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REGULATION OF AIR NAVIGATION IN THE IRISH FREE STATE

JAMES L. BROWN*

A new law relative to air navigation and transport was enacted in the Irish Free State on August 14, 1936.¹ Designed to bring the legislation of that country affecting this important branch of transportation into harmony with modern needs, the law provides appropriate measures governing the operation of internal air service as well as the regulation of international aircraft which touch the boundaries of the Irish Free State.

Included in the scope of the law are a wide range of subjects which establish and control air service undertakings. Organization of a Government subsidized company and subsidiaries thereof is provided for, together with assistance to Aer Lingus Teoranta² and other air service undertakings. Aircraft used for the transport of passengers and goods as well as those used for pleasure flights, private hire, and inspection purposes must be licensed. The building and maintenance of aerodromes and appropriate appurtenances is encouraged by Government loans. The liability of the owner or licensee of the aircraft for injuries caused to persons or property and stipulated minimum and maximum damages are provided for. In addition to provisions relative to restriction of internal aircraft services, there are included, among other matters, sections on dangerous flying, and trespass and nuisance.

The law gives force and effect, in the Irish Free State, to the provisions of the Paris,³ Warsaw,⁴ and Rome Conventions,⁵ and it is administered by the Minister for Industry and Commerce.

Air Service Undertakings

The Minister of Finance is empowered to prescribe the establishment of a limited liability company known as the Company, 3 of

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1. Air Navigation and Transport Act, 1936, Saorstát Éireann, Number 40 of 1936.

2. Air Line Limited (a privately owned air line operating between Dublin and England).

3. League of Nations Treaty Series, Vol. XI, page 173.

4. United States Department of State, Treaty Series No. 876.

5. United States Department of State, Treaty Information Bulletin No. 47, pp. 22, 27.

its 5 directors being nominated by the Government. The Government may hold part of the capital stock, the balance being subscribed for by public subscription. The Government may take up by subscription any shares in the Company to a value not to exceed one million pounds.

The Minister of Finance may loan the Company money to provide for its formation, registration and promotion. The Company may have subsidiaries and also obtain an interest in other air service undertakings. It may loan money to the Aer Lingus Teoranta. With regard to the payment of government subsidies to the Company by the Minister of Finance, an order therefor must be confirmed by resolution of the Dail Eireann. If the Dail Eireann has not acted upon the order within 21 days after its submission, it will come into force.⁶

The objects of the Company, include the establishment, maintenance, and working of lines of aerial conveyance between places in the Irish Free State and between the Irish Free State and other countries either directly or by means of Aer Lingus Teoranta and other transport undertakings in which the Company has a controlling interest. The Company may acquire and hold shares in Aer Lingus Teoranta and hold shares of other transport undertakings. It may also give with the consent of the Minister of Finance, financial and other assistance to such air transport undertakings. The Company also has power to issue debentures for the purposes for which it has been established. The amount of these debentures may not exceed the capital of the Company.⁷

Air service undertakings, whether as public transports for passengers and goods or for private hire, pleasure flights, or instruction purposes must be licensed to operate under penalty of law.

The Company, Aer Lingus Teoranta and every subsidiary company is required each year to furnish a balance sheet and statement of profits and loss to the Minister of Finance and any other particulars which may be required in relation to the activities of such company. The Company must furnish, whenever requested to do so by the Minister of Finance, such particulars as are within its power or possession which relate to any undertaking other than Aer Lingus Teoranta or a subsidiary company in which it holds an interest.⁸

Inspection of any books or documents of the Company, Aer Lingus Teoranta, and any subsidiary companies is provided for.

6. Section 79.

7. Second Schedule of the Air Navigation Act, see footnote 1, *supra*.

8. Section 81.

Any one obstructing an inspector or failing to produce such books or documents, if found guilty, will be liable to a penalty⁹

Control and Regulation of Air Service

The international carriage by air, insofar as the aircraft touches or passes over the Irish Free State, and as regards the rights and liability of carriers, passengers, consignors, consignees and other persons is governed in that country by the provisions of the Warsaw convention. The effect of force of law is given to that convention in the Irish Free State.¹⁰

Provisions of the Warsaw Convention will also apply to internal carriage by air when orders are issued relative to any provisions of that convention by the Executive Council.¹¹

Provision is made in accordance with Article 17 of the Warsaw Convention for the liability of the carrier for the payment of damages caused by an accident which results in death or wounding of a passenger.

Establishment of Aerodromes

The Minister for Commerce and Industry may establish, and maintain aerodromes and provide in connection therewith roads, bridges, approaches, apparatus, equipment, buildings, and other accommodations. The law extends a similar power to any local authority with the consent of the Minister for Industry and Commerce.¹² To that end, land may be acquired by agreement or compulsorily. Land adjacent to an aerodrome may not be used in such manner as to cause interference with or danger or damage to aircraft approaching or leaving the aerodrome. Trees and buildings on land adjacent to an aerodrome may be demolished if deemed advisable for insuring the safety of aircraft approaching or leaving the aerodrome.¹³

When it is necessary that a local authority carry on a business which is ancillary to the operation of an aerodrome maintained by such authority, the Minister for Industry and Commerce may grant the local authority the power to conduct that ancillary business.¹⁴

The Minister for Industry and Commerce or a local authority may authorize any person to enter on any land for the purpose of making an investigation preliminary to the acquisition of such land.

9. Section 82.
10. Section 17.
11. Section 20.
12. Section 43.
13. Section 36.
14. Section 38.

Authorization may also be granted to enter on any adjoining land in making a survey for the purpose of acquisition of any land the use of which is contemplated to be necessary for the establishment of an aerodrome. Any persons impeding or obstructing any authorized person in entering upon such land, will if convicted be fined in a sum not exceeding ten pounds.¹⁵

Whenever it is necessary to acquire compulsorily any land or acquire or use any right of impounding, diverting, or obstructing water, the Minister for Industry and Commerce may order, with the consent of the Minister for Finance and after consultation with the Minister for Agriculture, the acquirement of such land and right for the purpose of establishing and maintaining an aerodrome. Public notice thereof will be given and interested persons will be advised in order that any objection may be made thereto. In certain cases it may be deemed necessary to hold a public hearing at which interested persons may appear and be heard. Land belonging to any public utility such as a railway, electric, gas, or water company may not be compulsorily acquired.¹⁶

In the event an aerodrome is to be situated by the sea or a navigable inlet thereof, the Minister for Industry and Commerce after consultation with the Minister for Agriculture, may if it is in the public interest to do so, issue an order limiting or prohibiting navigation, fishing, or any other right in respect to any such part of the sea or inlet which may be adjacent to an aerodrome. If the right thus limited or prohibited is a private one, the owner thereof will be compensated.¹⁷

The Minister for Industry and Commerce or any local authority may with the consent of such Minister compulsorily divert, close, remove or otherwise interfere with any public road or bridge¹⁸ If such road or bridge is thereby closed to traffic, a temporary road or bridge may be constructed in a convenient situation sufficient to carry such traffic. Upon completion of the work, the road or bridge will be restored to its former condition or a new permanent road or bridge will be constructed in its place.¹⁹

A local authority when establishing and maintaining an aerodrome may receive from another local authority, conservancy authority, or harbor authority a contribution toward the expenses incurred in establishing and maintaining such aerodrome.²⁰ The

15. Section 39.
 16. Section 41.
 17. Section 45.
 18. Section 46.
 19. Section 47.
 20. Section 48.

local authority may borrow money for the purpose of defraying expenses incurred in the establishment and maintenance of an aerodrome. The local authority establishing and maintaining an aerodrome may appoint the necessary officers for that purpose.²¹ The law further provides that nothing contained therein is to deprive the Minister for Posts and Telegraphs of any rights and remedies under Telegraph Acts of 1863 to 1928.²²

Liability for Damage Caused by Aircraft

Where damage or loss is caused to any persons or property or land or water by an aircraft while in flight, taking off, or landing or where damage is caused by a person in an aircraft or by any article or person falling from an aircraft, the owner of such aircraft will be liable for such damage or loss. Proof of negligence, intention, or other cause of action on the part of the owner will not be required and such damage or loss will be considered as though caused by the willful act, neglect, or default of such owner, unless the injured person was guilty of contributory negligence.

In any instance where damages are recoverable and a legal liability for such damage or loss is created in a person other than the owner of the aircraft, the owner will be entitled to be indemnified by that other person against any claim for damage or loss.

Where any aircraft has been demised, let, or hired out to another for a period of more than fourteen days, the person to whom the aircraft was so demised, let, or hired out will be substituted for the owner in any action for damages resulting from injury or loss for which the owner would have been liable if the aircraft had not been so demised, let, or hired out, and provided that no pilot, commander, navigator, or operative member of the crew of such aircraft is in the employment of such owner.²³

The law provides that in certain instances the liability for damages or loss shall not exceed in the case of an airship twenty-five thousand pounds, a balloon (fixed or free) five thousand pounds, or a glider one thousand pounds or in any other case a number of pounds equal to the weight of the aircraft fully loaded, unless that number of pounds would be less than five thousand pounds or more than twenty-five thousand pounds in which event the sum shall be five thousand pounds or twenty-five thousand pounds as the case may be. If the owner was not insured in accordance with the

21. Section 52.

22. Section 54.

23. Section 21.

compulsory insurance provisions of the law or had not on deposit with the Court of Justice a required sum of money, he may not claim the benefit of the foregoing limitation of liability. However, if the owner can prove that the aircraft was, at the time that the loss or damage was incurred, in possession or control of some other person without his authority or permission, he will be entitled to such benefit.

Any person liable for damage resulting from injury caused by an aircraft may not claim the benefits of aforesaid limitation of liability if at the time the damage was incurred, he was not the owner of the aircraft concerned and if he was in possession or control of such aircraft without authority or permission of the owner.²⁴

Where there is more than one claimant for damages the Court may upon application of a person, determine the amount of liability and distribute it rateably among the several claimants. The Court may give directions for joining interested parties or for excluding claims not brought before it within a certain time. The Court may also require security from the person making the application.²⁵

Where a cause of action subsists against or is vested in a person who has died such action shall survive against or for the benefit of his estate. Where a cause of action survives for the benefit of the estate of a deceased person and the death of that person was caused by circumstances which gave rise to the cause of action any damage which may be recoverable for the benefit of his estate will be calculated without reference to any loss or gain to his estate consequent upon his death. Where a cause of action has survived against the estate of a deceased person, no proceedings will be maintainable, unless at the time of death proceedings against him were pending, or unless such cause of action arises not earlier than six months after his personal representative took out administration.²⁶

In the event of the insolvency of an estate against which proceedings are maintainable, any liability in such case will be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by contract or promise.²⁷

24. Section 24.

25. Section 24.

26. Section 23.

27. Section 23.

Compulsory Insurance Against Liability

Unless the owner of aircraft is otherwise exempted by the law, he is obliged to insure against third party risks with an approved aircraft insurer. It is, therefore, unlawful to fly or to cause another to fly aircraft, unless there is in force a policy of such insurance against all liability which the owner may incur by damage caused to persons or property on land or sea in the Irish Free State by aircraft while in flight, taking off, or landing, or by any person in such aircraft, or by any article or person falling from such aircraft.²⁸

Exempted Persons

Any owner of not more than two aircraft may be an exempted person and obtain a security certificate by making a deposit and keeping deposited with the Accountant of the Courts of Justice a sum of not less than five thousand pounds nor more than twenty-five thousand pounds, depending upon the kind of aircraft. However, in the case of a glider, the sum deposited must be not less than one thousand pounds.

Any owner of three or more aircraft who desires to become an exempted person may deposit and keep deposited a sum of not more than fifty thousand pounds with the Accountant of the Courts of Justice.²⁹

The money so deposited with the Accountant will be invested and any income accruing from such investment shall be paid to the depositor. The Accountant of the Courts of Justice will not accept a deposit except on a warrant of the Minister for Industry and Commerce.³⁰ Deposits may be paid to satisfy a judgment of a creditor and any investments which have been made as a result of such deposit may be sold to satisfy such judgment.³¹ The depositor at all times must maintain the required deposit with the Accountant.³²

The high court may upon application direct that any sum upon deposit be paid to the depositor or a person claiming through or under him.³³

The law provides that the Minister for Industry and Commerce may make appropriate regulations in regard to applications

28. Section 25.

29. Section 30.

30. Section 30.

31. Section 31.

32. Section 29.

33. Section 32.

for security certificates, the issuance of new certificates in place of those that have been lost, and the carrying of documents in aircraft and their production on demand of a specified person.³⁴

Trespass and Nuisance by Aircraft

No action for trespass or for nuisance will lie by reason only of the flight of the aircraft over any property at a height above the ground which is reasonable considering the wind, weather and all the circumstances of the case as well as ordinary incidents of the flight, provided, the provisions of the law are otherwise complied with.³⁵

Dangerous Flying

The pilot or the person in charge of the aircraft and the owner, unless the latter is the pilot or person in charge of the aircraft, will be severally guilty of a punishable offense where an aircraft is so flown as to cause unnecessary damage to any person or property. The fine imposed on conviction of such an offense may not exceed two hundred pounds and the guilty persons will in the discretion of the court be liable to imprisonment for a term not exceeding six months or both fine and imprisonment. The hirer of an aircraft may under such circumstances be liable. The owner of the aircraft will not be liable if he can prove that on the occasion when the offense was committed the aircraft was being flown without his fault or privity.³⁶

Infringement of Patents

If it is alleged by any person that a foreign aircraft passing over or landing in the Irish Free State is, in whole or in part, an infringement of an invention, design, or model protected in the Irish Free State, the aircraft may be detained pending deposit of security. This deposit shall be in an amount agreed upon between the interested parties. If the parties cannot come to an agreement, the Minister of Industry and Commerce or a person authorized by him will determine the amount which must be deposited.³⁷

A Union for the Protection of Industrial Property was established by a convention signed at Paris on March 20, 1883, and subsequently revised at Brussels December 14, 1900, at Washington

34. Section 33.
35. Section 55.
36. Section 56.
37. Section 61.

June 2, 1911, and at The Hague November 6, 1925. A provision relative to the infringement of the rights of the patentee resulting from anything used in the construction or functioning of the engines of locomotion for air was included in a new article (5 ter) which was adopted in the revision signed at The Hague.³⁸ Article 5 ter is as follows:

"In each of the contracting countries the following shall not be considered as infringing the rights of the patentee:

1. The use on board ships of other Unionist countries of anything the subject matter of his patent in the body of the ship, in the machinery tackle, apparatus, and other accessories when such ships enter temporarily or accidentally the waters of the country, provided that such thing is employed there exclusively for the needs of the vessel.

2. The use of anything the subject matter of the patent in the construction of or functioning of the engines of locomotion for air or land of the other Unionist countries, or of the accessories of these engines, when these enter the country temporarily or accidentally."

The Irish Free State has not as yet ratified The Hague convention and although a member of this Union it is bound only by the revision signed at Washington which made no reference to patent infringement in aircraft. When that country ratifies The Hague revision, the liability of the owner of the aircraft with regard to patent infringement would be governed by the provisions of the convention.

Detention of Aircraft

Any authorized person may detain aircraft to secure compliance with any provisions of law or to prevent such aircraft from flying when it is unfit to fly. When any detained aircraft which takes off or attempts to take off before it is released by competent authority the persons liable therefor will be subject to a fine not exceeding one hundred pounds.³⁹

Wreck and Salvage

Any services rendered in assisting in saving life, or in saving the cargo or apparel of an aircraft at sea or any tidal water or the shores thereof, are deemed to be salvage services in those cases where they would have been such if rendered in relation to a vessel.

38. See, *Patented Inventions on Ships and Airplanes*, p. 46, "Industrial Property Protection Throughout the World," T.P.S. No. 165, U. S. Government Printing Office, Washington, D. C.

39. Sections 63, 64.

Where any salvage services are rendered by an aircraft to any person or property the owner of the aircraft will be entitled to the same reward as though the aircraft had been a vessel.

The provisions of the law relative to salvage services have effect notwithstanding that the aircraft is a foreign aircraft and that the services are rendered outside the limits of the territorial waters of the Irish Free State.

Provisions of any law relating to wreck, salvage of life or property, or the duty of rendering assistance to vessels in distress will when ordered by the Executive Council apply to aircraft.

Any provisions of law relating to vessels laid by or neglected as unfit for sea service are deemed to relate to wreck.⁴⁰

In addition to the provisions of 103 sections contained in the act there are included two schedules, the first containing the text of the International Convention for the Unification of Certain Rules relating to International Carriage by Air, adopted at Warsaw on October 12, 1929, and the second containing Conditions to which the Company is to Conform.

40. Section 57.