



# Air Travel Reserve Fund Act 1975

## 1975 CHAPTER 36

An Act to make provision for establishing a fund from which payments may be made in certain cases in respect of losses or liabilities incurred by customers of air travel organisers in consequence of the inability of the air travel organisers to meet their financial commitments in respect of certain descriptions of travel contracts, and for establishing an agency to hold, manage and apply the fund; to provide for requiring contributions from air travel organisers for the purposes of the fund; to provide for loans to the agency by the Secretary of State; and for purposes connected with the matters aforesaid. [22nd May 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 The Air Travel Reserve Fund Agency**

- (1) There shall be a body corporate, to be called the Air Travel Reserve Fund Agency (hereafter in this Act referred to as " the Agency ").
- (2) The functions of the Agency shall be to hold, manage and apply, in accordance with the provisions of this Act and any rules made by the Civil Aviation Authority (hereafter in this Act referred to as " the Authority ") under section 3 below, any sums paid or lent to the Agency under or by virtue of this Act; and the assets for the time being representing any sums so paid or lent to the Agency shall constitute a fund to be known as the Air Travel Reserve Fund (hereafter in this Act referred to as " the Fund ").
- (3) The Agency shall consist of such number of persons appointed by the Secretary of State, after consultation with the Authority, to be members thereof as may appear to the Secretary of State to be appropriate; and the Secretary of State shall appoint one member to be the chairman of the Agency.
- (4) The persons appointed as members of the Agency shall include—
  - (a) persons who are members or officers of the Authority; and

- (b) persons appearing to the Secretary of State to be representative of the interests of persons engaged in the United Kingdom in the provision of travel facilities to members of the public ;

and the Secretary of State shall also ensure, through the exercise of his power of appointment in relation to the membership of the Agency, that the interests of members of the public using travel facilities provided by persons so engaged are specially represented on the Agency.

- (5) The person appointed chairman of the Agency shall be a person who is neither—
  - (a) a member of the Authority or an officer of the Authority or of the Department of Trade, nor
  - (b) in any way associated by way of business with persons engaged in the provision of travel facilities as mentioned in subsection (4)(b) above.
- (6) The provisions of the Schedule to this Act shall have effect with respect to the Agency.

## **2 Limits on the application of the Air Travel Reserve Fund**

- (1) Subject to the following provisions of this section and any rules made by the Authority under section 3 below, the Fund may be applied in making payments to or for the benefit of customers of air travel organisers in respect of losses or liabilities incurred by them in connection with overseas air travel contracts to which this section applies or overseas surface travel contracts.
- (2) A person is a customer of an air travel organiser within the meaning of this section if he has made any payment to an air travel organiser under or with a view to entering into a contract with him; and for the purposes of this section a loss or liability incurred by a customer of an air travel organiser is a loss or liability incurred in connection with a contract of any description mentioned in subsection (1) above if—
  - (a) it is a loss incurred in respect of any payment made by the customer to the air travel organiser under or in contemplation of a contract of that description; or
  - (b) it is a loss or (as the case may be) a liability incurred in consequence of a breach by the air travel organiser of any of his obligations towards the customer under a contract of that description.
- (3) Subsection (1) above does not apply to losses or liabilities incurred in connection with a contract of any description mentioned in that subsection unless—
  - (a) the losses or liabilities were incurred in consequence of the inability of the air travel organiser to meet his financial commitments under or in respect of contracts of that description ; and
  - (b) the time for performance under the contract fell, or would if the contract had been concluded have fallen, on or after 1st April 1974.
- (4) Subsection (1) above does not apply to losses or liabilities incurred in connection with an overseas air travel contract unless—
  - (a) the air travel organiser in question held an air travel organiser's licence at the time of booking; or
  - (b) the time for performance under the contract fell, or would if the contract had been concluded have fallen, before 6th February 1975.
- (5) Subsection (1) above does not apply to losses or liabilities incurred in connection with an overseas surface travel contract unless—

- (a) the air travel organiser in question held an air travel organiser's licence at the time of booking; and
- (b) the time for performance under the contract fell, or would if the contract had been concluded have fallen, before 6th February 1975.

(6) Where—

- (a) losses or liabilities are incurred by a customer of an air travel organiser in connection with an overseas air travel contract to which this section applies ; and
- (b) at the time of booking there was in force, in accordance with any requirements then applicable to the air travel organiser by virtue of any regulations made under section 26 of the Civil Aviation Act 1971, any bond or other security provided or procured by the air travel organiser for the protection of his customers in the event of his being unable to carry out his obligations towards them;

the losses or liabilities in question shall be treated for the purposes of subsection (3) (a) above as having been incurred in consequence of the inability of the air travel organiser to meet his financial commitments under or in respect of overseas air travel contracts to which this section applies if, since that time, the money due under that bond or security, or under any bond or other security provided or procured by the air travel organiser in place of it, has become payable.

(7) Where any money is in fact available under any such bond or security as is mentioned in subsection (6) above for the purpose of compensating customers of the air travel organiser in question in respect of losses or liabilities incurred by them in connection with overseas air travel contracts to which this section applies—

- (a) no payment shall be made out of the Fund in any case falling within that subsection until all the money so available has been paid to or for the benefit of the customers in question or any class or description of those customers; and
- (b) subsection (1) above shall not apply to any losses or liabilities incurred by a customer in a case falling within subsection (6) above in so far as the customer has been reimbursed in respect thereof from any money paid under the bond or security.

(8) In this section—

" overseas air travel contract " means any contract for the provision of accommodation for the carriage of a party to the contract (with or without any other persons) on an overseas flight, whether the provision of accommodation in question is the sole subject-matter of the contract or is associated with the provision thereunder of any other services, accommodation or facilities;

" overseas surface travel contract " means any contract other than an overseas air travel contract, being a contract for the provision of accommodation for the carriage of a party to the contract (with or without any other persons), otherwise than on a flight, from a place in the United Kingdom to a place outside the United Kingdom, whether the provision of accommodation in question is the sole subject-matter of the contract or is associated with the provision thereunder of any other services, accommodation or facilities;

" time for performance " means, in relation to a contract of any description mentioned in subsection (1) above, the time for performance by the air travel organiser of any of his obligations under the contract with respect to the provision of any services, accommodation or facilities; and

" time of booking " means the time when a payment was first made by the customer to the air travel organiser under or in contemplation of the overseas air travel contract or the overseas surface travel contract in question.

(9) An overseas air travel contract is an overseas air travel contract to which this section applies where the accommodation on a flight to which the contract relates is to be made available in such circumstances that the making of it available constitutes an activity in respect of which the air travel organiser with whom the contract is or is to be made is required by virtue of any regulations for the time being in force under section 26 of the Civil Aviation Act 1971 to hold an air travel organiser's licence.

(10) In this Act—

" air travel organiser " means a person whose activities consist of or include activities in respect of which he is required, by virtue of any regulations for the time being in force under section 26 of the Civil Aviation Act 1971, to hold an air travel organiser's licence; and

" air travel organiser's licence " means a licence under regulations made under that section.

### **3 Rules for the payment of benefits from the Fund**

(1) Subject to the approval of the Secretary of State, the Authority shall make rules with respect to the application of the Fund in making payments under this Act to or for the benefit of customers of air travel organisers (hereafter in this section referred to as " benefit rules ").

(2) The benefit rules may define particular circumstances in which losses or liabilities which are (within the meaning of section 2 above) losses or liabilities incurred by a customer of an air travel organiser in connection with a contract of any description mentioned in subsection (1) of that section are to be treated for the purposes of subsection (3)(a) of that section as incurred in consequence of the inability of the air travel organiser to meet his financial commitments under or in respect of contracts of that description; but any circumstances so defined must be circumstances of a character indicating or suggesting financial difficulties, whether in general or as affecting in particular the performance by an air travel organiser of his obligations towards his customers under contracts of that description.

(3) The Agency shall not make payments out of the Fund in respect of losses or liabilities to which section 2(1) above applies except in cases where such payments are authorised by the benefit rules, which may (without prejudice to the making of any other provision thereby)—

(a) prescribe the conditions which must be satisfied before any such payments may be made in any cases or classes of case in which such payments are authorised by the rules;

(b) provide for determining the amount of any such payments in any such cases or classes of case; and

(c) provide for the terms on which and the manner in which any such payments may be made in any such cases or classes of case.

(4) It shall be the duty of the Agency to supply to any person on request, free of charge, a copy of the benefit rules for the time being in force ; and the Agency may from time to time take such steps as may appear to them to be appropriate for bringing the provisions of the benefit rules to the notice of the public.

#### **4 Contributions for the purposes of the Fund by air travel organisers**

- (1) Subject to subsections (2) and (3) below, regulations made under section 26 of the Civil Aviation Act 1971 may make such provision (including in particular any such provision as is mentioned in subsection (2) of that section) as the Secretary of State, after consultation with the Authority, considers appropriate for requiring contributions, at such a rate as may be specified in the regulations, to be made for the purposes of the Fund by air travel organisers to whom this section applies, or by any class of such air travel organisers.
- (2) The rate of contributions to be required from any air travel organiser under regulations made under section 26 by virtue of subsection (1) above shall be fixed as a percentage of the total amount of the sums paid or payable by customers of the air travel organiser in respect of services, accommodation or facilities provided under overseas air travel contracts to which section 2 above applies for persons for whom the air travel organiser has provided accommodation on overseas flights under the authority of an air travel organiser's licence during the period to which the contribution relates ; but the provision authorised to be made by subsection (1) above shall include—
  - (a) provision for requiring from air travel organisers to whom this section applies, in connection with the issue or variation or during the currency of an air travel organiser's licence, such provisional payments in respect of contributions which may thereafter become due under the regulations as the Authority may determine to be appropriate in any particular case; and
  - (b) provision for the manner in which any overpayment by way of a provisional payment so required is to be repaid or credited to the air travel organiser in question.
- (3) No regulations shall be made under section 26 by virtue of subsection (1) above unless a draft of the statutory instrument containing the regulations has been approved by a resolution of each House of Parliament.
- (4) Any sum due in respect of a contribution payable under regulations made under section 26 by virtue of this section may be recovered by the Authority in any court of competent jurisdiction.
- (5) The Authority shall from time to time pay over to the Agency an amount equal to the aggregate amount of the sums received by the Authority by virtue of this section and not previously accounted for by way of a payment under this subsection, less any expenses incurred by the Authority (and not previously deducted from a payment under this subsection) for the purpose of performing any of the functions conferred on it under or by virtue of this section.
- (6) An air travel organiser is an air travel organiser to whom this section applies if the activities in respect of which he is required to hold an air travel organiser's licence consist of or include (or will if a licence is granted to him consist of or include) making available (whether as principal or agent) accommodation for the carriage of persons on overseas flights.

#### **5 Loans to the Agency by the Secretary of State**

- (1) Subject to subsection (2) below, the Secretary of State may, out of money provided by Parliament, make loans to the Agency of such amount and on such terms as the Secretary of State may, with the approval of the Treasury, determine.

- (2) Loans made under this section shall not in the aggregate exceed £15 million, and no loan shall be made under this section after 30th September 1977.
- (3) Any loans made by the Secretary of State under this section shall be repaid by the Agency out of the Fund.
- (4) Any sums received by the Secretary of State in repayment of any loan made under this section shall be paid into the Consolidated Fund.

## **6 Power of the Secretary of State to dissolve the Agency and wind up the Fund**

The Secretary of State may at any time, after consultation with the Authority, the Agency, and persons appearing to him to be representative of the interests of persons engaged in the United Kingdom in the provision of air travel facilities to members of the public, by order provide for the dissolution of the Agency, the winding up of the Fund and the disposal of any assets then standing to the credit of the Fund.

## **7 Interpretation, supplementary and consequential provisions**

- (1) In this Act—
  - " the Agency " has the meaning given in section 1(1) above ;
  - " the Authority " has the meaning given in section 1(2) above;
  - " air travel organiser " and " air travel organiser's licence " have the meanings given in section 2(10) above;
  - " the Fund " has the meaning given in section 1(2) above ;
  - " overseas flight " means any flight between places one or both of which are situated outside the United Kingdom ;
 and expressions to which a meaning is given for the purposes of the Civil Aviation Act 1971 have the same meaning in this Act as in that Act.
- (2) Sections 3 and 9 of that Act (which provide for the general objectives of the Authority in exercising its functions in relation to civil aviation and for charges by the Authority in respect of the performance of its functions) do not apply in relation to the functions conferred on the Authority by this Act, but sections 63(1) and (4) and 66 of that Act (which make provision with respect to the power of the Secretary of State to make orders and regulations under that Act and the procedure for doing so and with respect to the application of the provisions of that Act to certain overseas territories) shall have effect as if the provisions of this Act were contained in that Act.
- (3) No statutory instrument of which a draft has been approved by a resolution of each House "of Parliament in accordance with section 4(3) above shall be subject to annulment in accordance with section 63(1) of the Civil Aviation Act 1971.

## **8 Citation and extent**

- (1) This Act may be cited as the Air Travel Reserve Fund Act 1975.
- (2) It is declared that this Act extends to Northern Ireland.

## SCHEDULE

Section 1(6).

## ADDITIONAL PROVISIONS WITH RESPECT TO THE AIR TRAVEL RESERVE FUND AGENCY

*Appointment, tenure and remuneration of members*

- 1 (1) Subject to the following provisions of this paragraph, the members of the Agency (including the chairman) shall hold and vacate office in accordance with the terms of their respective appointments.
- (2) A person may at any time resign his office as a member or as chairman by giving to the Secretary of State a notice in writing signed by that person and stating that he resigns that office.
- (3) If the Secretary of State is satisfied that a member has become bankrupt or made an arrangement with his creditors the Secretary of State may declare his office as a member to be vacant and shall notify the declaration in such manner as the Secretary of State thinks fit; and thereupon the office shall become vacant.
- (4) In the application of sub-paragraph (3) above to Scotland, for the words " a member has become bankrupt or made an arrangement with his creditors " there shall be substituted the words " sequestration of a member's estate has been awarded or that a member has made a trust deed for behoof of his creditors or a compensation contract " .
- 2 (1) Subject to sub-paragraph (2) below, the Agency shall pay to each member such remuneration and such travelling, subsistence or other allowances as the Agency may determine.
- (2) Any determination of the Agency with respect to the remuneration to be paid to any member shall be subject to the approval of the Secretary of State, and the Secretary of State shall not give his approval without the consent of the Minister for the Civil Service.

*Powers and procedure, etc.*

- 3 Subject to paragraph 4 below—
- (a) the Agency shall have power to do anything incidental to the proper performance of the functions conferred on them by or under this Act, and the members of the Agency shall have such powers and duties in relation to the performance of the functions of the Agency and matters incidental thereto as the Agency may from time to time determine; and
- (b) the Agency shall have power to regulate their own procedure, including the manner in which matters subject to the determination of the Agency are to be determined by or on behalf of the Agency.
- 4 The exercise by the Agency of their functions in relation to the management of the Fund shall be subject to any directions the Secretary of State may think fit to give to the Agency from time to time ; and directions given by the Secretary of State under this paragraph may in particular (but without prejudice to the generality of the preceding provision) confine any investments to be made by the Agency for the purposes of the Fund to investments of any particular class or description.

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*Status: This is the original version (as it was originally enacted).*

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- 5        The validity of any action taken by or on behalf of the Agency shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

*Instruments and contracts*

- 6        The fixing of the common seal of the Agency shall be authenticated by a member of the Agency or some other person authorised by the Agency to act for that purpose.
- 7        A document purporting to be duly executed under the seal of the Agency shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

*Expenses*

- 8        The expenses incurred by the Agency in the performance of their functions, and any remuneration or allowances paid to the members of the Agency, shall be paid out of the Fund.

*Accounts, Audit and Annual Report*

- 9        (1) It shall be the duty of the Agency—
- (a) to keep proper accounts and proper records in relation to the accounts; and
  - (b) to prepare in respect of each period of account a statement of accounts, in such form as the Secretary of State may direct with the approval of the Treasury, showing the state of the affairs and income and expenditure of the Agency.
- (2) The accounts of the Agency shall be audited in such manner as the Secretary of State may direct with the approval of the Treasury.
- (3) It shall be the duty of the Agency to make to the Secretary of State, as soon as possible after the end of each period of account, a report on the performance of their functions during that period, and to include in that report a copy of the statement of accounts prepared in respect of that period in accordance with sub-paragraph (1)(b) above and any report made by the auditors on the statement or on the accounts.
- (4) In this paragraph " period of account" means the period beginning with the date on which this Act is passed and ending with 31st March 1976 and any subsequent period of twelve months ending with the 31st March in any year.
- (5) The Secretary of State shall lay before each House of Parliament a copy of every report made to him in pursuance of this paragraph.