



AN BILL EITLÍOCHTA (RÉAMH-IMRÉITEACH) 2009
AVIATION (PRECLEARANCE) BILL 2009

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The purpose of the Aviation (Preclearance) Bill 2009 is to give legal effect to the Preclearance Agreement which was signed by the Minister for Transport and the Secretary of the U.S. Department of Homeland Security in Washington on 17 November 2008. The Agreement provides for preclearance for scheduled and charter commercial airline flights to the U.S. from Ireland. It will also allow preclearance for private aircraft flights to the U.S. from Shannon airport. The Agreement is included in the Schedule to the Bill.

The introduction of preclearance will enable all U.S. customs, immigration, security and agriculture clearance procedures to be completed before U.S. bound passengers leave Ireland. Currently only U.S. immigration clearance (preinspection) services are available at Shannon and Dublin airports under the provisions of the Air Navigation and Transport (Preinspection) Act 1986.

The Preclearance Agreement will come into force following the enactment of the Aviation (Preclearance) Bill 2009 and an exchange of diplomatic notes confirming that certain conditions have been met, including *inter alia*, the existence of sufficient traffic at the relevant airport and the provision of adequate security to protect the preclearance facility and all personnel.

Section 1 is a standard interpretation provision.

Section 2 enables the Minister to make regulations designating preclearance areas at the airports. In such areas U.S. preclearance officers will have powers to undertake the necessary preclearance procedures for passengers seeking entry to the U.S. The regulations may provide that areas of airports to be used for preclearance may cease to be operational preclearance areas when there are no aircraft or passengers requiring preclearance there, thus enabling that part of an airport to be used for other flights. The airport authority, the Minister for Justice, Equality and Law Reform and the Revenue Commissioners will be consulted before the making of such regulations.

Section 3 outlines the duties and responsibilities of travellers in the preclearance area, for the purposes of seeking preclearance, such as an obligation to provide an accurate written declaration of all goods required to be declared, in accordance with instructions issued by or

on behalf of the Minister for Transport, and complying with the lawful requirements of an Irish law enforcement officer or a preclearance officer. A traveller who contravenes the provisions of this section shall be guilty of an offence.

Section 4 provides the traveller with a right to withdraw from the preclearance area at any time subject to certain exceptions relating to threatening or obstructive behaviour by the traveller or where a person is reasonably suspected of committing an offence under Irish law.

Section 5 outlines the functions of preclearance officers when processing applications for preclearance, including powers to search a traveller and his/her goods with his/her consent and to search a person and his/her goods in the preclearance area without warrant when the traveller is suspected of posing an immediate threat. Preclearance officers may also detain a person or private aircraft where an offence is suspected and shall forthwith deliver that person or private aircraft into the custody of an Irish law enforcement officer to be dealt with in accordance with Irish law. Under section 5(4), preclearance officers may also detain goods, which are not accurately declared by a traveller and, where they do so, forthwith deliver them to an Irish law enforcement officer for the purposes of sections 8 to 10 of the Bill, which deal with procedures for the seizure and forfeiture of goods. Under section 5(5), preclearance officers, as a condition for the grant of preclearance in respect of any particular goods, may require the traveller to pay a sum of money that would be payable by that traveller on postclearance in respect of any particular goods or alternatively to surrender the goods.

Section 6 sets out the functions of Irish law enforcement officers in the preclearance area where a person is reasonably suspected of making a false declaration of goods or of being in possession of goods (including a weapon) that are controlled or prohibited in the State or if the person is reasonably suspected of otherwise posing a threat to persons in the preclearance area. In these circumstances, an Irish law enforcement officer may search the person without warrant and detain the person for such time as is reasonably necessary for carrying out the search subject to certain provisions. An Irish law enforcement officer may examine, seize or detain anything found in the course of the search that might be required as evidence in a prosecution. Section 6(6) provides that the powers granted under section 6 shall not prejudice other powers exercised by Irish law enforcement officers to search, or to seize or detain any goods.

Section 7 restricts entry into the preclearance area to preclearance officers, Irish law enforcement officers, travellers and other authorised personnel. It also sets out the powers of preclearance officers and Irish law enforcement officers in the interest of security and the proper functioning of the preclearance area. It also empowers those officers to request a person to leave the preclearance area in certain circumstances. A person who contravenes these provisions shall be guilty of an offence.

Section 8 provides for the seizure of goods, not declared or falsely declared under section 3(1)(b), by an Irish law enforcement officer and outlines the procedures to be followed including sending a notice of claim to the Revenue Commissioners, in writing, within a month of the seizure, should a person wish to make a claim in respect of the goods seized.

Section 9 empowers the Revenue Commissioners to return seized goods to the claimant on the payment of an appropriate sum or to sell or destroy seized goods of a perishable or hazardous nature. In the case of goods for which a payment was made by the claimant to the Revenue Commissioners for their return or of goods that are sold or destroyed, certain compensation obligations to a claimant are imposed on the Revenue Commissioners, where Court proceedings subsequently determine that such goods were not liable to forfeiture at the time of seizure. Section 9(4) gives discretion to the Revenue Commissioners to restore any goods seized under the Act.

Section 10 requires the Revenue Commissioners to take Court proceedings for the “condemnation” of goods where a notice of claim is made under section 8. If the Courts find that the goods were not duly declared under section 3(1)(b) the Courts shall “condemn” them as forfeited to the Revenue Commissioners or in any other case order their release to the claimant. Proceedings shall be civil proceedings and may, depending on the value of the goods seized, be taken in either the District or High Court.

Section 11 provides that the responsibility of costs incurred in respect of certain traveller categories refused preclearance are to be borne in the first instance by the air carrier.

Section 12 clarifies the status of In-transit preclearance travellers under the Aliens Act 1935 and the Immigration Act 2004.

Section 13 provides for the privileges and immunities of citizens of the U.S. who are assigned to carry out preclearance functions in the State under this Act. In line with article IV(4) of the preclearance Agreement, section 13(6) enables any person to sue the State, who would be precluded from suing the U.S. authorities because of the immunity granted under this section.

Section 14 provides that an airport authority may charge a fee to airlines and private aircraft for use of preclearance facilities.

Section 15 contains a standard provision on the payment of expenses incurred by the Minister for Transport (the “Minister”) in the administration of the Act out of monies provided by the Oireachtas.

Section 16 enables the Minister to make regulations as necessary to give effect to the Act and Agreement. Section 16(3) is a standard provision dealing with procedures for presenting regulations to the Houses of the Oireachtas.

Section 17 provides for the offences and penalties to be applied under the Act.

Section 18 is a standard provision dealing with offences caused by a body corporate.

Section 19 provides for the repeal of the Air Navigation and Transport (Preinspection) Act 1986, under which legislation, travellers currently travelling to the U.S. are preinspected for U.S. immigration purposes in Ireland.

Section 20 provides for a minor amendment to the Third Schedule to the Freedom of Information Act 1997.

Section 21 deals with the short title and commencement of the Act.

Financial and Staffing Implications

The Bill does not have significant financial or staffing implications for the exchequer.

An Garda Síochána will carry out an assessment of appropriate security measures at each preclearance location. It is currently envisaged that any additional responsibilities that would arise for An Garda Síochána and the Revenue Commissioners would be addressed from within existing resources.

The costs of providing preclearance facilities by the airport authorities can be recovered from the participating airlines or from the owners of private aircraft, through the levying of a fee under section 14 of the Bill. The U.S. will be responsible for its personnel and operational costs.

*An Roinn Iompair,
Bealtaine, 2009.*