



STATUTORY INSTRUMENTS.

S.I. No. 95 of 2008



EUROPEAN COMMUNITIES (EUROPEAN AVIATION SAFETY
AGENCY) (AMENDMENT) REGULATIONS 2008

(Prn. A8/0437)

EUROPEAN COMMUNITIES (EUROPEAN AVIATION SAFETY AGENCY) (AMENDMENT) REGULATIONS 2008

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) and for the purpose of giving effect to Regulation (EC) No. 216/2008 of 20 February 2008¹, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (European Aviation Safety Agency) (Amendment) Regulations 2008.

2. These Regulations come into operation on 8th April 2008.

3. European Communities (European Aviation Safety Agency) Regulations 2003 (S.I. No. 469/2003) are amended as follows:

(a) In Regulation 3(1) by substituting the following for the definition of “the EASA Regulation”

“ “the EASA Regulation” means Regulation (EC) No. 216/2008 of the European Parliament and of the Council of 20 February 2008¹ and shall include any rules or regulations adopted by the European Commission in accordance with the EASA regulation.”;

(b) In Regulation 8(1) by inserting the words “the EASA Regulation,” after the word “include”;

(c) In Regulation 8(2) by deleting the words “in so far as they relate to summary offences,”;

(d) By the insertion of the following Regulations after Regulation 8

“9. (1) This Regulation shall apply without prejudice to the operation of any other law of the State relating to access to information by judicial authorities.

(2) Information received by the Authority pursuant to the EASA Regulation shall be treated as confidential and shall not be disclosable under the Freedom of Information Acts 1997 to 2003.

(3) The source of any information made available to the Authority in the application of the EASA Regulation shall not be disclosed.

¹OJ No. L 79, 19.3.2008 pp 1-49

10. (1) An employer shall not subject an employee of the employer to any prejudice because the employee has provided information in application of the EASA Regulation.

(2) *Paragraph (1)* shall not apply in cases of gross negligence.

(3) The Schedule to these Regulations has effect in relation to an alleged contravention of *paragraph (1)*.

(4) If the prejudice to which an employee is subject, in contravention of *paragraph (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2007, relief may not be granted to the employee in respect of that prejudice both under the Schedule and under those Acts.”

(e) By the addition of the following as a Schedule to the Regulations;

“SCHEDULE

REDRESS FOR CONTRAVENTION OF REGULATION 10

Complaints to rights commissioner

1. (1) An employee may present a complaint to a rights commissioner that his or her employer has contravened *Regulation 10(1)* in relation to the employee.

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall—

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,

(b) give a decision in writing in relation to it, and

(c) communicate the decision to the parties.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded;

(b) require the employer to take a specified course of action;

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances but not exceeding 2 years remuneration in respect of the employee’s employment;

and the references in the foregoing clauses to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(5) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner.

(7) A copy of a notice under *subparagraph (6)* shall be given to the other party concerned by the rights commissioner concerned.

(8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

Appeals from decisions of rights commissioner

2. (1) A party concerned may appeal to the Labour Court (the “Court”) from a decision of a rights commissioner under *paragraph 1* and, if the party does so, the Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 6 weeks (or such greater period as the Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Court containing such particulars as are determined by the Court under *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under *subparagraph (2)* shall be given by the Court to any other party concerned as soon as is practicable after the receipt of the notice by the Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Court, namely—

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Court of appeals under this paragraph,
- (b) the times and places of hearings of such appeals,
- (c) the representation of the parties to such appeals,
- (d) the publication and notification of determinations of the Court,
- (e) the particulars to be contained in a notice under *subparagraph (2)*, and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for determination and the determination of the High Court shall be final and conclusive.

(6) A party to proceedings before the Court under this paragraph may appeal to the High Court from a determination of the Court on a point of law and the determination of the High Court shall be final and conclusive.

Paragraphs 1 and 2: supplemental provisions

3. (1) A rights commissioner shall furnish the Court with a copy of each decision given by the commissioner under *paragraph 1(2)*.

(2) A rights commissioner shall maintain a register of all decisions given by him or her under *paragraph 1(2)* and shall make the register available for inspection by members of the public during normal office hours.

(3) The Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under *subparagraph (4)(a)*, (c), (e) and (f) of *paragraph 2* (not being a determination as respects a particular appeal under that paragraph).

Enforcement by Circuit Court

4. (1) Where any party to a complaint under *paragraph 1(1)* fails to carry out in accordance with its terms a decision of a rights commissioner under *paragraph 1(2)* or a determination of the Court under *paragraph 2(1)* within 6 weeks from the date on which the decision or determination, as the case may be, is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- (a) the employee concerned, or

(b) with the consent of the employee, any trade union, or excepted body (within the meaning of section 1 of the Industrial Relations (Miscellaneous Provisions) Act 2004 (No. 4 of 2004)), of which the employee is a member,

without hearing the respondent or any evidence (other than in relation to the matters aforesaid) make an order directing the respondent to carry out the decision or the determination, as the case may be, in accordance with its terms.

(2) The reference in *subparagraph (1)* to a decision of a rights commissioner or to a determination of the Court is a reference to such a decision or determination, as the case may be, in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned and the reference to the date on which the decision or the determination, as the case may be, is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.

(3) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, where the order relates to the payment of compensation, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in *section 22* of the *Courts Act 1981*, in respect of the whole or any part of the period beginning 6 weeks after the date on which the decision concerned of the rights commissioner under *paragraph 1(2)* or the determination of the Court under *paragraph 2(1)*, as the case requires, is communicated to the parties and ending on the date of the order.

(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the respondent ordinarily resides or carries on any profession, trade or business, or in which the principal office of the respondent is situate.”



GIVEN under my Official Seal,
7 April 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 amend the European Communities (European Aviation Safety Agency) Regulations 2003 and gives effect to Regulation (EC) 216/2008.

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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