



An Roinn Iompair
Turasóireachta agus Spóirt

Department of Transport,
Tourism and Sport

Consultation Document

Proposal for Legislative Amendment Concerning Aviation Security Regulation and Related Matters

October 2016

1. Introduction

In line with best practice concerning regulatory impact assessment¹, the Department, of Transport, Tourism and Sport is carrying out a public consultation to assist in its assessment of the impacts of a proposal for legislative amendment concerning the regulation of aviation security and related matters.

The regulatory impact assessment methodology can be appropriately applied where a particular approach is proposed in line with an existing policy, i.e. without the consideration of alternative policy options. The assessment of impacts is particularly important concerning any proposal which results in additional fees, levy or charges on a sector of the economy.

The headings under which a proposal can be assessed includes the following,

- 1) Costs, Benefits and Impacts of the proposal
- 2) Potential impacts, including,
 - a. National competitiveness
 - b. Socially excluded and vulnerable groups
 - c. The Environment
 - d. Market, consumer and competition impacts
 - e. The rights of citizens
 - f. Compliance Burdens
 - g. North-South and East-West Relations
- 3) Enforcement and compliance
- 4) Review

Where primary legislation is proposed, a regulatory impact assessment is conducted in advance of the Memorandum which is brought to Government seeking permission to proceed with a draft Heads of Bill. The regulatory impact assessment, or a summary of same, is included as an attachment with the Memorandum for Government and is later updated when the draft Bill is submitted for Government approval, before being finalized for publication in tandem with the publication of the Bill.

2. Background

On 1 January 2013, the Minister for Transport, Tourism and Sport transferred certain aviation security regulation functions to the Irish Aviation Authority (IAA) by means of the European Communities (Civil Aviation Security) (Amendment) Regulations 2012 (Statutory Instrument No. 551 of 2012).

¹ Revised RIA Guidelines, How to conduct a Regulatory Impact Analysis (June 2009), Department of the Taoiseach, Government Buildings, Dublin 2. www.betterregulation.ie

Specifically, the IAA took over responsibility for the following:

- Acting as Ireland’s appropriate authority under EU Regulation 300/2008 on common rules in the field of civil aviation security.
- Implementation of the national security quality control programme through inspections, tests and audits of regulated entities, i.e. airlines, airports, airline handling agents, air cargo operators, catering and cleaning operators, private security agencies and security training providers.

In addition, arising from a review of the National Civil Aviation Security Programme (NCASP) in 2015, further aviation security regulation activities have been transferred to the IAA in line with its current responsibility.

3. Proposal

This proposal has a number of aims relevant to the implementation of aviation security policy and regulation in Ireland and the functions of the IAA in that regard, as follows,

- To align the role and functions of the IAA relating to the regulation of aviation security in the State within the objects of the company as set out in the Irish Aviation Authority Act 1993;
- to regularise the current role of the IAA with regard to responsibilities for aviation security compliance monitoring for the purposes of the ICAO²;
- to provide for the IAA to make regulations under the Irish Aviation Authority Act 1993 concerning the level and method of levying fees and charges for the purposes of the regulation of civil aviation security and, in that regard, to consult periodically with industry on the level and manner of aviation security charges that it intends to levy;
- To provide as appropriate for powers of enforcement for the IAA in carrying out its functions relating to compliance monitoring of aviation security in the State;

Other related legislative amendments are also proposed to support specific aviation security and safety measures in the State; in particular,

- To extend to 5 years the minimum interval for Ministerial review of the functions of the IAA, as currently provided for under section 32 of the Irish Aviation Authority Act 1993,
- Provision concerning enforcement with regard to unruly passengers,
- A Schedule of disqualifying offences for the purpose of background checks for potential employees and persons other than passengers who require an airport

² International Civil Aviation Conference

- identification card from an Airport Authority allowing for unescorted access to the security restricted area of an airport; and, provision for sharing of information between law enforcement authorities and the Airport Authority in that regard,
- Strengthening of offences, and increasing penalties, trespass and for breaching of airport boundaries, and,
 - Offences, penalties and powers to seize items relating to the illegal use and operation of drones and lasers.

A more detailed description of the individual proposals for legislative amendment is set out in the Appendix.

4. Submission

Submissions in writing are being sought under this public consultation and should be submitted to the Department of Transport, Tourism and Sport **before close of business on Friday the 2nd of December 2016.**

The contact details for submissions are as follows,

Email: aviationpolicy@dtas.ie

Postal Address:

Aviation Services Division
Department of Transport, Tourism & Sport
Leeson Lane
93-97 Lower Leeson Street
Dublin 2
Ireland D02 TR60

For telephone queries: 01 6041104 or 01 6041362

Please note that, in line with established practice for public consultation, submissions may be published on the Department's website.

APPENDIX

To provide for,

An amendment to the Irish Aviation Authority Act 1993. In Section 14, Subsection (1), paragraph (a), to include the text after 'Schedule' and before 'except' the following text,

“, and in the case of Annexe 17 – Security, specifically, the compliance monitoring aspects,”

Explanatory Note:

Commencing in 2013, the Department transferred certain aviation security functions to the IAA relating to monitoring compliance with Ireland's NCASP, which includes International, EU Regulation 300/2008 and National aviation security requirements.

Ireland as a Contracting State of the ICAO Convention must adhere to ICAO Standards and Recommended Practices (SARPs), of which ICAO Standards are binding. While in practice the National Quality Control Programme of the IAA covers all relevant areas of the compliance monitoring aspects of the NCASP, the functions of the IAA for this aspect of ICAO Annex 17 – Aviation Security have not been formally given effect in legislation.

This amendment will, for the purposes of the ICAO Universal Security Audit Programme (USAP), align the IAA responsibility for compliance monitoring of ICAO SARPs under Annex 17 with the current practice.

To provide for,

An amendment to the Schedule of the Irish Aviation Authority Act 1993, as amended³. After the text ‘Annexe 16 – Environmental Protection’, to include the text,

“Annexe 17 – Security, specifically, the compliance monitoring aspects”

Explanatory Note

This amendment will have the effect of bringing the activities of the IAA with regard to ICAO Annexe 17 – Aviation Security within the objects of the Company under Section 14 (1)(a) of the Irish Aviation Authority Act 1993.

The IAA, can currently make orders relating to fees under the powers conferred on it by sections 5, 58, 59, 60, 60(1)(j)(i) of the Irish Aviation Authority Act, 1993, as amended.

Under Section 58 (1) the company may make such orders as appear to it to be necessary or expedient for the purpose of giving effect to the Annexes to the Chicago Convention specified in the *Schedule*. Under Section 58(2) of the Irish Aviation Authority Act 1993, a draft Order can provides for the inclusion in the *Schedule* of that Act a reference to ICAO Annexe 17 – Aviation Security.

Legal advice received by the Department suggests that, in line with current principles on the powers conferred in legislation, such an amendment to the Schedule of the Irish Aviation Authority Act 1993, which extends the scope of the 1993 Act, should be a matter for consideration by the Oireachtas, rather than by means of a Ministerial Order.

³ S.I. No. 483/2013 - Irish Aviation Authority Act 1993 (Amendment of Schedule) (Annexe 19 to Chicago Convention) Order 2013

To provide for,

An amendment to the Irish Aviation Authority Act 1993. In Section 14 Subsection (1) to include a new paragraph (p), as follows,

“(p) the regulation of aviation security in the State, including requirements set out in the State National Civil Aviation Security Programme.”

Explanatory Notes:

Further to the previous proposed amendment to Section 14 of the Irish Aviation Authority Act, 1993, this amendment will include within the objects of the Company, for the purposes of making regulations, its activities concerning responsibility for aviation security and its role as the appropriate authority in Ireland for the purposes of Article 4 of the EU Regulation 300/2008 and ensuring compliance with the Irish NCASP.

Article 5 of Regulation (EC) No. 300/2008 allows a Member State to introduce cost recovery measures in respect of the civil aviation security oversight function. The wording of Article 5 of Regulation 300/2008 does not oblige Member States to introduce cost recovering measures but provides for State discretion in that regard. The measures to implement Article 5 of Regulation 300/2008 are not “necessitated” as such and therefore can only be introduced by way of primary legislation.

Reference to the NCASP is mindful of the definition contained under SI 551/2012⁴, as well as reference to the NCASP in ICAO SARPs⁵. The NCASP may also contain National requirements which are specific to this State. Where such national requirements represent more stringent measures above the common basic security standards prescribed in EU Regulations, under Article 6 of EU Regulation 300/2008 these additional National requirements must be established upon the basis of a risk assessment and notified to the European Commission.

An objective of this amendment is to ensure that the IAA can, as part of its overall suite of enforcement measures, introduce fines as a penalty in the case of serious or recurrent deficiencies incurrent by regulated entities in applying aviation security standards required under the provisions in the NCASP.

4 ‘national civil aviation security programme’ means the measures adopted by the Minister to ensure that the common standards referred to in Article 4 of the Council Regulation and the Annex to that Regulation are given effect to in the State, and includes a national civil aviation security training programme

⁵ ICAO Annexe 17 – Security, 3.1.1 Each Contracting State shall establish and implement a written national civil aviation security programme to safeguard civil aviation operations against acts of unlawful interference, through regulations, practices and procedures which take into account the safety, regularity and efficiency of flights.

To provide for,

An Amendment to the Irish Aviation Authority Act 1993, in Section 44 to include a new Subsection (3), as follows,

“(3) The services referred to in Subsection (1) of this Section include aviation security regulation functions of the company as set out under Section 14.

Explanatory Note

Article 5 of EU Regulation 300/2008 concerning aviation security provides for cost recovery for aviation security oversight as a discretionary provision for Member States.

Therefore an explicit supporting legislative provision is proposed as an amendment to Section 44 of the Irish Aviation Authority Act 1993, to extend the existing enabling provision concerning cost recovery by the IAA to include aviation security.

To provide for,

An amendment of the Irish Aviation Authority Act 1993 - the deletion of Section 5, Subsection 10, which states,

“The company shall not, in any order or regulation made or direction given under or by virtue of this Act, make provision in relation to the safeguarding of civil aviation against acts of unlawful interference.”

Explanatory Note

The Section 5(10) of the Irish Aviation Authority Act 1993, maintained safeguard the Ministers role in all matters relating to aviation security.

This statement under Section 5(10) is in contradiction with the IAA responsibility for civil aviation security since 2013, and would prevent any regulation to be made for the purposes of aviation security charges.

Therefore it is proposed, for policy reasons, to delete Section 5(10) to align with the current responsibilities of the IAA relating to aviation security and the proposal to extend the principle of cost recovery to its aviation security regulation activities.

To provide for,

A new Head

Requests by the Company for a Ministerial order in matters concerning enforcement

“(1) The Company may request the Minister for an Order to be made concerning enforcement matters relating to its functions as set out under Section 14 (1)(h)(iii) and compliance monitoring of the NCASP in line with its responsibility set out under Section 14(1)(p)”

Explanatory Notes

Notwithstanding the proposed deletion of Section 5(10) of the Irish Aviation Authority Act 1993, as previously referred to in this Paper, the creation of additional penalties and offences related to compliance monitoring for the purposes of aviation security regulation, may be more appropriately dealt with by means of the company seeking an order via a Ministerial power.

Therefore, this proposed new head allows for the IAA, through the Minister, and where required, to better enforce the implementation of aviation security requirements by regulated entities.

To provide for,

An amendment to the Irish Aviation Authority Act, 1993, in Section 32, Subsection (3), to replace paragraph (a) with the following,

“(a) The Minister shall appoint a person to carry out an examination of the performance by the company of its functions in so far as they relate to the application and enforcement of technical and safety standards in relation to aircraft and air navigation and to report in writing to the Minister the results of the examination.”

And to insert a new paragraph (e) as follows,

“(e) The examination referred to at (a) shall be carried out no less than five years after the last previous report submitted to Government under paragraph (b).”

Explanatory Note

As part of the Section 32 Examination of the IAA in 2015, the consultants were tasked to assess and comment on the merits or otherwise of continuing the statutory system of review of the IAA under Section 32 in light of the safety oversight and audit roles of ICAO, European Aviation Safety Agency (EASA) and Eurocontrol.

Having considered the matter and the views of the consultants the Department has concluded that the Section 32 Examination has a continued role in the State oversight of the IAA in carrying out its statutory functions. This is in light of the specific organisation and functional separation arrangements in the IAA, which was addressed in the conclusions and recommendations in the Final Report of the Section 32 Examination.

However, the extent of the audit regime to which the IAA is subject, including International audits, could also have potential negative and undue resource burden effects on the day-to-day functioning of the IAA.

Therefore, it is proposed that provision should be made to extend the interval between examinations as specified in Section 32 beyond 3 years, i.e. to 5 year intervals similar to the current EU audit cycle; and, to revise the scope of the examination, so that the focus and content of future examinations is on the areas which are not encompassed by the evolving ICAO and EASA audit Programme. The latter can be achieved by means of the future Terms of Reference for the Section 32 Examination.

To provide for,

An amendment to Section 2A, Subsection (3) of the Air Navigation and Transport Act 1973, as inserted by Section 65 of the Air Navigation and Transport Act 1998, by inserting in Subsection (3) after the text 'aircraft in flight' the text ', which is either an Irish controlled aircraft in flight anywhere or an aircraft in flight next landing in the State, ', as follows,

2A. -(3) A person on board an aircraft in flight, which is either an Irish controlled aircraft in flight anywhere or an aircraft in flight next landing in the State, who engages in behaviour of a threatening, abusive or insulting nature whether by word or gesture with intent to cause a breach of the peace or being reckless as to whether a breach of the peace might be occasioned shall be guilty of an offence

Explanatory Note

The offence created under Section 2A(3) of the Air Navigation and Transport Act 1973 as inserted by Section 65 of the Air Navigation and Transport (Amendment) Act 1998 is proposed to be clarified further and amended with regard to an 'aircraft in flight'.

Section 2A(3) of the Air Navigation and Transport Act 1973 creates an offence relating to the intent to cause breach of peace through unruly behaviour on board an aircraft in flight. This allows for the Duty Commander of the aircraft to disembark the person at the earliest opportunity, under restraint or otherwise, and to hand the person over to the relevant enforcement authorities upon landing.

The amendment clarifies that the offence under 2A(3) of the Act is also an offence on board an Irish controlled aircraft in flight anywhere. This is in line with Section 2 of the Act which states that a criminal act in this State is also considered to be such on board an Irish Registered Aircraft in flight elsewhere than in or over the State. With regard to proceedings for such an offence, similar to the provision under Section 2(2) of the Act, it may be necessary to provide some discretion. Any implications for Irish Courts and An Garda Síochána would need to be considered further in this regard.

The amendment also clarifies that the offence under 2A(3) of the Act is also an offence on board an aircraft in flight, which is registered and operated by any State, and is next landing in this State. This proposal would mean that regardless of whether the offence is and offence in the other Contracting State of the Tokyo Convention where the aircraft is registered and/or operated, it would be considered an offence in this State if the aircraft is next landing in this States. As previously stated any implications for Irish Courts and An Garda Síochána as a result of this amendment would also need to be considered further.

It should be noted that a further review of the question of jurisdiction for the purposes of the Air Navigation and Transport Act 1973 is necessary for Ireland to proceed to ratify the Beijing Convention 2010 and the Montreal Protocol 2014 and to provide for necessary supporting National legislation. However, such additional legal provisions could not have effect until the International Convention and Protocol enter into force.

The Beijing Convention 2010 criminalises a range of acts of unlawful interference against civil aviation not previously provided for under the International Conventions. For example, using civil aircraft as a weapon; using civil aircraft to discharge chemical, biological, nuclear or other substances; and, cyber attack on air navigation facilities. The Montreal Protocol 2014 updates the Tokyo Convention 1963 by including, clarification concerning the definition of unruly behaviour; an extension of jurisdiction over in-flight incidents; and, the recovery of costs stemming from unruly passenger behaviour.

To provide for,

A new Head

Disqualification from holding an airside access pass at an airport in the State upon conviction of certain offences

1. Powers to airport authorities to grant or refuse applications for airside access passes based on confirmation of a conviction for a criminal offence contained in a schedule
2. A system of appeals for applicants refused an airside access pass pursuant to the above.
3. A new *Schedule* setting out the offences in the State, a conviction for which disqualifies a person from holding an airside access pass at an airport in the State
4. Provision to allow for the sharing by An Garda Síochána with Airport Authorities any relevant information to the security of civil aviation in the State which pertains to an applicant for an airside access pass.

Explanatory Note

The current requirements set out in the NCASP, concerning airside access at Irish Airports are in line with EU Regulatory requirements. An Airport Authority grants airside access passes based on a background check (including criminal convictions vetting), the operational need of the applicant and a certificate of basic security awareness training.

An Garda Síochána is the only authority in the State that can carry out the criminal vetting for residents in the State. The NCASP further allows the Airport Authority to accept criminal vetting carried out by authorities of other jurisdictions where the applicant has been, or has, residence in the other jurisdiction.

This proposal aims to support the security objective of the process required for background checks while also safeguarding a person's constitutional right to earn a living, if the person's work is carried out airside. Furthermore, the proposal would put on a statutory footing the disqualification from holding an airside access pass at an airport in the State upon conviction of certain offences; based on a schedule of relevant offences such as terrorism offences, offences against the State, public order offences, etc.; and, subject to an appeals process.

In addition, where there may be security relevant information that pertains to a person who applies for an airside access pass access, which relates to the security of civil aviation in the State, it is proposed to make provision so that An Garda Síochána may communicate this information with an Airport Authority for security reasons.

To provide for,

A new Head

Offence, penalty and powers of arrest by An Garda Síochána for the unauthorised breach and trespass of a person airside at an airport in the State

'airside' means 'the movement area of an airport, adjacent terrain and buildings or portions thereof, access to which is restricted'

(1) If any person trespasses airside of an Airport involved in civil aviation in the State, such person shall be guilty of an offence under this section.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or

(b) on conviction on indictment—

(i) where the person is an individual - to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 5 years or to both, or

(ii) where the person is a body corporate - to a fine not exceeding €250,000.

(3) Where a person is charged with an offence under this section in respect of a trespass—

(a) the fact that he had not received a personal warning shall not be a ground of defence,

(b) he shall not, in any case, be convicted of the offence unless the Airport Authority proves to the satisfaction of the Court that, at the date of the trespass there was affixed at the boundary or the Airport, a notice (painted on boards or printed, painted or enamelled, on iron or any other material) in legible characters warning persons not to trespass airside of the Airport.

(4) No person lawfully having been granted, by the relevant Airport Authority, access airside of the Airport, shall be liable to any fine under this section.

(5) An offence under this section may be prosecuted by the Airport Authority.

(6) A person found trespassing pursuant to Sub Section (1) who has not been lawfully granted access airside of the Airport under Sub Section (4) may be arrested and detained by An Garda Síochána, for up to 5 hours for the purpose establishing the basis for a prosecution under this Section.

Explanatory Notes

This provision seeks to address an issue of concern regarding the safety and security of passengers, employees and persons other than passengers, and infrastructure, as a result of intentional breach of airport boundary and incursion airside at airports

involved in civil aviation in the State.

During such incursions, in particular on the ramp and runway which is airside at the airport, there is an immediate undue risk to the safe and secure operation of the airport and the personnel who work there; and, for the security and safety of the travelling public.

Currently the offences for such airport incursions are contained under bye-laws (Statutory Instrument No. 425/1994) made under the State Airports Act 2004; but these are no longer considered to be robust enough within the context of European aviation safety and security Regulation. Therefore, this amendment seeks to provide a Statutory offence, penalty, and, in addition, relevant powers of arrest and detention by An Garda Síochána for the purpose of investigating such cases of incursions airside at airports in the State.

This proposal is proportionate to offences and penalties for trespass in other transport sectors, i.e. Railway Safety legislation with regard to trespass on railways in the State.

To provide for,

A new Head

Offences and penalties relating to the operation and use of drones or lasers and powers to seize items used in breach

1. Additional powers of enforcement including the power to seize items used in breach of the legislation, i.e. the drone or laser.
2. Ability to levy small fixed notice fines with regard to minor offences.

Explanatory Note

In recent years there has been a proliferation of the ownership and use of drone and laser technologies by the public. This proposed provision would seek to discourage illegal transgression of regulations concerning the safe operation of drones and laser strikes on aircraft and civil aviation.

It is envisaged under this provision that additional powers would be given to the Irish Aviation Authority, in line with its existing functions for aviation safety regulation and air navigation service provision under the Irish Aviation Authority Act 1993.