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OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 240

1998

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 27 of 1998: Aviation Amendment Act, 1998.

EXPLANATORY NOTE:

_____	Words underlined with a solid line indicate insertions in existing provisions.
[]	Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Aviation Act, 1962, so as to define certain expressions; to make further provision in respect of the appointment of the Director : Civil Aviation and of inspectors, authorized officers and authorized persons; to make other provision in respect of the Minister's power to make regulations; to empower the Director : Civil Aviation to issue technical standards for civil aviation; and to provide for matters incidental thereto.

(Signed by the President on 4 September 1998)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 1 of Act No. 74 of 1962, as amended by section 3 of Act No. 12 of 1965, section 1 of Act No. 83 of 1969 and section 1 of Act No. 10 of 1991

1. Section 1 of the Aviation Act, 1962 (hereafter referred to as the principal Act), is amended -

(a) by the insertion after the definition of "aircraft" of the following definitions:

" 'air navigation infrastructure' means infrastructure, including landing and air navigation aids and air traffic control systems, provided for the promotion of the safe, orderly and expeditious movement of air traffic, and, where applicable, any building or structure on or to which such infrastructure or part thereof is housed or attached, and includes the premises on which such infrastructure or part thereof is situated, whether or not such building, structure or premises are situated within the boundaries of an aerodrome;"

" 'air navigation service' means the planning, provision and maintenance of air navigation infrastructure;";

" 'air traffic service' means a flight information service, an alerting service, an air traffic advisory service and an air traffic control service consisting of an area control service, an approach control service or an aerodrome control service;";

" 'authorized officer' means an authorized officer designated in terms of section 5(2)(a)(i);" and

" 'authorized person' means an authorized person designated in terms of section 5(2)(a)(ii);";

- (b) by the insertion after the definition of "flight path" of the following definition :

" 'inspector' means an inspector designated in terms of section 5(2)(a)(i);";

- (c) by the substitution for the definition of "Minister" of the following definition:

" **'Minister'** means the Minister [**of Works, Transport and Communication**] responsible for Civil Aviation;"

- (d) by the insertion after the definition of "Minister" of the following definition:

" 'Ministry' means the Ministry responsible for Civil Aviation;";

- (e) by the insertion after the definition of "regulation" of the following definition:

" 'technical standard', in relation to civil aviation, means any standard, including any rule, requirement, method, specification, characteristic or procedure, issued by the Director in accordance

with section 22A(1) in respect of civil aircraft or aircraft components, or in respect of persons engaged in any civil aviation activity or in respect of civil aviation related services, facilities or equipment;"

Substitution of section 5 of Act No. 74 of 1962, as substituted by section 4 of Act No. 10 of 1991

2. The following section is substituted for section 5 of the principal Act :

"Director : Civil Aviation

5. (1) The Minister shall, upon such conditions as he or she may determine, but subject to subsection (3), appoint [subject to the laws on the public service] a person as Director : Civil Aviation, whose competency shall be relevant to the appointment concerned.

(2) The Director shall -

(a) designate one or more -

(i) officers or employees of the State in the service of the Ministry as inspectors or authorized officers; and

(ii) persons who are not in the service of the Ministry as inspectors or authorized persons,

and whose qualifications, powers and duties, and remuneration, if any, shall, subject to section 4(2) and (3), be prescribed by regulation; and

(b) have such powers and perform such duties as may be conferred upon or assigned to him or her by this Act or any other law.

(3) The Minister shall, before appointing the Director in terms of subsection (1), consult with the representatives of organizations, bodies or institutions approved, designated, certificated or licensed under this Act.

(4) The Minister may, out of moneys appropriated by Parliament for such purpose, remunerate or reimburse the Director, or any other person designated as an inspector or authorized officer in terms of subsection (2)(a), in respect of duties performed or expenses incurred by the director or such inspectors or authorized officers, as the case may be."

Amendment of section 19 of Act No. 74 of 1962

3. Section 19 of the principal Act is amended by the substitution for subsection (1) of the following subsection :

"(1) Any person who contravenes the provisions of, or commits an offence under, this Act or the Convention or the Transit Agreement, or who fails to comply with any such provision with which it is his or her duty to comply, shall, except where another penalty is specially provided, be liable on conviction to a fine not exceeding **[four hundred rand]** N\$ 50 000 or to imprisonment for a period not exceeding **[six months]** 5 years or to both such fine and such imprisonment."

Amendment of section 22 of Act No. 74 of 1962, as amended by section 5 of Act No. 12 of 1965, section 3 of Act No. 83 of 1969, section 25 of Act No. 62 of 1973 and section 13 of Act No. 10 of 1991

4. Section 22 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection :

"(1) The Minister may make regulations relating to -

(a) subject to section 3, the carrying out of, or the giving effect to, the Convention and the Transit Agreement;

- (b) the powers or duties of the Director, including the issue, amendment or withdrawal of technical standards for civil aviation, and the determination of the matters in respect of which such standards may be issued;
- (c) the qualifications, powers or duties of authorized officers, inspectors and authorized persons;
- (d) the designation of medical examiners for the purposes of this Act, including -
 - (i) the manner in which, and the person or persons by whom, such designation may be made;
 - (ii) the suspension or withdrawal of such designation;
 - (iii) the conditions, requirements or qualifications for such designation; and
 - (iv) the particulars to be contained in certificates issued by such medical examiners and the conditions or the requirements relating to the issue of such certificates;
- (e) the persons to be trained in first aid as contemplated in subparagraph (iv), and the designation of a body or institution to, for the purposes of this Act -
 - (i) exercise control over medical examinations or tests and over the persons conducting such examinations or tests;
 - (ii) determine standards for the examinations or the tests, and for the training of the persons, referred to in subparagraph (i);

- (iii) issue, amend, suspend or withdraw medical certificates and keep all records, registers, books or documents regarding the examinations or tests referred to in subparagraph (i); and
 - (iv) advise the Director on any matter relating to the examinations, tests or persons referred to in subparagraph (i), or relating to the training in first aid of persons prescribed by regulation;
 - (f) training courses, tests or verifications of skill or proficiency, or the persons conducting such courses, and the designation of a body or institution to, for the purposes of this Act -
 - (i) exercise control over such training courses, tests or verifications of skill or proficiency, and over the persons conducting such courses, tests or verifications;
 - (ii) determine standards for such courses, tests or verifications, and for the training of such persons;
 - (iii) issue or confirm certificates for the successful completion of such courses, tests or verifications, to suspend or withdraw any certificate so issued, and to keep all records, registers, books or documents regarding such courses, tests, verifications or persons; and
 - (iv) advise the Director on any matter relating to such courses, tests, verifications or persons;
 - (g) aviation recreational activities, and the designation of a body or institution to, for the purposes of this Act -
 - (i) exercise control over such aviation recreational activities;

- (ii) determine standards for the airworthiness or operation of aircraft engaged in such aviation recreational activities; and
 - (iii) advise the Director on any matter relating to the airworthiness or the operation of aircraft engaged in, and on the licensing of persons involved in, such aviation recreational activities;
- (h) the designation of a body or institution to, for the purposes of this Act -
 - (i) reduce the risk of aviation accidents or incidents; and
 - (ii) advise the Director on any matter relating to the reduction of the risk of aviation accidents or incidents;
- (i) subject to section 12, the reporting or the investigation of aviation accidents or incidents, including -
 - (i) the person or persons by whom or to whom such accidents or incidents shall be reported;
 - (ii) the procedures to be followed in reporting or in investigating such accidents or incidents;
 - (iii) the prohibition, pending an investigation, of access to or interference with any aircraft involved in an accident or incident, and the granting of an authorization to any person, in so far as it may be necessary for the purposes of the investigation, to have access to such aircraft, to examine or to remove such aircraft, to take steps for the preservation thereof or to deal therewith in any other manner, or the imposition of such a

prohibition or the granting of such an authorisation by any person, and the prescribing of the person or persons who may impose such a prohibition or may grant such an authorisation; and

- (iv) the investigation of any accident or incident, other than an accident referred to in section 12, reported in respect of the provision of any air traffic service, and the person or persons who may conduct, and the procedures to be followed at, such an investigation;
- (j) the classification or defining as dangerous goods of any goods or category of goods, and the exercising of control over the conveyance in an aircraft, or the consigning or acceptance by any person, of any dangerous goods so classified or defined, including -
 - (i) the prohibition of the conveyance; or
 - (ii) the issuing of licences or certificates to persons engaged in the consigning or acceptance,of such dangerous goods;
- (k) the requirements to be complied with or the steps to be taken in connection with the conveyance in an aircraft of any animal as defined in section 1 of the Animals Protection Act, 1962 (Act No. 71 of 1962), or any fish as defined in section 1 of the Sea Fisheries Act, 1992 (Act No. 29 of 1992), including the prohibition of the conveyance of any animal or fish prescribed by regulation, or any part thereof, as the case may be;
- (l) the delimitation, designation or restriction of airspace, or the purpose for which such airspace may be used, including -

- (i) the designation of any airspace for any purpose prescribed by regulation;
 - (ii) the airspace within which aircraft are restricted or prohibited from flying, and the extent of such restriction or prohibition;
 - (iii) the conditions under which, the airspace within which or the aerodromes at or from which aircraft entering Namibia shall land, or aircraft leaving Namibia shall depart, as the case may be; and
 - (iv) the provision of measures to restrict or prohibit aircraft from flying within any airspace in contravention of any such restriction or prohibition or from entering or leaving Namibia in contravention of any provision of this Act;
- (m) the general operating rules, flight rules and air traffic rules in respect of civil aviation, including -
- (i) the terminology, definitions, abbreviations and units of measurement to be used;
 - (ii) the identification, classification or registration of aircraft;
 - (iii) the identification, licensing or certification of persons engaged in any civil aviation activity;
 - (iv) the prevention of any nuisance arising from air navigation, aircraft factories, aerodromes or other aircraft establishments, including the prevention of any nuisance due to noise or vibration originating from the operation of machinery in aircraft at or above aerodromes, whether by the installation in aircraft or at aerodromes of means for the

- prevention of such noise or vibration, or any other form or manner of prevention;
- (v) the approval or, where appropriate, the design of let down and missed approach procedures;
 - (vi) for the purposes of aviation safety, the safety and security of persons and property in connection with the operation of aircraft, including the conditions under which aircraft shall be operated or any act may be performed in or from an aircraft, and the maximum hours of duty which may be performed by flight crew, cabin crew or air traffic service personnel during any specific period of time;
 - (vii) the order in which aircraft may be requisitioned and flight crew may be called out under section 17(1), the conducting or the co-ordination of any air search and rescue operations and the rate at which compensation is to be paid by the State in respect of any such requisitioning or calling out;
 - (viii) the signals or other communications which may or shall be conveyed by or to any aircraft, or any person therein, and the acknowledgment of, or the compliance with, such signals or communications;
 - (ix) the co-ordination of frequency allocations in bands of the radio frequency spectrum allocated for civil aviation use;
 - (x) the determination of standards for the maintenance of any air navigation infrastructure; and
 - (xi) the flight calibration of any air navigation infrastructure;

- (n) the use, licensing, inspection or management of aerodromes, including -
- (i) the prevention of interference with aerodromes and other civil aviation related facilities;
 - (ii) the prohibition or the regulation of the use of unlicensed aerodromes;
 - (iii) the approval for the siting of any air navigation infrastructure which is not situated at an aerodrome;
 - (iv) the certification of categories of operations at aerodromes;
 - (v) the access to aerodromes or other places where aircraft have landed, or the access to civil aircraft factories for the purpose of the inspection of the work done therein;
 - (vi) the prohibition or the regulation of the erection or the allowing to come into existence of any obstruction -
 - (aa) exceeding the height; and
 - (bb) within the distance from any aerodrome, prescribed by regulation, including the prescribing of such height or distance, as the case may be;
 - (vii) the illumination and marking of obstructions -
 - (aa) which are situated at, or within the distance prescribed by regulation from, any aerodrome;

- (bb) which exceed the height prescribed by regulation; or
- (cc) which, according to criteria prescribed by regulation, constitute a danger to aircraft, including the prescribing of such distance, height or criteria, as the case may be;
- (viii) the prohibition of, or the control over, any light in any area surrounding any aerodrome, and which may affect or influence air traffic or navigation;
- (ix) the registers or records to be kept at licensed aerodromes and the manner in which they shall be kept;
- (x) the technical, operational, security and safety standards in respect of licensed aerodromes; and
- (xi) the prohibition of smoking at an aerodrome or any part thereof;
- (o) the provision or organization of air traffic or navigation services, aviation meteorological, security or communication services and any other civil aviation related services, including the licensing or the certification of aircraft design, manufacturing or maintenance organizations, or aviation training organizations, and the designation of aviation meteorological organizations;
- (p) the determination of standards, specifications or requirements in respect of civil aircraft or aircraft components, or in respect of persons engaged in any civil aviation activity or civil aviation related services, facilities or equipment, including -

- (i) for the purposes of ensuring the safe operation of aircraft, the prohibition or regulation of the use in aircraft or aero engines of parts, instruments, accessories or other materials which do not conform to the specifications or standards prescribed by regulation, including the prescribing of such specifications or standards;
 - (ii) the requirements relating to the airworthiness, design, performance, operation or maintenance of aircraft, aircraft components or aircraft equipment and the specifications for materials used, or the standards or the processes which shall be applied, in the construction of aircraft, aircraft components or aircraft equipment; and
 - (iii) the determination of standards for the training, grading, licensing or certification of persons engaged in any such activity;
- (q) the manner in which, or the conditions under which, any licence or certificate required by or under this Act, the Convention or the Transit Agreement shall be issued, renewed or confirmed, including -
- (i) the courses, examinations, inspections, tests or verifications which shall be completed, passed or complied with; and
 - (ii) the form, custody, production, cancellation, suspension, endorsement or surrender of any such licence or certificate;
- (r) the publication of aeronautical information;
- (s) the manuals, registers, records or other documents to be

kept for the purposes of this Act, the Convention or the Transit Agreement, the form thereof and the manner in which they shall be kept;

- (t) the prohibition of certain acts relating to civil aviation at or above or in the vicinity of aerodromes;
 - (u) subject to subsection (3) -
 - (i) the fees to be paid in respect of prescribed matters;
 - (ii) the manner in which fees prescribed by regulation are to be determined; and
 - (iii) the recovery of expenditure incurred in connection with the application of this Act;
 - (v) the exemption from any of the provisions of this Act, the Convention or the Transit Agreement of any aircraft operated for experimental purposes, or of any other aircraft or of any person in or under the circumstances or conditions prescribed by regulation; and
 - (vi) in general, any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved, and the generality of this paragraph shall not be limited by the preceding paragraphs."; and
- (b) by the deletion of subsection (2).

Substitution of section 22A of Act No. 74 of 1962, as inserted by section 14 of Act No. 10 of 1991

5. The following section is substituted for section 22A of the principal Act :

"Technical standards for civil aviation

22A. (1) The Director may issue technical standards for civil aviation on such matters as may be prescribed by regulation.

(2) The manner in which any technical standard for civil aviation shall be issued, amended or withdrawn, and the procedure to be followed in respect of any such issue, amendment or withdrawal, shall be prescribed by regulation.

(3) Any person who contravenes or fails to comply with a provision of a technical standard shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$ 50 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) The Director may incorporate into a technical standard any international aviation standard or any amendment thereof, by mere reference to the title, number and year of issue of such standard or amendment or to any other particulars by which such standard or amendment is sufficiently identified, without quoting the text of the standard or amendment so incorporated.

(5) An officer or employee of the State in the Ministry designated by the Director shall keep in his or her office a copy of the complete text of each international aviation standard or each amendment thereof which has been incorporated into any technical standard in accordance with subsection (4).

(6) The officer or employee of the State referred to in subsection (5) shall, at the request in writing of any interested person -

- (a) make the copy of the standard and amendments referred to in that subsection available free of charge to such person for inspection; or

- (b) provide such person with a copy of the standard and amendments referred to in that subsection, subject to the payment by such person of an amount determined by the Director.

(7) When in any judicial proceedings the question arises whether any document contains the text of any international aviation standard or any amendment thereof which has been incorporated into any technical standard in accordance with subsection (4), any document purporting to be a statement by a person who in that statement alleges that he or she is an officer or employee of the State in the Ministry and that a particular document described in or attached to the statement contains such text shall, on its mere production at those proceedings by any person, be *prima facie* proof of the facts stated therein.

(8) For the purposes of this section, 'international aviation standard' means -

- (a) any international standard or recommended practice or procedure adopted by the International Civil Aviation Organization for the purposes of Article 37 of the Convention;
- (b) any standard, rule or requirement made or determined by any other contracting State of the International Civil Aviation Organization under any law; or
- (c) any other technical standard which is contained in a document which in the opinion of the Director is too extensive to be issued as physically forming part of the technical standards."

Short title and commencement

6. This Act shall be called the Aviation Amendment Act, 1998, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.
