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*Number 10 of 2004*

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**AER LINGUS ACT 2004**

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SCHEDULE

REPEAL OF ENACTMENTS

[No. 10.] *Aer Lingus Act 2004.* [2004.]

ACTS REFERRED TO

Air Companies (Amendment) Act 1969	1969, No. 20
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Air Companies Act 1966	1966, No. 4
Air Companies Acts 1966 to 1993	
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Ethics in Public Office Acts 1995 and 2001	
Prompt Payment of Accounts Act 1997	1997, No. 31
Taxes Consolidation Act 1997	1997, No. 39
Worker Participation (State Enterprises) Act 1977	1977, No. 6
Worker Participation (State Enterprises) Acts 1977 to 2001	



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*Number 10 of 2004*

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**AER LINGUS ACT 2004**

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AN ACT TO PROVIDE FOR THE HOLDING, TRANSFER, DISPOSAL, EXCHANGE AND SALE OF SHARES IN AER LINGUS GROUP PUBLIC LIMITED COMPANY BY THE MINISTER FOR FINANCE, TO PROVIDE FOR THE ISSUE OF SHARES BY THAT COMPANY, TO PROVIDE FOR MATTERS RELATING TO SUPERANNUATION SCHEMES OF THAT COMPANY AND ITS SUBSIDIARIES, TO PROVIDE FOR MATTERS RELATING TO AERLINTE, TO PROVIDE FOR THE AMENDMENT OF THE AIR COMPANIES ACT 1966, TO PROVIDE FOR THE AMENDMENT OF THE WORKER PARTICIPATION (STATE ENTERPRISES) ACTS 1977 TO 2001, TO PROVIDE FOR THE REPEAL OF CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS.

[7th April, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, except where the context otherwise requires— Interpretation and construction.

“Aerlinte” means the company incorporated as Aerlinte Eireann Teoranta on 26 February 1947, which company is now incorporated under the name “Santain Developments Limited”;

“Air Companies Acts” means the Air Companies Acts 1966 to 1993;

“Act of 1969” means the Air Companies (Amendment) Act 1969;

“Act of 1993” means the Air Companies (Amendment) Act 1993;

“Companies Acts” means the Companies Acts 1963 to 2003, and every other enactment which is to be construed as one with those Acts;

“Company” means Aer Lingus Group public limited company;

“Minister” means the Minister for Transport;

“subsidiary” has the same meaning as it has in section 155 of the Companies Act 1963.

- S.1 (2) In this Act—
- (a) a reference to a section or Schedule is a reference to a section of, or the Schedule to, this Act unless it is indicated that reference to some other enactment is intended,
  - (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,
  - (c) a reference to any enactment is a reference to that enactment as amended, extended or adapted by or under any subsequent enactment (including this Act).
- Repeals. **2.**—Each enactment specified in the *Schedule* is repealed to the extent specified in *column (3)* of that Schedule.
- Power to hold, sell or dispose of shares in Company. **3.**—(1) The Minister for Finance may hold for so long as he or she thinks fit any shares in the Company subscribed for, taken up or acquired by that Minister under the Air Companies Acts.
- (2) Subject to *subsection (4)*, the Minister for Finance may, at such time or times as appear to him or her appropriate, sell, transfer, exchange, surrender, redeem or dispose of all or any of the shares in the Company on such terms and conditions as appear to that Minister to be appropriate.
- (3) Any funds received in respect of the sale, transfer, disposal, surrender or redemption of any share to which *subsection (2)* refers shall be paid into or disposed of for the benefit of the Exchequer.
- (4) Before exercising any of the powers conferred on him or her by *subsection (2)*, the Minister for Finance shall consult with the Minister.
- (5) The Minister for Finance may not dispose of any shares in the Company without the general principles of the disposal being laid before and approved by Dáil Éireann.
- (6) *Subsection (5)* shall not apply to the exercise of powers conferred on the Minister for Finance by *section 7*.
- Power to issue shares. **4.**—Notwithstanding anything contained in the Air Companies Acts, the Company may in accordance with the Companies Acts—
- (a) issue new shares, and
  - (b) divide and sub-divide shares into one or more than one class and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions in accordance with the Companies Acts.
- Agreements relating to sale or issue of shares in Company. **5.**—(1) The Minister for Finance, having consulted the Minister, may enter into one or more than one agreement in connection with the sale or issue of shares in the Company or enter into one or more

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than one agreement in connection with both the sale and issue of S.5 shares in the Company, and any such agreement may include—

- (a) representations, warranties and indemnities and provisions relating thereto,
- (b) provisions customarily contained in a shareholders' agreement or an underwriting agreement, and
- (c) such other matters as the Minister for Finance, having consulted the Minister, shall consent to.

(2) The Company may enter into one or more than one agreement in connection with the sale or issue of shares in the Company or in connection with both the sale and issue of shares in the Company.

(3) Without prejudice to the generality of the foregoing an agreement referred to in *subsection (1)* or *(2)* may include provisions relating to—

- (a) amendments to the memorandum of association or articles of association of the Company,
- (b) directors,
- (c) shareholders,
- (d) voting rights,
- (e) dividend policy,
- (f) investments, and
- (g) restrictions on the alienability of shares.

6.—(1) Section 12 of the Act of 1966 (as amended by section 8 of the Act of 1993) is amended by substituting “such number not exceeding 12” for “such number not exceeding eight”.

Number of directors of Company and of worker directors under Worker Participation (State Enterprises) Acts 1977 to 2001.

(2) Notwithstanding anything contained in the Worker Participation (State Enterprises) Acts 1977 to 2001, or any order or warrant made under those Acts, with effect from the commencement of this subsection those Acts shall cease to apply to the Company, and any person appointed a director of the Company under section 15 of the Worker Participation (State Enterprises) Act 1977 and holding such office immediately prior to such commencement shall thereupon cease to hold such office.

(3) *Subsection (2)* shall come into operation on such day as the Minister may by order appoint.

(4) Notwithstanding anything contained in the Worker Participation (State Enterprises) Acts 1977 to 2001, or any order or warrant made under those Acts, the Minister may by order reduce the number of directors of the Company appointed pursuant to those Acts.

(5) The Minister may by order amend or revoke an order made pursuant to *subsection (4)* including an order made under this subsection.

S.6

(6) On the coming into operation of an order pursuant to *subsection (4) or (5)* reducing the number of directors appointed to the Company pursuant to the Worker Participation (State Enterprises) Acts 1977 to 2001, one or more (as the provisions of the order necessitate) of the directors so appointed shall retire as director of the Company, which person or persons shall be chosen by lot in the absence of agreement between all of the directors then serving as a director of the Company pursuant to those Acts.

Employee shareholding schemes.

7.—(1) Notwithstanding anything contained in the Air Companies Acts the Company may issue shares in accordance with the Companies Acts as part of one or more than one employee shareholding scheme.

(2) The Minister for Finance may, as part of one or more than one employee shareholding scheme, sell, transfer, exchange or surrender, redeem or otherwise dispose of shares in the Company held by him or her subject to such terms and conditions as may be specified by that Minister, and may enter agreements regarding any such shares.

(3) Before exercising the powers conferred on him or her by *subsection (2)* the Minister for Finance shall consult with the Minister.

Non-application of section 60 of Companies Act 1963.

8.—(1) Section 60 of the Companies Act 1963 shall not apply to—

(a) any representation made or warranty or indemnity given by the Company or any subsidiary of the Company in connection with the sale or transfer by the Minister for Finance, or the issue by the Company, of any shares in the Company, or

(b) any financial obligations undertaken by the Company or any subsidiary of the Company in connection with the sale or transfer by the Minister for Finance of any shares in the Company, or the issue by the Company, of any shares in the Company,

for the purposes of an agreement entered into by that Minister under *section 5(1)* of this Act.

(2) Notwithstanding *subsection (13)(b)* of section 60 of the Companies Act 1963, section 60 of that Act shall not apply to the provision, whether directly or indirectly, by the Company or any subsidiary thereof of money or a financial arrangement including a loan, guarantee, the provision of security or otherwise in connection with the purchase of, or subscription for, shares in the Company or its holding company by an employee share ownership trust established by the Company, or the transfer thereto of such shares, irrespective of whether or not all or a portion of such shares are pledged as security or otherwise to any third party.

Superannuation schemes.

9.—(1) Aer Lingus may establish one or more than one scheme for the granting of superannuation benefits to or in respect of such employees or former employees of Aer Lingus as it thinks fit (in this section referred to as a “New Scheme”) and any such scheme shall be carried out by Aer Lingus in accordance with its terms.

(2) Every New Scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under such scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) Superannuation benefits granted under a New Scheme to or in respect of a person to whom such scheme applies shall not be less favourable than the superannuation benefits granted to or in respect of that person under the Existing Scheme at the establishment date. S.9

(4) In determining the superannuation benefits granted to or in respect of a person under a New Scheme any period of service which was a period of reckonable service for the purposes of the Existing Scheme shall be regarded as a period of reckonable service for the purposes of the New Scheme.

(5) Where Aer Lingus establishes a New Scheme the Company shall, within 60 days following the establishment date of such scheme, issue a notice in writing to each of those persons to whom the New Scheme concerned relates and, subject to *subsections (7) and (8)*, with effect from the transfer date each such person to whom such New Scheme relates shall become and be a member of that New Scheme and cease to be a member of the Existing Scheme.

(6) The Company shall be deemed to have issued a notice to a member of the Existing Scheme if it—

(a) delivers, or

(b) sends by ordinary pre-paid post,

the notice to the last known address held by the Company relating to that person.

(7) A person whose superannuation benefits have come into payment at the establishment date of a New Scheme and to whom a notice is issued pursuant to *subsection (5)*, shall with effect from the transfer date become and be a member of the New Scheme concerned and cease to be a member of the Existing Scheme unless he or she gives written notification to the Company within the period of time specified in the notice (which period shall be not less than 60 days from the date of the issuing of the notice to the person concerned) to the effect that he or she does not wish to become a member of the New Scheme concerned.

(8) A person to whom *subsection (7)* relates who notifies the Company in accordance with that subsection that he or she does not wish to become a member of the New Scheme concerned shall remain a member of the Existing Scheme.

(9) The Company shall notify the trustees of the Existing Scheme of the persons who are to become members of the New Scheme concerned by virtue of *subsections (5) and (7)*.

(10) Aer Lingus shall, on the establishment date of a New Scheme, establish a fund, administered by trustees who shall be appointed by the Company, from which superannuation benefits payable under such scheme shall be paid.

(11) On receipt of notification from the Company pursuant to *subsection (9)* the trustees of the Existing Scheme shall, as soon as practicable thereafter, determine the amount to be transferred to the New Scheme concerned pursuant to *subsection (13)*, acting on the advice of the actuary of the Existing Scheme.

(12) The amount determined pursuant to *subsection (11)* shall be an amount bearing the same proportion to the assets of the Existing Scheme as the liabilities under the Existing Scheme in respect of the

members who by virtue of *subsections (5) and (7)* become members of the New Scheme concerned bear to the total liabilities under the Existing Scheme.

(13) Subject to *subsection (14)*, as soon as practicable after the determination of the amount to be transferred to the New Scheme concerned pursuant to *subsection (11)*, or as the case may be pursuant to *subsection (14)*, such amount shall be transferred by the trustees of the Existing Scheme to the fund of the New Scheme concerned established pursuant to *subsection (10)*.

(14) Where a dispute arises between any of the following categories:

- (a) the trustees of the Existing Scheme;
- (b) the Company;
- (c) any other company participating in the Existing Scheme;
- (d) the trustees of the New Scheme concerned,

as to the amount to be transferred to the New Scheme concerned, or as to the manner in which it has been calculated, or the liability of Aer Lingus under *subsection (12)*, the matter may be referred to a person who shall be nominated by the parties to the dispute or if they are unable to agree as to the person to be nominated for that purpose, to a person nominated for that purpose by the President for the time being of the Society of Actuaries in Ireland, following a request in writing to him or her by any one or more of the parties in dispute and a determination on the matter or matters in dispute by the person so nominated shall be binding and final.

(15) Notwithstanding anything contained in any deed of trust or rules relating to the Existing Scheme, the provisions of this Act shall take effect and any such deed or rules shall be construed accordingly.

(16) For the purposes of this section, where a person is in receipt of payment of benefits to which he or she is entitled by virtue of a person's membership of the Existing Scheme (in this subsection referred to as a "dependant") a reference to a "member" shall be construed as including a reference to such a dependant.

(17) In this section—

"Aer Lingus" means the Company and as the case may be a subsidiary of the Company or an associated company;

"associated company" means a company of which not less than 20 per cent of the issued share capital is owned by the Company or a subsidiary of the Company;

"establishment date" means the date on which a New Scheme is established pursuant to *subsection (1)*;

"Existing Scheme" means the Irish Airlines (General Employees) Superannuation Scheme;

"New Scheme" means a superannuation scheme established pursuant to *subsection (1)*;



“transfer date” means the date on which the trustees of a New Scheme receive payment of the amount referred to in *subsection (13)*.

**10.**—Moneys required by the Minister for Finance or the Minister to meet amounts payable by either or both of them in respect of the disposal of shares or rights in shares in the Company shall be paid out of moneys provided by the Oireachtas. Expenses.

**11.**—(1) The sums advanced to Aerlinte by the Minister for Finance pursuant to section 3 of the Act of 1969 shall be deemed to have been advanced to Aer Lingus Limited, and notwithstanding section 3 of the Act of 1969, all sums advanced to Aerlinte pursuant to that section shall be repaid by Aer Lingus Limited to the Minister for Finance on such date as may be designated for that purpose by the Minister. Provision as to certain loans.

(2) Subject to this section, until the sums advanced under section 3 of the Act of 1969 are repaid to the Minister for Finance, the terms affecting such sums shall continue to apply and shall be construed as if every reference to Aerlinte in that section and in any associated documentation relating to the sums advanced were a reference to Aer Lingus Limited.

(3) Where the sums advanced pursuant to section 3 of the Act of 1969 (or any part of such sums) have not been repaid to the Minister at any time after the date for repayment designated by the Minister pursuant to *subsection (1)* has passed, such sums together with any interest due may be recovered from the Company by the Minister for Finance as a simple contract debt.

(4) Any funds received by the Minister for Finance in respect of sums of money referred to in this section shall be paid into or disposed of for the benefit of the Exchequer.

**12.**—(1) With effect from the coming into operation of this subsection, the Ethics in Public Office Acts 1995 and 2001, shall cease to apply to the Company. Certain Acts not to apply to Company.

(2) With effect from the coming into operation of this subsection, the Prompt Payment of Accounts Act 1997 shall cease to apply to the Company.

(3) With effect from the coming into operation of this subsection, section 521 of the Taxes Consolidation Act 1997 shall cease to apply to the Company.

**13.**—(1) This Act may be cited as the Aer Lingus Act 2004. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions and in particular as respects the repeals effected by *section 2*, different days may be appointed as respects—

- (a) different enactments specified in the *Schedule*,
- (b) different provisions of those enactments, or
- (c) different purposes.

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SCHEDULE

REPEAL OF ENACTMENTS

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
4 of 1966	Air Companies Act 1966	The whole Act, in so far as it is unrepealed.
20 of 1969	Air Companies (Amendment) Act 1969	The whole Act, in so far as it is unrepealed.
36 of 1976	Air Companies (Amendment) Act 1976	The whole Act, in so far as it is unrepealed.
28 of 1978	Air Companies (Amendment) Act 1978	The whole Act.
3 of 1983	Air Companies (Amendment) Act 1983	The whole Act.
38 of 1993	Air Companies (Amendment) Act 1993	The whole Act, in so far as it is unrepealed.