

Memorandum for the Cabinet  
by the Hon. Prime Minister

- (a) Civil Aviation (Air Operators' Certificates) Act, 1969.  
(b) Air Operators Certificates Regulations, 1969.

The principal aviation law of Malta is the United Kingdom Civil Aviation Act, 1949, as applied to Malta and the Colonial Air Navigation Order, 1961, published by Legal Notice No. 10 of 1963. Arrangements are in hand to draft a Malta Civil Aviation Act. Owing to its magnitude and complexity, the completion of the draft is likely to take some time. Amendments effected to the Order made by other Orders-in-Council subsequent to the 1st September, 1964, are not applicable to Malta due to Independence.

2. An important amendment made to the Order but not applicable to Malta concerns the certification of aircraft operators. It is proposed to remedy this deficiency by the enactment of ad hoc legislation - the subject being amenable to such treatment. Enclosed are therefore a draft Civil Aviation (Air Operators' Certificates) Act and draft Air Operators Certificates Regulations.

3. Malta has ratified the Convention on International Civil Aviation signed at Chicago on the 7th December, 1944, in the preamble of which the "Governments agreed on certain principles and arrangements in order that international Civil Aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically".

4. Annex 6 to the Convention - Operation of Aircraft - contains Standards and Recommended Practices adopted by the International Civil Aviation Organization as the minimum standards applicable to the operation of aeroplanes in scheduled international air services and in non-scheduled international air transport operations for remuneration or hire. The purpose of Annex 6 is to contribute to the safety of international air navigation by providing criteria of safe operating practice and to contribute to the efficiency and regularity of international air navigation by encouraging States to facilitate the passage over their territories of aeroplanes belonging to other States that operate in conformity with such standards.

The implementation, or rather the known implementation of at least the minimum standards in Annex 6 is therefore as much in the interest of the travelling public and the State as of the aircraft operators themselves. Furthermore, Air Services Agreements between States invariably contain an article stipulating that the aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities before issuing the necessary operating authorization to that airline.

5. An element of the safety of an operation is the intrinsic safety of the aircraft, i.e. its level of airworthiness. The level of airworthiness of an aircraft is, however, not fully defined by the application of the airworthiness standards of Annex 8 to the Convention but also requires the application of those Standards of Annex 6 that are complementary to them.

6. Clearly to ensure the implementation of the above Standards, a system of certification of air operators has to be established and section 3 of the proposed Act prohibits the carriage of passengers and cargo for hire or reward in aeroplanes operated by a person who does not hold an air operators' certificate. The operation of aircraft having a maximum total weight authorised of 5,000 lb. or less is exempted from the applicability of the Act. Such aircraft carry a maximum of five to six passengers and as they do not involve a complex operation, they do not require the same standard of governmental supervision as operations conducted with heavier and more complex aircraft. The operation of the larger aircraft, especially the modern jets, involves intricate planning and provision of equipment, organization, staffing, training, aircraft maintenance arrangements and other matters affecting the operation. The issue of an Air Operators' Certificate signifies that the holder is considered "competent to secure the safe operation" of his aircraft.

7. Air Operators Certificates would be issued by the Director of Civil Aviation to the operator i.e. the person who has, for the time being, the management of the aircraft. The Director may suspend, revoke or vary a certificate but, if other than at the operator's request, only after having given notice of his intention to the operator and having considered his representations. However, when he considers that the safety of air navigation necessitates it, he may act immediately. Notice of a decision must be served

on an applicant and when the Director rejects an application or grants it conditionally and when he suspends, revokes or varies a certificate, he must give reasons. There is a right of appeal to an Aviation Safety Board consisting of one of Her Majesty's Judges and two technical assessors.

8. The grant of an air operator's certificate involves supervision of actual operations on the flight deck and examination of the Operations Manual; Crew Manual; Flight Crew Licences; Engineers Licences; supervision of aircraft maintenance arrangements in Malta and overseas stations; Flight Crew training and testing arrangements; Insurance of aircraft and passengers; examination of the Technical Log Books, Certificates of maintenance, certificates of compliance and Load Sheet; Flying Staff Instructions; Base organization and facilities; and Modification book for aircraft.

9. Departments of Civil Aviation abroad are equipped, in varying degrees, with Inspectorates normally consisting of fully qualified airline captains with at least twenty years flying experience to examine and inspect the airlines of their countries. Such staff is very highly paid and arrangements involve a considerable annual expenditure which can be very much reduced if in assessing the requirements in para. 7 above, we make use of the services of the Flight Operations Inspectorate of the Board of Trade, London. It is understood that the services of Flight Operations Inspectors could be made available to Malta on the basis of technical co-operation provided we pay passage expenses and subsistence allowance. The engineering aspects will be examined by the Air Registration Board who have a Resident Surveyor here under an already existing contract with the Department of Civil Aviation.

10. Ministers are asked to approve, subject to the advice of the Crown Advocate General, that

- (a) The Civil Aviation (Air Operators Certificates) Act, 1969, be printed as a Bill and brought before the House of Representatives; and
- (b) The Air Operators' Certificates Regulations, 1969, be made as soon as the above Act is enacted.

Office of the Prime Minister,

Auberge d'Aragon,

Valletta.

7th May, 1969.

Draft

L.N. of 1969.

CIVIL AVIATION (AIR OPERATORS' CERTIFICATES) ACT, 1969  
(ACT NO. OF 1969)

Air Operators' Certificates Regulations, 1969.

Date of commencement: May, 1969.

IN exercise of the powers conferred by section 9 of the Civil Aviation (Air Operators' Certificates) Act, 1969, the Minister responsible for Aviation has made the following regulations:-

1. These regulations may be cited as the Air Operators' Certificates Regulations, 1969, and shall come into force on the May, 1969. Citation and Commencement.
2. Words and phrases used in these regulations shall have the same meaning as is assigned to them in the Civil Aviation (Air Operators' Certificates) Act, 1969, hereinafter referred to as "the Act". Interpretation.
3. (1) If the applicant for or holder of a certificate is aggrieved by a decision of the Director as to the application or certificate he may at any time before the expiration of the period of thirty days beginning with the day on which he has been served by the Director with notice of that decision, serve on the Director written notice that he wishes to appeal against that decision. Notice of appeal.
- (2) The Notice of Appeal shall state concisely the grounds on which the appeal is based. A copy of the Notice of Appeal shall, at the same time as it is served on the Director, be served on the Crown Advocate General and the appellant shall inform the Crown Advocate General whether or not he proposes to be legally represented at the hearing of the appeal and of the name and address of the Advocate or Solicitor, if any, acting for him, or of any other person who will be representing him at the appeal.
4. (1) The Director shall forthwith refer the appeal to the Board, who shall hear the appellant and the Director. Determination of the appeal.
- (2) The hearing shall be held in public unless the Board determines in relation to the whole or part of the case, that it is to be held in private because of exceptional circumstances.
- (3) The Board shall fix the time and place for the hearing.
- (4) The appellant and the Director may appear in person or be represented by any other person whom he may have authorized to represent him.
- (5) the Crown Advocate General may prepare a statement of the grounds upon which the Director intends to rely to support his decision at the hearing of the appeal, and shall forward any such statement to the Board and to the appellant. The statement shall be delivered within twenty-eight days of the delivery of the Notice of Appeal. At the hearing the Director may give evidence himself and may produce other evidence, either oral or documentary, in support of his decision.

(6) The appellant shall have the right to examine the Director and any witnesses produced by him, and the Director shall have the right to examine the appellant and any person who gives evidence for the appellant.

(7) If either the appellant or the Director at any time before the date fixed for the hearing desire to obtain any directions or any preliminary or interlocutory order as to the procedure, application for the same may be made to the Board and the party making such application shall at the same time give notice of such application to the other party to the appeal.

(8) The Board shall make such Order as it thinks proper with respect to the application or certificate which is the subject of the appeal, and the Director shall forthwith give effect to that Order. The Board shall furnish the appellant and the Director with the reasons for its decision.

5. (1) The Board on determining an appeal shall order the appellant or the Director to pay, respectively, the whole or part of the costs incurred by the Board, such costs to be taxed on a party and party basis by the Registrar of Her Majesty's Superior Courts.

Costs of Appeal.

(2) Any sum payable by virtue of an order under this Regulation shall be recoverable from the appellant as a civil debt.

6. When an application is made for the issue of a certificate or for the variation or renewal of a certificate, there shall be paid for the investigation required a fee of an amount equal to the cost of making the investigation or £200 whichever is the lesser amount.

Fees for certificates.

A BILL  
entitled

AN ACT to provide for the issue, variation, suspension and revocation of air operators' certificates to companies operating aircraft for the purpose of public transport.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I

Preliminary

1. This Act may be cited as the Civil Aviation (Air Operators' Certificates) Act, 1969.

Short title.

2. In this Act, unless the context otherwise requires -  
"Board" means the Aviation Safety Board which shall be composed of one of Her Majesty's Judges sitting with two technical assessors as may be so appointed;

Interpretation

"Certificate" means an air operators' certificate;

"Director" means the Director of Civil Aviation and includes any person deputed by him in writing;

"holder" in relation to a certificate, includes the holder of a certificate which has been revoked or suspended;

"Minister" means the Minister responsible for Aviation;

"Operator", in relation to an aircraft, means the person for the time being having the business management of that aircraft, and cognate expressions shall be construed accordingly;

"prescribed" means prescribed by regulations made under this Act;

"reward", in relation to any flight by an aircraft includes any form of consideration received or to be received wholly or partly in respect of or in connection with that flight, irrespective of the person by or to whom the consideration has been or is to be given.

PART II

Certification of air operators

3. (1) An aircraft registered in Malta, and having a maximum total weight authorized of more than 5000 lb., shall not fly on any flight for the purpose of public transport, otherwise than under and in accordance with the terms of a certificate granted to the operator of the aircraft under section 4 of this Act, certifying that the holder of the certificate is competent to secure that aircraft operated by him on such flights as that in question are operated safely.

Requirement of air operator's certificate.

(2) (a) Subject to the provisions of this subsection, an aircraft in flight shall for the purposes of this Act be deemed to fly for the purpose of public transport -

(i) if hire or reward is given or promised for the carriage of passengers or cargo in the aircraft on that flight; or

(ii) if any passengers or cargo are carried gratuitously in the aircraft on that flight by an air transport undertaking, not being persons in the employment of the undertaking (including, in the case of a body corporate, its directors), persons with the authority of the Director either making

an inspection or witnessing any training, practice or test for any purpose whatsoever, or cargo intended to be used by any such passengers as aforesaid, or by the undertaking.

(b) Where under a transaction effected by or on behalf of a member of an unincorporated association of persons on the one hand and an association of persons or any member thereof on the other hand, a person is carried in, or is given the right to fly, an aircraft in such circumstances that hire or reward would be deemed to be given or promised if the transaction were effected otherwise than as aforesaid, hire or reward shall, for the purposes of this Act, be deemed to be given.

(3) An aircraft shall be deemed to be in flight from the moment when, after the embarkation of its crew for the purpose of taking off, it first moves under its own power, until the moment when it next comes to rest after landing.

4. The Director shall grant to any person applying therefor a certificate if he is satisfied that that person is competent, having regard in particular to his previous conduct and experience, his equipment, organization, staffing, maintenance and other arrangements, to secure the safe operation of aircraft of the types specified in the certificate on flights of the description and for the purpose so specified. The certificate may be granted subject to such conditions as the Director thinks fit, and subject to the provisions of section 5, shall remain in force for a period of one year.

Power to issue certificates

5. Subject to the provisions of section 6, the Director may, if he thinks fit, suspend or revoke any certificate, and may vary any such certificate whether or not application has been made for the variation.

Suspension, revocation, etc. of certificates

6. The Director shall not suspend, revoke or vary any air operator's certificate, except in accordance with an application made by the holder thereof, unless:

Circumstances in which certificates may be suspended, revoked or varied.

(a) the Director has previously served on the holder of the certificate not less than thirty days before the date on which the Director proposes to suspend, revoke or vary the certificate, as the case may be, a written notice containing concise particulars of the Director's proposals and the reasons for it;

(b) the notice has expired; and

(c) the Director has considered any representations which the holder of the certificate may have made to him in writing before the expiration of the notice:

Provided that the foregoing requirements of this paragraph need not be complied with in any case in which the Director certifies that in the interests of the safety of air navigation it is essential for the revocation, suspension or variation of the certificate to take effect immediately.

L-ARKIVJI NAZZJONALI TA' MALTA

7. (1) The Director shall serve the applicant for or holder of the certificate (as the case may be) with written notice of his decision as to that certificate and shall within the period of twenty-one days furnish the applicant for or holder of the certificate with reasons in writing for his decision:

Notification of Director's decision

(a) if he refuses to grant the certificate, or grants it subject to a condition to which the applicant has not agreed; or

(b) if he suspends, revokes or varies the certificate otherwise than in accordance with an application by the holder.

(2) The period of twenty-one days referred in subsection (1) of this section shall begin on the day on which the Director serves notice of his decision on the applicant for or holder of the certificate, as the case may be.

8. Any applicant for or holder of an air operator's certificate who is aggrieved by a decision of the Director as to that application or certificate may, within such period and in such manner as may be prescribed, appeal to the Board.

Appeal

9. The Minister may, from time to time, make and when made, alter or revoke regulations generally for giving effect to any of the purposes of this Act and particularly for making provision as to the giving of notice of appeal, the liability of any of the parties in respect of costs or expenses incurred in connection therewith, and for the procedure relating to appeals.

Power to make Regulations

PART III

Miscellaneous Provisions

10. The Director shall levy such fees for the issue of certificates as may be prescribed.

Fees

11. For the purposes of this Act, a document may be served by the Director on any person by sending it by registered post in a letter addressed to that person at his usual or last known place of abode or place of business.

Service of documents

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Objects and Reasons

The object of this Bill is to ensure that operators of aircraft used for the public transport of passengers and over 5000 lb. maximum total weight, are competent to secure the safe operation of such aircraft and have set up an adequate organization to achieve this purpose. The Standards required of an operator are broadly laid down in Annex 6 to the Convention on International Civil Aviation which has been ratified by Malta. The Standards in Annex 6 are complementary to the Standards of Airworthiness in Annex 8 (which ensure the intrinsic safety of the aircraft) and together form the basic elements of a safe operation. The Bill provides for the issue of competency certificates to operators by the Director of Civil Aviation, the variation, suspension or revocation of such certificates and for appeals from the decisions of the Director.

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