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*Number 13 of 2005*

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**AIR NAVIGATION AND TRANSPORT (INDEMNITIES) ACT  
2005**

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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. State of difficulty.
3. Ministerial indemnities.
4. Requirement for prior insurance.
5. Minister not obliged to grant or renew indemnity.
6. Conditions in indemnities.
7. Limit of Ministerial liability.
8. Period of validity of indemnities.
9. Charges.
10. Limitation on power of Minister to grant or renew indemnities.
11. Defences available to Minister.
12. Applications and duty to furnish information.
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.

[No. 13.]      *Air Navigation and Transport*      [2005.]  
*(Indemnities) Act 2005.*

Section

18. Disposal of monies.

19. Short title.

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ACTS REFERRED TO

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



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*Number 13 of 2005*

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**AIR NAVIGATION AND TRANSPORT (INDEMNITIES) ACT  
2005**

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AN ACT TO MAKE PROVISION FOR THE GRANTING OF  
INDEMNITIES TO AIR NAVIGATION UNDERTAKINGS  
BY THE MINISTER FOR TRANSPORT AND TO MAKE  
PROVISION FOR MATTERS RELATED THERETO.

[4th July, 2005]

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 Irish Aviation Authority (Aerodromes and Visual Ground Aids) Order 2000 (S.I. No. 334 of 2000);

“airline licensed by 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 by the State, the Irish Aviation Authority, an aviation support company, the operator of an airport, the operator of an aerodrome licensed for public use by the Irish Aviation Authority, and a person referred to in section 10(1)(b);

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

“aviation security” has the same meaning as it has in Regulation (EC) No. 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security<sup>1</sup>;

“aviation support company” means an undertaking providing—

(a) groundhandling services, or

(b) services involving the maintenance, repair or overhaul of aircraft,

<sup>1</sup>O.J. No. L355, 30.12.2002, p.1

(c) aviation security service;

“enactment” means a statute or an instrument made under a power conferred by a statute;

“groundhandling services” has 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 Transport;

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

“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 subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraphs of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(4) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment.

State of difficulty.

**2.—**(1) Whenever and so often as the Government are of the opinion that circumstances prevail or are likely to prevail in relation to the provision of insurance relating to aviation, which insurance, in the opinion of the Government, is essential for the functioning of civil aviation, and whereby such insurance is unavailable or unavailable at a reasonable cost in the commercial insurance market, the Government may by order declare that a state of difficulty affecting the supply of such insurance exists in relation to risks specified in the order.

(2) The Government in an order made under this section may 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 (including a date prior to the enactment of this Act, but not earlier than 23:59 Greenwich Mean Time on 16 June 2005).

(3) An order under *subsection (1)* of this section shall remain in force for such period (not exceeding 12 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 circumstances referred to in *subsection (1)* or this 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 thinks fit (not exceeding 12 months from the date of the making of the continuing order).

(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)* or *(4)*.

(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 Government 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 without prejudice to anything previously done thereunder.

3.—(1) Subject to the provisions of this Act, the Minister, with the consent of the Minister for Finance, may grant or renew an indemnity to an air navigation undertaking in respect of specified risks and any such indemnity is in this Act referred to as a “Ministerial indemnity”. Ministerial indemnities.

(2) Subject to *section 5(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 12* by the air navigation undertaking concerned.

4.—(1) Subject to *subsection (2)*, 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 commencement of the period of 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.

(2) In the case of an air navigation undertaking which had not commenced the activity in respect of which the indemnity is sought before the commencement of the period of the state of difficulty the subject of an order under *section 2*, the Minister may, notwithstanding *subsection (1)* grant a Ministerial indemnity to that air navigation undertaking.

5.—(1) Nothing in this Act shall oblige the Minister to grant or renew a Ministerial indemnity to an air navigation undertaking. Minister not obliged to grant or renew indemnity.

(2) The Minister may, at his or her discretion, refuse to grant or to renew a Ministerial indemnity.

[No. 13.] *Air Navigation and Transport* [2005.]  
*(Indemnities) Act 2005.*

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

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

(5) Without prejudice to the generality of *subsections (2) to (4)*, in considering whether to exercise the powers under *subsections (2) to (4)* the Minister may consider—

- (a) whether full payment has been made by the air navigation undertaking concerned in respect of charges due to the Minister under *section 9*;
- (b) whether conditions, to which an indemnity previously granted to the air navigation undertaking concerned was subject, have been complied with;
- (c) whether, in the opinion of the Minister, the air navigation undertaking concerned will comply with conditions to which the Ministerial indemnity would be subject if granted or renewed;
- (d) whether the air navigation undertaking concerned holds all necessary authorisations or licences to operate the business in respect of which the Ministerial indemnity is sought;
- (e) the risk associated with the Ministerial indemnity sought and whether such risk is, in the opinion of the Minister, excessive.

(6) Without prejudice to the generality of *subsections (2) to (4)*, where, in relation to an application for the grant or renewal of a Ministerial indemnity, the Minister is of the opinion that—

- (a) the air navigation undertaking is a member of a class of undertaking,
- (b) the aircraft in respect of which the Ministerial indemnity is sought belongs to a class of aircraft, or
- (c) the air navigation undertaking or the aircraft concerned engages in a class of activity,

and, having regard to the risk associated with the Ministerial indemnity applied for or the potential liability of the Minister or the State under this Act, in the opinion of the Minister it would be in the public interest not to grant or renew the Ministerial indemnity, or to grant the Ministerial indemnity limited as to its extent, the Minister may, in relation to such application, refuse to grant or renew the Ministerial indemnity or, without prejudice to *section 6*, may grant or renew the Ministerial indemnity incorporating a limitation as to its extent.

(7) No liability shall attach to the Minister or the State in respect of or arising from—

- (a) the refusal to grant or renew a Ministerial indemnity, or

- (b) any delay or default on the part of the Minister relating to the grant or renewal of a Ministerial indemnity.

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

(2) Without prejudice to the generality of *subsection (1)*, a condition referred to in *subsection (1)* may relate to matters which in the opinion of the Minister may reduce the likelihood of an event giving rise to a claim under the indemnity or may reduce the amount of a claim made under the indemnity.

(3) 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.

(4) 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.

(5) 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.

7.—(1) Subject to the provisions of this section, 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 immediately prior to the commencement of the period of the state of difficulty specified in the order made by the Government pursuant to *section 2*. Limit of Ministerial liability.

(2) Subject to the provisions of this section, in the case of an air navigation undertaking to which *section 4(2)* applies, the liability of the Minister or the State arising from the granting or renewal of a Ministerial indemnity shall not exceed such amount as may be specified in the indemnity concerned, being the amount which, in the opinion of the Minister is the minimum amount necessary to enable the air navigation undertaking concerned to operate its business.

(3) 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 aggregate.

(4) Notwithstanding *subsection (3)*, the Minister may grant or renew indemnities, the liabilities in aggregate under which exceed €9,000,000,000.

(5) 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 €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.

(6) 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.

8.—(1) Subject to *subsection (2)*, the Minister may, with the consent of the Minister for Finance, grant or renew a Ministerial indemnity for any period not exceeding 12 months, provided that no indemnity shall extend beyond the end of the period of validity of the most recently made order under *section 2*.

(2) A Ministerial indemnity may retrospectively indemnify an air navigation undertaking as regards the specified risks with effect from 23:59 Greenwich Mean Time on 16 June 2005.

Charges.

9.—(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 or renewed 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 16 June 2005 and the granting of a Ministerial indemnity pursuant to *section 3* and which is referred to in *section 8(2)* and the air navigation undertaking concerned shall pay to the Minister any such charges.

(3) In fixing charges in respect of the grant 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 premium charged by insurers for similar indemnity cover relating to the specified risks,
- (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*, and
- (d) the level of risk of a claim arising in respect of the Ministerial indemnity to which the application for such indemnity relates.

(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.



[2005.] *Air Navigation and Transport (Indemnities) Act 2005.* [No. 13.]

**10.**—(1) The Minister shall not agree to indemnify an air navigation undertaking unless the Minister is satisfied that—

Limitation on power of Minister to grant or renew indemnities.

- (a) it is an airline licensed by the State,
- (b) it is the person who is responsible for complying with Regulation EC 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators<sup>2</sup>, and the indemnity relates to a specified aircraft registered in the State (not being an aircraft operated by an airline), or
- (c) that the service is provided in the State by the air navigation undertaking concerned, and
  - (i) in the opinion of the Minister is essential to the provision of civil air services to, from or within the State, or
  - (ii) involves the maintenance, repair or overhaul of aircraft.

(2) In this section “provision of civil air services to, from or within the State” includes services provided to civil aviation relating to emergency, technical or transit stops at an airport or aerodrome licensed for public use by the Irish Aviation Authority.

**11.**—(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)—
    - (i) held by or accruing to the insurer under the policy of insurance referred to in *section 4(1)*, or
    - (ii) in the case of an air navigation undertaking to which *section 4(2)* refers which are or were prior to the commencement of the state of difficulty normally held by or accrue to an insurer under a policy of insurance relating to the risk the subject of the indemnity,
- 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 a policy of insurance of the type 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 that that person would not have had against the air navigation undertaking concerned had

<sup>2</sup>O.J. No. L138, 30.4.2004, p.1

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.

Applications and duty to furnish information.

**12.—**(1) An air navigation undertaking seeking the grant or renewal of a Ministerial indemnity in its favour—

- (a) shall 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.

Insurance acts not to apply.

**13.—**The provisions of the Insurance Acts shall not apply in so far as the Minister grants or renews or offers to grant 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—

- (a) with immediate effect, or
- (b) with effect from a time and date specified therein,

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 and taxied to a standstill.

(3) In relation to an aircraft to which *subsection (2)* applies, the air navigation undertaking 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 air navigation undertaking 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.

**15.**—The Minister may effect insurance or re-insurance in respect of all or such part of the liabilities in respect of which a Ministerial indemnity or indemnities are granted or renewed, 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 granted or renewed for the time being.

**16.**—(1) Where an air navigation undertaking which is the recipient of a Ministerial indemnity believes that an event has occurred that may give rise to a claim in respect of such indemnity, the undertaking concerned shall inform the Minister at the earliest opportunity.

Claims on foot of an indemnity.

(2) Claims for indemnity on foot of a Ministerial indemnity shall be presented to the Minister in such form as may be designated by the Minister.

(3) The Minister shall, subject to the provisions of this Act, if satisfied as to the admissibility of a claim relating to a Ministerial indemnity, indemnify the air navigation undertaking concerned.

(4) Subject to *subsection (5)*, 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 granted or renewed under this Act may exceed in aggregate the limit of €9,000,000,000 referred to in *section 7(3)*, 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.

(5) Where the Minister has made a determination under *subsection (4)*, 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 7(5)* apply.

(6) The Minister may, following consultation with the Minister for Finance, 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.

(7) Where the Minister has made an order under *subsection (6)*, 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.

(8) Where the Minister proposes to make an order under *subsection (6)* 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

S.16	[No. 13.]	<i>Air Navigation and Transport (Indemnities) Act 2005.</i>	[2005.]
		a resolution approving of the draft has been passed in each such House.	
		(9) The date and time fixed by the Minister in an order made under <i>subsection (6)</i> shall be not less than 6 months from the date of the making of the order.	
Expenses.		<b>17.</b> —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.		<b>18.</b> —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.	
Short title.		<b>19.</b> —This Act may be cited as the Air Navigation and Transport (Indemnities) Act 2005.	