



STATUTORY INSTRUMENTS.

**S.I. No. 175 of 2012**



EUROPEAN UNION (AIR TRAFFIC FLOW MANAGEMENT)  
REGULATIONS 2012

**(Prn. A12/0843)**

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I, LEO VARADKAR, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Commission Regulation (EU) No. 255/2010 of 25 March 2010<sup>1</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Union (Air Traffic Flow Management) Regulations 2012.

*Interpretation*

2. (1) In these Regulations—

“ATFM” means air traffic flow management;

“ATFM Regulation” means Commission Regulation (EU) No. 255/2010 of 25 March 2010<sup>1</sup>;

“authorised officer” means a person appointed as an authorised officer under Regulation 4;

“Authority” means Irish Aviation Authority;

“party” means a party, or agent acting on its behalf, involved in the ATFM process mentioned in Article 1(3) of the ATFM Regulation.

(2) A word or expression which is used in these Regulations and is also used in the ATFM Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the ATFM Regulation.

*Tasks of Authority*

3. (1) In addition to those set out in its memorandum of association, under section 14(1) of the Irish Aviation Authority Act 1993 (No. 29 of 1993), the principal objects of the Authority shall also include the performance of air traffic flow management and capacity management for the purpose of the ATFM Regulation.

(2) The Authority shall take such steps under the Companies Acts as may be necessary to alter its memorandum and articles of association to make them consistent with these Regulations.

<sup>1</sup>OJ No. L 80, 26.3.2010, p.10

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 1st June, 2012.*

(3) The Authority is the central unit in the State for the purposes of the ATFM Regulation and shall—

- (a) perform the tasks of the State under that Regulation, and
- (b) take the appropriate ATFM measures and procedures.

(4) Another party shall comply with ATFM measures and procedures (including suspension of flight plans) taken by the Authority.

*Directions*

4. (1) Where the Authority is of the opinion that an ATS unit is failing to comply with Article 6 of, an operator is failing to comply with Article 7 of, or an airport managing body is failing to comply with Article 8 of, or a party is failing to comply with an ATFM measure or procedure the Authority has taken under, the ATFM Regulation, it may issue a direction to the party concerned to comply with the Regulation or to comply with any instructions contained in the direction. The party may, unless because of the urgency of the direction it is not appropriate, within 14 days of the issue of the direction, make representations to the Authority, which the Authority shall consider. The Authority shall, where it has received such representations, reply in writing to the party within 2 months of such receipt. The Authority in its reply may confirm, vary or withdraw the direction. Where the direction is confirmed (with or without variation) the direction takes effect on the date the reply is given.

(2) Where a direction has been issued to a party who—

- (a) has not made representations to the Authority within the period of 14 days of the issue of the direction to the party, after such period, or because of the urgency of the direction upon its issue, or
- (b) has made such representations and the Authority has replied to the party confirming the direction with or without variation, after the reply is given,

fails to comply with the direction, the party commits an offence and is liable—

- (i) on summary conviction, to a class A fine, or
- (ii) on conviction on indictment, to a fine not exceeding €150,000.

(3) Where a direction or reply is required to be given to a party, the direction or reply shall be addressed to the party and shall be given to the party in one of the following ways—

- (a) by delivering it to the party,
- (b) by leaving it at the address at which the party carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the party at the address at which the party carries on business,

- (d) if an address for the service of a direction or reply has been furnished by the party, by leaving it at, or sending it by pre-paid registered post addressed to the party to, that address,
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the party carries on business or, if an address for the service of a direction or reply has been furnished by the party, that address:

provided that—

- (i) the sender's—
  - (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
  - (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or reply,
- and
- (ii) the direction or reply is also given in one of the other ways mentioned in any of the preceding paragraphs.

(4) For the purposes of paragraph (3), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(5) A copy of a direction or reply, which has endorsed on it a certificate purporting to be signed by an officer of the Authority (authorised in that behalf by the Authority) stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

(6) In this section—

“direction” means a direction under paragraph (1);

“reply” means a reply by the Authority under paragraph (1).

#### *Enforcement*

5. (1) The Authority may appoint persons to be authorised officers for the purposes of enforcing the ATFM Regulation.

(2) A person appointed under paragraph (1) shall, on his or her appointment, be furnished by the Authority with a certificate of his or her appointment and

when exercising a power conferred by paragraph (3) shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(3) For the purposes of the exercise by the Authority of its functions under the ATFM Regulation, an authorised officer may—

- (a) enter at any reasonable time any premises or place (other than a dwelling) owned or occupied by a party and search and inspect the premises and any books, documents or records found therein,
- (b) require any such party or person employed by the party to produce to him or her any books, documents or records relating to the provision of airport or aviation services which are in the person's power or control, and in the case of information in a non-legible form to reproduce it in a legible form, and to give to the officer such information as he or she may reasonably require in relation to any entries in such books, documents or records,
- (c) secure for later inspection any premises or part thereof in which books, documents or records relating to the provision of airport or aviation services are kept or there are reasonable grounds for believing that such books, documents or records are kept,
- (d) inspect and take extracts from or make copies of any such books, documents or records (including in the case of information in a non-legible form a copy of or extract from such information in a permanent legible form),
- (e) remove and retain such books, documents or records for such period as may be reasonable for further examination,
- (f) require the party or person employed by that party to maintain such books, documents or records for such period of time, as may be reasonable, as the authorised officer directs,
- (g) require the party or person employed by the party to give to the officer any information which he or she may reasonably require with regard to the provision of airport or aviation services,
- (h) require any person on the premises or place having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto.

(4) A person who—

- (a) obstructs, impedes or assaults an authorised officer in the exercise of a power under this Regulation,
- (b) fails or refuses to comply with a requirement under this Regulation,

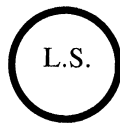
- (c) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce,
- (d) gives to the Authority or to an authorised officer information which is false or misleading, in a material respect, or
- (e) falsely represents himself or herself to be an authorised officer,

commits an offence and is liable on summary conviction to a class A fine.

6. (1) Proceedings for an offence may under these Regulations be brought summarily by the Authority.

(2) In a prosecution of a person for an offence under Regulation 4 it shall be a defence for the person to prove that the contravention concerned was due to stress of weather or other unavoidable cause and in a prosecution of the operator of an aircraft for such an offence, it shall be a defence for him or her to prove that the contravention concerned took place without his or her actual default or knowledge.

(3) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of, any person, being a director, manager or secretary of such body, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.



GIVEN under my Official Seal,  
29 May 2012.

LEO VARADKAR,  
Minister for Transport, Tourism and Sport.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

The purpose of these Regulations, which are in accordance with Single European Sky legislation, is to designate the Irish Aviation Authority as the Central Unit for (ATFM) services in the State for the purposes of Commission Regulation (EU) No. 255/2010 of 25th March 2010 and to make provision for penalties in respect of infringements.

EU Regulation 255/2010 states that Member States must make provision for penalties and that such provisions be notified to the European Commission which is the main purpose of this S.I.

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