



Number 48 of 2001

**AIR NAVIGATION AND TRANSPORT (INDEMNITIES) ACT,
2001**

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. State of difficulty.
 3. Ministerial indemnities.
 4. Requirement for prior insurance.
 5. Conditions in indemnities.
 6. Limit of Ministerial liability.
 7. Period of validity of indemnities.
 8. Charges.
 9. Limitation on power of Minister to issue indemnities.
 10. Defences available to Minister.
 11. Applications and duty to furnish information.
 12. Minister not obliged to issue indemnity.
 13. Insurance Acts not to apply.
 14. Suspension and termination of indemnities.
 15. Re-insurance by Minister.
 16. Claims on foot of an indemnity.
 17. Expenses.
 18. Disposal of monies.
 19. Duration of Act.
 20. Short title.
-

[No. 48.] *Air Navigation and Transport* [2001.]
(Indemnities) Act, 2001.

ACTS REFERRED TO

Air Navigation and Transport Act, 1936	1936, No. 40
Air Navigation and Transport Act, 1965	1965, No. 6
Air Navigation and Transport (Amendment) Act, 1998	1998, No. 24
European Communities Act, 1972	1972, No. 27
Insurance Acts, 1909 to 2000	



Number 48 of 2001

**AIR NAVIGATION AND TRANSPORT (INDEMNITIES) ACT,
2001**

AN ACT TO MAKE PROVISION FOR THE GRANTING OF
INDEMNITIES TO AIR NAVIGATION UNDERTAKINGS
BY THE MINISTER FOR PUBLIC ENTERPRISE AND TO
MAKE PROVISION FOR MATTERS RELATED
THERE TO. [19th December, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, except where the context otherwise requires— Interpretation.

“aerodrome” has the same meaning as it has in the Air Navigation and Transport Act, 1936;

“airline licensed in the State” means an undertaking holding an authorisation under section 8 of the Air Navigation and Transport Act, 1965;

“air navigation undertaking” means an airline licensed in the State, the Irish Aviation Authority, an aviation support company and the operator of an airport or an aerodrome to which scheduled commercial air services operate;

“airport” has the same meaning as it has in the Air Navigation and Transport (Amendment) Act, 1998;

“aviation support company” means an undertaking providing groundhandling services at an airport;

“groundhandling services” shall have the same meaning as it has in the European Communities (Access to the Groundhandling Market at Community Airports) Regulations, 1998 (S.I. No. 505 of 1998), in respect of airports and has the same meaning in respect of aerodromes;

“Insurance Acts” means the Insurance Acts, 1909 to 2000, regulations made under those Acts and regulations relating to insurance made under the European Communities Act, 1972;

“Minister” means the Minister for Public Enterprise;

“Ministerial indemnity” has the meaning assigned by *section 3(1)*; and

[No. 48.] *Air Navigation and Transport* [2001.]
(*Indemnities*) Act, 2001.

S.1. “specified risks” means risks specified by the Minister in an indemnity granted or renewed pursuant to this Act.

(2) In this Act, a reference to an order includes a reference to a continuing order.

(3) A reference in this Act to a section, subsection or paragraph, is a reference to the section, subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

State of difficulty.

2.—(1) Whenever and so often as the Government are of the opinion that exceptional circumstances prevail or are likely to prevail in relation to the provision of insurance relating to aviation, the Government may by order declare that a state of difficulty affecting the supply of such insurance exists, or is likely to exist, in relation to risks specified in the order.

(2) The Government in an order made under this section shall specify a date as being the date of commencement of the state of difficulty and such date may be a date earlier than the date of the making of the order by the Government.

(3) An order under *subsection (1)* of this section shall remain in force for such period (not exceeding 6 months from the date of the making of the order) as the Government think proper and specify in the order, and unless previously revoked or continued by an order made pursuant to *subsection (4)*, shall then expire.

(4) Where, prior to the expiry of an order made pursuant to *subsection (1)*, the Government are of the opinion that the exceptional circumstances referred to in that subsection prevail or are likely to prevail, then the Government may make an order (in this Act referred to as a “continuing order”) continuing the order in force for such further period as the Government think fit (not exceeding 6 months from the date of the making of the continuing order) and the Government may make further continuing orders continuing an order provided that no such continuing order may remain in force for a period greater than 6 months from the date of its making.

(5) The Government may make a continuing order under this section where the circumstances prevailing or considered by the Government as likely to prevail are altered from the circumstances which prevailed or were considered likely to prevail at the time the Government made the order pursuant to *subsection (1)*.

(6) The Government may by order amend or revoke an order made under this section, including an order made under this subsection.

(7) Every order made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after it is laid before it, the order shall be annulled accordingly but without prejudice to anything previously done thereunder.

Ministerial
indemnities.

3.—(1) Subject to the provisions of this Act, the Minister, with the consent of the Minister for Finance, and having consulted the Minister for Enterprise, Trade and Employment, may grant or renew an indemnity to an air navigation undertaking in respect of specified

[2001.] *Air Navigation and Transport [No. 48.]
(Indemnities) Act, 2001.*

risks, which indemnity is in this Act referred to as a “Ministerial S.3.
indemnity”.

(2) The Minister shall not grant or renew an indemnity pursuant to *subsection (1)* unless—

- (a) there is in force an order referred to in *section 2*,
- (b) the indemnity relates to risks specified in the order referred to in *section 2*, and
- (c) the Minister has been requested to grant such an indemnity on foot of an application made pursuant to *section 11* by the air navigation undertaking concerned.

4.—The Minister shall not grant or renew a Ministerial indemnity unless he or she is satisfied that there was a policy of insurance in force immediately prior to the state of difficulty referred to in *section 2(1)* in respect of the air navigation undertaking concerned providing cover for the specified risks. Requirement for prior insurance.

5.—(1) The Minister may grant or renew an indemnity subject to a condition or conditions and the recipient of such a Ministerial indemnity shall comply with the terms of each condition. Conditions in indemnities.

(2) A condition in a Ministerial indemnity may restrict or limit the extent of an indemnity, even where there was no such condition, restriction or limitation in a Ministerial indemnity previously granted to that recipient.

(3) The Minister may require an air navigation undertaking to give a warranty or warranties to him or her relating to any matter which appears relevant to the Minister.

(4) Failure by the recipient of a Ministerial indemnity to comply with the terms of a condition referred to in *subsection (1)* or (2) may, at the option of the Minister, render the Ministerial indemnity null and void.

6.—(1) The liability of the Minister or the State arising from the granting or renewal of a Ministerial indemnity shall not exceed the amount of the liability for which the insurer under the policy of insurance referred to in *section 4* was on risk in respect of the specified risks prior to the making of the order by the Government pursuant to *section 2(1)*. Limit of Ministerial liability.

(2) The liability of the Minister or the State arising from the granting or renewal of Ministerial indemnities under this Act shall not under any circumstances exceed the sum of €9,000,000,000 in the aggregate.

(3) Without prejudice to *subsection (2)*, the Minister may grant or renew indemnities, the liabilities in aggregate under which exceed €9,000,000,000.

(4) In the event that the aggregate amount of claims admitted on foot of a Ministerial indemnity or indemnities (including costs and expenses of a claimant legally recoverable from the air navigation undertaking concerned) in respect of an event or events which are specified risks referred to in a Ministerial indemnity exceeds

[No. 48.] *Air Navigation and Transport* [2001.]
(*Indemnities*) Act, 2001.

S.6. €9,000,000,000, then the entitlement of an air navigation undertaking to recover from the Minister shall be restricted to the extent that all claims arising on foot of a Ministerial indemnity or indemnities shall abate rateably.

(5) Nothing in this Act or any rule of law or practice shall entitle a person, other than a person to whom a Ministerial indemnity is granted, to make a claim against the Minister or the State in respect of an event or events which are specified risks referred to in a Ministerial indemnity.

Period of validity of indemnities. 7.—(1) Subject to *subsection (3)*, the Minister shall not grant a Ministerial indemnity for a period greater than 31 days.

(2) The Minister may, with the consent of the Minister for Finance and having consulted the Minister for Enterprise, Trade and Employment, renew a Ministerial indemnity for subsequent periods not exceeding 31 days.

(3) The Minister may grant a Ministerial indemnity which retrospectively indemnifies the air navigation undertaking concerned as regards the specified risks with effect from 23.59 Greenwich Mean Time on 24 September, 2001, and such an indemnity may be for a period in excess of 31 days but for no greater period than 120 days.

Charges. 8.—(1) The Minister may recover from an air navigation undertaking in whose favour a Ministerial indemnity is granted (or renewed) a charge or charges to be fixed by the Minister with the approval of the Minister for Finance in respect of the granting or renewal of such an indemnity and an air navigation undertaking shall be obliged to pay to the Minister any such charges.

(2) The Minister may recover from an air navigation undertaking to whom a Ministerial indemnity is granted a charge or charges fixed by the Minister with the approval of the Minister for Finance in respect of the period of time (or any part of the period of time) between 23.59 Greenwich Mean Time on 24 September, 2001, and the granting of a Ministerial indemnity pursuant to *section 2* and which is referred to in *section 7(3)* and the air navigation undertaking concerned shall pay to the Minister any such charges.

(3) In fixing charges in respect of the granting or renewal of a Ministerial indemnity, the Minister shall have due regard to the circumstances prevailing in relation to aviation insurance including—

- (a) any directions or guidelines issued by the Commission of the European Communities,
- (b) the premiums charged by insurers for similar indemnity cover relating to the specified risks, and
- (c) the premium payable to the insurer of the air navigation undertaking concerned by that undertaking, in respect of the specified risks, at any time prior to or after the making of an order of the Government under *section 2*.

(4) The Minister may recover, as a simple contract debt in any court of competent jurisdiction, from the recipient of the Ministerial indemnity, any amount due and owing to the Minister under this Act.

[2001.] *Air Navigation and Transport [No. 48.]
(Indemnities) Act, 2001.*

9.—(1) A Ministerial indemnity shall not agree to indemnify an air navigation undertaking unless the Minister is satisfied that— Limitation on power of Minister to issue indemnities.

- (a) it is an airline licensed by the State, or
- (b) the service provided by the air navigation undertaking concerned is essential to the provision of civil air services to, from or within the State.

(2) In this section, “provision of civil air services to, from or within the State” includes services provided to civil aviation relating to—

- (a) the maintenance of aircraft in the State, or
- (b) emergency, technical or transit stops at an airport or aerodrome to which scheduled commercial air services operate in the State.

10.—(1) The Minister shall have available to him or her in respect of a Ministerial indemnity— Defences available to Minister.

- (a) all defences to a claim for indemnity,
- (b) all rights (including, but without prejudice to the generality of the foregoing, rights of repudiation, disclaimer and subrogation) held by or accruing to the insurer under the policy of insurance referred to in *section 4*, and
- (c) all rights of repudiation and disclaimer in relation to warranties and representations made by or on behalf of the applicant for a Ministerial indemnity,

as if the Minister were, to the extent of the liability referred to in the Ministerial indemnity concerned, the insurer under the policy of insurance concerned.

(2) Nothing in this Act shall confer any rights on a person, as against an air navigation undertaking, the Minister or the State, in respect of an event which is a specified risk which that person would not have had against the air navigation undertaking concerned had the event occurred before the date specified in the order most recently made under *section 2(1)* as being the date upon which the state of difficulty commenced.

11.—(1) An air navigation undertaking seeking the issue or renewal of a Ministerial indemnity in its favour shall— Applications and duty to furnish information.

- (a) make application to the Minister in such manner and form as may be designated by the Minister, and
- (b) furnish such information and documentation as may be requested by the Minister.

(2) The Minister may, at any time when a Ministerial indemnity is in force, request an air navigation undertaking to furnish to him or her such information and documentation as the Minister may request, and the undertaking concerned shall comply with such request as soon as practicable.

[No. 48.] *Air Navigation and Transport* [2001.]
(*Indemnities*) Act, 2001.

Minister not obliged to issue indemnity.

12.—(1) Nothing in this Act shall oblige the Minister to grant or renew a Ministerial indemnity to an air navigation undertaking.

(2) The Minister, at his or her discretion, may grant or renew a Ministerial indemnity in respect of part of the liability for which the applicant has sought the issue or renewal of the Ministerial indemnity.

(3) The Minister, at his or her discretion, may issue or renew a Ministerial indemnity in respect of only part of the operations of the air navigation undertaking concerned.

(4) No liability shall attach to the Minister or the State in respect of or arising from the refusal to grant or renew a Ministerial indemnity or any reasonable delay on the part of the Minister relating to the grant or renewal of a Ministerial indemnity.

Insurance Acts not to apply.

13.—The provisions of the Insurance Acts shall not apply in so far as the Minister provides or renews or offers to provide or renew an indemnity pursuant to this Act.

Suspension and termination of indemnities.

14.—(1) Subject to *subsection (2)*, the Minister may at any time suspend or terminate, with effect from a time and date specified, the operation of a Ministerial indemnity.

(2) Suspension or termination of the operation of an indemnity pursuant to *subsection (1)* shall not take effect in relation to an aircraft in flight until the aircraft has landed, taxied to a standstill and the passengers and crew have had a reasonable opportunity to disembark.

(3) In relation to an aircraft to which *subsection (2)* applies, the airline concerned shall avail of every opportunity possible to land the aircraft concerned at the nearest suitable airport upon being made aware of the termination of the indemnity concerned.

(4) Notwithstanding *subsection (3)*, the Minister may, at the absolute discretion of the Minister and at the request of the airline concerned, agree to the landing of an aircraft referred to in *subsection (3)* at an airport other than the nearest suitable airport, subject to such conditions as the Minister considers appropriate.

(5) Notice of suspension or termination of the operation of a Ministerial indemnity may be given in writing, by telephone, fax, electronic mail or in such other manner as may to the Minister appear effective.

(6) Suspension or termination of a Ministerial indemnity shall not take effect earlier than—

(a) 1 hour after notice of termination or suspension is issued by the Minister, or

(b) the time such notice is received by the air navigation undertaking concerned,

whichever shall occur first.

[2001.] *Air Navigation and Transport [No. 48.] (Indemnities) Act, 2001.*

15.—The Minister may effect insurance or re-insurance in respect of all or such part of the liabilities specified in a Ministerial indemnity or indemnities, either as respects— Re-insurance by Minister.

- (a) the liability under an individual Ministerial indemnity, or
- (b) the total liabilities in respect of all the Ministerial indemnities standing issued for the time being.

16.—(1) Without prejudice to the obligations of the air navigation undertaking concerned under the policy referred to in *section 4*, where an air navigation undertaking which is the recipient of a Ministerial indemnity believes that an event has occurred giving rise to a claim in respect of such indemnity, the undertaking concerned shall present such claim to the Minister in such form as may be designated by the Minister. Claims on foot of an indemnity.

(2) The Minister shall, subject to the provisions of this Act, if satisfied as to the admissibility of a claim to which *subsection (1)* relates, indemnify the air navigation undertaking concerned.

(3) Subject to *subsection (4)*, if the Minister is of the opinion that there is a possibility that the value of a claim or claims in respect of a Ministerial indemnity or indemnities issued under this Act may exceed in aggregate the limit of €9,000,000,000 referred to in *section 6(2)*, the Minister may determine that the claim or claims shall not be paid until the full extent of such claim or claims has been established and shall cause a copy of such determination to be sent to each air navigation undertaking to which a Ministerial indemnity has been granted or renewed.

(4) Where the Minister has made a determination under *subsection (3)*, the Minister may make an interim payment to the air navigation undertaking concerned in respect of a claim admitted and proved, on such conditions as the Minister thinks fit, including a condition as to repayment to the Minister of any overpayment if the provisions of *section 6(4)* apply.

(5) The Minister may, following consultation with the Minister for Finance and the Minister for Enterprise, Trade and Employment, make an order fixing a date and time before which an air navigation undertaking wishing to make a claim against the Minister on foot of a Ministerial indemnity may make such a claim.

(6) Where the Minister has made an order under *subsection (5)*, no liability shall attach to the Minister or the State arising from the Ministerial indemnity other than in respect of claims duly made in accordance with this section prior to the date and time specified in the order.

(7) Where the Minister proposes to make an order under *subsection (5)* he or she shall cause a draft of the order to be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed in each such House.

(8) The date and time fixed by the Minister in an order made under *subsection (5)* shall be not less than 6 months from the date of the making of the order.

[No. 48.] *Air Navigation and Transport* [2001.]
(*Indemnities*) Act, 2001.

- Expenses. **17.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.
- Disposal of monies. **18.**—Monies received by the Minister under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.
- Duration of Act. **19.**—(1) This Act shall cease to be in operation at the expiry of 12 months from the date of its coming into operation unless a resolution has been passed by each House of the Oireachtas resolving that the Act shall continue in operation.
- (2) The operation of this Act may from time to time be continued in force by the passing of a resolution by each House of the Oireachtas while the Act is still in operation.
- (3) Where a resolution referred to in *subsection (2)* is passed pursuant to that subsection the Act shall continue in force for the period specified in such resolution, which shall be a period of not more than 12 months.
- Short title. **20.**—This Act may be cited as the Air Navigation and Transport (Indemnities) Act, 2001.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
4 - 5 BÓTHAR FHEARCHAIR, BAILE ÁTHA CLIATH 2,
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 4752760)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE,
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
4 - 5 HARCOURT ROAD, DUBLIN 2,
(Tel: 01 - 6476834/35/36/37; Fax: 01 - 4752760)
or through any bookseller.

€2.54

ISBN 0-7557-2

