



Number 16 of 2009

AVIATION (PRECLEARANCE) ACT 2009

REVISED

Updated to 28 May 2019

This Revised Act is an administrative consolidation of the *Aviation (Preclearance) Act 2009*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Greyhound Racing Act 2019 (15/2019)*, enacted 28 May 2019, and all statutory instruments up to and including *European Communities (Sheep Identification) (Amendment) Regulations 2019 (S.I. No. 243 of 2019)*, made 28 May 2019, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

None

All Acts up to and including *Greyhound Racing Act 2019 (15/2019)*, enacted 28 May 2019, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Aviation (Preclearance) Act 2009 (Section 19) (Commencement) Order 2013* (S.I. No. 445 of 2013)
- *Preclearance Area (Dublin Airport) Regulations 2011* (S.I. No. 9 of 2011)
- *Preclearance Area (Shannon Airport) Regulations 2009* (S.I. No. 317 of 2009)
- *Aviation (Preclearance) Act 2009 (Commencement) Order 2009* (S. I. No. 315 of 2009)

All statutory instruments up to and including *European Communities (Sheep Identification) (Amendment) Regulations 2019* (S.I. No. 243 of 2019), made 28 May 2019, were considered in the preparation of this revision.



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SCHEDULE

Agreement between the Government of Ireland and the
Government of the United States of America on Air Transport
Preclearance

ACTS REFERRED TO

Air Navigation and Transport (Amendment) Act 1998	1998, No. 24
Air Navigation and Transport (Preinspection) Act 1986	1986, No. 18
Aliens Act 1935	1935, No. 14
Consular Conventions Act 1954	1954, No. 10
Firearms and Offensive Weapons Act 1990	1990, No. 12
Firearms Acts 1925 to 2007	
Freedom of Information Act 1997	1997, No. 13
Immigration Act 2004	2004, No. 1



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AN ACT TO GIVE EFFECT TO AN AGREEMENT ENTERED INTO BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING TO THE PROVISION OF PRECLEARANCE OPERATIONS AT AIRPORTS IN THE STATE FOR PERSONS TRAVELLING BY AIR TO THE UNITED STATES OF AMERICA, DONE AT WASHINGTON ON 17 NOVEMBER 2008, TO GIVE THE MINISTER FOR TRANSPORT POWER TO MAKE REGULATIONS, INCLUDING REGULATIONS DESIGNATING AREAS AT AIRPORTS WITHIN WHICH PRECLEARANCE OPERATIONS MAY BE CARRIED OUT, TO PROVIDE FOR CONFERRING CERTAIN LIMITED FUNCTIONS ON PRECLEARANCE OFFICERS WITHIN THOSE AREAS, TO PROVIDE FOR THE SEIZURE AND FORFEITURE OF GOODS NOT DULY DECLARED AND TO REPEAL THE AIR NAVIGATION AND TRANSPORT (PREINSPECTION) ACT 1986, TO AMEND THE FREEDOM OF INFORMATION ACT 1997 AND TO PROVIDE FOR RELATED MATTERS.

[8th July, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation. **1.— (1) In this Act—**

“Agreement” means the agreement between the Government of Ireland and the Government of the United States of America on Air Transport Preclearance, done at Washington on 17 November 2008, the text of which, for convenience of reference, is set out in the Schedule;

“air carrier” means an air transport undertaking, whether scheduled or charter, that operates a non-stop air travel service between the State and the United States, whether that service originates in the State or elsewhere;

“aircraft” means an aircraft intended to be flown to the United States following preclearance and includes, where applicable, a private aircraft;

“aircraft commander” means the person serving on a private aircraft who has command of its operation and navigation;

“airport authority” means the body responsible for the management, operation and development of an airport at which preclearance services are provided in accordance with this Act;

“goods” includes personal effects, baggage, aircraft stores, equipment, food, animals and plants and their products, any substance, currency and other monetary instruments, and documents in any form (including electronic form);

“in-transit preclearance” means the preclearance of travellers, their goods, and the aircraft concerned that arrive in the State from a state other than the State en route to the United States;

“Irish law enforcement officer” means a member of An Garda Síochána or an officer of Customs and Excise;

“Minister” means the Minister for Transport;

“permission to enter” means permission under this Act by a preclearance officer—

(a) to a traveller, to enter the United States, and in respect of the traveller’s goods, to take them to the United States, and

(b) in respect of an aircraft, to enter the United States;

“possession”, in relation to possession of any goods or weapon by a person, includes control over any goods or weapon;

“preclearance” means the procedure of conducting at an airport in the State by a preclearance officer of all or any of the examination and inspection required in respect of—

(a) a traveller seeking entry into the United States,

(b) the goods of such traveller intended to be taken into the United States, and

(c) the aircraft concerned;

“preclearance area”—

(a) means a place designated by the Minister under *section 2(1)* (including any bridge designed to facilitate the boarding of an aircraft from such a place), and

(b) includes a vehicle while conveying travellers to or from a preclearance area and the aircraft or another part of the preclearance area;

“preclearance facility” means the physical inspection infrastructure in the preclearance area, including any offices and examination areas together with any equipment required for the purposes of this Act;

“preclearance officer” means a United States Customs and Border Protection official authorised by this Act to perform the functions conferred by this Act;

“private aircraft” means an aircraft intended to be flown to the United States that is not operated by an air carrier;

“postclearance” means the examination and inspection of travellers, their goods and the aircraft concerned, upon arrival in the United States;

“traveller” means a passenger or member of the crew of an aircraft seeking entry to the United States under this Act and includes an aircraft commander;

“United States” means the United States of America, its Government and any agency of the United States associated with preclearance operations in Ireland, including United States Customs and Border Protection;

“weapon” means a firearm within the meaning of the Firearms Acts 1925 to 2007, or a knife within the meaning of section 9(1) of the Firearms and Offensive Weapons Act 1990, or a weapon of offence within the meaning of section 10(2) of that Act.

(2) Subject to *subsection (1)*, a word or expression used in this Act that is also used in the Agreement has the same meaning in this Act as it has in the Agreement.

(3) In this Act a reference to preclearance, or preclearance area, includes a reference to in-transit preclearance, or in-transit preclearance area, as the case may be.

Minister may designate preclearance area.

2.— (1) The Minister may, by regulations, designate, by reference to a map or otherwise, a place or places within an airport in the State as an area (“preclearance area”) or areas within which preclearance may be carried out.

(2) Subject to *subsection (3)*, regulations made under this section may provide that—

(a) a part of a preclearance area may cease to be operational when no aircraft at that part of the preclearance area is, for the time being, subject to preclearance, or

(b) a building, or a portion of a building, in a preclearance area may cease to be operational when that building, or that portion of the building, is, for the time being, not being used for the purpose of preclearance.

(3) Where regulations are made to which *subsection (2)* applies, the airport authority, shall, during periods when that part of the preclearance area or building (or portion thereof) is operational, place signage in prominent positions, or otherwise indicate that preclearance is, for the time being, being carried out in that part of the preclearance area or building (or portion thereof), as the case may be.

(4) Where the Minister designates a preclearance area under *subsection (1)* and that area includes a building consisting of more than one floor, the Minister may designate—

(a) the entire building,

(b) an entire floor, or

(c) a portion of a floor.

(5) Before making regulations under this section, the Minister shall consult with the airport authority, with the Minister for Justice, Equality and Law Reform, and with the Revenue Commissioners.

(6) In this section—

“floor” includes a basement and any connections between floors concerned;

“map” includes a plan of a building;

“operational” means operational for the purpose of preclearance.

Annotations

Editorial Notes:

- E1** Power pursuant to section exercised (19.01.2011) by *Preclearance Area (Dublin Airport) Regulations 2011* (S.I. No. 9 of 2011), in effect as per reg. 1(2).
- E2** Power pursuant to section exercised (5.08.2009) by *Preclearance Area (Shannon Airport) Regulations 2009* (S.I. No. 317 of 2009), in effect as per reg. 1(2).

Duties of traveller.

3.— (1) A traveller who enters a preclearance area shall—

- (a) present himself or herself without delay at the preclearance facility for the purpose of applying for permission to enter,
- (b) make an accurate written declaration of all goods required to be declared in accordance with instructions issued by or on behalf of the Minister and made available to the traveller in the preclearance area, and
- (c) comply with any requirement of an Irish law enforcement officer or a preclearance officer under *section 7(2)*.

(2) A traveller who contravenes *paragraph (a), (b) or (c) of subsection (1)* shall be guilty of an offence.

(3) Where a traveller is accused of an offence under *subsection (2)* in respect of *subsection (1)(b)*, it shall be a good defence to show that he or she had reasonable grounds for believing that his or her declaration was duly made in accordance with that provision.

(4) Where *section 5(5)(a)* applies, no proceedings shall be instituted against a traveller under *subsection (2)* in respect of *subsection (1)(b)* in relation to any particular goods.

Right of traveller to withdraw.

4.— A traveller may, at any time—

- (a) withdraw his or her application for permission to enter, and
- (b) subject to *subsections (1)(e) and (3) of section 5, and section 6*, leave the preclearance area.

Functions of preclearance officers.

5.— (1) In addition to exercising functions under *section 7(2)*, a preclearance officer may—

- (a) take and process applications for permission to enter,
- (b) ask for the production of travel documents and other documents supporting the traveller's application for permission to enter and examine such documents when produced,
- (c) ask questions relating to the traveller's eligibility to enter the United States,
- (d) with the consent of the traveller and subject to *subsection (2)*, search such traveller and his or her goods,
- (e) without warrant, where he or she reasonably suspects that a person poses an immediate threat (including the possession of a weapon) to the safety of officers or other persons in the preclearance area, search such person and his or her goods and may detain the person for such time as is reasonably necessary for carrying out the search,
- (f) examine any area of the aircraft, including any goods on, or to be loaded onto, it,
- (g) grant permission to enter to any traveller or aircraft where such traveller or aircraft is found to be eligible for entry into the United States,
- (h) review or revoke permission to enter granted under *paragraph (g)*,
- (i) refuse permission to enter to any traveller or aircraft where such traveller or aircraft is found to be ineligible for entry into the United States,

- (j) notwithstanding the fact that permission to enter has not been granted to any traveller, permit such traveller to board the aircraft for the purpose of postclearance on arrival in the United States, and
- (k) request the assistance of an Irish law enforcement officer with respect to the matters referred to in *paragraphs (e) and (f)* of this subsection and *paragraphs (a) and (b)* of *section 6(1)*.
- (2) Where *subsection (1)(d)* applies, the preclearance officer conducting a search of a person shall—
- (a) be of the same sex as the person being searched, and
- (b) have due respect for the person being searched.
- (3) Where a preclearance officer reasonably suspects that—
- (a) a person has—
- (i) committed an indictable offence under the law of the State, or
- (ii) obstructed or attempted to obstruct a preclearance officer in the performance of his or her functions under this Act,
- or
- (b) a private aircraft is conveying goods in contravention of the law of the State,
- the preclearance officer—
- (I) may, without warrant, detain that person or private aircraft, and
- (II) where such person or aircraft is detained, shall forthwith deliver that person or aircraft into the custody of an Irish law enforcement officer to be dealt with in accordance with law.
- (4) Where a traveller fails to comply with *section 3(1)(b)*, the preclearance officer may detain such goods and, where he or she does so, shall forthwith deliver them to an Irish law enforcement officer for the purposes of *sections 8 to 10*.
- (5) Notwithstanding *subsection (4)*, the preclearance officer may, as a condition of granting permission to enter, require a traveller to—
- (a) pay him or her, or another preclearance officer identified by him or her, a sum of money equivalent to the sum of money that would be payable by that traveller on postclearance in respect of any particular goods, or
- (b) surrender those goods.
- (6) (a) Subject to *paragraph (b)*, a preclearance officer may perform the functions conferred by this Act solely within the preclearance area.
- (b) Where regulations are made to which *section 2(2)* applies, a preclearance officer may perform the functions conferred solely in a place referred to in that subsection that is, for the time being, operational for the purpose of preclearance.
- (7) Nothing in this Act shall be construed as permitting a preclearance officer to be in possession of a weapon in the performance of his or her functions under this Act.

Functions of Irish law enforcement officers.

6.— (1) An Irish law enforcement officer who reasonably suspects that, in the preclearance area—

(a) a traveller has failed to comply with *section 3(1)(b)*, or

(b) any person (whether or not a traveller) is in possession of any goods (including a weapon) the possession of, or the export of which, is controlled or prohibited in the State, or otherwise poses a threat to the safety of officers or other persons in the preclearance area,

may, without warrant—

(i) search the person and, if he or she considers it necessary for that purpose, detain the person for such time as is reasonably necessary for carrying out the search, provided that—

(I) except where the threat posed is immediate—

(A) the officer conducting a search of a person being detained shall ensure, so far as practicable, that the person understands the reason for the search and that it is conducted with due respect for the person being searched,

(B) a person being detained shall not be searched by an officer or person of the opposite sex, and

(II) where a search of a person being detained involves removal of clothing, other than headgear or a coat, jacket, glove or similar article of clothing, no officer or person of the opposite sex shall be present, unless either that person is a medical practitioner designated by the officer conducting the search, or the officer considers that the presence of that person is necessary for the protection of the person carrying out the search, or is otherwise expedient in the interests of the person being searched, and

(ii) examine (by opening or otherwise), seize and detain anything found in the course of a search under this section that appears to him or her to be something that might be required as evidence in proceedings for an offence.

(2) Where an Irish law enforcement officer decides to search a person under this section, he or she may require the person to accompany him or her to such other place at the airport as may be specified by the officer for the purpose of being so searched at that other place.

(3) Where there is a failure to comply with a requirement under *subsection (2)*, the Irish law enforcement officer concerned may arrest without warrant the person of whom the requirement was made.

(4) Where a person fails to comply with a requirement under this section, he or she shall be guilty of an offence.

(5) A requirement mentioned in *subsection (2)* shall remain in force until the search in relation to which it is made is completed, but such search shall be carried out as soon as is practicable.

(6) Nothing in this section shall operate to prejudice any power to search, or to seize or detain any goods, which may be exercised by an Irish law enforcement officer apart from this section.

(7) An Irish law enforcement officer shall, where requested under *section 5(1)(k)*, assist a preclearance officer.

Security of
preclearance
area.

7.— (1) Persons other than—

- (a) preclearance officers and other personnel authorised by the United States,
- (b) travellers,
- (c) Irish law enforcement officers, and
- (d) persons authorised by the airport authority who require entry for a purpose relating to their employment,

shall not enter—

- (i) a preclearance area, or
- (ii) where regulations are made to which *section 2(2)* applies, a place referred to in that subsection that is, for the time being, operational for the purpose of preclearance.

(2) An Irish law enforcement officer or a preclearance officer may, in the interest of security or the proper functioning of the preclearance area, do any of the following in the preclearance area:

(a) require any person to:

- (i) give his or her name and to produce evidence of his or her identity;
- (ii) state the purpose of his or her being in the preclearance area;
- (iii) account for any baggage or other property which may be in his or her possession;
- (iv) return to the preclearance facility;

(b) require any of the following persons to leave the preclearance area:

- (i) a person who fails to give his or her name or to produce evidence of his or her identity;
- (ii) a person who fails to state the purpose of his or her being in the preclearance area;
- (iii) a person who fails to account for any baggage or other property in his or her possession;
- (iv) a person who gives a name or states a purpose for his or her being in the preclearance area which is known, or is reasonably suspected, by the preclearance officer or the Irish law enforcement officer to be false;
- (v) a person whom he or she knows not to have, or whom he or she reasonably suspects of not having, a lawful reason for being in the preclearance area.

(3) A person who contravenes *subsection (1)* or fails to comply with a requirement under *subsection (2)* shall be guilty of an offence.

(4) A person who obstructs or impedes a preclearance officer or an Irish law enforcement officer in the exercise of any functions conferred by this Act shall be guilty of an offence.

(5) A person shall not be convicted under—

- (a) *subsection (3)* in respect of *subsection (2)* of this section, and

(b) section 3(2) in respect of section 3(1)(c),

in respect of the same act.

Seizure of goods generally.

8.— (1) Without prejudice to any other applicable law, any goods that are—

(a) not declared, or

(b) the subject of a false declaration,

under section 3(1)(b) may be seized as liable to forfeiture by an Irish law enforcement officer.

(2) Where goods are seized under subsection (1), the person affected shall be furnished with a notice in writing (“notice of seizure”) specifying—

(a) the goods seized,

(b) the reasons for the seizure, and

(c) the procedure for making a claim against the seizure.

(3) A person whose goods have been seized under subsection (1) who claims that such goods are not liable to forfeiture (“claimant”), shall, within one month of the seizure, give notice in writing of such claim (“notice of claim”) to the Revenue Commissioners.

(4) A notice of claim shall specify the name and address of the claimant and, in the case of a claimant who is outside the State, the name and address of a solicitor in the State who is authorised to accept service of any document required to be served on the claimant and to act on behalf of the claimant.

(5) If, on the expiration of the period referred to in subsection (3), no notice of claim has been given, the goods shall be deemed to have been duly condemned as forfeited.

(6) Where goods are, under this Act, condemned or deemed to have been condemned as forfeited, the forfeiture shall have effect as from the date of seizure.

Seizure of goods: certain powers of Revenue Commissioners.

9.— (1) Where a notice of claim has been duly given, the Revenue Commissioners may, as they think fit and notwithstanding that the goods seized have not yet been condemned—

(a) deliver them up to the claimant on payment to the Revenue Commissioners of such sum as they think proper, being a sum not exceeding that which, in their opinion, represents the value of the goods, or

(b) if the goods seized are in the opinion of the Revenue Commissioners of a perishable or hazardous nature, sell or destroy them.

(2) If, where any goods are delivered up, sold or destroyed under this section, it is subsequently held by the court in proceedings that the goods were not liable to forfeiture at the time of seizure, the Revenue Commissioners shall on demand tender to such claimant—

(a) an amount equal to any sum paid by the claimant under subsection (1)(a),

(b) if they have sold the goods, an amount equal to the proceeds of sale, or

(c) if they have destroyed the goods, an amount equal to their value at the time of seizure.

(3) If the claimant accepts any amount tendered under *subsection (2)*, such claimant shall not be entitled to maintain proceedings in any court on account of the seizure, sale or destruction of the goods concerned.

(4) The Revenue Commissioners may, in their discretion, restore any goods seized under this Act.

Seizure of goods:
proceedings.

10.— (1) Subject to *section 8(6)*, where a notice of claim in respect of any goods is given, the Revenue Commissioners shall take proceedings for their condemnation by the court, and—

(a) where the court finds that the goods were not at the time of seizure duly declared, the court shall condemn them as forfeited and,

(b) in any other case, the court shall order their release to the claimant.

(2) Goods seized under this Act shall, after condemnation of such goods, be forfeited to the Revenue Commissioners.

(3) Proceedings under *subsection (1)* shall be civil proceedings and may be instituted either in the High Court or (if, in the opinion of the Revenue Commissioners, the value of the goods does not exceed the amount that is the monetary limitation on the jurisdiction of the District Court) the District Court.

(4) In any such proceedings the claimant or his or her solicitor shall state on oath that the goods seized were, or were to the best of his or her knowledge and belief, the property of the claimant at the time of the seizure.

(5) Where proceedings have been instituted or continued in the name of an Irish law enforcement officer who has ceased for any reason to be such an officer, or being such officer is absent at any time during such proceedings, then such proceedings may be continued in the name of any other officer, or of the officer so absent, as appropriate in the circumstances.

(6) In any proceedings under this section, if judgement is given for the claimant, no Irish law enforcement officer or other person who made or assisted in making the seizure shall be liable to any subsequent civil or criminal proceedings on account of the seizure of the goods, provided that the court certifies that there was probable cause for making such seizure.

(7) In any civil or criminal proceedings against any Irish law enforcement officer or other person on account of the seizure under this Act of any goods, where—

(a) judgement is given against that officer or other person, and

(b) the court certifies that there was probable cause for such seizure,

the claimant or other person shall not be entitled to—

(i) any damages, besides the goods seized or the value of such goods, or

(ii) the costs of the proceedings,

and the Irish law enforcement officer or other person shall not be liable for any punishment or penalty.

In-transit
preclearance:
where traveller is
refused permis-
sion to enter.

11.— (1) Where, on in-transit preclearance, a traveller is refused permission to enter, the air carrier or the aircraft commander concerned shall be responsible for any costs (including, where necessary, the traveller's accommodation and maintenance costs) arising from the removal of the traveller and his or her goods—

(a) to the state or other territory in which the traveller boarded the aircraft,
or

(b) where the traveller is not a citizen of that state or a resident of that state or territory, to the state or territory of which the traveller is a citizen (in the case of a state) or a resident (in the case of a state or a territory).

(2) Nothing in *subsection (1)* shall prevent the air carrier or the aircraft commander from recouping from the traveller in any court of competent jurisdiction the costs expended pursuant to that subsection.

In-transit
preclearance:
control of aliens.

12.— (1) Subject to *subsection (2)*, a person who lands at an airport in the State for the purposes of in-transit preclearance, shall not, for the purposes of the Aliens Act 1935 and the Immigration Act 2004, be deemed to have arrived at a frontier of the State.

(2) A person who—

(a) lands at an airport in the State for the purposes of in-transit preclearance,
and

(b) is refused preclearance to travel onwards to the United States,

shall be deemed, for the purposes of the Aliens Act 1935 and the Immigration Act 2004, to have arrived at a frontier of the State.

Privileges and
immunities.

13.— (1) A preclearance officer who is—

(a) a national of the United States, and

(b) assigned and posted to the State,

shall not be amenable to the jurisdiction of the judicial or administrative authorities of the State in respect of acts performed by him or her in the exercise of his or her functions under this Act and shall, together with his or her dependants, enjoy such privileges as are agreed by an exchange of diplomatic notes.

(2) The immunity accorded under *subsection (1)* may be waived in writing by the United States.

(3) The immunity and privileges referred to in *subsection (1)* shall not be accorded to a preclearance officer who is permanently resident in the State.

(4) Without prejudice to any other power of a Minister of the Government, where the Minister considers that a preclearance officer has abused his or her position, the Minister may, after consultation with the United States, require—

(a) in the case of a preclearance officer referred to in *subsection (1)*, the departure from the State of that preclearance officer, or

(b) in the case of a preclearance officer who is permanently resident in the State, that he or she cease to exercise his or her functions under this Act.

(5) All documents (including information kept in a non-legible form, whether stored electronically or otherwise, that is capable by any means of being reproduced in a legible form) of the United States located in the preclearance area shall be regarded as archives kept at a consulate within the meaning of the Consular Conventions Act 1954.

(6) An action shall lie against the State by a person who is precluded from taking an action by virtue of *subsection (1)*.

Fees for preclearance. **14.**— Without prejudice to any other fee or charge that an airport authority may duly impose, an airport authority may charge a fee to air carriers and aircraft commanders availing of preclearance.

Expenses. **15.**— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Regulations. **16.**— (1) The Minister may make regulations—
(a) for any purpose in relation to which regulations are provided for in this Act, and
(b) generally for the purpose of giving effect to this Act and to the Agreement,
and such regulations may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(2) Without prejudice to the generality of *subsection (1)*, the Minister may make regulations for ensuring the integrity, security and proper functioning of—

- (a) preclearance areas generally,
- (b) a preclearance area at a particular airport, or
- (c) a part of a preclearance area at a particular airport.

(3) Every regulation made under this Act shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Offences and penalties. **17.**— (1) A person guilty of an offence under this Act (other than an offence to which *subsection (2)* relates) shall be liable on summary conviction to a fine not exceeding €5,000, or imprisonment for a term not exceeding 6 months, or both.

(2) A person who assaults an Irish law enforcement officer (other than a member of the Garda Síochána) or a preclearance officer in the performance of his or her functions shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €25,000, or imprisonment for a term not exceeding 5 years, or both.

Offences by bodies corporate. **18.**— Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of such body corporate or a person who was purporting to act in any such capacity, that officer or person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Repeal of Air Navigation and Transport (Preinspection) Act 1986.

19.— The Air Navigation and Transport (Preinspection) Act 1986 is repealed.

Amendment of Third Schedule to Freedom of Information Act 1997.

20.— The Third Schedule to the Freedom of Information Act 1997 is amended in Part I by inserting the following at the end of that Part:

“

1998, No. 24	Air Navigation and Transport (Amendment) Act 1998	Section 36
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”.

Short title and commencement.

21.— (1) This Act may be cited as the Aviation (Peclearance) Act 2009.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose (including a particular airport, or part of an airport) or provision and different days may be so appointed for different purposes or different provisions.

Annotations

Editorial Notes:

E3 Power pursuant to section exercised (29.11.2013) by *Aviation (Peclearance) Act 2009 (Section 19) (Commencement) Order 2013* (S.I. No. 445 of 2013).

2. The day appointed as the day on which section 19 of the Aviation (Peclearance) Act 2009 (No. 16 of 2009) comes into operation is 29 November 2013.

E4 Power pursuant to section exercised (5.08.2009) by *Aviation (Peclearance) Act 2009 (Commencement) Order 2009* (S.I. No. 315 of 2009).

2. The 5th day of August 2009 is appointed as the day on which the Aviation (Peclearance) Act 2009 (No. 16 of 2009), other than section 19, comes into operation.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE
UNITED STATES OF AMERICA ON AIR TRANSPORT PRECLEARANCE

The GOVERNMENT OF IRELAND and the GOVERNMENT OF THE UNITED STATES OF AMERICA (hereinafter, "The Parties"),

CONSIDERING the benefits to Ireland and the United States of preclearance in Ireland in respect of United States' immigration, customs, and other border controls and having regard to the success of existing arrangements in respect of preinspection introduced pursuant to the Agreement between Ireland and the United States of America on Preinspection signed at Dublin 25 June 1986 and supplemented by the agreement effected by an exchange of notes at Washington 31 March 1988,

AGREE as follows:

Article I
Definitions

1. "**Air carrier**" means any undertaking (meaning a business entity or person) that provides air transport services for passengers pursuant to a valid operating certificate or licence for remuneration, hire or other consideration;
2. "**Air industry**" means scheduled/charter Air carriers and, if applicable, any Private aircraft owner/operator;
3. "**Aircraft commander**" means any person serving on a Private aircraft who is in charge or has command of its operation and navigation;
4. "**Airport authority**" means the body responsible for the management, operation and development of an airport or airports at which Preclearance services are provided in accordance with this Agreement;
5. "**Eligible flight**" means any commercial scheduled/charter flight, including ferry flights (crew only), and any flight by Private aircraft, that has requested and been approved for Preclearance service;
6. "**Goods**" means personal effects, baggage, wares of any description, animals and plants and their products, currency and other monetary instruments, and any document in any form;
7. "**Ireland**" means Ireland and its Government (including any Government Department, Department official or other party authorized to act on behalf of the Irish State in relation to any provision of this Agreement);
8. "**In-Transit Preclearance**" means the Preclearance of passengers and their Goods, as well as aircraft, coming from third countries that do not formally enter Ireland;
9. "**In-Transit Preclearance area**" means all or part of a Preclearance area that is used for In-Transit Preclearance;
10. "**Irish law enforcement officer**" means a member of An Garda Síochána, and/or an Officer of Customs and Excise;
11. "**Preclearance**" means the procedure of conducting in the territory of one Party, all or any examination and/or inspection required for entry/admission into the territory of the other Party;
12. "**Preclearance area**" means a designated, limited and operationally contiguous part of an airport within which Preclearance operations are effected in respect of individuals, Goods and aircraft;

13. "**Preclearance facility**" means the physical inspection infrastructure, to include any offices and examination areas as well as any equipment required for the processing of passengers and their Goods (including, where applicable, in-transit passengers and goods).

14. "**Preclearance officer**" means a U.S. Customs and Border Protection (CBP) official authorized by Ireland to carry out Preclearance in Ireland.

15. "**Private aircraft**" means any aircraft engaged in a personal or business flight which is not carrying passengers and/or cargo for commercial purposes;

16. "**Post clearance**" means the clearance of aircraft, crew, passengers and Goods upon arrival in the United States;

17. "**Travellers**" means any air passengers or crewmembers seeking entry/admission to the United States using Preclearance;

18. "**United States**" means the United States of America, its Government and/or any United States agency associated with Preclearance operations, and in particular CBP.

Article II

General

1. Nothing in this Agreement shall be construed as diminishing the rights enjoyed by individuals under the Constitution and laws of Ireland and, where applicable, the United States.

2. Ireland shall designate areas at an airport in which Preclearance is sought to be a "Preclearance area" or an "In-Transit Preclearance area."

3. Before designating an area to be a Preclearance area, Ireland shall consult with officials from the relevant Airport authority in order to seek their recommendations on the precise location of any Preclearance facility and, if applicable, In-Transit Preclearance facilities.

4. The Parties to this Agreement shall consult regarding, *inter alia*, the proposed boundaries and location of any and all Preclearance areas prior to formal designation by Ireland in accordance with paragraph (2) of this Article.

5. The laws of Ireland shall at all times apply in Preclearance and In-Transit Preclearance areas.

6. Ireland shall ensure that Travellers, Air carriers and Aircraft commanders that wish to avail of Preclearance services in Ireland can do so on condition that they recognise and consent to the right of the United States to grant or refuse Preclearance in accordance with its laws.

7. In order to ensure the sterility of the Preclearance area, entry shall be restricted to the following classes of person:

a. Preclearance officers and other U.S. personnel authorized by CBP;

b. Travellers;

c. Irish law enforcement officers acting in the course of their duty; and

d. Personnel authorized by the Airport authority who require entry for a purpose relating to their employment.

8. Travellers who enter a Preclearance area shall be required to report and declare their Goods to a Preclearance officer without delay for the purpose of enabling the

Preclearance officer to carry out his or her functions in accordance with this Agreement.

9. Subject to the provisions of Article IV of this Agreement, Travellers who withdraw their application for Preclearance shall be free to leave the Preclearance area at any time.

10. The Parties shall establish mutually acceptable standard operating procedures concerning Preclearance, including, but not limited to, protocols to apply to screening of aircraft, Travellers and/or their Goods, and may include protocols regarding In-Transit Preclearance procedures and on-board duty free sales, if applicable.

11. Nothing in this Agreement shall limit the right of Ireland to refuse entry of persons into Ireland and to enforce, *inter alia*, any existing or future laws relating to immigration, residence and/or protection.

12. Nothing in this Agreement shall affect the right of Ireland to refuse permission to any aircraft to enter Irish airspace or land at an Irish airport. Nor shall any provision of this Agreement be construed as diminishing the right of Ireland to inspect and/or search any aircraft that lands on Irish territory.

13. Nothing in this Agreement changes or modifies the existing domestic laws of the United States or affects the rights and obligations of the Parties under other international agreements or treaties.

14. Nothing in this Agreement affects the authority of the United States to apply and enforce its civil and criminal laws (including any laws with extraterritorial effect) within its own territory.

15. Expenses incurred by the United States in the performance of this Agreement shall be subject to applicable U.S. law and regulations.

Article III

Provision of Preclearance

1. The United States shall commence Preclearance services in Ireland on the date of entry into force of this Agreement subject to, and provided that:

a. A suitable Preclearance facility or facilities is/are being made available;

b. The facility or facilities meet(s) CBP Airport Technical Design Standards;

c. Standard operating procedures regarding the provision of Preclearance and/or In-Transit Preclearance services in accordance with Article II(10) have been established by the Parties; and

d. The conditions in paragraph (5) of this Article have been satisfied.

2. In developing or modifying its Preclearance facility requirements applicable in Ireland, the United States shall consider the views of the local Air industry and Airport authorities and shall obtain the consent of Ireland, which consent shall not be unreasonably withheld.

3. Where modifications to Preclearance area and/or facilities are required to achieve compliance with the requirement of one or both Parties to this Agreement, the Party/Parties concerned shall consult with the relevant Airport authority and agree such modifications and establish a reasonable time frame for implementation of such modifications in consultation with the Airport authority. Where agreement cannot be reached with the relevant Airport authority, the Party/Parties concerned shall refer the matter to the U.S./Ireland Preclearance Consultative Group pursuant to Article XI of this Agreement.

4. In-Transit Preclearance procedures shall be considered and may be adopted at any airport upon agreement of the Parties hereto.

5. The provision of Preclearance services at an Irish airport shall be contingent upon:

a. The existence of sufficient traffic to make feasible the efficient operation of the Preclearance facility;

b. The provision of adequate and appropriate security arrangements, including law enforcement support in accordance with Article IV(2), to ensure the safety of Preclearance officers, Travellers and airport personnel;

c. Adequate and appropriate security arrangements in respect of the Preclearance facility to protect against intrusion or damage and to protect the official archives and documents held at such facilities;

d. Each Airport authority establishing, implementing and maintaining an acceptable plan for coordinating Air carrier and Aircraft commander requests for the Preclearance of flights; and

e. Each Airport authority permitting the installation and operation by the United States of such communications and inspection aids as are required.

6. Where an issue arises which may place Preclearance operations at serious risk, the United States may request immediate consultations with the appropriate authorities in accordance with Article XI. If the matter is not resolved by that forum within 30 days, the matter shall be referred to the Parties for resolution.

7. Any decision to terminate Preclearance services at a Preclearance location shall be a joint decision by written agreement of the Parties, following consultation with the relevant Airport authority and local Air industry, and shall be based upon relevant factors, including national security interests and/or sustained and substantial decreases in air traffic.

Article IV

Ireland's Obligations

1. Ancillary Powers

Ireland shall permit Preclearance officers to determine whether to grant or refuse Preclearance to any aircraft and/or individual seeking Preclearance to the United States. In order to facilitate the effective operation of Preclearance, Ireland shall permit Preclearance officers to exercise the following ancillary powers within the Preclearance area:

(a) Inspection

Preclearance officers shall be authorized by law to:

i. Conduct voluntary inspections and/or assessments of individuals, as well as any Goods in their possession, seeking Preclearance for entry/admission into the territory of the United States;

ii. Examine any aircraft seeking Preclearance (including all Goods in, or to be loaded onto, the said aircraft, as well as aircraft stores) with a view to determining whether or not to grant Preclearance for onward passage to the United States; and

iii. Request the assistance of An Garda Síochána or another appropriate Irish law enforcement officer regarding the screening of any Traveller, aircraft or Goods for Preclearance purposes.

(b) Search

Preclearance officers shall be authorized by law to exercise the following powers of search:

- i. Subject to the consent of the person concerned, conduct personal searches (pat-down search, partial body search and search of Goods) of any Traveller or other individual entering the Preclearance area;
- ii. Conduct non-voluntary searches (immediate pat-down search, partial body search and search of baggage and/or other personal effects) of any Traveller or other individual entering the Preclearance area reasonably suspected of carrying a weapon or of posing an immediate threat to the safety of officers or other individuals in the Preclearance area. In exercising this power, a Preclearance officer shall use no more force than is reasonable in the circumstances as he or she believes them to be; and
- iii. Request the assistance of a member of An Garda Síochána and/or an Officer of Customs and Excise to conduct a search of any person reasonably suspected of having made a false declaration or of being in possession of an article, substance or Goods the possession and/or export of which is controlled or prohibited under Irish law and/or any person reasonably suspected of carrying a weapon or of otherwise posing a threat to the safety of officers or other individuals in the Preclearance area.

(c) Detention

Preclearance officers shall be authorized by law to exercise the following limited powers of detention:

- i. Hold, pending the arrival of a member of An Garda Síochána and/or an Officer of Customs and Excise, any Traveller or other individual reasonably suspected of having committed an indictable offence under Irish law, for a period no greater than is necessary to obtain the above assistance;
- ii. Hold, pending the arrival of a member of An Garda Síochána and for a period no greater than is necessary to obtain Garda assistance, any Traveller or other individual reasonably suspected of having obstructed or having sought to obstruct a Preclearance officer in the exercise of his or her powers and duties under this Agreement; and
- iii. Hold, pending the arrival of a member of An Garda Síochána and/or an Officer of Customs and Excise, and for a period no greater than is necessary to obtain such assistance, any Private aircraft reasonably suspected of conveying or facilitating the conveyance of Goods in violation of Irish law.

In exercising these powers, a Preclearance officer shall use no more force than is reasonable in the circumstances as he or she believes them to be.

(d) Collections, Seizure and Forfeiture

Without prejudice to the rights exercisable by An Garda Síochána and/or an Officer of Customs and Excise to seize and retain items required as evidence in the prosecution of an offence under Irish law and without prejudice to the right of the United States to request the transmission in accordance with Irish law and applicable international agreements of any item of evidence required in the prosecution in the United States of an offence, Preclearance officers shall be authorized by law to exercise the following powers:

- i. Take possession of any item the subject of a false declaration or a failure to declare, where the possession and/or export of the item or items does not constitute an offence under Irish law, and thereafter deliver such items to an Irish law enforcement officer for the purpose of seizure in accordance with Irish law;
- ii. Request return of items held by Ireland after the expiration of 6 weeks;
- iii. Transfer said items to the United States;

iv. Require, as a pre-condition to the grant of Preclearance, the payment of a sum of money equivalent to that which would constitute the applicable duty, tax, fee and/or penalty payable by an individual importing into the United States those Goods or items in the possession of the individual seeking Preclearance; and

v. Require, as a pre-condition to the grant of Preclearance, the voluntary surrender of any Goods in the possession of the individual the importation of which into the United States is prohibited or regulated under the laws of the United States.

(e) Return to Preclearance facility

Without prejudice to the foregoing powers that may be exercised by Preclearance officers within the Preclearance area, where a Preclearance officer deems it necessary to review a decision to grant Preclearance to a Traveller, he or she may request the individual to return to the Preclearance facility and, where necessary, may request the support of An Garda Síochána to ensure that the individual whose Preclearance status is under review does not board a precleared flight or otherwise jeopardise or prejudice the status of a flight pre-cleared for entry into the United States.

2. Security

Ireland shall, through An Garda Síochána, provide appropriate and sufficient law enforcement support as is required to maintain the proper and effective functioning of Preclearance and to ensure the security of the Preclearance area and safety of Preclearance officers, Travellers and airport staff. Security arrangements shall be reviewed by An Garda Síochána from time to time as may be required. In conducting such reviews, An Garda Síochána shall take into account any representations made by the United States.

3. Information and Training

The Parties shall mutually arrange for the provision of information and training. Ireland shall, if requested, arrange for the provision of information and/or training for Preclearance officers regarding the laws of Ireland relevant to the powers and duties exercised by Preclearance officers working in Ireland. The United States shall, if requested, provide information and/or training in accordance with Article V(6).

4. Right of Redress

Ireland shall make such provision in law as is necessary to ensure that any individual aggrieved by the unlawful exercise of powers associated with the administration of Preclearance has an effective right of redress in Ireland against the Government of Ireland.

5. Claim in respect of Goods seized

Ireland shall provide in law for a right, subject to such limitations as will be imposed by law, to challenge the seizure of Goods grounded upon an alleged false declaration or failure to declare in the context of Preclearance.

Article V

**United States' Obligations and Authorities
in Respect of Preclearance Service**

1. The United States shall provide a high level of service to those availing of Preclearance in Ireland. In particular, the United States shall:

a. Provide a sufficient number of Preclearance officers to carry out Preclearance operations with reasonable speed and efficiency;

b. Give due consideration to using flexible practices and/or operating procedures which may improve the efficiency of Peclearance operations or address temporary disruptions;

c. Use its best efforts to secure necessary resources for additional staff and/or equipment that may be required in order to maintain the efficient operation of Peclearance;

d. Give due consideration to adopting any recommendation from the relevant Airport authority and/or Irish Air industry representatives to improve the efficiency of the Peclearance service; and

e. Provide at least 90 days' notice to Ireland, the Airport authority and local Air industry of any reduction in Peclearance service at a given airport.

The Parties shall establish prior to the commencement of Peclearance operations mutually acceptable standard operating procedures that include procedures for implementing Paragraph 1 of this Article.

2. Peclearance authorization

The United States shall authorize Peclearance services for flights in accordance with the provisions set forth in the Annex of this Agreement.

3. The United States shall have the right:

a. To deny Peclearance to flights or any Traveller in any case where authorized under its law;

b. To require Post clearance as it deems necessary of any aircraft, Traveller or Goods on any flight;

c. To preclear Eligible flights only if Travellers can be routed through the designated Peclearance area;

d. To decline to conduct Peclearance for any Air carrier or aircraft until the Air carrier or Aircraft commander has satisfied the Peclearance officers that it will deny carriage to anyone failing to submit to a Peclearance inspection, and to anyone who, having submitted to such inspection, is found ineligible to board a precleared flight;

e. To deny in-transit privileges to any Air carrier or Aircraft commander, which/who would not otherwise be authorized by the United States' civil aviation authorities to fly to the United States;

f. To refuse to preclear any Traveller and his/her Goods if the Traveller does not satisfy the Peclearance officer that he/she qualifies for Peclearance or that his/her Goods can be lawfully imported into the United States; and

g. To refuse onward passage of any Traveller or Aircraft commander on a flight subject to Peclearance who is deemed by a Peclearance officer to be inadmissible to the United States or who refuses to provide information relevant to his/her immigration status.

4. Cooperation in relation to prevention and detection of offences under Irish law

The United States shall, in the context of this Agreement, provide all reasonable assistance to Ireland in relation to the prevention and detection of offences under Irish law. Without prejudice to the generality of the foregoing, Peclearance officers shall exercise the powers afforded to them under Article IV of this Agreement in a manner consistent with this obligation and in particular:

a. Where during the course of an inspection, a Preclearance officer discovers an item the possession and/or export of which constitutes an offence under Irish law, he or she shall immediately call for the assistance of an Irish law enforcement officer; and

b. Where a Preclearance officer has cause to detain an individual in accordance with the provisions of Article IV(1)(c), he or she shall, forthwith, deliver such person into the custody of an Irish law enforcement officer.

5. Information Leaflets and Signage

The United States shall ensure that information provided by Ireland, e.g., signage, brochures and/or other materials outlining the rights and or obligations of Travellers availing of Preclearance is readily available and/or visible.

6. The United States shall, if requested, arrange for the provision of information and training for Irish law enforcement officers relevant to the processing and search of passengers seeking to be precleared to the United States.

Article VI

In-Transit Preclearance

In-Transit Preclearance operations shall, upon agreement by the Parties, be implemented at locations with existing Preclearance operations established in accordance with this Agreement. Provisions under this Agreement applicable to Preclearance operations shall apply to any established In-Transit Preclearance operations.

Article VII

Role of Airport Authorities

Ireland shall use its best endeavours to ensure that the Airport authorities for airports at which Preclearance is established pursuant to this Agreement shall:

a. Permit the installation and operation by the United States of such equipment as is required for the effective operation of Preclearance;

b. Ensure that each Preclearance area and, if applicable, each In-Transit Preclearance area, is clearly demarcated;

c. Ensure that there will be no public access to the designated Preclearance area by restricting access in accordance with Article II(7) of this Agreement;

d. Post signage and make available information regarding the rights and obligations of Travellers in the Preclearance area;

e. If applicable and approved, provide adequate facilities for the operation of In-Transit Preclearance;

f. Follow designated procedures regarding the advance notification to the United States of the identity of any Private aircraft requesting Preclearance (as per the Annex);

g. Consult with Preclearance officers regarding authorization of personnel for the purposes of Article II(7)(d) of this Agreement; and

h. Ensure any Goods, items and other products not eligible for entry into the United States are not provided or made available for sale in the Preclearance area or in the In-Transit Preclearance area.

Article VIII

Participation of Air Carriers and Aircraft Commanders

1.The United States shall permit each Air carrier and Aircraft commander the option to use Preclearance or Post clearance for flights, subject to the following conditions:

a.Any Air carrier seeking approval for Preclearance services for scheduled flights will be required to make such request in writing no later than 60 days before the proposed commencement of service. All requests for Preclearance must be directed to the applicable representative of the United States Port Director for the Preclearance facility. For adjustments to Air carrier flight schedules, the United States shall require notice in accordance with paragraph (1) of the Annex;

b.Any Air carrier desiring to withdraw its scheduled operations entirely from Preclearance at any location will be required to provide 90 days' advance written notice to both Parties. However, if neither Party objects, the Air carrier may withdraw sooner. The United States may require reasonable notice be provided to withdraw from Preclearance only in respect of one or more eligible routes;

c.Aircraft commanders will be required to comply with laws governing their landing, entry and clearance in the United States. Ireland will endeavour to ensure that all Aircraft commanders seeking Preclearance provide advance notice of their departure from the territory of Ireland to the territory of the United States in order to schedule Preclearance services (see the Annex); and

d.Air carriers shall inform Travellers of their rights and obligations in respect of Preclearance.

2.Where In-Transit Preclearance is introduced in accordance with the terms of this Agreement, Ireland shall use its best endeavours to ensure that each airport with In-Transit Preclearance makes available the in-transit process to all Air carriers and Aircraft commanders that have agreed to participate in the In-Transit Preclearance.

3.Cargo services (i.e., Preclearance of cargo) shall not be eligible for Preclearance under this Agreement, except as otherwise mutually agreed upon between the Parties.

Article IX

Cost of Preclearance

The cost of Preclearance shall be borne as follows:

a.The United States, pursuant to its laws and regulations governing Preclearance, shall be responsible for its personnel and operations costs (other than facility costs) of conducting Preclearance activities;

b.Consistent with Article V of this Agreement, for any Traveller refused passage onward by the United States based upon the authority of the United States, the Air carrier or the Aircraft commander concerned shall be responsible for any costs, including, where necessary, accommodation and maintenance costs arising from the removal to that individual's point of embarkation, or to the country of which he/she is a national;

c.The provision of the necessary Preclearance facilities shall be the responsibility of the competent Airport authority;

d.Responsibility for the costs associated with Preclearance service under subparagraphs (a) and (c), above, shall be allocated between the United States and the relevant Airport authority in accordance with the CBP Airport Technical Design Standards document;

e.The only fees levied by the United States on Travellers for the provision of Preclearance services shall be the universal fees routinely sought by the United States from all individuals seeking clearance (including Post clearance) to enter the United States.

Article X**Privileges and Immunities**

1. Employees of the Government of the United States who are U.S. nationals, assigned to Preclearance duties in Ireland under this Agreement, except employees who are permanently resident in Ireland, shall not be amenable to the jurisdiction of the judicial or administrative authorities of Ireland in respect of acts performed by them in the exercise of their functions under this Agreement.

2. The immunity accorded under paragraph (1) may be waived in writing by the United States.

3. After consultation with the United States, Ireland may require the departure of a Preclearance officer whom Ireland deems to have abused his/her official position, or, with regard to a Preclearance officer who is permanently resident in Ireland, may require that he/she cease exercise of his/her functions under this Agreement.

4. Employees of the Government of the United States assigned to Preclearance duties in Ireland pursuant to this Agreement, except employees who are permanently resident in Ireland, shall, together with their dependants, enjoy such privileges as are agreed between the Parties by an exchange of notes.

5. Official archives, including electronic files and documents, of the United States located in the designated Preclearance area and facility shall enjoy the same inviolability as consular archives under the Vienna Convention on Consular Relations.

Article XI**Consultations**

1. Local airport mechanisms shall be used to address issues pertinent to a particular Preclearance location. Issues which cannot be resolved at the local level shall be referred to the U.S./Ireland Preclearance Consultative Group.

2. The Parties shall establish a U.S./Ireland Preclearance Consultative Group consisting of representatives of each Party. The U.S./Ireland Preclearance Consultative Group shall meet on a regular basis, at least annually, to review any issues related to this Agreement.

a. Other interested groups, including the Air industry, may attend portions of the U.S./Ireland Preclearance Consultative Group meetings as mutually determined by the Parties.

b. The U.S./Ireland Preclearance Consultative Group shall commence consultations within 20 days of the receipt of a request by either Party to convene the consultative group unless otherwise agreed among the members.

c. Where the U.S./Ireland Preclearance Group fails to resolve a matter within 30 days from commencement of the consultations, unless otherwise agreed between the Parties, the affected Party may request a meeting of the Parties to this Agreement.

3. At any time, either Party may request consultations regarding any portion of this Agreement. Such requests may include, but are not limited to, changes in domestic law or any other matter a Party considers may affect the interpretation, application or implementation of this Agreement.

a. On matters which the requesting Party states are urgent, such consultations between the Parties shall commence within 15 days of the date of the request.

b. Consultation on other issues shall commence within 30 days of the request, unless otherwise agreed to between the Parties.

4. Any disagreement between the Parties arising out of or relating to this Agreement shall be resolved through consultations between the Parties and shall not be submitted to any tribunal, court or other third party.

5. The Parties agree that if a competent court or tribunal of either nation should determine that any Preclearance activity or operation is contrary to the laws of either Party, the Parties should consult on how to proceed.

Article XII

Annex

The Annex hereto constitutes an integral part of this Agreement.

Article XIII

Reciprocity

Should Ireland seek to establish Preclearance service at airports in the United States of America, the Government of the United States shall consult with relevant authorities at U.S. airports which are mutually identified by the Parties to determine the feasibility and details of establishing reciprocal Preclearance service under the terms of this Agreement. Reciprocal Preclearance rights may be agreed to by the Parties in an amendment to this Agreement.

Article XIV

Entry into Force

1. This Agreement shall enter into force on the date of the later note in an exchange of diplomatic notes in which each Party informs the other that it considers the conditions of Article III(5) to have been met with respect to Preclearance services at an Irish airport and that it has completed its necessary internal procedures for entry into force of the Agreement, including the enactment of any legislation required.

2. This Agreement and its Annex may be amended by written agreement of the Parties. Upon entry into force, this Agreement shall supersede the Agreement between Ireland and the United States of America on Preinspection, signed at Dublin 25 June 1986, as supplemented by the agreement of 31 March 1988.

3. This Agreement shall continue in force unless terminated by either Party by giving one year's written notice to the other Party.

DONE in two originals at this day of
, 2008.

For the Government of Ireland

For the Government of the United States
of America

Annex

Coordination of Preclearance Services

1. Consistent with Article VIII and/or, if applicable, Article VI, for Preclearance purposes, Airport authorities and Air carriers will be required to notify the United States of any proposed seasonal schedules and new flights, no less than 60 days in advance of their implementation. Air carriers shall be required to provide reasonable notice of subsequent, limited adjustments to their seasonal schedules.

2.The Parties will develop procedures to ensure adequate advance notice of requests for the Prclearance of Private aircraft and Air carriers operating non-scheduled flights departing Ireland for the United States.

3.The United States shall endeavour to accommodate all requests for Prclearance service when such requests are made in the timeframes specified in paragraph (1) above and shall work with Airport authorities and Air carriers to accommodate new flights and changes in flight schedules. The United States will endeavour to accommodate requests for Prclearance service in respect of Private aircraft and Air carriers operating non-scheduled flights in accordance with the joint procedures that are developed by the Parties (as referred to in paragraph 2).

4.Consistent with Article XI, any request for Prclearance service which is not resolved at the local level shall be referred to the U.S./Ireland Prclearance Consultative Group.

5.The United States, in its sole discretion, shall have the right to determine on a case-by-case basis whether to provide Prclearance service to any irregular or *ad hoc* flights during mutually agreed upon normal hours of operation when there has been insufficient coordination with the United States.

6.The United States shall have the right to determine on a case-by-case basis whether to provide Prclearance service to flights outside mutually agreed upon normal hours of operation.