

S.I. No. 645 of 2003.

European Communities (Air Navigation and Transport Rules and Procedures for Noise Related Operating Restrictions at Airports) Regulations 2003

I, SEAMUS BRENNAN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No.27 of 1972) and for the purpose of giving effect to Council Directive No. 2002/30/EC of 26 March 2002¹, hereby make the following regulations:

¹ OJ No. L 85, 28.03.02 p.40

1. These Regulations may be cited as the European Communities (Air Navigation and Transport Rules and Procedures for Noise Related Operating Restrictions at Airports) Regulations 2003.

2. (1) These Regulations apply to civil airports that have more than 50000 movements of civil subsonic jet aeroplanes per year (a movement being a take-off or landing), taking into consideration the average of the last three years before the application of the rules of this Regulation to the airport in question.

(2) In these Regulations —

"airport authority" means the person owning, whether in whole or in part, or managing, either alone or jointly with another person, an airport in the State;

"the Directive" means Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002².

² OJ No. L 85, 28.03.02 p.40

"the Minister" means the Minister for Transport;

(3) In these Regulations, unless otherwise indicated-

(a) a reference to a Regulation is to a Regulation of these Regulations,

(b) a reference to a paragraph is to a paragraph of the provision in which the reference occurs,

(c) a reference to a subparagraph is to a subparagraph of the provision in which the reference occurs,

(d) a reference to an Annex is to an Annex to the Directive.

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

3. The Irish Aviation Authority shall be the Competent Authority responsible for ensuring that airport authorities:

(a) adopt a balanced approach in dealing with such noise problems as may arise and comply with Regulations 4, 5 and 6;

(b) allow exemptions for marginally compliant aircraft from developing countries pursuant to Regulation 8 where appropriate;

(c) allow exemptions for marginally compliant aircraft carrying out exceptional or non-revenue operations pursuant to Regulation 9 where appropriate;

(d) establish procedures for consultation in accordance with Regulation 10; and

(e) give prior public notice of the introduction or modification of operating procedures in accordance with Regulation 11.

4. (1) When there is a noise problem at an airport in the State which requires the introduction or modification of operating restrictions or other measures under these Regulations, the airport authority shall adopt a balanced approach in dealing with that noise problem having regard to these regulations and the Directive.

(2) When considering the introduction or modification of operating restrictions or other measures, the airport authority:

(a) shall take into account the likely costs and benefits of the various measures available as well as airport specific characteristics, and

(b) may consider economic incentives as a noise management measure.

(3) Measures or a combination of measures taken under these Regulations shall not be more restrictive than necessary in order to achieve the environmental objective established for a specific airport, and such measures or combination of measures shall be non-discriminatory on grounds of nationality or identity of air carrier or aircraft manufacturer.

(4) Operating restrictions may be performance-based, and such performance-based operating restrictions shall be based on the noise performance of the aircraft as determined by the certification procedure conducted in accordance with Volume 1 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993).

5. (1) When a decision on the introduction or modification of operating restrictions or other measures is being considered by an airport authority, the information as specified in

Annex II shall, as far as appropriate and possible, for the operating restrictions or other measures concerned and for the characteristics of the airport, be taken into account.

(2). Where airport projects are subject to an environmental impact assessment pursuant to Directive 85/337/EEC of 27 June 1985³, the assessment carried out in accordance with that Directive shall be considered as meeting the requirements of Regulation 5(1), provided that the assessment has taken into account as far as possible the information as specified in Annex II.

³ OJ NO. NO. L 175, 05/07/1985 p. 40 - 48

6. If the assessment by the airport authority of all available measures, including operating restrictions of a partial nature, carried out in conformity with the requirements of Regulation 5 demonstrates that the achievement of the objectives of these Regulations and the Directive requires the introduction or modification of restrictions or other measures aimed at the withdrawal of marginally compliant aircraft, the following rules shall apply instead of the procedure laid down in Article 9 of Regulation (EEC) No 2408/92⁴ of 23 July 1992 at the airport under consideration:

⁴ OJ NO. L 240, 24/08/1992 p. 8 - 14

(a) six months after the completion of the assessment and decision by the airport authority on the introduction or modification of an operating restriction or other measure, no services over and above those operated in the corresponding period of the previous year shall be allowed with marginally compliant aircraft at that airport; and

(b) not less than six months thereafter, each operator may be required by the airport authority to reduce the number of movements of that operator's marginally compliant aircraft serving that airport at an annual rate of not more than 20 per cent of the initial total of these movements.

7 (1) Regulation 5 does not apply to:

(a) operating restrictions or other measures that were already established on the date of entry into force of the Directive;

(b) minor technical changes to operating restrictions or other measures that do not have any significant cost implications for the airline operators at any airport in the State and that have been introduced after the entry into force of the Directive.

(2) A minor technical change to an operating restriction or other measure is deemed to be a modification of that operating restriction or other measure for the purposes of these Regulations.

8. Marginally compliant aircraft registered in developing countries shall, for a period of 10 years after the entry into force of the Directive, be exempted from the requirements of Regulation 6, provided that:

(a) such aircraft, granted noise certification to the standards specified in Volume 1, Part II, Chapter 3 of Annex 16 to the Convention on International Civil Aviation, were used at the airport concerned in the State between 1 January 1996 and 31 December 2001, and

(b) those aircraft were, between 1 January 1996 and 31 December 2001 on the register of the developing country concerned and that they continue to be operated by a natural or legal person established in that country.

9. (1) In individual cases, an airport authority may authorise, at its airport or airports, individual operations of marginally compliant aircraft which could not take place on the basis of other provisions of these Regulations.

(2) Authorisations granted under paragraph (1) shall be limited to:

(i) aircraft whose individual operations are of such an exceptional nature that it would be unreasonable to withhold a temporary exemption, or

(ii) aircraft on non-revenue flights for the purpose of alterations, repair or maintenance.

10. Each airport authority shall establish procedures for the consultation of interested parties, for the purposes of the application of Regulations 5 and 6.

11. (1) The airport authority shall, prior to the introduction or modification of any operating restrictions or other measures, notify interested parties including the Irish Aviation Authority of the introduction or modification of that restriction or other measures, including an explanation of the reasons for that restriction or measure taking into account the appropriate elements of the balanced approach, and shall, at the time of the notification, make that notification publicly available

(2) A notification made under this Regulation shall be given by the airport authority to interested parties:

(a) in respect of the introduction or modification of operating restrictions or other measures under Regulation 6(1)(a), six months before the entry into force of those operating restrictions, that modification, or those other measures,

(b) in respect of the introduction or modification of operating restrictions or other measures under Regulation 6(1)(b) and 6(2), one year before the entry into force of those operating restrictions, that modification, or those other measures, and

(c) in the case of the introduction or modification of operating restrictions or other measures under Regulation 6, two months before the scheduling conference for the relevant scheduling period.

(3) The Irish Aviation Authority shall, as soon as possible, inform the Minister, the European Commission, and other Member States of the European Communities of the introduction or modification of operating restrictions or other measures made under these Regulations.

12. (1) Any person, including the Minister and The Irish Aviation Authority aggrieved by the introduction or modification of operating restrictions or other measures taken under Regulation 6 or Regulation 7(1)(b) may within 21 days of the receipt of notification of the introduction or modification of the operating restrictions or other measures in question, appeal to the High Court against the introduction or modification of those operating restrictions or other measures.

(2) Where an appeal is made under paragraph (1) the appellant may make an application to the court that the introduction or modification of the operating restrictions or other measures in question shall stand suspended until the appeal is determined or withdrawn.

(3) Upon hearing the parties the High Court may make an order prohibiting, varying or confirming the introduction or modification of the restrictions or other measures in question or else direct that the airport authority in question reconsider the introduction or modification of the said restrictions or other measures and give such further directions in that regard as the court shall seem fit.

(4) A decision of the High Court on an appeal under paragraph (1) shall be final, save that, by leave of the Court an appeal from the decision shall lie to the Supreme Court on a specified question of law.

13 (1) The Irish Aviation Authority for the purposes of ensuring compliance with the Directive and with these Regulations, may issue a direction to an airport authority as it sees fit, and the airport authority shall comply with that direction.

(2) Where an airport authority has failed to comply with such a direction the Irish Aviation Authority may apply to the High Court for an order directing such compliance and the Court may make such Order as it sees fit.

14 (1) An airport authority which fails to comply with these Regulations or with a direction issued by the Irish Aviation Authority under Regulation 13 is guilty of an offence.

(2) An airport authority guilty of an offence under this Regulation is liable on summary conviction to a fine not exceeding €3,000

(3) An offence under this Regulation may be brought and prosecuted by the Irish Aviation Authority.

(4) Where an offence is committed under these Regulations by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any 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, 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.

GIVEN UNDER MY SEAL

25 November 2003.



SÉAMUS BRENNAN
Minister for Transport.

EXPLANATORY MEMORANDUM

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

The purpose of these Regulations is to give effect to the provisions of Council Directive No. 2002/30/EC of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports.