

Article Seeking Discussion/Debate on Alleged EASA Pilot Licensing Requirements Changes Which

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Came Into Effect On 20th June 2022

Written by Kevin Swords

Section 1 – The alleged current position

On March 20th, 2022 – “Flying in Ireland” online magazine published the following article:- [Click Here](#)

Extract from the Article:-

“Squawk 7000 – EASA Pilot Licencing Requirements Changes Coming into Effect 20th June 2022”

“Pilots holding a pilot licence and associated medical certificate issued by a third country (non-EU country) involved in the non-commercial (VFR, private, etc.) operation of aircraft registered in Ireland are currently permitted to fly in Ireland without any further formality*. The same holds true while flying aircraft registered in non-EU countries where that country permits it e.g. FAA allow holders of a foreign licence to fly privately in the country of issue. However, for pilots residing in the EU, this is due to change from 20th June 2022.

From 20th June 2022, any pilot who resides in the EU must hold an EASA Part FCL licence when flying any aircraft other than those defined in Annex I of the EU Basic Regulation (Regulation (EU) 2018/1139) e.g. gyroplanes, ex-military, homebuilt and certain historic aircraft, and microlight aeroplanes.

Here, we will explore some of the changes and give you links to the relevant legislation. It's impossible to analyse every scenario but this article should give you the highlights of how these changes will affect you flying legally in Ireland. If you need an EASA Part FCL licence by 20th June 2022, contact an ATO/DTO like Fun Fly Aerosports (www.funfly.ie).

What's changing?

Start date: September 23, 2023

End date: September 29, 2023

Time: 4:00 pm - 6:00 pm

Location: Tullamore

Manage consent

Shannon Aviation Museum Talk – Irish Air Corps – Heli 60

Date: October 14, 2023

Time: 1:00 pm

Location: Shannon Aviation Museum

Future of Women in Aviation 2023

Date: October 17, 2023

Time: 10:00 am - 12:00 pm

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After 20th June 2022, any pilot resident in the EU, flying an aircraft, wheresoever registered, must hold an EASA Part FCL licence. This doesn't apply to Annex I aircraft which are not subject to the EASA Regulations.

Is this likely to be extended? No, it will not be extended.

Ireland, and some other EU Member States, have been availing of a derogation permitted under Article 12(4) of EU Reg. 1178/2011 {Author's note – See Extract at Appendix X}, which has regularly been extended by the EU whilst awaiting the entry into force of the licencing annex to the EU-USA BASA. As that Annex, and the associated Technical Implementation Procedures – Licensing (TIP-L), are now in force, the EU will not extend the exemption further.

May I fly an N registered aircraft in Ireland on an FAA licence?

A pilot resident in the EU must hold an EASA Part FCL licence to fly in Ireland. There may be additional requirements to meet the FAA's regulations, but to fly in Ireland legally from 20th June 2022 – you must hold an EASA Part FCL licence. To fly the aircraft outside of Ireland, you must hold an FAA licence also. A visiting FAA licence holder flying an N registered aircraft does not have to hold an EASA Part FCL licence.”

END OF EXTRACT

Section 2 – Further Action by the IAA

Comment: In fairness to “Flying in Ireland” magazine, they were accurately reporting the substance of an Aeronautical Notice No. P.28, ISSUE 04, Date 28.01.2021 – published by the Irish Aviation Authority (IAA) – Title – “DEROGATION FROM CERTAIN REQUIREMENTS OF THE AIRCREW REGULATION WITH REGARD TO RECOGNITION OF Third COUNTRY LICENCES” (refer Appendices 1 and 4 beneath).

(Aero Notice available at weblink:

https://www.iaa.ie/docs/default-source/publications/aeronautical-notices/p—personnel-licensing/derogation-from-certain-requirements-of-the-aircrew-regulation.pdf?sfvrsn=1c4803f3_14

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The IAA also published Personnel Licensing Advisory Memorandum (PLAM) No. 036, Revision 01, Area ACW, Date 15.11.2022, TITLE: "END OF DEROGATION PROVIDED UNDER AERONAUTICAL NOTICE P28" (refer Appendices 1 and 4 beneath)

(PLAM available at weblink –

[https://www.iaa.ie/docs/default-source/publications/advisory-memoranda/personnel-licensing-advisory-memoranda-\(plam\)/end-of-derogation-period-provided-under-aeronautical-notice-p28.pdf?sfvrsn=a64615f3_7](https://www.iaa.ie/docs/default-source/publications/advisory-memoranda/personnel-licensing-advisory-memoranda-(plam)/end-of-derogation-period-provided-under-aeronautical-notice-p28.pdf?sfvrsn=a64615f3_7)

IAA had previously issued –PLAM. No. 031- which advised pilots on methods of obtaining a conversion of an FAA PPL or an ICAO-compliant Third Country PPL – Title: "Procedures for the Issuance of an EU Part-FCL Private Pilot Licence, Instrument Rating and/or Night Rating on the Basis of an FAA Pilot Certificate and/or Instrument Rating"

(PLAM available at weblink –

[https://www.iaa.ie/docs/default-source/publications/advisory-memoranda/personnel-licensing-advisory-memoranda-\(plam\)/procedures-for-issuance-of-an-eu-part-fcl-private-pilot-licence-and-certain-ratings-on-the-basis-of-an-faa-pilot-certificate-and-or-instrument-rating.pdf?sfvrsn=cff16f3_6](https://www.iaa.ie/docs/default-source/publications/advisory-memoranda/personnel-licensing-advisory-memoranda-(plam)/procedures-for-issuance-of-an-eu-part-fcl-private-pilot-licence-and-certain-ratings-on-the-basis-of-an-faa-pilot-certificate-and-or-instrument-rating.pdf?sfvrsn=cff16f3_6)

Section 3 – The Argument That A Pilot Flying An Aircraft Registered In A Third Country Needs Only To Hold A Pilot Licence Or Validation (Of Another Country's Licence) Issued By That Third Country of Registration.

Consider the Extracts (below) from the ICAO Convention on International Civil Aviation (also known as the Chicago Convention) which sets out the world aviation rules (known as "SARPS" – Standards and Recommended Practices). (Also Refer Appendix 6 below)



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Extracts – Articles 32 and 33:-

“Article 32 – Licences of personnel”

“a) The pilot of every aircraft and the other members of the operating crew of every aircraft engaged in international navigation shall be provided with certificates of competency and licences issued or rendered valid by the State in which the aircraft is registered.”

“b) Each contracting State reserves the right to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to any of its nationals by another contracting State.”

“Article 33 – Recognition of certificates and licences”

“Certificates of airworthiness and certificates of competency and licences issued or rendered valid by the contracting State in which the aircraft is registered, shall be recognised as valid by the other contracting States, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to this Convention.”

(Note: The standards for pilot Licences are set out in the Annex to the ICAO Convention – “ICAO Annex 1 – Personnel Licensing”. All EASA pilot Licences (with the exception of the EASA LAPL Licence) are required by EASA Regulations to be compliant with ICAO Standards).

Argument Part 1: Where, for instance, a USA N-registered aircraft is flown anywhere in the world by a pilot holding the appropriate USA FAA pilot licence, such pilot is perfectly in compliance with ICAO standards. If it is said that, when in the EU, such pilot needs, in addition to his FAA Licence, an equivalent EASA Licence as well, then this would effectively represent constructive refusal of recognition of his USA FAA Licence which would, in turn, be a contravention of the ICAO Convention. It will be shown hereunder that such contravention of the ICAO Convention is also prohibited by the EASA “Basic” Regulation (i.e., Regulation (EU) 2018/1139 – the ‘master’ Regulation which overrides any subservient EASA Regulations (which are also known as “IRs” – Implementing Rules) including Part-FCL [Flight Crew Licensing] of EASA Regulation 1178/2012). This obligation on EU Member States is contained in Article 4, paragraph 1., subparagraph (h), shown below-

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Extract – Regulation (EU) 2018/1139:-

“Article 4 – Principles For Measures Under This Regulation”

“1. When taking measures under this Regulation the Commission, the Agency and the Member States shall:

[Note: subparagraphs (a) –(g) not relevant]

(h) take into account the international rights and obligations in the field of civil aviation of the Union and of the Member States, including those under the Chicago Convention.”

Argument Part 2(a): Once the derogation from Article 2, paragraph 1. , subparagraph (b), sub-subparagraph (ii) has been terminated, there is no doubt that EASA law applies to the Third Country aircraft and aircraft operators who (quote) are “established, residing or with a principal place of business in the territory” of the EU. However, this appears to give rise to the (I believe mistaken) interpretation that you can have, for instance, an N-registered Cessna 172 operated by two pilots, both of whom have Irish nationality (by their Passports) and both of whom are holders of an appropriate USA FAA PPL(A), but that one of them who has residence in Ireland must (allegedly) hold an EASA PPL in addition to his FAA PPL in order to fly the Cessna, while the other, who is resident in a Third Country, does not require such EASA PPL to fly the same Cessna aircraft. This amounts to the frankly ludicrous situation whereby a pilot’s liability to hold a licence (under peril of committing a criminal offence) is determined by his country of residence? This is not supported by any law – the requirement to hold a licence is, per the ICAO Convention (quoted above), determined by the state of registration of the aircraft. It is true (per Article 32 above) that an ICAO Contracting State (quote) “reserves the right to refuse to recognise, for the purpose of flight above its own territory, licenses granted to any of its nationals by another contracting State”. This is an enabling power for contracting States (for whatever good safety reason) to ban the use of a foreign licence by one of its nationals (i.e. its passport holder, not a resident of that state) in its own airspace only. Ireland has not enacted any general law under the aforementioned power to apply a general ban to all of its nationals from using Third Country pilot Licences in Irish airspace. Neither can the EU, which is not an ICAO contracting state in its own right, use this power to prevent the proper use of Third Country pilots licences by nationals of EU Member States.

Argument Part 2(b): In the above debate, it is worth holding in mind the EASA definition (refer Appendices 2 and 7 below) of the term “aircraft operator” which is that it (quote) “ means any legal or



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natural person operating or proposing to operate one or more aircraft;”. It seems that there is a propensity, in the case of light private aircraft, to regard the pilot thereof to be the “aircraft operator”, while in the case of a large heavy multi-pilot aircraft engaged in Commercial Air Transport (CAT), the airline company (AOC holder) is the “aircraft operator”. It should be remembered that, in both cases, the “aircraft operator” may be a legal entity – which is not, of course, capable of holding a pilot licence (which Licence may only, of course, be issued to a natural person). This is mentioned because the “country of residence of the aircraft operator” is sometimes conflated and confused as determining a pilot licensing requirement.

Argument Part 2(c): I have heard it represented that the following provision of the EASA Basic Regulation drives the alleged legal requirement for pilots of Third Country aircraft to hold EASA Licences (see Appendix 3 below). In Regulation (EU) 2018/1139, Chapter III – “Substantive Requirements”, Section II – “Aircrew”, Article 20 – “Essential Requirements”, provides as follows :-

“Article 20 – Essential Requirements

Pilots and cabin crew involved in the operation of aircraft referred to in point (b) of Article 2(1), other than unmanned aircraft, as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of those pilots and cabin crew, shall comply with the essential requirements set out in Annex IV.”

While Article 21 continues –

“Article 21 – Pilots

1. Pilots shall be required to hold a pilot licence and a pilot medical certificate appropriate to the operation to be performed, except foretc.”

While it is true that the above provisions do apply to Third Country Licensed pilots flying within the EU, it does not mean that such pilots must hold an EASA pilot Licence. An examination of the “essential requirements set out in Annex IV” shows that, substantively, Annex IV merely contains a summary of the normal technical requirements for the issue of a pilot Licence (Theoretical knowledge, demonstration of practical skill, Language Proficiency, Experience Requirements, Medical Fitness etc.). These are, essentially, the same requirements that are set out in the technical requirements for the issue of a pilot Licence as set out in ICAO Annex I – Personnel Licensing. So, the Third Country Licensed pilots

do meet the “essential requirements set out in Annex IV” by virtue of holding an ICAO-compliant Licence. No more is required and the actual holding of an EASA pilot Licence is not thereby mandated.

Argument Part 2(d): (Supplementary Information Note): The principal purpose of Aeronautical Notice No. P.28 was to allow the continued use of Article 5, paragraph (10) of the Irish Aviation Authority (Personnel Licensing) Order (S.I. 333 of 2000) which automatically “deemed” (i.e. without the need for any application for the Certificate of Validation) the validation of the PPL privileges of any foreign-issued ICAO Annex 1 compliant pilot Licence. This facility was considered beneficial to facilitate private short-term VFR tourism flying of light aircraft within Ireland. This facilitation had been allowed in Ireland since the 1950s and was fully compliant with ICAO Annex 1 recommendation at paragraph 1.2.2.3 and accompanying note (refer Appendix 6 below). The automatic validation of PPL privileges is not a feature of EASA Regulation (which leans more to regulated Licence conversion terms or those agreed by bilateral air safety agreements – such as the BASA with the USA FAA).

Argument Part 2(e): (Supplementary Information Note 2) : Incidentally, Article 5 of the ICAO Convention (refer Appendix 5 below) provides that aircraft not engaged in scheduled international air services shall have the right to make flights into or in transit non-stop across the territory of a contracting State and to make stops for non-traffic purposes without the necessity of obtaining prior permission. In this context, could it be argued that the alleged requirement to acquire an EASA licence additional to the already held Third Country Licence constitutes a “necessity of obtaining prior permission” and thereby contravenes the said Article 5 (and also contravenes the EASA Basic Regulation requiring compliance by Member States with their obligations under the ICAO Convention).

Section 4 – Final Summary Warning and Disclaimer by the Author of this Article

1. This article has been written to stimulate debate on the question of whether or not two licences (i.e., an additional EASA Licence) must be held by a Third Country licensed pilot who is resident within the EU and flying in Third Country registered aircraft within the airspace of an EU Member State.
2. The author has no formal legal qualification (e.g., barrister or solicitor) and depends for his expertise on his acquisition of knowledge of aviation law acquired while formerly employed by a civil aviation authority.

3. The author accepts no liability (civil, criminal or otherwise) for compliance with aviation law (or failure to do so) by any pilot reading this article and advises such pilot to read the applicable aviation laws themselves and to refer, if necessary, to professional legal opinion or to their relevant civil aviation authority, as appropriate.

4. The author will attempt to respond to any serious enquiries about this article if such are made through the medium of the online "Flying in Ireland" magazine. However, it is requested that any such enquiries are based on production of quoted relevant aviation law and not reported hearsay opinions.

Appendix 1

Extract – Easy Access Rules for the Basic Regulation (Regulation (EU) 2018/1139)

"Article 2 – Scope

1. This Regulation shall apply to:

(a) the design and production of products, parts and equipment to control aircraft remotely by a natural or legal person under the oversight of the Agency or a Member State, to the extent not covered by point (b);

(b) the design, production, maintenance and operation of aircraft, as well as their engines, propellers, parts, non-installed equipment and equipment to control aircraft remotely, where the aircraft is or will be:

(i) registered in a Member State, unless and to the extent that the Member State has transferred its responsibilities pursuant to the Chicago Convention to a third country and the aircraft is operated by a third country aircraft operator;

(ii) registered in a third country and operated by an aircraft operator established, residing or with a principal place of business in the territory to which the Treaties apply;

(iii) an unmanned aircraft, that is registered neither in a Member State nor in a third country and that is operated within the territory to which the Treaties apply by an aircraft operator established, residing or

with a principal place of business within that territory;

(c) the operation of aircraft into, within, or out of the territory to which the Treaties apply by a third country aircraft operator;”

Appendix 2

Extract – Easy Access Rules for the Basic Regulation (Regulation (EU) 2018/1139)

“ARTICLE 3 – DEFINITIONS

(13) ‘aircraft operator’ means any legal or natural person operating or proposing to operate one or more aircraft;”

Appendix 3

Easy Access Rules for the Basic Regulation (Regulation (EU) 2018/1139)

“SECTION II – AIRCREW

ARTICLE 20 – ESSENTIAL REQUIREMENTS

Pilots and cabin crew involved in the operation of aircraft referred to in point (b) of Article 2(1), other than unmanned aircraft, as well as flight simulation training devices, persons and organisations involved in the training, testing, checking or medical assessment of those pilots and cabin crew, shall comply with the essential requirements set out in Annex IV.”

Appendix 4

Extract – Easy Access Rules for Aircrew (Regulation (EU) No 1178/2011)

“Article 12 — Entry into force and application (of Commission Regulation (EU) No 1178/2011)

(As amended by Regulation (EU) 2020/2193)

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union. It shall apply from 8 April 2012.

[Note sections 2. [deleted] and 3. [deleted]]

4. By way of derogation from paragraph 1, Member States may decide not to apply the provisions of this Regulation until 20 June 2022, to pilots holding a licence and associated medical certificate issued by a third country involved in the non-commercial operation of aircraft as specified in Article 2(1)(b), points (i) or (ii), of Regulation (EU) 2018/1139. Member States shall make those decisions publicly available.”

Appendix 5

ICAO Chicago Convention – Chapter II – FLIGHT OVER TERRITORY OF CONTRACTING STATES

“Article 5 – Right of non-scheduled flight

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory, and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.”

Appendix 6

ICAO Annex 1 — Personnel Licensing

International Standards and Recommended Practices (SARPS)

“Chapter 1. Definitions and General Rules Concerning Licences

1.2 General rules concerning licences

1.2.1 Authority to act as a flight crew member

A person shall not act as a flight crew member of an aircraft unless a valid licence is held showing compliance with the specifications of this Annex and appropriate to the duties to be performed by that person. The licence shall have been issued by the State of Registry of that aircraft or by any other Contracting State and rendered valid by the State of Registry of that aircraft.”

“1.2.2 Method of rendering a licence valid

1.2.2.3 Recommendation — *A pilot licence issued by a Contracting State should be rendered valid by other Contracting States for use in private flights.*

Note.— Contracting States which, without formality, render valid a licence issued by another Contracting State for use in private flights are encouraged to notify this facility in their Aeronautical Information Publications.”

Appendix 7

Easy Access Rules for the Basic Regulation (Regulation (EU) 2018/1139)

Article 3 – Definitions

‘aircraft operator’ means any legal or natural person operating or proposing to operate one or more aircraft;

But see also –

Irish National law definitions (from S.I. Orders)

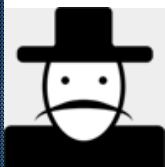
“operator”, in relation to an aircraft, means a person engaged or proposing to engage in the operation of an aircraft and who is for the time being responsible for the management of the aircraft;

Pilot-in-command – The pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight.

Pilot (to) –To manipulate the flight controls of an aircraft during flight time.

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