L.N. 281 of 2006

CIVIL AVIATION ACT
(CAP. 232)

Civil Aviation (Provision of Air Navigation Services) Order, 2006

IN exercise of the powers conferred by article 3 of the Civil Aviation Act, the Minister for Competitiveness and Communications has made the following Order:-

Title and commencement.

1. (1) The title of the Order is the Civil Aviation (Provision of Air Navigation Services) Order, 2006.

(2) The Order shall come into force on the date of its publication except for the following articles of this Order:-

(a) article 3 in relation to ESARR 1 which shall come into force on the 1st November, 2007:

(b) article 4(1) in relation to the provision of meteorological services for air navigation, on such date as the Minister responsible for Civil Aviation may by notice in the Gazzette appoint; and

(c) article 4 (4) in relation to ESARR 3 and ESARR 4 and articles 9 and 10 which shall come into force on the 1st April, 2007; and

(d) article 4 (4) in relation to ESARR 6 which shall come into force on the 6th November, 2006.

Interpretation.

2. In this Order, unless the context otherwise requires-

"air navigation services" means the Air Traffic Services, the Communication, Navigation and Surveillance Services, the Meteorological Services for Air Navigation, and the Aeronautical Information Services;

"Air Traffic Management (ATM)" means the aggregation of airborne and ground based (Air Traffic Services, Airspace Management, Air Traffic Flow Management) functions required

to ensure the safe and efficient movement of aircraft during all appropriate phases of operations;

"air navigation service provider" means an organisation responsible and authorised to provide air navigation services;

"the Director" means the Director of Civil Aviation and, to the extent of the authority given, any person authorised in that behalf by the Director;

"ESARR" means a EUROCONTROL Safety Regulatory Requirement;

"EUROCONTROL" means the European Organization for the Safety of Air Navigation;

"ICAO" means the International Civil Aviation Organization;

"Regulation EC No. 549/2004" means the European Parliament and Council Regulation of the 10th March, 2004 laying down the framework for the creation of the Single European Sky;

"Safety Management System (SMS)" means a systematic and explicit approach defining the activities by which safety management is undertaken by an organisation in order to achieve acceptable or tolerable safety.

National Supervisory Authority.

3. The National Supervisory Authority responsible for the safety oversight and certification of an air navigation service provider for the purposes of Regulation EC No. 549/2004 shall be the Director, who shall also ensure the application of the requirements contained in ESARR 1.

Requirement for air navigation service certificate.

4. (1) No person shall provide an air navigation service in Maltese airspace or in airspace outside of Malta where Malta has in pursuance of international arrangements, undertaken to provide air navigation services, otherwise than under and in accordance with the terms of an air navigation service certificate granted to him by the Director.

(2) The Director shall grant an air navigation service certificate if he is satisfied that the applicant is competent, having regard to his organisation, staffing, equipment, maintenance and other arrangements, to provide a service which is safe for use by aircraft.

(3) An air navigation service certificate may be granted subject to such conditions as the Director thinks fit and shall, subject to the provisions of article 13, remain in force for the period specified therein.

(4) The person in charge of providing an air navigation service and operating under an air navigation service certificate shall comply with the provisions of the ICAO Annexes and Documents, and the ESARR documents listed in the Schedule to this Order as applicable.

Access and inspections.

5. The Director may cause such inspection and audits as he deems fit for the purpose of this Order and any person authorised to do so in writing by the Director may at any reasonable time inspect and oversee any premises, equipment, technical records and other relevant documents that an air traffic management provider possesses in order to discharge his duties and obligations, and may for that purpose enter into any aerodrome or premises.

Obstruction of persons.

6. No person shall obstruct or impede any person acting in the exercise of his powers or the performance of his duties under this Order.

Manual of air navigation services.

7. A person shall not provide an air navigation service at any place unless:-

(a) the service is provided in accordance with the standards and procedures specified in a manual of air navigation services in respect of that place and the type of air navigation services provided;

(b) the manual is produced to the Director within a reasonable time after a request for its production is made by the Director; and

(c) such amendments or additions have been made to the manual as the Director may from time to time require.

Directions and safety directives.

8. (1) The Director may, in the interest of safety and in relation to the services being provided by an air navigation service provider issue a direction to that provider to cause him to take any specific action as the Director thinks fit.

(2) The Director shall issue a safety directive to an air navigation service provider when an unsafe condition has been determined to exist in a system. The directive shall identify the unsafe condition, the affected system, the action required and their rationale, the compliance time for the required action and the date of entry into

force. The air navigation service provider shall comply with the safety directive as required.

Safety Management System.

9. (1) A provider of air traffic management shall comply with the requirements of ESARR 3 document by establishing a safety management system which:-

(a) ensures a formalised, explicit and pro-active approach to systematic safety management in meeting its safety responsibilities within the provision of ATM services;

(b) operates in respect of all ATM and supporting services which are under its managerial control;

(c) includes, as its foundation, a statement of safety policy defining the organization's fundamental approach to managing safety;

(d) ensures that everyone involved in the safety aspects of ATM service-provision has an individual safety responsibility for their own actions, and that managers are responsible for the safety performance of their own organisations;

(e) ensures that the achievement of satisfactory safety in the ATM shall be afforded the highest priority over commercial, operational, environmental or social pressures;

(f) ensures that while providing an ATM service, the principal safety objective is to minimise the ATM contribution to the risk of an aircraft accident as far as reasonably practicable.

Operation of Safety Management System.

(2) The Safety Management System shall be operated by qualified and competent staff who shall ensure that:-

(a) a safety management function is identified with organizational responsibility for development and maintenance of the safety management system;

(b) this point of responsibility is, wherever possible, independent of line management, and accountable directly to the highest organizational level;

(c) in the case of small organizations where combination of responsibilities may prevent sufficient independence in this regard, the arrangements for safety assurance are supplemented by additional independent means;

(d) the highest level of the service provider organization plays a general role in ensuring safety management;

(e) wherever practicable, quantitative safety levels are derived and are maintained for all systems;

(f) risk assessment and mitigation is conducted to an appropriate level to ensure that due consideration is given to all aspects of ATM;

(g) changes to the ATM system are assessed for their safety significance, and ATM system functions are classified according to their safety severity;

(h) appropriate mitigation of risks where assessment has shown this to be necessary due to the safety significance of the change;

(i) the SMS is systematically documented in a manner, which provides a clear link to the organization's safety policy;

(j) adequate and satisfactory justification of the safety of the externally provided services, having regard to their safety significance within the provision of the ATM service;

(k) ATM operational or technical occurrences which are considered to have significant safety implications are investigated immediately, and any necessary corrective action is taken.

(3) A provider of air traffic management shall ensure that:- Safety surveys, monitoring and records.

(a) safety surveys are carried out as a matter of routine, to recommend improvements where needed, to provide assurance to managers of the safety of activities within their areas and to confirm conformance with applicable parts of their Safety Management Systems;

(b) methods are in place to detect changes in systems or operations which may suggest any element is approaching a point at which acceptable standards of safety can no longer be met, and that corrective action is taken;

(c) safety records are maintained throughout the SMS operation as a basis for providing safety assurance to all associated with, responsible for or dependent upon the services provided, and to the safety regulatory authority;

(d) the results and conclusions of the risk assessment and mitigation process of a new or changed safety significant system are specifically documented, and that this documentation is maintained throughout the life of the system;

(e) the lessons arising from safety occurrence investigations and other safety activities are disseminated widely within the organization at management and operational levels;

(f) all staff are actively encouraged to propose solutions to identified hazards; and

(g) changes are made to improve safety where they appear needed.

ATM hazard identification and risk assessment and mitigation.

10. (1) A provider of air traffic management shall comply with the requirements of ESARR 4 to ensure that hazard identification as well as risk assessment and mitigation are systematically conducted for any changes to those parts of the air traffic management system and supporting services within his managerial control, in a manner which addresses:-

(a) the complete life cycle of the constituted part of the ATM system under consideration, from initial planning and definition to post implementation operation, maintenance and de-commissioning;

(b) the airborne and ground components of the ATM system through cooperation with responsible parties; and

(c) the three different types of ATM elements (human, procedures and equipment), the interaction between these elements and the interaction between the constituent part under consideration and the remainder of the ATM system.

(2) The hazard identification, risk assessment and mitigation processes shall include:-

(a) a determination of the scope, boundaries and interfaces of the constituent part being considered, as well as the identification of the functions that the constituent part is to perform and the environment of operations in which it is intended to operate;

(b) a determination of the safety objectives to be placed on the constituent part, incorporating:-

(i) an identification of ATM-related credible hazards and failure conditions, together with their combined effects;

(ii) an assessment of the effects they may have on the safety of aircraft, as well as an assessment of the severity of those effects, using the severity classification scheme provided in ESARR 3 Appendix A; and

(iii) a determination of their tolerability, in terms of the hazard's maximum probability of occurrence, derived from the severity and the maximum probability of the hazard's effects, in a manner consistent with ESARR 3 Appendix A;

(c) the derivation, as appropriate, of a risk mitigation strategy which:-

(i) specifies the defences to be implemented to protect against the risk-bearing hazards;

(ii) includes, as necessary, the development of safety requirements potentially bearing on the constituent part under consideration, or other parts of the ATM System, or equivalent of operations; and

(iii) presents an assurance of its feasibility and effectiveness;

(d) Verification that all identified safety objectives and safety requirements have been met:-

(i) prior to its implementation of the change;

(ii) during any transition phase into operational service;

(iii) during its operational life; and

(iv) during any transition phase till decommissioning.

(3) The results, associated rationales and evidence of the risk assessment and mitigation processes, including hazard identification, shall be collated and documented in a manner which ensures that:-

(a) correct and complete arguments are established to demonstrate that the constituent part under consideration, as well as the overall ATM System are, and will remain, tolerably safe

including, as appropriate, specifications of any predictive, monitoring or survey techniques being used; and

(b) all safety requirements related to the implementation of a change are traceable to the intended operations/functions.

Air Traffic Management staff.

11. (1) A provider of air traffic management shall ensure that:-

(a) whilst on duty staff employed as air traffic controllers or student air traffic controllers are properly licensed as required under the Air Navigation Order, 1990 and meet the medical and physical fitness requirements laid out in the same Order; and

L.N. 176 of 1990.

(b) in accordance with ESARR 5 technical and engineering personnel employed to install and maintain equipment used for the provision of air traffic control services are properly trained and qualified. Training records shall be maintained for technical and engineering personnel and such records shall be made available for examination by the Director if he so requires.

(2) A person who fails to comply with the requirements of sub-article (1) of this article shall be guilty of an offence.

Reporting and assessment of ATM related occurrences.

12. (1) A person who becomes aware of either through involvement or by having witnessed, an ATM related occurrence in which there is an actual or potential threat to flight safety or can compromise the provision of safe ATM services and which falls within the definitions of Appendix A to ESARR 2, shall report such an occurrence in writing to the Director within 96 hours.

(2) A person who fails to comply with the requirements of sub-article (1) of this Article shall be guilty of an offence.

(3) A provider of an air navigation service shall record, secure and store data concerning ATM occurrences in such a manner which will ensure its quality and confidentiality whilst permitting subsequent collation and assessment.

(4) (a) The Director shall be responsible for analysing and classifying by severity and risk in accordance with ESARR 2 such occurrences and shall do so without delay to identify the extent to which the ATM system helped or could have helped to reduce the risk incurred.

(b) The analyses mentioned in paragraph (a) of this sub-article shall include safety recommendations and the Director shall

monitor the implementation of any corrective measures that are recommended to be taken.

(5) An annual report of ATM occurrences shall be submitted to EUROCONTROL by the Director in accordance with Appendix B of ESARR 2.

Revocation, suspension and variation of an air navigation services certificate.

13. (1) (a) The Director, may, if he thinks fit, provisionally suspend or vary an air navigation services certificate issued under this Order pending inquiry into or consideration of the reasons for such suspension or variation.

(b) The Director may, on sufficient ground being shown to his satisfaction after due inquiry, revoke, suspend or vary an air navigation services certificate.

(2) The person having possession or custody of an air navigation services certificate which has been revoked, suspended or varied, shall surrender it to the Director within a reasonable time after being required to do so by the Director.

(3) The breach of any condition subject to which an air navigation services certificate has been granted shall in the absence of provisions to the contrary in the document, render the document invalid during the continuance of the breach.

Enforcement of air traffic directions and safety directives.

14. Any person who without reason acceptable to the Director fails to comply with any direction or safety directive issued under article 8 of this Order shall be deemed for the purpose of this Order to have contravened that provision.

Penalties.

15. (1) A person who commits an offence under articles 6, 11(2), and 14 shall be liable, on conviction, to a fine (multa) not exceeding five hundred liri.

(2) A person who commits an offence under article 12 (2) shall be liable, on conviction, to a fine (multa) not exceeding two hundred liri; and in a second or subsequent offence to a fine (multa) not exceeding five hundred liri, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Repeals L.N. 79 of 2004.

16. The Air Navigation (Air Traffic Management) Order, 2004 is hereby repealed.

Schedule

Annex 3 is the ICAO document entitled "Meteorological Services for Air Navigation"

Annex 10 is the ICAO document entitled "Aeronautical Telecommunications"

Annex 11 is the ICAO document entitled "Air Traffic Services"

Annex 15 is the ICAO document entitled "Aeronautical Information Services"

Doc RAC 4444 is the ICAO document entitled "Procedures for Air Navigation Services - Air Traffic Management"

Doc 7030 is the ICAO document entitled "Regional Supplementary Procedures".

ESARR 1 is the EUROCONTROL document entitled "Safety oversight in ATM" Edition 1.0 dated 5 November 2004

ESARR 2 is the EUROCONTROL document entitled "Reporting and Assessment of Safety Occurrences in ATM", Edition 2.0 dated 3 November 2000.

ESARR 3 is the EUROCONTROL document entitled "Use of Safety Management Systems by ATM Service providers" Edition 1.0 dated 17 July 2000.

ESARR 4 is the EUROCONTROL document entitled "Risk Assessment and Mitigation in ATM" Edition 1.0, dated 05 April 2001.

ESARR 5 is the EUROCONTROL document entitled "ATM Services' Personnel" Edition 2.0, dated 11 April 2002.

ESARR 6 is the EUROCONTROL document entitled "Software in ATM Systems" Edition 1.0 dated 06 November 2003.