

## AVIATION

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***Carriage by Air Act 17 of 1946***, as amended in South Africa to March 1978.

**Summary:** This Act gives effect to the Warsaw Convention that governs international air travel.

**Applicability to SWA:** Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”.

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(1)(a) of the transfer proclamation excluded section 5 of the Act (which deals with the ratification of amendments to the Warsaw Convention by the State President) from the operation of section 3(1) of the General Proclamation, meaning that the administration of this section was not transferred to SWA.

Section 3(2) of the transfer proclamation excluded the reference to “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and specified that it should be read to include SWA as well as South Africa.

The provisions of the Act relating to the National Transport Commission and the Civil Aviation Advisory Committee were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Carriage by Air Amendment Act 81 of 1979* -- which was not made expressly applicable to SWA.

**Amendments:** Act 14/1992 amends sections 1, 3, 5 and 7 and substitutes certain expressions to make the Act consistent with an independent Namibia, and to provide for the conversion of sums in francs into Namibian currency in respect of claims against carriers.

**Regulations:** See GN 265/1998 (GG 1982), which deals with the conversion of sums into francs in terms of section 3(7).

***Air Services Act 51 of 1949***, as amended in South Africa to March 1978.

**Summary:** This Act provides for the licensing and control of air carriers.

**Applicability to SWA:** Section 24 states “The provisions of this Act and any amendment thereof shall apply in respect of any air services provided by the Railway Administration, and shall also apply to the Territory of South West Africa”, which is

defined in section 1 to include “the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(1)(b) of the transfer proclamation excluded section 2(2) of the Act (which refers to bilateral agreements between South Africa and other countries) from the operation of section 3(1) of the General Proclamation, meaning that the reference to the “Government of the Republic” in this section was not to be construed as a reference to the Administrator-General. Section 3(1)(h) of the transfer proclamation excluded section 15 of the *Air Services Amendment Act 43 of 1973* from the operation of section 3(1) of the General Proclamation.

Section 3(2) of the transfer proclamation excluded the reference to the “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and provided that “Republic” should be deemed to include “the territory”.

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Transfer of Powers and Duties of the State President Act 97 of 1986* -- which was not made expressly applicable to SWA.

**Amendments:** Act 6/1991 amends the Act substantially to make it consistent with an independent Namibia (affecting sections 1, 2, 3, 4, 7, 8, 11, 13, 16, 17, 19, 20, 22, 24 and the substitution of certain words).

The Posts and Telecommunications Companies Establishment Act 17 of 1992 amends section 11.

Act 31/1998 amends sections 4, 9 and 11 and repeals section 10.

The Road Traffic and Transport Act 22 of 1999 amends section 1.

**Regulations:** Civil Air Services Regulations are contained in RSA GN R.449 of 20 March 1964, as amended by RSA GN R.1799 of 10 November 1967, GN 224/1995 (GG 1204) and GN 59/1998 (GG 1825).

**Application:** Visiting aircraft are excluded from the application of section 2(1) of the Act in terms of modifications set forth in GN 58/1998 (GG 1826).

### ***Aviation Act 74 of 1962***, as amended in South Africa to March 1978.

**Summary:** This Act gives effect to certain international conventions concerning aviation and regulates domestic flying.

**Applicability to SWA:** Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”.

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(2)(d) of the transfer proclamation excluded the references to the “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation and provided that “Republic” should be deemed to include “the territory”.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

**Amendments:** Sections 4 and 5 of the Executive Powers (Transport) Transfer Proclamation (AG 14/1978) amend the Act.

Act 10/1991 amends the Act substantially to make it consistent with an independent Namibia (affecting sections 1, 2, 3, 5, 6, *6bis*, 7, 9, 13, 15, 22, 22A, inserting section 16, repealing section 10 and substituting certain words and the long title).

The Liquor Act 6 of 1998 amends section 1 and *6bis*.

Act 27/1998, which was brought into operation by GG 273/1998 (GG 1993), amends sections 1, 5, 19, 22 and 22A.

**Regulations:** State Airport Regulations are contained in RSA GN R.1974 of 20 December 1963, as amended by-

- RSA GN R. 397 of 20 March 1964
- RSA GN R.2027 of 24 December 1965
- RSA GN R. 943 of 23 June 1967
- RSA GN R.1031 of 26 June 1970
- RSA GN R.2233 of 11 December 1970
- RSA GN R. 331 of 9 March 1973
- RSA GN R.1258 of 27 July 1973
- RSA GN R.1564 of 31 August 1973
- RSA GN R.1677 of 14 September 1973
- RSA GN R.2443 of 21 December 1973
- RSA GN R. 774 of 18 April 1975
- RSA GN R. 142 of 30 January 1976
- RSA GN R.1472 of 20 August 1976
- RSA GN R.2512 of 24 December 1976
- RSA GN R.2633 of 30 December 1977
- RSA GN R. 441 of 10 March 1978
- RSA GN 12 of 15 January 1988
- GN 223/1995 (GG 1204)
- GN 235/1997 (GG 1739)
- GN 61/1998 (GG 1825)
- GN 215/1998 (GG 1942)
- GN 255/1998 (GG 1972).

Air Navigation Regulations are contained in RSA GN R.141 of 30 January 1976, as amended by-

- RSA GN R.1283 of 23 July 1976
- RSA GN R.2380 of 18 November 1977
- GN 225/1995 (GG 1204)
- GN 60/1998 (GG 1825).

These are supplemented by Safety Directive No. DCA 97-1, published in General Notice 223/1997 (GG 1639), effective as from 1 April 1997.

Regulations Regarding the Investigation of Aircraft Accidents are contained in GN 82/2000 (GG 2298). These regulations replace RSA GN R. 120 of 26 January 1973.

Namibian Civil Aviation Regulations, 2001 are published in GN 1/2001 (GG 2467). These regulations, which came into force on 2 March 2001, cover the following topics:

- Procedures
- Aircraft
- Personnel
- Rules of the Air and General Operating Rules
- Certificated Aircraft Operators and Other Flight Operations
- Aerodromes and Heliports
- Organisations
- Air Traffic Services
- Aeronautical Information and Related Services
- Administration.

These regulations repeal Chapters 2-3, 6, 10-11, 12-16, 21-24 of the Air Navigation Regulations, 1976 (as amended), along with the portions of Chapters 1, 2, 3, 4, 5, 7, 8, 9 and 25 relating to pilots and to flight engineers. They also repeal the Rules of the Air, Air Traffic Services, Search and Rescue and Overflight Regulations, 1975 (RSA GN R. 1753 of 19 September 1975) and the Air Navigation Regulations, 1963 (RSA GN R.1779 of 1963, as amended by GN 11/1988 and GN 62/1998, GG 1825).

Regulations on Technical Standards relating to Cabin Crew Licensing are contained in GN 120/2002 (GG 2773), which came into force on 1 September 2002.

The following technical standards have been issued in terms of Regulation 11.03.5 of the Namibian Civil Aviation Regulations, 2001:

NAM-CAT-DO Design organisations for products and appliances	GN 50/2003 (GG 2939)
NAM-CATS-MORG Manufacturing Organisations	GN 51/2003 (GG 2939)
NAM-CATS-ARM Registration and marking	GN 52/2003 (GG 2939)
NAM-CATS-OPS 98 Operation of powered paragliders	GN 53/2003 (GG 2939)
NAM-CATS-MR Medical certification	GN 54/2003 (GG 2940)
NAM-CATS-OPS 100 Operation of gyroplanes	GN 55/2003 (GG 2941)
NAM-CATS-OPS 102 Operation of free balloons and airships	GN 56/2003 (GG 2941)
NAM-CATS-AMO Aircraft maintenance organisations	GN 57/2003 (GG 2941)
NAM-CATS-AH Licensing and operation of aerodromes and heliports	GN 55/2003 (GG 2941)
NAM-CAT-OPS 133 Helicopter external-load operations	GN 59/2003 (GG 2944)
NAM-CAT-OPS 105 Operation of parachutes	GN 60/2003 (GG 2944)
NAM-CAT-OPS 106 Operation of hang gliders	GN 61/2003 (GG 2944)
NAM-CAT-OPS 104 Operation of gliders	GN 62/2003 (GG 2944)
NAM-CATS-ARO Aviation recreation organisations	GN 63/2003 (GG 2944)
NAM-CATS-AIRS Aeronautical information services	GN 64/2003 (GG 2944)
NAM-CAT-DG Conveyance of dangerous goods	GN 65/2003 (GG 2944)
NAM-CAT-OPS 103 Operation of microlight aeroplanes	GN 66/2003 (GG 2944)
NAM-CATS-GMR General maintenance rules	GN 67/2003 (GG 2945)
NAM-CATS-ENVIRO Noise certification	GN 68/2003 (GG 2945)
NAM-CATS-ATO Aircraft training organisations	GN 157/2003 (GG 3024)
NAM-CATS-OPS Agricultural Operations	GN 158/2003 (GG 3024)

NAM-CATS-AR Certification procedures for products and parts and aircraft worthiness	GN 159/2003 (GG 3025)
NAM-CATS-AR Air Traffic Service Personnel Licensing	GN 160/2003 (GG 3026)
NAM-CATS-OPS 91 General Operating and Flight Rules	GN 186/2003 (GG 3045)
NAM-CATS-OPS 135 Air Transport Operations - Small Aeroplanes	GN 187/2003 (GG 3047)
NAM-CATS-OPS 121 Air Transport Operations - Large Aeroplanes	GN 257/2003 (GG 3112)
NAM-CATS-ATS Airspace and Air Transport Services	GN 9/2004 (GG 3135)
NAM-CATS-AMEL Aircraft Maintenance Engineer Licensing	GN 54/2004 (GG 3179)
NAM-CATS-OPS 127 Air Transport Operations - Helicopters	GN 55/2004 (GG 3180)

**Draft regulations:** A proposed structure for future Civil Aviation Regulations was published for comment in General Notice 201/1997 (GG 1627). Proposed regulations and technical standards were published for comment in General Notices 201-212/1997, General Notices 224-251/1997, General Notice 39/1998, General Notice 171/2001, General Notice 31/2002, General Notices 159-178/2002 and General Notices 73-82/2003.

## **Aerodrome Ordinance 12 of 1963.**

**Summary:** This Ordinance provides for the establishment, management and maintenance of airports.

**Amendments:** Section 3(1) of the Ordinance was assigned to the administration of the Minister of Transport by GN 179/86.

## ***Civil Aviation Offences Act 10 of 1972***, as amended in South Africa to March 1978.

**Summary:** This Act gives effect to several conventions concerning air travel and includes measures designed to ensure the safety of aircraft and airports.

**Applicability to SWA:** Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”. Section 9 states “This Act and every amendment thereof shall also apply in every territory in respect of which Parliament is competent to legislate.”

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

**Amendments:** Act 9/1992 amends sections 1, 2 and 3, inserts sections 2A-2M, repeals section 9, and substitutes certain expressions in the Act and the long title. Among other things, these amendments are aimed at providing additional security measures. The Airports Company Act 25 of 1998 amends sections 1 and 2B and inserts section 2N.

**Regulations:** Regulations concerning security are contained in GN 181/1996 (GG 1348).

## **Airports Company Act 25 of 1998.**

**Summary:** This Act provides for the incorporation of a company to undertake the operation, management and control of certain aerodromes in Namibia. The bulk of the Act came into operation on 1 November 1998 (GN 261/1998, GG 1981). Sections 5-13 and sections 15-18 came into operation on 5 February 1999 (GN 19/1999, GG 2045), on the date of transfer of certain aerodromes to the Company. (This date of transfer was originally set as 5 November 1998 by GN 262/1998 (GG 1981), but this notice was withdrawn by GN 275/1998 (GG 1993).)

**Regulations:** Charges set forth in GN 263/1998 (GG 1981) were withdrawn by GN 275/1998 (GG 1993). Aerodrome and airport charges are contained in GN 20/1999 (GG 2045).

**Cases:** *Westair Aviation (Pty) Ltd & Others v Namibia Airports Company Ltd & Another* 2001 NR 256 (HC).

## **COMMISSIONS**

Commission of Inquiry into the Aviation Regulatory Practices of the Directorate: Civil Aviation in the Ministry of Works, Transport and Communication (Proc 9/1997, GG 1611).

See also GN 153/1997 (GG 1611).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, GG 2616)

See also GN 194/2001 (GG 2616) and GN 230/2001 (GG 2647).

## **INTERNATIONAL LAW**

### ***Convention on International Civil Aviation of 7 December 1944***

accession: 30 April 1991, effective 30 May 1991

(source: International Civil Aviation Organization)

### ***Protocol on the Authentic Trilingual Text of the Convention, Buenos Aires, 1968***

acceptance: 30 May 1991 (source: International Civil Aviation Organization)

### ***Protocol on the Authentic Quadrilingual Text of the Convention, Montreal 1977***

acceptance: 2 November 2000 (source: Parliament); effective: 19 October 2001 (source: International Civil Aviation Organization)

### ***Protocol relating to an Amendment to the Convention (Final Clause, Russian Text), Montreal, 1977***

ratification: 2 November 2000, deposited 27 September 2001 (source: International Civil Aviation Organization)

### ***Protocol relating to an Amendment to the Convention (Article 56), Montreal, 1989***

(not yet in force internationally as of 20 January 2005)

ratification: 2 November 2000, deposited 27 September 2001 (source: International Civil Aviation Organization)

### ***Protocol relating to an Amendment to the Convention (Article 50(a)), Montreal, 1990***

ratification: 2 November 2000, deposited 27 September 2001 (source: International Civil Aviation Organization)

### ***Protocol on the Authentic Quinquilingual Text of the Convention, Montreal, 1995***

acceptance: 2 November 2000 (source: Parliament); effective: 19 October 2001 (source: International Civil Aviation Organization)

***Protocol relating to an Amendment to the Convention (Final Clause, Arabic Text), Montreal, 1995***

(not yet in force internationally as of 20 January 2005)

ratification by Parliament: 2 November 2000

deposit: 27 September 2001 (source: International Civil Aviation Organization)

***Protocol on the Authentic Six-Language Text of the Convention, Montreal, 1998***

(not yet in force internationally as of 20 January 2005)

acceptance: 2 November 2000 (source: Parliament)

effective: 19 October 2001 (source: International Civil Aviation Organization)

***Protocol relating to an Amendment to the Convention (Final Clause, Chinese Text), Montreal, 1998***

(not yet in force internationally as of 20 January 2005)

ratification by Parliament: 2 November 2000 (source: Parliament)

deposit: 5 November 2001 (source: International Civil Aviation Organization)

***Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume I — Aircraft Noise, Chicago, 1944***

effective date in respect of Namibia: 30 May 1991

(source: ENTRI – Environmental Treaties and Resource Indicators -

<http://sedac.ciesin.columbia.edu:9080/>)

***Convention for the Unification of Certain Rules relating to International Carriage by Air, 1999***

(came into force internationally on 4 November 2003)

ratification by Parliament: 7 March 2001

deposit: 27 September 2001 (sources: Parliament; International Civil Aviation Organization)

***Constitution of African Civil Aviation Commission (AFAC)***

ratification: 6 March 2001 (source: Parliament)