



# Air Transport

in 34 jurisdictions worldwide

Contributing editor: John Balfour

# 2010



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# Ireland

Kieran Cowhey, Tom Carney, Andrew Lawless and Lea Devitt

Dillon Eustace

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## General

### 1 Which bodies regulate aviation in your country, under what basic laws?

The sector-specific regulator for aviation in Ireland is the Commission for Aviation Regulation (the CAR) which is established pursuant to the Aviation Regulation Act 2001. General competition in the aviation sector may be enforced by the Competition Authority, pursuant to the Competition Act 2002, whereas the Irish Aviation Authority (the IAA), established by the Irish Aviation Authority Act 1993 regulates safety standards for Irish civil aviation and provides for air traffic management among other things.

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## Regulation of aviation operations

### 2 How is air transport regulated in terms of safety?

The IAA implements and enforces safety and technical standards for civil aviation in Ireland pursuant to section 14 of the IAA Act 1993, in accordance with the European Aviation Safety Agency (EASA) Regulations. It also oversees the application process for air operator certificates (AOCs) and issues an extensive list of operations advisory memoranda (OAMs) and aeronautical notices to ensure ongoing compliance.

As a signatory to the Chicago Convention, Ireland is obliged to ensure compliance of air navigation equipment and operations with standards set by the International Civil Aviation Organisation (the ICAO).

Section 14(7) of the IAA Act 1993 empowers the IAA to regulate the airworthiness of aircraft, including their operation and maintenance. It must also ensure the competence of persons engaged in or associated with the operation, maintenance and management of aircraft and related aeronautical communications services and systems, together with other services at aerodromes. The IAA must ensure that Irish civil aviation operates to safety standards set internationally by the ICAO, the EASA, the European Organisation for the Safety of Navigation (EuroControl), the European Civil Aviation Conference (the ECAC) and the EU.

### 3 What safety regulation is provided for air operations that do not constitute public or commercial transport, and how is the distinction made?

As a general rule, private operators must also comply with the operating standards set out in the regulations, statutory instruments, OAMs and aeronautical notices mentioned above. The EASA requirements, however, are not applicable to private operators.

### 4 Is access to the market for the provision of air transport services regulated, and if so how?

The CAR is responsible for granting air carrier operating licences (ACOLs) (under Council Regulation No. 1008/2008) to operators

who possess a valid AOC issued by the IAA.

Air transport services cannot be provided within the EU for remuneration without an appropriate operating licence. Before issuing an ACOL, the CAR must be satisfied that the applicant fulfils the conditions set out in Council Regulation No. 1008/2008 and all relevant legislative requirements (eg, Regulation (EC) No. 785/2004 on Insurance Requirements for Air Carriers and Aircraft Operators whereby the applicant air carrier is required to hold adequate insurance cover for a proposed activity). The CAR monitors the efficiency and adequacy of such insurance arrangements on a continuous basis.

Further to Statutory Instrument 426 of 2008 (which gives effect to Council Regulation No. 1008/2008) an applicant air carrier must have its principal place of business and registered office in Ireland. Its main occupation must be air transport either solely or together with another person involved in the commercial operation, repair or maintenance of aircraft.

### 5 What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

Pursuant to Statutory Instrument 426 of 2008 implementing Council Regulation No. 1008/2008, an air carrier must be owned and controlled (either directly or through a majority ownership) by an EU or EEA member state or an EU or EEA national or both. In Ireland, the issue of control is generally determined by the requirement of 50 per cent plus one share majority ownership.

An operator's compliance with the ownership and control requirements of Regulation No. 1008/2008 is assessed by the CAR on a case-by-case basis. A carrier must at all times, be able, upon request, to demonstrate to the CAR that it meets the necessary requirements.

The CAR, pursuant to Statutory Instrument 426 of 2008, shall assess whether an air carrier (applying for the first time for an ACOL) can meet its actual and potential obligations for a period of 24 hours from the start of operations, and its fixed and operational costs incurred by operations (as per the air carrier's business plan) for three months from the start of operations, not taking into account any income from its operations.

### 6 What procedures are there to obtain licences or other rights to operate particular routes?

The holder of an ACOL does not have an automatic right of access to specific routes or markets. All licensed EEA air carriers may operate on most routes within the EEA, without being subject to permit or authorisation by a member state. For operations beyond the EEA, operators must obtain authorisation from the Aviation Regulation and International Relations Division of the Irish Department of Transport.

- 7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

Disgruntled applicants may seek judicial review of all decisions made by Irish public bodies in respect of licence and authorisation applications from the High Court of Ireland.

- 8 Is there a declared policy on airline access or competition, and if so what is it?

There is no stated policy on airline access or competition. Competition is viewed, though, as critical, to ensure maximised efficiency and productivity for the ultimate benefit of the consumer. The 'Single European Sky' and the 'EU-US Open Skies' policies facilitate an open market and foster further competition.

- 9 What requirements must a foreign air carrier satisfy in order to operate to or from your country?

A foreign carrier requires authorisation from the IAA in order to operate to and from Ireland.

Foreign air carriers can be divided into two categories – European Economic Area (EEA) carriers and non-EEA carriers. The EEA includes all EU countries and Norway, Iceland and Liechtenstein. Regulation (EC) No. 1008/2008, which provides for mutual recognition of air carriers licensed within the EU, also applies to the EEA in this respect.

#### EEA carriers

All foreign air carriers established within the EU must have an operating licence in order to carry by air, passengers, mail or cargo for remuneration or hire. In order to obtain an operating licence within the EU, the requirements of chapter II of Regulation (EC) No. 1008/2008 must be complied with. These requirements include, among others, complying with specified financial conditions and having adequate insurance in place. In addition, the granting and validity of an operating licence is dependant upon the possession of a valid Air Operator's Certificate (AOC).

In general, operating licences do not automatically confer rights of access to specific routes and markets. These 'traffic rights' must be acquired independently. All EEA licensed air carriers however, automatically obtain traffic rights and no further authorisations are required to operate in and out of Ireland in this respect.

All licensed EEA carriers are therefore free to operate on most routes within the EEA, without having to obtain any further authorisations.

#### Non-EEA carriers

No further authorisations are required to operate in and out of Ireland for non-EEA licensed carriers provided they have the necessary traffic rights. In order for a non-EEA licensed air carrier to be issued traffic rights, it requires authorisation from the Department of Transport, Aviation Division ('DOT') and the Irish Aviation Authority (IAA).

The non-EEA carrier is required to furnish the DOT with a number of documents including its AOC, Certificate of Airworthiness and Certificate of Insurance. The DOT will then forward the documentation to the IAA to ensure that the non-EEA carrier meets the required safety and technical standards. The DOT will then issue an authorisation in respect of the non-EEA carrier. This authorisation is valid for a season – summer or winter – and entitles the non-EEA carrier to operate in and out of Ireland for the duration of the season.

Ireland has entered into a number of bilateral agreements with non-EEA countries. Specific airlines which are designated under such agreements will usually have fewer obstacles to overcome to gain authorisation. In addition, there are a number of horizontal agreements between the EU and other countries whereby standards

have been set and recognised, requiring fewer formalities in effecting authorisation.

- 10 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?

Specific rules are in place to ensure aviation services are offered to remote destinations when vital for the local economy. An EU public tender process relating to contracts to provide scheduled services on six regional air routes exists. Public service obligation (PSO) contracts were awarded in May 2008 and will commence on 22 July 2008 for a three-year period.

Applicants may apply to the Department of Transport for PSO contracts. They are awarded in accordance with EU Regulation 1008/2008. Appointed air carriers may provide additional non-PSO services on the routes in question.

- 11 Are charter services specially regulated?

The regulatory requirements relevant to charter services are those that apply to all other commercial operators.

- 12 Are airfares regulated, and if so, how?

With the exception of PSO services, mentioned above, airfares are not regulated. In accordance with PSO obligations, a set percentage of seats per flight must be sold at a fixed price. Generally, airfares are driven by competition albeit influenced by miscellaneous charges, taxes and fuel prices.

#### Aircraft

- 13 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?

The aircraft register is not a proprietary register which reflects actual legal ownership; rather it reflects responsibility for the aircraft's compliance with technical standards. The aircraft register must contain the name and address of the owner of a legal or beneficial interest in the aircraft or a share therein or in the case of an aircraft that is the subject of a charter or lease by an operator, the name of the operator. The manufacturer of the aircraft is also entitled to be mentioned on the aircraft register.

An aircraft shall not be registered or continue to be registered in Ireland unless it is wholly owned by a citizen of Ireland or a citizen of a member state of the EU having a place of residence or business in Ireland, or a company registered in and having a place of business in Ireland or in another member state of the EU, where not less than two-thirds of the directors are citizens of Ireland or of member states of the European Union.

- 14 Is there a register of aircraft mortgages or charges, and if so how does it function?

All aircraft mortgages and charges must be registered with the Companies Registration Office within 21 days of their creation. With effect from 1 March 2006, aircraft mortgages or charges with an international interest must be registered on the international registry established pursuant to the Convention on International Interests in Mobile Equipment (the Cape Town Convention). The international registry is supervised by the ICAO, and is maintained in Dublin by Aviareto (a joint venture between SITA, an air transport IT service provider and the Irish government).

15 What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

EuroControl is an autonomous European organisation established pursuant to the EuroControl Convention of 13 December 1960. EuroControl is responsible for the safety of air navigation and the collection of route charges for en-route navigation facilities and services throughout Europe. Ireland is a party to a number of international agreements regarding EuroControl.

Irish legislation giving effect to these agreements imposes liability for the payment of any charges on aircraft operators to whom services are provided, aircraft owners or airport managers. It enables, on foot of application to the High Court, the detention and sale of aircraft (including equipment, stores or documents) where the aircraft operator or owner defaults in the payment of any charge for air navigation services.

16 Do specific rules regulate the maintenance of aircraft?

Specific rules are in place regulating the maintenance of aircraft (also see question 2) and are set out in the EASA Regulations (including EASA 145), specific statutory instruments and miscellaneous aeronautical notices and memoranda issued by the IAA.

#### Airports

17 Who owns the airports?

Not all airports are state-owned. Some regional airports such as Waterford, Knock, Galway, Sligo, Donegal and Kerry are owned by private companies. Shannon, Cork and Dublin airports are owned by the Irish government and operated on its behalf by separate airport authorities established under statute.

18 What system is there for the licensing of airports?

Airports are licensed in Ireland by the IAA pursuant to section 60 of the Irish Aviation Authority Act 1993 (as amended). The IAA has the power to license and regulate aviation safety at aerodromes and heliports. Licences may be public or private, covering the aerodrome and heliport, and facilities such as lighting, approach and fuel installations. The standards of the ICAO annex 14 must be met (with limited exceptions) by airports which accept international traffic.

Details of aerodrome and heliport licence application procedures and forms are available on the IAA website ([www.iaa.ie](http://www.iaa.ie)).

19 Is there a system of economic regulation of airports, and, if so, how does it function?

The Aviation Regulation Act 2001 (the 2001 Act) provides the legal basis for CAR's regulation of airport charges. The term 'airport charge' is defined by section 2 of the Air Navigation and Transport (Amendment) Act 1998 and relates to take-off, landing, parking of aircraft and passenger and cargo charges. Charges include airport and aviation terminal services charges. Aviation terminal services charges are defined in the IAA Act 1993 and relate to air navigation services provided for aircraft landing at or taking off from an aerodrome and services of providing, giving or issuing information, directions or instruction, or other facilities for the purposes of or in connection with the navigation or movement of aircraft.

At present, the CAR sets maximum airport and aviation terminal service charges at Dublin Airport under sections 33 and 36 of the 2001 Act (as amended). In determining maximum charges, the CAR must have regard to the following:

- facilitating the economic development and operation of Dublin Airport which meets the requirement of its users;
- protecting the reasonable interest of current and prospective users of Dublin Airport; and

- enabling Dublin Airport Authority (DAA) to operate and develop Dublin Airport in a sustainable and financially viable manner.

20 Are there laws or rules restricting or qualifying access to airports?

The implementation of the 'Single European Sky' and 'EU-US Open Skies' policies and the termination of bilateral agreements between Ireland and the US, and the EU and the US, have eliminated many perceived restrictions on airport access and certain routes.

21 How are slots allocated at congested airports?

At a schedule-facilitated airport, a schedule facilitator assists air carriers which operate or propose to operate to and from that airport. Significantly, at a coordinated airport, an air carrier may not operate in the absence of a slot allocated by the airport coordinator.

Following a full capacity analysis carried out in 2006, the CAR declared Dublin Airport to be a coordinated airport with effect from March 2007. Dublin Airport is currently the only coordinated airport in Ireland.

22 Are there any laws or rules specifically relating to ground handling?

Ground handling broadly comprises services required by an aircraft between landing and take-off. The CAR is responsible for authorising ground handling operations. An airline may choose to provide services for itself (self-handling) or contract with another company (third-party handling), be it an airline or a dedicated ground handling company.

In Ireland, Statutory Instrument No. 505 of 1998 transposing Council Directive 96/67/EC of 15 October 1996 regulates ground handling. It is enforced to ensure open access to the Irish ground handling market. The directive provides for open access to airports by ground handling service providers subject to certain conditions. It states that access may be restricted in respect of the core ground handling services, provided it is restricted to no fewer than two providers for each category of service at a given airport and a minimum of two self-handlers. Dublin, Shannon and Cork airports are obliged to meet all of the directive's requirements; other airports in Ireland are required only to meet the general provisions on free access by providers of related services.

Airports are entitled to charge for access (by service providers) and to establish rules for the proper functioning of the airport. Approval of such charges is required from the CAR.

23 Who provides air traffic control services? And how are they regulated?

Ireland, as a signatory of the Chicago Convention, must ensure that its safety regulations and air navigation equipment and operations are compliant with those standards established by the ICAO under the Chicago Convention. Responsibility for the safety of air navigation services (ANS) is addressed mainly in terms of two safety functions – ATM Safety Management and AMS Safety Regulations. The state, through the Air Navigation Standards Department (the ANSD) of the IAA, must ensure that all ANS provided are safe.

The ANS safety regulator is responsible for establishing a National Safety Regulatory Framework including safety regulatory policies, objectives and directives, and ensuring ongoing compliance with national regulatory objectives and requirements (in line with EuroControl).

## Liability and accidents

- 24 Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

Since 28 June 2004, all carriage by EU airlines, whether domestic or international, is governed by the Montreal Convention pursuant to Regulation (EC) No. 889/2002 amending Regulation (EC) No. 2027/1997 on air carrier liability in the event of accidents. The Montreal Convention has also been given effect in Ireland by the Air Navigation and Transport (International Conventions) Act 2004.

There are no financial limits to the liability of air carriers in the event of death or injury to a passenger. If the damage is below 100,000 special drawing rights (SDRs) (approximately €123,000) an air carrier may not exclude or limit its liability. Above that amount, it may contest liability by establishing an absence of negligence.

In the event of injury or death to a passenger, the air carrier must make an advance payment within 15 days to cover immediate economic needs. In the event of death, this payment must not be less than SDR16,000.

An air carrier will be liable for damage or loss to baggage up to SDR1,000 per passenger unless a special declaration of interest is made. If the baggage is checked (unless it is defective) the air carrier is strictly liable for loss and damage arising. Where baggage is unchecked, the air carrier is liable only if it is at fault.

In the case of cargo, the air carrier is liable, subject to certain conditions, for the period the cargo is in its charge. Liability is limited to SDR17 per kilogram unless a special declaration of interest is made.

- 25 Are there any special rules about the liability of aircraft operators for surface damage?

Pursuant to the Air Navigation and Transport Act 1936 (the 1936 Act), an aircraft owner is liable for any material damage caused to property or persons by any person in an aircraft or where any person or article falls from an aircraft, while in flight, taking off or landing. Where damage or loss arises from an aircraft hired or demised to any person for more than 14 days (and provided none of the crew is employed by the aircraft's owner), the person to whom the aircraft is let or demised is liable under the 1936 Act.

Every aircraft operator (other than a state aircraft) must hold a policy of insurance against liability for such damage pursuant to section 17 of the Air Navigation and Transport Act 1988. The minimum level of insurance required is set out in Regulation No. 785/2004. The regulation provides that insurance cover for third parties should include cover for damage to property caused by accidents.

- 26 What system and procedures are in place for the investigation of air accidents?

Every accident and serious incident must be investigated. An accident is considered to be one in which a person is seriously or fatally injured or where the aircraft is seriously damaged or missing. A serious incident involves circumstances where an accident nearly occurs. Council Directive 94/56/EC of 21 November 1994 (establishing the fundamental principles governing the investigation of civil aviation accidents and incidents) provides that investigations should be carried out by an independent body.

In Ireland, the body responsible for carrying out investigations is the Air Accident Investigation Unit (the AAIU), a unit within the Department of Transport. It relies upon annex 13 to the Convention on International Civil Aviation which sets out the international requirements for air accident and incident investigations. The Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations 1997 establish the procedures to be followed in

Ireland. Regulation 11 provides that when an accident or serious incident occurs, the pilot (or if he is seriously injured, the aircraft operator) must notify the chief inspector at the AAIU. Accidents must also be notified to the Irish police force, or if occurring outside of the state, to the appropriate local authorities. The information to be notified includes a description of the accident or serious incident, number of crew on board the aircraft and the identification of the aircraft.

Once notified, the chief inspector decides whether a formal inspector's investigation (in the case of a more serious accident) or a field investigation (in the case of a less serious incident) is to be carried out. All investigations are carried out in private. Public notice that a formal inspector's investigation is to take place may be given and persons may be invited to make representations. Persons involved may also be cross-examined and give evidence. During an investigation, the investigator in charge shall recommend any preventative measures needed. When a field investigation has been completed, the chief inspector may or may not decide to proceed with a formal investigation.

- 27 Is there a mandatory accident and incident reporting system, and if so, how does it operate?

A report must be prepared after every accident and incident. The chief inspector of the AAIU must decide upon the appropriate form of the report, depending upon the seriousness and type of accident or incident. Before reports are finalised, they must be sent in draft form to any interested parties who are given an opportunity to comment within an appropriate time frame. Thereafter, at the end of the formal inspector's investigation, a final report must be submitted to the minister for transport. The final report should contain the circumstances surrounding the accident, the cause of the accident and safety recommendations for avoidance of future accidents. The report must be published and made available to the public as soon as possible after it has been submitted to the minister. The identity of the persons involved may not be revealed.

## Competition law

- 28 Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

Sector-specific rules for the aviation sector are set out in the Aviation Regulation Act 2001 (the 2001 Act), which establishes the CAR, the principal function of which, pursuant to section 7 of the 2001 Act, is to regulate airport charges and aviation terminal services charges. Pursuant to section 8(3) of the 2001 Act, the CAR is responsible for the licensing of air carriers. As the general competition requirements of articles 81 and 82 of the EC Treaty are directly effective, they apply concurrently with the legislative sector-specific rules. The 2001 Act does not specifically provide for the disapplication of sections 4 and 5 of Competition Act, 2002, the general Irish competition rules, which are enforced by the Competition Authority.

- 29 Is there a sector-specific regulator or are competition rules applied by the general competition authority?

The aviation sector in Ireland is regulated by the CAR, which enforces the 2001 Act. The Competition Authority has jurisdiction to enforce articles 81 and 82 of the EC Treaty and sections 4 and 5 of the Competition Act 2002.

- 30 How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

In the Irish enforcement of competition law in the aviation sector, the relevant market may be route-specific and may be defined broadly

or narrowly. For instance, it may be as broad as a bundle of routes or as narrow as one specific route. In such an approach, the Irish competition authorities have regard to both classical service market and geographic market definitions. The Irish approach is flexible to embrace the fact that market definitions in the aviation sector might change over time. Airports may be treated as essential facilities for the purposes of article 82 of the EC Treaty.

**31** What are the main standards for assessing the competitive effect of a transaction?

The main standard applied under section 4 of the Competition Act 2002, when considering the competitive impact, is framed in legislation, that is, whether or not the transaction is an agreement or concerted practice and whether it has the object or effect of preventing, restricting or distorting competition in any part of the Irish state. The standard applied under article 81(1) of the EC Treaty requires, as an additional criterion to be met, the effect on intra-Community trade.

Transactions involving dominant players may be assessed under section 5 of the Competition Act 2002 with a view to establishing whether they reflect abusive exploitation in any relevant market. In the EC Treaty, article 82 provides the normative standard.

**32** What types of remedies have been imposed to remedy concerns identified by the competition authorities?

As articles 81 and 82 of the EC Treaty are directly effective, any person may rely on either article before the national courts to seek remedy for competition issues. The remedies available to injured parties from the courts are broad and include damages and injunctive relief.

Where the Competition Authority has concerns relating to competition in the Irish aviation market, it may initiate investigations, carry out dawn raids and initiate proceedings before the national courts against any person to ensure that competition concerns are addressed.

The Competition Authority has the statutory right to pursue criminal proceedings against any person whom it believes has infringed the substantive provisions of the Competition Act 2002. It also has the right to seek all appropriate relief from the national courts to ensure that infringements of the Competition Act 2002 are brought to an end. The remedies available through the courts include criminal and civil sanctions and remedies.

#### Financial support and state aid

**33** Are there sector-specific rules regulating direct or indirect financial support to companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, do general state aid rules apply?

No domestic Irish sector-specific rules regulate direct or indirect financial support to individual companies by the government or government-controlled agencies or companies (state aid) in the aviation sector. The EU's rules on state aid apply to the airline sector.

**34** What are the main principles of the state aid rules applicable to the aviation sector?

Although the general provisions of the EU's state aid rules apply to the aviation sector, the European Commission has set out specific principles in respect of state aid in the aviation sector. Responsibility for state aid in regard to air transport rests mainly with the European Commission's Directorate-General for Energy and Transport. Details of these principles are available on its official website and reference is drawn to Council Regulation EC/659/99 laying down detailed rules for the application of article 93 of the EC Treaty.

**35** Are there exemptions from the state aid rules or situations in which they do not apply?

No exemptions are applicable to the Irish aviation sector other than those normally available in general EU state aid law.

**36** Must clearance from the competition authorities be obtained before state aid may be granted?

Where state aid falling within the remit of EU state aid rules is contemplated, clearance must be obtained from the European Commission.

**37** If so, what are the main procedural steps to obtain clearance?

Article 2 of Council Regulation EC/659/99 obliges Ireland to notify the European Commission in sufficient time regarding any aid contemplated. Article 4 of the Regulation provides that upon notification, the European Commission is obliged to examine the notification as soon as it is received. Where the Commission finds that the notified measure does not constitute aid, it shall record that finding by way of a decision. Where the Commission finds that no doubts are raised as to the compatibility with the common market of a notified measure, it shall decide that the measure is compatible with the common market. The decision must specify which exemption, if any, under the EC Treaty has been applied.

**38** If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

Article 10 of Council Regulation EC/659/99 lays down the procedures which must be adhered to so as to recover state aid unlawfully granted by the state. Specifically, it provides that if no clearance is obtained, the European Commission is entitled to request information about the alleged unlawful aid and examine that information without delay. The Commission, may, after giving the state the opportunity to submit its views, adopt a decision to suspend any unlawful aid until it has taken a decision on the compatibility of the aid with the common market. The following criteria must be met before the Commission may make a finding of incompatibility:

- there must be no doubts regarding the aid character of the measure concerned;
- there must be an urgency to act; and
- there must be a serious risk of substantial and irreparable damage to a competitor.

Aid is recovered in accordance with article 14 of the Regulation.

#### Miscellaneous

**39** Is there any aviation-specific passenger protection legislation?

#### Denied boarding, cancellation and delay

Regulation EC No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules and compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights (the Denied Boarding Regulation), applies to passengers departing from an airport located in an EU member state and to passengers departing from a non-EU member state to an EU member state if the air carrier has an EU licence.

The Denied Boarding Regulation, which repeals Regulation (EEC) No. 295/91, has been in force since 17 February 2005. It imposes significant liability on airlines in the event of denied boarding, cancellations or long delays on flights.

The Aviation Act 2006 (amending the 2001 Act) designates the CAR as the competent authority to enforce the Denied Boarding Regulation in Ireland and to provide compensation to air pas-

sengers where an airline fails to comply with the Denied Boarding Regulation.

### Disabled passengers

Under the Denied Boarding Regulation, air carriers must give priority to people with reduced mobility or those who are accompanied by service dogs or children. In the case of denied boarding, delay of any length or cancellations, certain care must be provided to them as soon as possible. This includes meals, refreshments, hotel accommodation, transport and two free telephone calls, e-mails, telefaxes or faxes.

At European level, Regulation EC No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, entered into force on the 15 August 2006. It is not effective until the 26 July 2008, with the exception of articles 3 and 4 which are effective from 26 July 2007. Its purpose is to provide protection and assistance to disabled passengers and to those with reduced mobility.

### Bankruptcy of tour operators and travel agents

The Package Holidays and Travel Trade Act 1995 implements Council Directive No. 90/314/EEC of 13 June 1990 of the European Communities on Package Travel, Package Holidays and Package Tours. It imposes an obligation on tour operators and travel agents to protect consumers of package holidays in the event of their insolvency. All travel agents and tour operators are required to enter into a bond before the CAR will issue them with a licence. In the event of the insolvency of the tour operator or travel agent, the bond is administered and the funds are used to compensate consumers who have paid money for contracts which have not been fully performed.

### Package holidays

The Package Holidays and Travel Trade Act 1995 also provides that an organiser, within the meaning of the statute, is liable to a consumer for the performance of its obligations under a contract for a package holiday. For example, where an organiser cancels the package before it starts, it must compensate the consumer unless the cancellation is due to unforeseen circumstances or the persons agreeing to take the package are less than the minimum required. If the package begins and the organiser cannot provide the services contracted for, then it must compensate the consumer for the difference and either make suitable alternative arrangements or provide transport arrangements, at no extra cost.

40 Are there mandatory insurance requirements for the operators of aircraft?

Article 7 of Council Regulation (EEC) No. 2407/92 of 23 July 1992 on the licensing of air carriers provides that an air carrier must have

### Update and trends

Current hot topics in air transport regulation in Ireland include:

- UK-Ireland FAB (Functional Airspace Block) Plan ([www.iaa.ie/indexjsp?p=93&n=96&a=647](http://www.iaa.ie/indexjsp?p=93&n=96&a=647));
- JAA (European Joint Aviation Authority) function to be carried out by EASA from 30 June 2009 (see [www.jaa.nl](http://www.jaa.nl));
- draft determination of airport charges ([www.aviationreg.ie/Commission\\_publishes\\_Draft\\_Determination\\_2010\\_2014/Default.415.html](http://www.aviationreg.ie/Commission_publishes_Draft_Determination_2010_2014/Default.415.html)) and Ryanair's failed High Court challenge ([www.aviationreg.ie/\\_fileupload/Image/ABOUT\\_PR3\\_2008\\_High\\_statement\\_2008\\_05\\_20.pdf](http://www.aviationreg.ie/_fileupload/Image/ABOUT_PR3_2008_High_statement_2008_05_20.pdf)); and
- introduction of airport departure tax.

insurance in place to cover accidents, in particular relating to third parties, luggage, cargo and mail.

The scope required for insurance cover was extended to include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure and civil commotion following the 9/11 attacks on the US, by the introduction of EC Regulation No. 785/2004 on insurance requirements for air carriers and aircraft operators. The regulation sets out the minimum insurance requirements for air carriers and aircraft operators.

Under the Air Navigation and Transport (Indemnities) Act 2005, where the government is of the view that insurance is unavailable or too costly, then it may declare that a state of difficulty exists concerning the provision of insurance. In such circumstances and subject to certain conditions, it may grant an indemnity to an air navigation undertaking in respect of specified risks. The limit of the state's liability as a result of granting an indemnity shall not exceed €9 billion in aggregate.

41 What legal requirements are there with regard to aviation security?

The main legal framework in Ireland regarding aviation security is contained in Regulation (EC) No. 2320/2002 establishing common rules in the field of aviation security. Since 9/11, the need to tighten aviation security has become a priority and security requirements have been harmonised in the EU. The regulation is directly applicable in Ireland. It sets out the security measures which have to be complied with and includes the screening of passengers, staff and baggage, physical security and checking of aircrafts. The regulation also provides for a national civil aviation security programme and quality control programme to be established in every member state.

The European Communications (Civil Aviation Security) Regulations 2003 give administrative effect in Ireland to Regulation (EC) No. 2320/2002. They provide for a national civil aviation security programme and quality control programme to be adopted in Ireland

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by the minister for transport. All air carriers and airports must also have their own security programme in place.

Also, under the Air Navigation and Transport Act, 1988 the minister for transport has certain powers concerning safety and security.

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42 What serious crimes exist with regard to aviation?

The Air Navigation and Transport Act 1973 provides that any act which would constitute a criminal offence in the state shall constitute that offence if committed on board an Irish-controlled aircraft. Subject to certain provisos, the Act provides that a person who unlawfully seizes control or otherwise interferes with the control of an aircraft or who attempts to or commits an act of violence in connection with such

acts may be liable on conviction to life imprisonment. The Act was amended by section 65 of the Air Navigation and Transport (Amendment) Act 1998 to allow for the offence of what is commonly known as 'air rage'. A person who is intoxicated so as to endanger himself or herself or others, engages in abusive, threatening or insulting behaviour with intent to breach the peace or is reckless as to whether the peace is breached, will be liable on conviction to a fine, a term of imprisonment, or both.

The Aviation Act 2006 inserted a new section 45A into the Aviation Regulation Act 2001 pursuant to which if an airline fails to comply with a direction issued by the CAR under the Denied Boarding Regulation, it is committing an offence. An airline is liable on conviction on indictment to a fine not exceeding €150,000.

