

Legislative Developments in the Aviation Sector in 2011

by

Filip Czernicki*

The Polish Aviation Law Act of 3 July 2002 was amended six times in 2011. The only major change introduced in this period resulted from the Amendment Act to the Aviation Law Act of 30 June 2011, most of which entered into force 30 days after its publication¹. In fact, changes introduced thereby were so widespread and crucial to the entire aviation sector that it can easily be referred to as a completely new law. Considerable effort went into the preparation of this Act – its first draft was presented as early as 2009 followed by long consultations and the ultimate introduction of a number of further changes.

Among the key changes brought to the Aviation Law Act by the Amendment Act of 30 June 2011 were new rules on air traffic charges (new appendix No 6 to the Aviation Law Act). Incidentally, air traffic charges did not, under the new rules, rise as high as it was initially proposed.

Another important amendment concerned qualifications of those, who are described by Article 94 (1) of the Aviation Law Act as entitled to lead flights. This category was expanded by the introduction of crew members mentioned in part O of the III appendix to Resolution No. 3922/91/EEC. Polish aviation law is now also less restrictive towards those convicted of a criminal offence. In the past, such candidates were precluded from get a license. This rules is now limited to those subject to a driving or flying ban.

The obligation to perform medical checkups was extended to cover cabin crew members and their candidates. The new Article 105(4) of the Aviation Law Act explicitly states also that the costs of medical examinations shall

* Filip Czernicki, Analysys' and Projects Section Manager in the Department of Subsidiaries' Supervision, 'Polish Airports' State Enterprise (PPL); plenipotentiary responsible for the creation of the Modlin Airport.

¹ Journal of Laws 2011 No. 170, item 1015.

be covered by the employer – it was until now unclear who was supposed to cover them.

Another change affected the approach displayed towards the recognition of licenses. In principle, licenses issued by a foreign authority need now to be recognized by the President of the Polish Civil Aviation Office (in Polish: *Urząd Lotnictwa Cywilnego*; hereafter, ULC) There are two exceptions to this rule:

- 1) when a license is issued by EU Member States, the Swiss Confederation or EFTA members in accordance with Annex 1 to the Convention on International Civil Aviation of 7 December 1944 (Chicago Convention), under which operations will be carried out as non-revenue flights, single pilot, day light, VFR flights;
- 2) the license was issued or confirmed by the competent authority of a foreign state in accordance with international requirements established by the Joint Aviation Authorities (JAA) or EASA.

New provisions describe now also the conditions for the revocation or suspension of a license or written permit. This may happen if the flight crew member:

- a) obtained a license or permit on the basis of forged documents;
- b) falsified records in the license or maintenance documents;
- c) incurred the loss of his/her qualifications required to perform certain flight activities;
- d) in his/her pursuit of flying activities for which he/she is qualified, endangers the safety of air traffic),
- e) has performed air operations under the influence of alcohol or drugs.

A pilot may be requested to withdraw or suspend his/her license. Such applications need to be reviewed by the ULC President.

The Act specified further that the conduct of training for aviation personnel in order to obtain a certificate of qualification of a flight crew member is a regulated activity. As a result, it is subject to registration in the register of instructors run by the ULC President. An entry into this register requires a written request to be submitted to the regulator.

Introduced were also new provisions relating to working hours for aircraft crew in air transportation using helicopters and emergency medical service helicopters. The Aviation Law Act provides now a 1900 hours limit in a calendar year whereby working time is seen as not only the time spent in the air but also during other activities required by the employer. The Act specifies moreover the maximum working time for helicopter crews and helicopter rescue service per week and monthly (28 days).

A novel provision was introduced stating that airport fees must be set in a way that does not discriminate particular users and ensures fair competition.

The Amendment Act enabled an airport operator that does not provide border control in order to access the airport to perform non-commercial international flights. This is possible upon obtaining a special permit from the Chief Commander of the national Border Patrol and customs authorities. These special rules apply to the Schengen area only.

Additional responsibilities were placed on aerodrome operators such as having a safety management system and having an updated general plan.

The definition of airport charges was changed. Charges now relate to take-off, landing, parking of aircrafts, arrival and departure of passengers and cargo handling. Fees may also include additional payments that can be added in airports with environmental problems due to heavy noise. These fees do not cover services for disabled passengers and ground handling fees.

An amendment occurred with respect to rules governing the use of airstrips. In the past, their use was possible only in emergency situations such as emergency landing, saving lives or counteracting natural disasters as well as an unclear category of conditions whereby airstrips could be used in cases of 'legitimate needs of air services'. The amendment indicates now clearly who can use airstrips (for both take-off and landing): charter flights and local transport by propeller driven aircraft with a maximum takeoff weight of 5700 kg or less than 10 passenger seats, a helicopter, aircraft or aerostat and other non-commercial flights.

It was explicitly stated furthermore that the responsibility for choosing the landing site of an airplane as a place to take-off and land lies with the pilot.

The legislature accepted the possibility of take-off and landing performed from places other than airports or airstrips in situations listed exhaustively in the new Article 93a(1) as:

- a) need to land to prevent a situation posing a potential threat to the safety of an aircraft;
- b) medical transportation in order to save human life or health;
- c) need to save human life or health, perform search and rescue operations, prevent the effects of natural disasters, and in cases of urgent public safety threats.

Major changes were introduced to airport protection rules – supervision by the Border Patrol was substituted by private airport security forces. According to the new rules, airport authorities perform security tasks through specialised armed security units (also screeners) while Border Patrol merely oversees their work.

Minor changes have been introduced to the Polis Aviation Law Act by the Amendment Act to the Protection of Classified Information Act of 5 August 2010², which entered into force on 2 January 2011. This Act adjusted the

² Journal of Laws 2010 No. 182, item 1228.

wording of Article 58 of the Aviation Law Act by introducing the new name of the Act on Protection of Classified Information.

The Aviation Law Act was subject to a number of other minor changes in 2011 introduced based on:

- Article 76 of the Private International Law Act of 4 February 2011, which entered into force on 16 May 2011³,
- Article 41 of the Act on reducing administrative barriers for citizens and businesses of 25 March 2011, which entered into force on 1 July 2011⁴,
- Article 24 of the Act on registration and identification of taxpayers and other Acts of 29 July 2011, which entered into force on 1 September 2011⁵,
- Article 5 of the Act amending the law on liability for breaching discipline in public finance and some other Acts of 19 August 2011, which entered into force on 10 November 2011⁶.

³ Journal of Laws 2011 No. 80, item 432.

⁴ Journal of Laws 2011 No. 106, item 622.

⁵ Journal of Laws 2011 No. 171, item 1016.

⁶ Journal of Laws 2011 No. 240, item 1429.