



Guidance Note on applying for an Air Carrier Operating Licence

Commission for Aviation Regulation

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1. Introduction

1.1 The Commission for Aviation Regulation ('CAR') is responsible for licensing Irish based air carriers in accordance with Regulation (EC) No 1008/2008 ('the Regulation'). The Commission is designated as the competent licensing authority for granting Operating Licences under the European Communities (Common Rules for the Operation of Air Services in the Community) Regulations 2008 (S.I. 426 of 2008). Copies of the relevant legislation can be found on our website at,

<http://www.aviationreg.ie/airline-licensing-the-commissions-role/legislation.142.html>

1.2 An Operating Licence permits the holder to engage in the carriage by air of passengers, mail and/or cargo for remuneration and/or hire.

1.3 There are two types of Operating Licence – Category A and Category B. **Category A** licence holders are permitted to carry passengers, cargo and/or mail on aircraft with 20 seats or more and/or over 10 tonnes MTOM (maximum take-off mass). **Category B** licence holders are permitted to carry passengers, cargo and/or mail on aircraft with fewer than 20 seats and/or less than 10 tonnes MTOM.

1.4 You will find the full list of licensed air carriers on the Commission's website at:

<http://www.aviationreg.ie/airline-licensing-the-commissions-role/licence-holders.140.html>.

1.5 An Operating Licence stays in force for so long as the licensee remains in possession of a valid AOC or unless otherwise revoked by the Commission.

1.6 The Operating Licence does not in itself confer any rights of access to specific routes or markets. These rights, often referred to as 'traffic rights', must be obtained separately. All licensed EEA¹ carriers are free to operate on most routes within the EEA without the requirement to obtain further authorisation. However, for operations beyond the EEA, operators are required to obtain further authorisation(s). The Aviation Services Division of the Department of Transport, Tourism and Sport should be contacted in this regard (Tel: +353 1 6707444) or at aviationservices@dtas.ie.

2. Exemptions to the requirement to hold an Operating Licence

2.1 Under Article 3 (3) of the Regulation, an operating licence is not required for the following categories of air services:

- air services performed by non-power-driven aircraft and/or ultralight power-driven aircraft; and
- local flights².

¹ European Economic Area – All EU countries and Norway, Iceland and Liechtenstein.

² A 'local flight' is defined under the Regulation as a flight not involving carriage of passengers, mail and/or cargo between different airports or other authorised landing points.

2.2 No other exemptions to the requirement to hold an operating licence are allowed.

3. Conditions for granting an Operating Licence

3.1 In order to be eligible for an Operating Licence, an applicant must meet the following nine substantive requirements which are set out under Article 4 of the Regulation:

- i. Its **principal place of business** must be located in the licensing Member State. The Regulation provides that the principal place of business of a Community air carrier is either its head office or its registered office which are situated in the Member State where the principal financial functions and operational control, including continued airworthiness management, are exercised. "Head office" refers to the actual central office, the headquarters of the company, while "registered office" is the official seat of the undertaking as registered by the relevant authorities of the Member State concerned under its national law. Furthermore, the principal financial functions must be exercised in the same Member State to ensure that the authority or authorities³ of the Member State which are responsible for the economic and safety oversight of the air carrier are capable to fulfil their obligations by exercising real, effective regulatory control.
- ii. It has an **Air Operators Certificate** ('AOC') granted by the same licensing Member State. The [Irish Aviation Authority](#) ('IAA') is responsible for granting AOCs.
- iii. It has one or more **aircraft** at its disposal operated through ownership or dry lease. This condition stresses that the air carrier must initially and at all times operate at least one aircraft under its own AOC through ownership or dry lease.
- iv. Its **main occupation** is to operate air services or the repair and maintenance of aircraft. 'Air Services' is a defined term under the Regulation, and the only exceptions are the ones contemplated in Article 3 (3). Aviation services need to be the main purpose of the enterprise, although they can be combined with other commercial activities. The financial stability of the undertaking should mainly depend upon its aviation activities. Other commercial activities should not take a scale where they create significant financial risks for the undertaking.
- v. Its **company structure** allows the competent licensing authority to implement the provisions of Chapter II of the Regulation. This point deals with the question of transparency of the company structure, particularly in order to assess compliance with the requirements on majority ownership and effective control. The company must also be capable of having an insurable interest, of entering into contracts

³ In some Member States (as is the case in Ireland), the AOC and the operating licence are granted and overseen by different authorities.

and being audited. The licensing authority is required to ensure that the structure of the undertaking complies with the requirements both in substance and in form.

- vi. It must be **majority owned** and **effectively controlled** by Member States and/or nationals of Member States, except as provided in Community agreements. Please refer to the Commission's Guidance Note on how we apply the ownership and control requirements at, http://www.aviationreg.ie/fileupload/OCGuidance_Note_22_11_12.pdf.
- vii. It meets the required **financial conditions**. An undertaking applying for the first time for a licence has to:
- a) demonstrate that it can meet actual and potential (financial) obligations for a period of 24 months from the start of operations;
 - b) demonstrate that it can meet fixed and operational costs (as foreseen realistically in the business plan) for a period of three months without any income;⁴
 - c) present a detailed business plan covering the first three years of operation. (The business plan should be provided in electronic format in Microsoft Excel to include all links and workings and should also include a narrative);
 - d) provide the information detailed in point 1 of Annex 1 to the Regulation ("first time application financial fitness");
 - e) As an exception to the general rule, 'Category B carriers' shall demonstrate that their net capital⁵ is EUR 100,000 or provide, when requested, information covering points a), b) and d) above. Category B licence holders need only be able to demonstrate when requested that their net capital is EUR 100,000 or provide information that proves that, in the opinion of the licensing authority, no financial problems exist. The information listed above under points a) to d) may be requested where an undertaking applying for an operating licence intends to operate scheduled air services or whose turnover exceeds €3 million per year.
- viii. It complies with the **insurance** requirements. Minimum insurance requirements are established for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties (Regulation 785/2004) and mail (Article 11 of the Regulation). Applicants are required to arrange for their insurer to complete the Commission's Insurance Declaration form which can be downloaded

⁴ The Regulation inserts a statutory assumption here of no income from operations for the first three months as a stress test.

⁵ The Commission regards the term 'net capital' as being assets minus liabilities.

from the website at, <http://www.aviationreg.ie/airline-licensing-the-commissions-role/insurance.574.html>.

- ix. It complies with the provisions on **good repute**. Article 7 of Regulation (EC) No 1008/2008 requires that for the purpose of issuing an operating licence, proof is required that the persons who will continuously and effectively manage the operations of the undertaking are of good repute or that they have not been declared bankrupt. Good repute is evidenced by the production of suitable documents issued by the competent authorities in the Member State of origin or the Member State where the person has his/her permanent residence showing that those requirements are met. If a Member State does not issue the kind of documents referred to above, the Commission will accept a declaration on oath or [solemn declaration](#) made by the person concerned before a competent judicial or administrative authority, or where appropriate, a notary or qualified professional body of the Member State of origin or the Member State where the person has his/her permanent residence. Such authority, notary or qualified professional body shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration. The Commission may require that the documents and certificates referred to above be presented no more than three months after their date of issue.

4. How to apply for an Operating Licence

- 4.1 Applications for an operating licence must be made using the Commission's application form which is available on www.aviationreg.ie.

The application form is a fillable PDF form.

The Commission has produced a short guide to assist applicants in completing and navigating the form which can be downloaded from our website at, <http://www.aviationreg.ie/airline-licensing-the-commissions-role/apply-for-a-licence.141.html>.

- 4.2 The Commission welcomes pre-application meetings in order to understand more fully from applicants the type of operations proposed, to explain how the application process works and to respond to any queries applicants may have on the application process or on the relevant requirements of the Licensing Regulation.
- 4.3 Before completing the application form, applicants are advised to familiarise themselves with the relevant legislation applicable to airline licensing which is available to download from the Commission's website. Applicants are also reminded of the requirement to obtain an Air Operator's Certificate (AOC) from the Irish Aviation Authority.
- 4.4 All sections of the application form should be completed **in full** and no questions should be left unanswered. Failure to do so will result in the application being rejected.
- 4.5 The following fee structure applies to airline licensing (applicable from 1st January 2019):

New Applications	€7,670 (Category A)
	€2,557 (Category B)
Additional Approval Fee	€2,045
Late Fee	€2,045
Annual Monitoring Fee	€7,670 (Category A)
	€2,557 (Category B)

Note that fees applicable to airline licensing are adjusted annually for changes in the Consumer Price Index (CPI).

Payment Methods

Application fees should be paid at the time of making your application by Electronic Funds Transfer (EFT) to the Commission's bank account. Bank Account details are as follows:

Bank: Bank of Ireland, 2 College Green, Dublin 2.

Account Name: Commission for Aviation Regulation

Account Number: 19410683

Sort code: 90-00-17

IBAN: IE91 BOFI 9000 1719 4106 83

BIC: BOFIE2D

Please ensure that your Company Name is quoted as a reference when making payments to the Commission's bank account.

It should be noted that the fee payable on application for an Operating Licence is non-refundable.

- 4.6 You will find further clarification on the fee structure applicable to airline licensing at:

http://www.aviationreg.ie/fileupload/AL_Clarification_of_Air_Carrier_Licensing_Fee_Structure_18_12_08.pdf

- 4.7 It is important to note that the Commission does not give decisions in principle on proposed plans by potential applicants for an operating licence. A decision to grant/refuse an operating licence will only be given in the context of a fully complete, formal application.
- 4.8 Applications should be made well in advance of the proposed commencement of operations as it is important that the Commission has adequate time to process applications. Applicants are advised **not** to anticipate the issue of an operating licence by selling tickets or taking bookings in advance of securing an operating licence.
- 4.9 It should be noted that Article 9 (4) of the Regulation provides that, '*The competent licensing authority shall suspend or revoke the operating licence if the Community air carrier knowingly or recklessly furnishes the competent licensing authority with false information on an important*

point.'

- 4.10 The Commission is subject to Freedom of Information legislation. Should you wish that any of the information supplied by you in this application should not be disclosed because of its confidentiality, you should identify it and specify the reasons for its confidentiality.

5. Processing the Application

- 5.1 Applications are dealt with in the order in which they are received. On receipt of an application, the Commission will issue a letter acknowledging receipt within three working days of same and respond as quickly as possible thereafter.
- 5.2 A preliminary examination of the application takes place first, where the Commission will check if there are any sections of the application incomplete or if there is any information missing. Applicants should be contacted within 7 days of submission if the application is incomplete or any documents are missing.
- 5.3 The application and supporting documentation are then examined in detail. Once this is completed, the Commission may need to contact the applicant with queries on the application or to obtain additional information relevant to the application. Such queries will be dealt with in writing and in a timely manner by the Commission. A meeting may also be required with the applicant but this will depend on the number and nature of the queries arising and each individual case will be different.
- 5.4 If the applicant does not engage with the Commission for a period of three months in relation to any queries or requests for further information, the application will be treated as abandoned and thereafter a fresh application will be required along with the relevant fee.
- 5.5 Under Article 10 (1) of the Regulation, the Commission is required to take a decision on an application as soon as possible, and not later than three months after all necessary information has been submitted, taking into account all available evidence. As soon as the Commission has obtained all the necessary information it will be in a position to take a decision on the application. The decision will be notified to the applicant in writing. There is no formal appeals procedure provided for in the Regulation. However, a decision not to grant an operating licence will state the reasons for the refusal.

6. Annual Monitoring of Operating Licence Holders

- 6.1 The Commission is not only responsible for granting licences to Irish based air carriers, but is also obliged to closely monitor compliance with the requirements of the Licensing Regulation on a regular basis. In order to monitor compliance effectively, we regularly contact air carriers to request certain information. There are three main areas monitored by the Commission on a regular basis: (i) financial fitness, (ii) insurance cover and (iii) ownership and control. A brief outline is included below on the information we require in each area.

(i) Financial Fitness

Annual audited accounts are required to be submitted **within six months of an air carrier's financial year end** to monitor compliance with the financial fitness criteria set out under the Regulation. It is important that annual audited accounts are submitted on time as failure to submit accounts within the required timeframe may incur a late fee and could lead to the suspension/revocation of an operating licence. It should also be noted that these requirements are entirely separate to any obligation a company is required to meet for the Companies Registration Office, Revenue Commissioners etc.

Category A airlines are also required to submit management accounts on a regular basis. Frequency of submissions in this regard are determined by the Commission on a case-by-case basis.

Additional information requirements relating to financial fitness apply to air carriers during the first two years of operation. In addition, the Commission may at any time assess the financial performance of licensed air carriers by requesting certain data as set out under the Licensing Regulation.

(ii) Insurance cover

Licensed air carriers are required to have in place minimum levels of insurance cover for liability in respect of passengers, baggage, cargo, mail, and third parties. These minimum insurance requirements are set out under Regulation (EC) No 785/2004. At the initial application stage, our Insurance Declaration Form is required to be completed by the relevant insurer and submitted with the application. Ongoing compliance with the insurance requirements is monitored each year as insurance policies are renewed.

(iii) Ownership and Control

Licensed air carriers must also comply at all times with the majority ownership and effective control requirements of the Regulation which require that Member States and/or nationals of Member States (including EEA States) own more than 50% of the undertaking and effectively control it, whether directly or indirectly through one or more intermediate undertakings. The ability of the air carrier to meet this requirement is monitored on a regular basis throughout the term of the licence (i.e. annually).

7. Review of an Operating Licence

- 7.1 An Operating licence is subject to a review two years after it has been granted as per Article 8 (2) of the Regulation.
- 7.2 At the review stage, licence holders are required to provide certain information to confirm and demonstrate continued compliance with the requirements of the Regulation. The Commission will write to the licence holder in advance of the two year anniversary of the issuing of an operating licence requesting this information.

8. Events Requiring Notification

- 8.1 Licence holders are obliged to notify the Commission in the following cases (not applicable to Category B operators but can be applied if the Category B licence holder operates scheduled services or if turnover exceeds €3 million per year):
- a. When it plans to make a substantial change in the scale of its activities (e.g. includes plans for the operation of new services to a continent or world region not previously served, a substantial change in the number/type of aircraft operated etc.)
 - b. When there is a merger or acquisition involving an air carrier
 - c. When there is a change in ownership of a shareholding which represents 10% or more of the total shareholding of the air carrier or of its parent or ultimate holding company. In this case, information can be provided after the change of ownership has taken place, within a 14 day deadline.
- 8.2 If the licensing authority considers that the changes notified have a significant bearing on the finances of the air carrier, it must require that the air carrier submits an updated business plan covering 12 months from the date of implementation of the proposed changes and the specific information detailed under point 2 of Annex I to the Regulation.
- 8.3 The licensing authority is obliged to make a determination on whether the revised business plan is acceptable within 3 months of the receipt of all information detailed above.

9. Information Requirements Summary

- 9.1 The Commission issues an 'Information Requirements' Summary Sheet to all new licence holders which sets out the regular requirements in terms of monitoring, i.e. the information required to be provided to the Commission to demonstrate ongoing compliance with the Regulation. The summary sheet also lists certain other events/changes which need to be notified to the Commission or require approval in advance.
- 9.2 A copy of the Information Requirements summary sheet is available on our website at, <http://www.aviationreg.ie/airline-licensing-the-commissions-role/documents.215.html>.

10. Leasing

- 10.1 Under Article 13 (3) of Regulation (EC) No 1008/2008, a Community air carrier is required to obtain prior approval to wet lease aircraft registered outside the EEA from its licensing authority. Approval may be granted if certain conditions are met.
- 10.2 The Commission's website has a section on Leasing of aircraft – <http://www.aviationreg.ie/airline-licensing-the-commissions-role/leasing-aircraft.217.html>. The relevant leasing of aircraft form is also available to download from this page which must be completed by air carriers when submitting an application for approval to wet lease in non-EEA registered

aircraft.

11. Procedures Document

- 11.1 Under Article 10 (2) of the Regulation, the competent licensing authority is required to make public the procedures for granting, suspending and revoking operating licences.
- 11.2 These procedures are published on the Commissions website at, <http://www.aviationreg.ie/airline-licensing-the-commissions-role/apply-for-a-licence.141.html>.

12. Queries

- 12.1 Any queries on the application form/process should be directed to the Airline Licensing Department on Tel: +3531 6611700 or by e-mail to: adlicensing@aviationreg.ie.

13. Useful Contacts

1. Aviation Services Division,
Department of Transport, Tourism & Sport,
Leeson Lane,
Dublin 2.

Tel: 01-6707444
E-mail: aviationservices@dtas.ie

2. Irish Aviation Authority,
The Times Building,
11-12 D'Olier Street,
Dublin 2.

Tel: 01-6718655
Website: www.iaa.ie

3. Aviation Security
Irish Aviation Authority
Tel: 01- 6718655
E-mail: avsec@iaa.ie

4. Directorate General for Mobility and Transport
European Commission
DG Mobility and Transport
B – 1049 Brussels
Belgium.
E-mail: move-infos@ec.europa.eu
Website: http://ec.europa.eu/transport/index_en.htm