to *section 32* of the *Aviation Regulation Act, 2001*” for “with the approval of the Minister”.

Aviation terminal services charges.

**35.**—(1) In this section and *section 36*—

“Authority” means Irish Aviation Authority;

“determination” means a determination made under *subsection (2)*.

(2) Not more than 12 months after the establishment day and at the end of each succeeding period of 5 years, the Commission shall make a determination specifying the maximum levels of aviation terminal services charges that may be imposed by the Authority. Pr.3 S.35

(3) A determination shall—

- (a) be in force for a period of 5 years, and
- (b) come into operation not later than 30 days after the making of such determination.

(4) A determination may—

- (a) provide—
  - (i) for an overall limit on the level of aviation terminal services charges,
  - (ii) for limits to apply to particular categories of such charges, or
  - (iii) for a combination of any such limits,
- (b) operate to restrict increases in any such charges, or to require reductions in them, whether by reference to any formula or otherwise, or
- (c) provide for different limits to apply in relation to different periods of time falling within the period to which the determination relates.

(5) Prior to making a determination the Commission shall—

- (a) give notice to any person concerned stating that it proposes to make a determination,
- (b) publish such notice in a daily newspaper published and circulating in the State, and
- (c) specify the period (being not less than 2 months from the publication of the notice) within which representations with respect to the proposed determination may be made by interested parties or the public.

(6) The Commission—

- (a) shall consider any representations which are made under *subsection (5)* and not withdrawn, and
- (b) may either accept or reject any representations made under *subsection (5)*.

(7) On making a determination the Commission shall make a report on the determination giving an account of its reasons for making that determination together with its reasons for accepting or rejecting representations made under *subsection (5)*.

(8) A report under *subsection (7)* shall be sent by the Commission to the Minister and to the Authority.

(9) The Commission shall as soon as may be—

- (a) give notice that it has made a report under *subsection (7)*, and
- (b) make the report available on request to interested parties or to the public.

(10) A notice under *subsection (9)* shall be given by publishing the notice in a daily newspaper published and circulating in the State and by such other means as the Commission may determine.

(11) For the purposes of this section, the Commission may request the Authority in writing to provide information (including accounts, estimates, returns, projections or any other records) to it which is in the possession of or which can be obtained by the Authority about the aviation terminal services provided by the Authority or matters relevant to the provision of aviation terminal services provided by the Authority.

(12) (a) The Commission may on or after the expiration of a period of 2 years after the making of a determination under *subsection (1)*—

- (i) at its own initiative, or
- (ii) at the request of the Authority or user concerned in respect of the determination,

if it considers that there are substantial grounds for so doing, review the determination and if it sees fit, amend the determination.

(b) An amendment made under *paragraph (a)* shall be in force for the remainder of the period of the determination referred to in *subsection (3)(a)*.

(c) *Subsection (3)(b)* and *subsections (5) to (11)* shall apply to an amendment made under *paragraph (a)*.

(13) Any aviation terminal service charges imposed by the Authority, which are in force immediately before the establishment day, shall continue in force until a determination has been made.

Regulatory objectives in respect of aviation terminal services charges.

**36.**—In making a determination, the Commission shall aim to facilitate the development and operation of safe, cost-effective terminal services which meet international standards and shall have due regard to—

- (a) the relevant charging principles of the International Civil Aviation Organisation and of Eurocontrol,
- (b) the level of investment in aviation terminal services by the Authority, in line with safety requirements and commercial operations, in order to meet current and prospective needs of the airline industry,
- (c) the efficient and effective use of all resources by the Authority,
- (d) the level of the Authority's income from aviation terminal services and other revenue earned by the Authority generally,

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- (e) operating and other costs incurred by the Authority in providing aviation terminal services, Pr.3 S.36
- (f) the level and quality of aviation terminal services, and the reasonable interests of the users of these services, and
- (g) the cost competitiveness of aviation terminal services with respect to international practice.

37.—Section 43(1)(a) of the Irish Aviation Authority Act, 1993, is amended by the insertion of “and *section 35* of the *Aviation Regulation Act, 2001*” after “subject to subsection (3)”. Amendment of Irish Aviation Authority Act, 1993.

38.—(1) A person shall not question the validity of a determination, a review of a determination or a request of the Commission under this Part otherwise than by way of an application for leave to apply for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (hereafter in this section referred to as “the Order”). Judicial review.

(2) An application for leave to apply for judicial review under the Order in respect of either of the matters referred to in *subsection (1)* shall—

- (a) be made within the period of two months commencing on the date on which notice of the determination under this Part was first published, unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made, and
- (b) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to the Commission and the person concerned,

and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the determination is invalid or ought to be quashed.

(3) The High Court may, before hearing an application referred to in *subsection (2)*, direct that notice of the application be also served on such other persons as the Court may specify.

(4) Notwithstanding an application for leave to apply for judicial review under the Order against a determination under this Part, the application shall not affect the validity of the determination and its operation unless, upon an application to the High Court, that Court suspends the determination until the application is determined or withdrawn.

- (5) (a) The determination of the High Court of an application for leave to apply for judicial review as aforesaid or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case save with the leave of the High Court which leave shall only be granted where the High Court or the Supreme Court certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

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(b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(6) Where an application is made for judicial review in respect of part only of a determination under this Part, the High Court may, if it so thinks fit, declare to be invalid or quash the part or any provision thereof without declaring to be invalid or quashing the remainder of the determination or part, as the case may be, and if the Court does so, it may make any consequential amendments to the remainder of the order or part, as the case may be.

(7) References in this section to the Order shall be construed as including references to the Order as amended or re-enacted (with or without modification) by rules of court.

Application to High Court.

**39.**—Where a person fails to comply with a determination or a request made by the Commission under this Part, the Commission may apply to the High Court for an order requiring the person to comply with the determination or request.

Appeal panel.

**40.**—(1) This section applies to—

- (a) an airport authority to whom a determination under *section 32(2)* applies,
- (b) the Irish Aviation Authority in respect of a determination under *section 35(2)*, and
- (c) an airport user, being any person responsible for the carriage of passengers, mail or freight by air to or from an airport, in respect of a determination under *section 32(2)* or *35(2)*.

(2) The Minister shall, upon a request in writing from a person to whom this section applies who is aggrieved by a determination under *section 32(2)* or *35(2)*, establish a panel (“appeal panel”) to consider an appeal by that person against the determination.

(3) An appeal panel shall consist of at least 3 but not more than 5 persons appointed by the Minister, one of whom shall be designated by the Minister to be the chairperson of the appeal panel.

(4) An appeal panel shall determine its own procedure.

(5) An appeal panel shall consider the determination and, not later than 2 months from the date of its establishment, may confirm the determination or, if it considers that in relation to the provisions of *section 33* or *36*, there are sufficient grounds for doing so, refer the decision in relation to the determination back to the Commission for review.

(6) An appeal panel shall notify the person who made the request under *subsection (2)* of its decision under *subsection (5)*.

(7) An appeal panel, having considered a determination under *section 32(2)* or *35(2)* and made a decision in respect of it under *subsection (5)* and having notified under *subsection (6)* the person who made the request under *subsection (2)* of its decision, shall stand dissolved.



(8) The Commission, where it has received a referral under *subsection (5)* from an appeal panel, shall, within one month of receipt of the referral, either affirm or vary its original determination and notify the person who made the request under *subsection (2)* of the reasons for its decision. Pt.3 S.40

(9) A notice of a decision made under *subsection (8)* shall be given by publishing the notice in a daily newspaper published and circulating in the State and by such other means as the Commission may determine.

**41.—**(1) Where a notice is required under this Part to be given to a person, the notice shall be addressed to that person and shall be given to the person in one of the following ways— Service of notices.

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the person at the address at which the person ordinarily resides or carries on business,
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by pre-paid registered post addressed to the person to, that address,
- (e) in any case where the Commission considers that the immediate giving of the notice is required, by sending it, by means of a facsimile machine, to a device or facility for the reception of 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 facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

## PART 4

### ENFORCEMENT

**42.—**(1) The Commission may appoint persons to be authorised officers for the purposes of this Act. Authorised officers.

(2) A person appointed under *subsection (1)* shall, on his or her appointment, be furnished by the Commission with a certificate of his or her appointment and when exercising a power conferred by *subsection (3)* shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(3) For the purposes of the exercise by the Commission of its functions under this Act, an authorised officer may—

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- (a) enter at any reasonable time any premises or place owned or occupied by a person to whom this section applies and search and inspect the premises and any books, documents or records found therein,
  - (b) require any such person to produce to him or her any books, documents or records relating to the provision of airport or aviation services which are in the person's power or control, and in the case of information in a non-legible form to reproduce it in a legible form, and to give to the officer such information as he or she may reasonably require in relation to any entries in such books, documents or records,
  - (c) secure for later inspection any premises or part thereof in which books, documents or records relating to the provision of airport or aviation services are kept or there are reasonable grounds for believing that such books, documents or records are kept,
  - (d) inspect and take extracts from or make copies of any such books, documents or records (including in the case of information in a non-legible form a copy of or extract from such information in a permanent legible form),
  - (e) remove and retain such books, documents or records for such period as may be reasonable for further examination,
  - (f) require the person to maintain such books, documents or records for such period of time, as may be reasonable, as the authorised officer directs,
  - (g) require the person to give to the officer any information which he or she may reasonably require with regard to the provision of airport or aviation services,
  - (h) require any person on the premises or place having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto.
- (4) This section applies to the following persons:
- (a) an airport authority,
  - (b) a supplier of aviation terminal services,
  - (c) any person responsible for the carriage of passengers, mail or freight by air to or from an airport,
  - (d) a supplier of ground handling services,
  - (e) a tour operator or a travel agent,
  - (f) an organiser.

(5) Where an authorised officer in exercise of his or her powers under this section is prevented from entering any premises or place,

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an application may be made under *section 43* for a warrant to authorise such entry. Pr.4 S.42

(6) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling, unless he or she has obtained a warrant under *section 43* authorising such entry.

(7) A person to whom this section applies who—

- (a) obstructs, impedes or assaults an authorised officer in the exercise of a power under this section,
- (b) fails or refuses to comply with a requirement under this section,
- (c) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce,
- (d) gives to the Commission or to an authorised officer information which is false or misleading, in a material respect, or
- (e) falsely represents himself or herself to be an authorised officer,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

**43.**—If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by an authorised officer for the purpose of this Act is held at any premises or place, the judge may issue a warrant authorising the authorised officer, accompanied if the officer considers it necessary by other authorised officers 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 required, of the warrant, to enter, if need be by reasonable force, the premises or place and exercise all or any of the powers conferred on an authorised officer under *section 42*. Search warrants.

**44.**—Where the Commission is satisfied that any member of the staff of the Commission or an authorised officer has discharged his or her duties in pursuance of the functions of the Commission in a *bona fide* manner, the Commission shall indemnify such member of staff or authorised officer, against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties. Indemnification.

**45.**—Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. Offences of bodies corporate.

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Prosecution of  
summary offences.

**46.**—Summary proceedings for offences under this Act may be brought and prosecuted by the Commission.

## PART 5

### MISCELLANEOUS AMENDMENTS

Repeal.

**47.**—Subsection (11) of section 5 of the Irish Aviation Authority Act, 1993, is repealed.

Amendment of  
Freedom of  
Information Act,  
1997.

**48.**—The Freedom of Information Act, 1997, is amended in the Third Schedule, by the insertion in Part I at the end thereof in the second column of “*Aviation Regulation Act, 2001*” and opposite in the third column of “*Section 19*”.

Amendment of Act  
of 1998.

**49.**—The Act of 1998 is amended in section 7(4) by the deletion of “that is not being prosecuted summarily”.

Amendment of Air  
Navigation and  
Transport Act,  
1973.

**50.**—Section 2A (inserted by section 65 of the Act of 1998) of the Air Navigation and Transport Act, 1973, is amended—

(a) by the insertion after subsection (3) of the following subsection:

“(3A) Where an aircraft lands, on the territory of the State and a member of the Garda Síochána has reason to believe that there is on board the aircraft a person who has committed an offence under this section, the member, together with any other members of the Garda Síochána, may, without warrant, enter the aircraft and may, without warrant, arrest any such person whom he or she finds on the aircraft.”,

and

(b) in subsection (4), by the substitution—

(i) in paragraph (a) for “£500” of “£1,500”, and

(ii) in paragraph (b) for “£700” of “£1,500”.