



STATUTORY INSTRUMENTS

S.I. No. 305 of 2008



EUROPEAN COMMUNITIES (AIR TRAFFIC CONTROLLER
LICENCE) REGULATIONS 2008

(Prn. A8/1171)

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I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Directive No. 2006/23/EC of the European Parliament and of the Council of 5 April 2006¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Air Traffic Controller Licence) Regulations 2008.

Interpretation

2. (1) In these Regulations—

“AIC” means Aeronautical Information Circular under Annex 15 to the Chicago Convention (within the meaning of section 2(1) of the Air Navigation and Transport Act 1946 (No. 23 of 1946));

“air navigation service provider” means an air navigation service provider who holds a certificate to provide air navigation services issued by the supervisory authority under Article 7 of Regulation (EC) No. 550/2004 of the European Parliament and of the Council of 10 March 2004²;

“Article” means Article of the Directive;

“Annex” means Annex to the Directive;

“authorised officer” means a person appointed as an authorised officer under Regulation 22;

“Directive” means Directive No. 2006/23/EC of the European Parliament and of the Council of 5 April 2006¹;

“licence” means an air traffic controller’s licence or a student air traffic controller’s licence granted by the supervisory authority under Regulation 7;

“medical certificate” means a medical certificate issued under Regulation 15;

“supervisory authority” means Irish Aviation Authority;

“training provider” means the holder of a training provider’s certificate to provide one or more types of training;

¹OJ No. L 114, 27.4. 2006, p. 22

²OJ No. L 96, 31.3.2004, p. 10.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 1st August, 2008.

“training provider’s certificate” means a certificate issued under Regulation 17.

(2) A word or expression which is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Scope

3. (1) These Regulations apply to air traffic controllers and student air traffic controllers exercising their functions under the responsibility of air navigation service providers which offer their services primarily to aircraft movements of general air traffic.

(2) In cases where regular and planned air traffic control services are provided under the responsibility of the Minister for Defence to general air traffic, the Minister for Defence must ensure that the level of safety and quality of those services is at least equivalent to the level resulting from the application of these Regulations and the Directive.

National Supervisory Authority

4. The Irish Aviation Authority is nominated as the national supervisory authority in the State to assume the tasks assigned to such authority under the Directive. The Irish Aviation Authority shall ensure that there is adequate separation at functional level to achieve independence between any supervisory function it has under these Regulations and the Directive and the provision of air navigation services.

Prohibition on unlicensed provision of air traffic control services

5. A person shall not provide air traffic control services unless he or she is the holder of a licence. A person who contravenes this Regulation commits an offence.

6. An air navigation service provider shall ensure that air traffic control services it provides are performed by licence holders who hold licences appropriate to the function being exercised. An air navigation service provider who knowingly fails to comply with this Regulation commits an offence.

Licences

7. The supervisory authority shall grant licences to applicants who prove to it they are competent to act as air traffic controllers or student air traffic controllers.

8. A student air traffic controller’s licence authorises the holder to provide air traffic control services under the supervision of an on-the-job-training instructor. It shall be granted to applicants who fulfil the conditions set out in Article 5(1).

9. An air traffic controller’s licence shall be granted to applicants who fulfil the conditions set out in Article 5(2).

10. An instructor endorsement shall be granted to the holder of an air traffic controller’s licence who fulfils the conditions set out in Article 5(3).

11. A licence shall be in English and include the items set out in Annex I. It is the property of and shall be signed by its holder.

12. A licence shall contain the one or more of the ratings set out in Article 6. The Aerodrome Control Instrument, Approach Control Surveillance and Area Control Surveillance rating shall bear at least one of the endorsements set out in Article 7(1), (2) and (3), respectively.

Language endorsements

13. (1) An air traffic controller must speak and understand English to a satisfactory standard determined in accordance with the language proficiency rating scale set out in Annex III at level 4 of that scale or higher. However, the supervisory authority may require level 5 of that scale where the operational circumstances of the particular rating or endorsement warrant a higher level for imperative reasons of safety. The supervisory authority shall issue a certificate of proficiency in English to air traffic controllers who demonstrate their ability to speak and understand English to a satisfactory standard for the purposes of this Regulation and Article 8.

(2) Where the supervisory authority requires a higher scale, this should be notified by it under an AIC or in such other manner as the supervisory authority decides, including the issue of a general notice to air navigation service providers or by publication on the website of the supervisory authority.

Instructor and unit endorsements

14. Instructor endorsements shall be in accordance with Article 9. Unit endorsements shall be in accordance with Article 10. The validity of endorsements and the conditions for maintaining ratings and keeping endorsements are as set out in Article 11.

Medical certificates

15. (1) Medical certificates shall be issued, in accordance with Article 12, by medical examiners approved by the supervisory authority and are valid for the period mentioned in Article 12(3).

(2) The supervisory authority shall ensure that effective review or appeal procedures in relation to the issue of medical certificates are put in place with the appropriate involvement of independent medical advisers.

(3) The supervisory authority shall notify air navigation service providers and other interested persons of any review or appeal procedures by means of an AIC or in such other manner as the supervisory authority decides including the use of a general notice to air navigation service providers or other interested persons or by publication on the website of the supervisory authority.

Notification procedures — reduced medical fitness

16. (1) An air navigation service provider shall ensure that procedures are established to deal with cases of reduced medical fitness and to enable licence holders employed by the provider to notify the provider that they are becoming

aware of any decrease in medical fitness or are under the influence of psychoactive substance or medicines which might render them unable to exercise the privileges of the licence safely and properly.

(2) The holder of a licence who, on becoming aware of any decrease in his or her medical fitness or is under the influence of psychoactive substances or medicines which might render him or her unable to exercise the privileges of the licence safely or properly, fails to comply with any procedure established under paragraph (1) with intent to deceive commits an offence.

(3) In the case of the holder of a licence who has not been in the continuous employment of an air navigation service provider, the holder shall before taking up employment with an air navigation service provider, notify the provider of any decrease in medical fitness or use of psychotic substance or medicines which might render him or her unable to exercise the privileges of the licence safely and properly. A holder who, upon being requested by an air navigation service provider with whom he or she is taking up employment, fails to comply with this paragraph commits an offence.

(4) The supervisory authority may give directions to an air navigation service provider who has not complied or has not in its operation adequately complied with paragraph (1) in establishing procedures. The provider may within 21 days, or such other period as the supervisory authority allows, make representations to the authority in relation to the direction. The supervisory authority having considered any such representations shall by notification to the provider confirm or modify the direction. The provider must comply with the direction. Where the provider fails to comply with the direction, the supervisory authority may apply to the Circuit Court for an order directing compliance. The Court may make such order it sees fit. The decision of the Court is final, except by its leave, an appeal on a specified point of law lies to the High Court.

Certification of training providers

17. (1) The supervisory authority shall certify the provision of training to air traffic controllers, including related assessment procedures, in accordance with Article 13 and issue training provider's certificates in accordance with point 2 of Annex IV to those applicant training providers who fulfil the requirements laid down in point 1 of Annex IV.

(2) If the supervisory authority finds that the holder of a training provider's certificate no longer satisfies the requirements of this Regulation or any conditions attached to the certificate, it may withdraw the certificate in whole or in part, for such period as it considers appropriate or permanently. Where a certificate is withdrawn for a particular period, it may be withdrawn permanently if the supervisory authority considers that a requirement of these Regulations or the Directive or a condition attached to the certificate has not been complied with or is unlikely to be complied with by the training provider concerned.

(3) Where the supervisory authority proposes to so withdraw a training provider's certificate it shall notify the holder of the proposal and afford the holder the opportunity to make representations to the supervisory authority within 21

days of the proposal or such further period as the authority allows. However, if the supervisory authority considers that there is a serious threat to the safety of general air traffic, the withdrawal may take place immediately upon notification.

Suspension and revocation of licence, etc.

18. (1) The supervisory authority may—

- (a) suspend, for such period it considers appropriate, or suspend and subsequently revoke or revoke a licence, ratings or endorsements, when the competence of the licence holder concerned is in doubt or in cases of misconduct, or
- (b) revoke a licence, in cases of gross negligence or abuse by the licence holder concerned.

(2) Where the supervisory authority proposes to suspend a licence, a rating or a rating endorsement or revoke a licence, a rating or a rating endorsement, it shall notify the holder of the proposal and afford, unless the authority considers the matter affects the safety of general air traffic, the holder the opportunity to make representations to the supervisory authority within 21 days of the proposal or such other period as the authority allows. However, if the supervisory authority considers that there is a serious threat to the safety of air traffic, the suspension or revocation, as the case may be, may take place immediately upon notification.

Surrender of suspended licence and withdrawn training provider's certificate

19. Where a licence is suspended or revoked under Regulation 18 or a training provider's certificate is withdrawn under Regulation 17, the holder of it shall immediately surrender it to the supervisory authority. Where a rating or endorsement is suspended under Regulation 18(1)(a) the licence holder shall immediately submit the licence to the supervisory authority for amendment. A holder who fails, without reasonable excuse, to comply with a requirement under this Regulation commits an offence and is liable on summary conviction to a fine not exceeding €2,000.

Prohibition on operating under suspended, revoked or withdrawn licences or certificates

20. A person who continues to operate as an air traffic controller or training provider, as the case may be, where that person's training provider's certificate has been withdrawn under Regulation 17 or licence, rating or rating endorsement has been suspended or revoked under Regulation 18(1)(a) or licence has been revoked under Regulation 18(1)(b) commits an offence.

Appeal panel

21. (1) The Minister shall establish a panel ("appeal panel") for the purposes of considering appeals under this Regulation. 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 chairperson of the panel. An appeal panel shall not consist of any person who decided or was involved in the decision to suspend, revoke or withdraw the licence, training provider's certificate or

rating or endorsement being the subject of the appeal in question. The Minister may establish more than one appeal panel to consider one or more appeals. An appeal panel shall establish its own procedure.

(2) Where the supervisory authority decides to suspend a licence, rating or endorsement or revoke a licence or withdraw a training provider's certificate (having considered any representations made to it) the supervisory authority shall notify the holder accordingly and the holder may, within 14 days after the date of the notification, appeal to an appeal panel, against the suspension, revocation or withdrawal, as the case may be. The licence rating or endorsement or certificate stands suspended, revoked or withdrawn, as the case may be, from the date of the notification, unless the appeal panel, upon an application to it, having considered the safety of general air traffic, decides otherwise, pending the outcome of the appeal. On hearing the appeal the appeal panel may confirm the decision, vary it or allow the appeal and notify the applicant of its decision. The decision of the appeal panel is final except that an appeal lies to the High Court on application to it on a specified point of law. Such an application does not affect the decision of the appeal panel and its operation.

(3) All expenses reasonably incurred by the supervisory authority in relation to an appeal before an appeal panel or the High Court shall be borne by the appellant where the appeal panel or the Court confirms or confirms with a variation the decisions of the supervisory authority. The supervisory authority may recover these expenses as a simple contract debt in a court of competent jurisdiction.

Authorised officers

22. (1) The supervisory authority may appoint persons to be authorised officers for the purposes of these Regulations and the Directive.

(2) An authorised officer shall be furnished with a warrant of his or her appointment. When exercising a power conferred on him or her under this Regulation he or she shall, if requested by any person affected, produce the warrant or a copy of it to the person for inspection.

(3) Authorised officers may enter the premises of air navigation service providers or training providers to ensure these Regulations and the Directive are being complied with and may for that purpose make such inspections, ask such questions and require the production of and inspect and take copies of licences, certificates and other records (in whatever form kept).

(4) A person who obstructs or fails, without reasonable excuse, to answer any questions or to comply with a requirement of, an authorised officer under these Regulations commits an offence and is liable on summary conviction to a fine not exceeding €2,000.

Forgery, etc.

23. (1) A person who—

- (a) forges, procures, or assists in the forgery of, or knowingly and without authority alters, a licence, training provider's certificate or medical certificate,
- (b) knowingly is in possession of or uses or allows the use of such, or
- (c) knowingly provides another with such to which the other is not entitled,

commits an offence.

(2) An authorised officer may seize and detain any document purporting to be a licence, training provider's certificate or medical certificate which he or she suspects has been forged or so altered, is so possessed or used or provided.

False representations

24. A person who makes, or assists another in making, false representations to obtain the issue of a licence, rating or endorsement or a training provider's certificate or a medical certificate commits an offence. An authorised officer may seize and detain any licence, rating or endorsement or any such certificate which he or she suspects has been obtained through false representations.

Penalty, prosecution of offences and offence by body corporate

25. (1) A person guilty of an offence under these Regulations (other than under Regulation 19 or 22(4)) is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 3 months or both.

(2) An offence under these Regulations may be prosecuted by the supervisory authority.

(3) Where an offence is committed under these Regulations by a body corporate and is proved to have been committed with the consent, connivance or approval of or to have been attributable to the 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, commits an offence and is liable to be proceeded against and punished as if he or she was guilty of the first mentioned offence.

Mutual assistance

26. The supervisory authority shall provide appropriate information and mutual assistance to the national supervisory authorities of other Member States to ensure the effective application of the Directive, particularly the free movement of air traffic controllers within the European Community.

Data base

27. The supervisory authority shall establish and maintain a data base listing the competencies of licence holders and the validity dates of their endorsements. To this end, air navigation service providers shall keep records, for such period

as the supervisory authority specifies and notifies under an AIC or in such other manner as the supervisory authority decides (including the options mentioned in Regulation 13(2)) being not more than 2 years, of the hours effectively worked in the sectors, group of sectors or in the working positions for every licence holder working in the unit. An air navigation service provider shall provide this data to the supervisory authority on request. An air navigation service provider who fails, without reasonable excuse, to comply with such a request commits an offence.

Approval of examiners and audit of training

28. The supervisory authority shall—

- (a) approve licence holders, for a renewable period of 3 years, who are entitled to act as competence examiners or competence assessors for unit and continuation training, and
- (b) audit training providers on a regular basis against the standards laid down in the Directive.

Mutual recognition of air traffic controller licences

29. Where a person has been issued with a licence by the national supervisory authority of another Member State and the licence holder exercises the privileges of the licence in the State, the licence holder may exchange that licence for a licence issued by the supervisory authority, without additional conditions being imposed.

30. In order to grant a unit endorsement, the supervisory authority shall require the applicant to fulfil the particular conditions associated with it, specifying the unit, sector or working position. When establishing the unit training plan, the training provider shall take due account of the acquired competencies and the experience of the applicant. Approval of the plan is in accordance with Article 15(4).

Notifications, etc.

31. (1) Where a notification or direction is required under these Regulations (other than Regulations 13 and 27) to be given by the supervisory authority to a person, it shall be in writing, addressed to the person and shall be given to the person in one of the following ways—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person carries on business or if the person is an individual at the place where he or she resides,
- (c) by sending it by post in a pre-paid registered letter addressed to the person at the address at which the person carries on business or if the person is an individual at the place where he or she resides,
- (d) if an address for the service of a notification or direction 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, or

(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 person carries on business or if the person is an individual at the place where he or she resides or, if an address for the service of a notification or direction has been furnished by the person, that address, but only if—

(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 notification,

and

(ii) the notification or direction is also given in one of the ways mentioned above.

Fees

32. (1) The supervisory authority may charge such fees to cover administration costs as it considers reasonable in respect of its tasks under these Regulations and the Directive, such as the issue or renewal of licences, ratings or endorsements or training providers' certificates, medical certification, approval of competency of examiners, exchange of licences and approval of unit training plans. Fees so paid remain as part of the income of the supervisory authority.

(2) A fee due under this Regulation—

(a) shall accompany the application to which it relates, and

(b) in any other case may be recovered by the supervisory authority as a simple contract debt in a court of competent jurisdiction.

(3) Where the supervisory authority charges a fee under this Regulation, this should be notified by it under an AIC or in such other manner as the supervisory authority decides, including the issue of a general notice to air navigation service providers or relevant persons or by publication on the website of the supervisory authority.

Revocation and saver

33. (1) Part VII of, and Part I of Schedule V to, the Irish Aviation Authority (Personnel Licensing) Order 2000 (S.I. No. 333 of 2000) are revoked in so far as they apply to air traffic controllers and student air traffic controllers.

(2) An air traffic controller, a student air traffic controller licence and any endorsements or ratings issued under the provisions revoked under paragraph (1) which are in force on the making of these Regulations continue as if issued under these Regulations and these Regulations apply to it.



GIVEN under my Official Seal,
29 July 2008

NOEL DEMPSEY.
Minister for Transport.

EXPLANATORY NOTE

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

These Regulations prescribe the regulatory framework for the licensing of student air traffic controllers and air traffic controllers for the purpose of providing services to general air traffic. They designate the Irish Aviation Authority as the national supervisory authority to assume the tasks assigned to such an authority in accordance with Council Directive 2006/23/EC of 5 April 2006.

They revoke Part VII of, and Part I of Schedule V to, the Irish Aviation Authority (Personnel Licensing) Order 2000 (S.I. No. 333 of 2000) in so far as they apply to the licensing of air traffic controllers and student air traffic controllers.

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