



Republic of Namibia
Annotated Statutes

Civil Aviation Offences Act 10 of 1972 (RSA)

(RSA GG 3421)

brought into force in the South Africa and in “every territory in respect of which Parliament is competent to legislate” on 24 May 1972 by RSA Proc. R.132 of 1972 (RSA GG 3536)
(see section 9 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: 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 TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Transport) Transfer Proclamation, AG 14 of 1978, dated 15 March 1978. Neither of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Civil Aviation Offences Amendment Act 63 of 1978* (RSA GG 6018) and the *Civil Aviation Offences Amendment Act 4 of 1981* (RSA GG 7410) – applied to South West Africa because neither was made expressly so applicable.

The Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, contains directives about how the terms “minister” and “the State” should be construed, but all the incidences of these terms which remain in the Act as it now stands were inserted after Namibian independence. The Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, also provides that any reference to the *Government Gazette* of the Republic shall be construed as a reference to the *Official Gazette*. However, the only remaining incidence of the term “*Gazette*” which pre-dates Namibian Independence occurs in section 11, where such a construction would be illogical given that the Act commenced prior to the operation of the transfer proclamation.

as amended by

General Law Amendment Act 29 of 1974 (RSA) (RSA GG 4220)

came into force on date of publication: 15 March 1974

Civil Aviation Offences Amendment Act 9 of 1992 (GG 394)

came into force on date of publication: 16 April 1992

Airports Company Act 25 of 1998 (GG 1958)

brought into force in relevant part on 5 February 1999 by GN 19/1999 (GG 2045),
by virtue of section 19(2) of Act 25 of 1998 read together with section 14(1)

REPEALED by the Civil Aviation Act 6 of 2016 (GG 6047)

ACT

To give effect to the Convention on Offences and certain other Acts committed on board Aircraft; the Convention for the Suppression of Unlawful Seizure of Aircraft; and the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation; to

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provide for additional measures directed at the more effective control of the security of aircraft and airports; to amend the Aviation Act, 1962; and to provide for matters connected therewith.

[long title amended by Act 9 of 1992;
not all changes indicated by amendment markings]

*(Afrikaans text signed by the State President)
(Assented to 14th March, 1972)*

ARRANGEMENT OF SECTIONS

1. Definitions
2. Offences and penalties
- 2A. Prohibition and control of carriage of persons and harmful articles in aircraft
- 2B. Prohibition and control of persons and harmful articles in restricted areas
- 2C. Prohibition and control of persons and harmful articles in air navigation facilities
- 2D. Penalties
- 2E. Authorized persons and certain employees may call for identification
- 2F. Search of persons and goods
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- 2K. Board of inquiry
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3. Acts or omissions taking place outside Namibia
4. Jurisdiction
5. Extradition
6. Powers of commander of aircraft and certain other persons on board an aircraft
7. Admissibility of certain statements as evidence
8. Aircraft to which Act does not apply
9. [deleted]
10. Repeal of section 16 of Act 74 of 1962
11. Short title and commencement

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

[Act 9 of 1992 makes the following substitutions throughout the Act:
* “Namibia” for “the Republic”; and
* “Namibian aircraft” for “South African aircraft”.]

Definitions

1. (1) In this Act, unless the context otherwise indicate -

“aerodrome” means a defined area on any land, water or building, which is intended to be used for, or in connection with, the arrival, departure or movement of aircraft, and includes any building, installation or equipment within such area;

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[definition of “aerodrome” inserted by Act 9 of 1992]

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the surface of the earth;

“air navigation facility” means premises used for the handling of cargo, mail or baggage, an aircraft hangar, a fuel storage area and any other premises, structure or place to which the public have no right of access and in which a service is rendered for the operation of an airport or aircraft or for the public at an airport, aerodrome or heliport and includes any aid provided for promotion of the safe, orderly and expeditious movement of air traffic, and includes, where applicable, any building or structure in or to which such aid or part thereof is housed or attached, and includes the premises on which such aid or part thereof is situated, whether such a building, structure or premises are situated within the boundaries of an airport, aerodrome or heliport or not;

[definition of “air navigation facility” inserted by Act 9 of 1992]

“airport” means any -

- (a) aerodrome established and maintained in terms of section 6 of the Aviation Act, 1962 (Act No. 74 of 1962);
- (b) Company aerodrome as defined in section 1 of the Airports Company Act, 1998,

and includes any aerodrome or heliport designated by the Minister by notice in the *Gazette* as an airport for the purposes of this Act;

[definition of “airport” inserted by Act 9 of 1992 and amended by Act 25 of 1998; the Airports Company Act referred to is Act 25 of 1998]

“airport manager” includes any person appointed in writing by the airport manager to discharge any function imposed, or to exercise any power conferred, upon the airport manager by this Act;

[definition of “airport manager” inserted by Act 9 of 1992]

“authorized person” means -

- (a) any member of the Namibian Police Force;
- (b) any other person appointed in writing by the Minister as an authorized person for the purposes of this Act;

[definition of “authorized person” inserted by Act 9 of 1992]

“board” means the board of inquiry appointed under section 2K;

[definition of “board” inserted by Act 9 of 1992]

“commander”, in relation to an aircraft, means the member of the crew designated as commander of that aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of that aircraft;

“Company” means the company contemplated in section 2 of the Airports Company Act, 1998;

[definition of “Company” inserted by Act 25 of 1998; the Airports Company Act referred to is Act 25 of 1998]

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“convention country” means a country in which either the Convention on Offences and certain other Acts committed on board Aircraft or the Convention for the Suppression of unlawful Seizure of Aircraft, or the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation is for the time being in force;

Namibia acceded to the *Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention)*, 1963 on 19 December 2005 and the Convention became binding on Namibia on 19 March 2006 in terms of Article 21(1) of the Convention. Namibia has not yet agreed to the Protocol to amend the Convention, 2014.

Namibia acceded to the *Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention)*, 1970 on 4 November 2005 and the Convention became binding on Namibia on 4 December 2005 in terms of Article 13(4) of the Convention. Namibia has not yet agreed to the Protocol to amend the Convention, 2010.

Namibia acceded to the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Sabotage Convention)*, 1971 on 4 November 2005 and the Convention became binding on Namibia on 4 December 2005 in terms of Article 15(4) of the Convention.]

“harmful article” means -

- (a) any ammunition, as defined in section 1 of the Arms and Ammunition Act, 1969, (Act 75 of 1969), and includes any cartridge or projectile intended for use in the discharge of an arm referred to in section 32(1) of that Act;
- (b) any arm, as defined in section 1 of the Arms and Ammunition Act, 1969, (Act 75 of 1969), as amended from time to time in terms of subsection 62) of that section, and includes any arm referred to in section 32(1) of that Act, any grenade, bomb or similar missile and any article which has the appearance of such an arm or a grenade, bomb or similar missile, whether capable of being discharged or exploded or not;

[There is an error in the number “62”, which should be “(2)”.]

- (c) explosives, as defined in section 1 of the Explosives Act, 1956 (Act 26 of 1956), and includes any article which has the appearance of an explosive or which is marked or labelled that it is or contains an explosive, whether such an article is capable of explosion or of being exploded or not; or
- (d) any other article which is primarily a weapon of attack or defence in relation to persons or primarily an instrument by means of which property may be damaged or destroyed;

[The definition of “harmful article” is inserted by Act 9 of 1992. The comma after “Arms and Ammunition Act, 1969” in both paragraph (a) and paragraph (b) is superfluous. The Arms and Ammunition Act 75 of 1969 has been replaced by the Arms and Ammunition Act 7 of 1996.]

“heliport” means a defined area on any land or building, which is used or intended to be used for, or in connection with, the arrival, departure or movement of helicopters, and includes any building or installation within such area;

[definition of “heliport” inserted by Act 9 of 1992]

“Minister” means the Minister of Works, Transport and Communication;

[definition of “Minister” inserted by Act 9 of 1992]

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“Namibian aircraft” means an aircraft registered in Namibia and includes any aircraft that is operated by joint air transport operating organizations or international operating agencies established by the State and any other convention country and in respect of which the Minister has, by notice in the *Gazette*, declared it to be deemed to be a Namibian aircraft;

[definition of “Namibian aircraft” inserted by Act 9 of 1992]

“oath” includes an affirmation or declaration in the case of persons allowed by the law of any country concerned to affirm or declare instead of swearing;

“pilot in command”, in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

[definition of “Republic” deleted by Act 9 of 1992]

“restricted area” means an area building or place at an airport, in respect of which access control has been instituted for security purposes by, or with the concurrence of, the management of such airport, and includes any area, building or place at an airport in respect of which the Minister has directed the management of the airport, or any organization conducting business at the airport, to institute access control and in respect of which access control has been so instituted;

[definition of “restricted area” inserted by Act 9 of 1992]

“search” includes the use of metal detectors for persons and metal detectors, X-ray equipment and explosive detecting equipment for personal effects, baggage, cargo, mail and other goods;

[definition of “search” inserted by Act 9 of 1992]

[definition of “South African aircraft” deleted by Act 9 of 1992]

“this Act” includes any regulations made under this Act.

[definition of “this Act” inserted by Act 9 of 1992]

- (2) For the purposes of this Act an aircraft shall be deemed to be in flight -
- (a) at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation or, if the aircraft makes a forced landing, until the moment when the competent authorities of the country in which the forced landing takes place, take over the responsibility for the aircraft and for the persons and property on board;
 - (b) during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

(3) For the purposes of this Act an aircraft shall be deemed to be in service from the beginning of the preflight preparation of such aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing.

Offences and penalties

2. (1) Any person who -
- (a) on board any aircraft in flight -

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- (i) by force or threat of force or by any other form of intimidation and without lawful reason seizes, or exercises control of, that aircraft;
- (ii) assaults any person, if such assault is likely to endanger the safety of that aircraft;
- (iii) assaults or wilfully interferes with any member of the crew of that aircraft in the performance of his duties;
- (b) destroys an aircraft in service or wilfully causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight or is likely to endanger its safety in flight;

[paragraph (c) amended by Act 9 of 1992]

- (d) destroys or wilfully damages air navigation facilities or wilfully interferes with their operation;

[paragraph (d) amended by Act 9 of 1992]

- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in service;

[paragraph (e) amended by Act 9 of 1992]

- (f) places or causes to be placed at on or in an airport, aerodrome, heliport or air navigation facility any device or substance which is calculated to endanger, injure or kill any person, or to endanger, damage, destroy, render useless or unserviceable or put out of action any property, vehicle, aircraft, building, equipment or air navigation facility or part thereof;

[paragraph (f) substituted by Act 9 of 1992]

- (fA) wilfully pollutes or causes to pollute any aviation fuel;

[paragraph (fA) inserted by Act 9 of 1992]

- (g) performs any other act which endangers or may endanger the operation of an air carrier or the safety of any airport, aerodrome, heliport, aircraft in service or of persons or property thereon or therein or which may endanger good order and discipline at an airport, aerodrome or heliport or on board an aircraft in service,

[paragraph (g) amended by Act 9 of 1992; not all of the changes are indicated by amendment markings]

shall be guilty of an offence and liable on conviction to imprisonment for a period of not less than five years but not exceeding thirty years.

- (2) Any person -

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- (a) who threatens to commit any offence referred to in subsection (1) or who falsely alleges that any other person has committed or is about to commit any such offence; or
- (b) who communicates information which he or she knows to be false or incorrect,

and thereby interferes with or may interfere with the operation of an air carrier or of an airport, aerodrome or heliport, shall be guilty of an offence and on conviction be liable to imprisonment without the option of a fine for a period not exceeding 15 years.

[subsection (2) inserted by Act 9 of 1992]

(3) Any person who on board any aircraft in service commits any nuisance or any disorderly or indecent act or is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of any other person on the aircraft or uses abusive, indecent or offensive language, shall be guilty of an offence and on conviction be liable to a fine not exceeding R 1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[subsection (3) inserted by Act 9 of 1992]

Prohibition and control of carriage of persons and harmful articles in aircraft

2A. (1) Except with the permission of the aircraft operator, and subject to such conditions as the operator may stipulate, no person shall at an airport, aerodrome or heliport board or attempt to board, or be on, an aircraft if he or she has in his or her possession or under his or her control any harmful article or if any harmful article has to his or her knowledge been placed within his or her reach or at his or her disposal.

(2) Any person who wishes to consign any harmful article by aircraft, shall consign the article in the manner required, and in accordance with the conditions stipulated, by the aircraft operator: Provided that where the Minister has by regulation under the Aviation Act, 1962 (Act 74 of 1962), prescribed the manner in which, and the conditions subject to which, an article which is also a harmful article under this Act, shall be consigned by aircraft, the provisions of such a regulation shall prevail in the case of a conflict with any requirement, or any condition stipulated, under this subsection.

(3) An air carrier may refuse to transport on any aircraft any person, personal effects, baggage, mail, cargo or other goods, if in the opinion of the air carrier -

- (a) the person concerned may, while on board, perform or attempt to perform any act which may endanger the safety of the aircraft or interfere with the flight of the aircraft; or
- (b) any occurrence which may endanger the safety of the aircraft or which may interfere with the flight of the aircraft, may eventuate from the transportation of such person, personal effects, baggage, mail, cargo or other goods.

[section 2A inserted by Act 9 of 1992]

Prohibition and control of persons and harmful articles in restricted areas

- 2B.** (1) (a) Subject to the provisions of this Act, no person shall enter or attempt to enter or be within any restricted area if he or she has in his or her possession or

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under his or her control any harmful article or if any harmful article has to his or her knowledge been placed within his or her reach and at his or her disposal.

- (b) The provisions of paragraph (a) shall not apply in relation to a passenger or crew member who arrived by aircraft and who is in a restricted area for the purpose of taking possession of baggage in which a harmful article is, if the passenger or crew member, before he or she collects the baggage, declares the harmful article to any customs officer where such an officer is on duty in the restricted area, or, where such an officer is not available, to an authorized person.

- (2) The provisions of subsection (1) shall not apply in relation to -

- (a) an employee of the State or the Company;

[paragraph (a) amended by Act 25 of 1998]

- (b) an authorized person;
- (c) any person authorized in writing by the airport manager concerned to be within the restricted area in question, which authority may be conditional,

who is in possession of a harmful article within the restricted area in the course, and for the purpose, of his or her employment at the airport in question.

(3) Any authorized person may refuse entry into a restricted area to any person, or of any baggage, personal effects, mail, cargo, vehicle or other goods, if in the opinion of the authorized person -

- (a) the person concerned may, while he or she is within the restricted area, perform or attempt to perform, any act which may endanger the safety of the airport or of any aircraft, air navigation facility or air traffic service unit, or which may interfere with the operation thereof; or
- (b) any occurrence which may endanger the safety of the airport or of any aircraft, air navigation facility or air traffic service unit, or which may interfere with the operation thereof, may eventuate from the entry into the restricted area of such person, baggage, personal effects, mail, cargo, vehicle or other goods.

(4) Any person to whom, and any person who has a legal interest in any baggage, personal effects, mail, cargo, vehicle or goods in respect of which, entry into a restricted area has been refused in terms of subsection (3), may forthwith request any person in authority over the authorized person concerned, or the airport manager, to review the refusal of the authorized person, and such a person in authority or the airport manager may confirm the refusal or grant the permission required on such conditions as he or she may deem fit.

[section 2B inserted by Act 9 of 1992]

Prohibition and control of persons and harmful articles in air navigation facilities

2C. (1) Except with the permission of the person in control of an air navigation facility, and subject to such conditions as such person may stipulate, no person shall have access to any air navigation facility.

(2) The person in control of an air navigation facility may refuse access thereto to any person, or of any personal effects or of any goods, if in his or her opinion -

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- (a) the person concerned may, while he or she is at or within the air navigation facility, perform or attempt to perform any act which may endanger the safety of the air navigation facility or any contents thereof or which may interfere with the operation thereof; or
- (b) any occurrence which may endanger the safety of the air navigation facility or any contents thereof, or which may interfere with the operation thereof, may eventuate from the access thereto of such a person, effects or goods.

[section 2C inserted by Act 9 of 1992]

Penalties

2D. Any person who contravenes any provision of section 2A, 2B or 2C, or who fails to comply with any provision thereof or with any condition of any permission granted thereunder, shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[section 2D inserted by Act 9 of 1992]

Authorized persons and certain employees may call for identification

- 2E.** (1) (a) Any authorized person may, if he or she deems it necessary in the interest of security, call upon any person at, in or upon any airport, aerodrome or heliport or air navigation facility to furnish him or her with his or her full name and address.
- (b) Any employee attached to an airport, aerodrome or heliport or an air navigation facility, who has been authorized thereto in writing by the airport or aerodrome manager or person in control of the air navigation facility, respectively, may, if he or she deems it necessary in the interest of security, exercise the power referred to in paragraph (a), in respect of the airport, aerodrome, heliport or air navigation facility in question, as the case may be.

(2) Any person who fails to furnish his or her name and address or who furnishes a false or incorrect name or address, shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[section 2E inserted by Act 9 of 1992]

Search of persons and goods

- 2F.** (1) (a) When requested thereto by an air carrier, an authorized person may, subject to the provisions of subsection (7), without a warrant search at an airport, aerodrome or heliport -
- (i) any person, or the hand baggage and personal effects of any person, who intends to board, or who has disembarked from, an aircraft;
 - (ii) any other baggage, or any cargo or goods, before such baggage, cargo or goods are loaded into, or after such baggage, cargo or goods have been offloaded from, an aircraft.

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- (b) The Minister may in respect of any particular flight or in respect of flights in general, direct the manager of any particular airport, aerodrome or heliport, or an air carrier in respect of any particular airport, aerodrome or heliport, that a search shall, subject to the provisions of subsection (7), be conducted by an authorized person without a warrant -
 - (i) of all persons, or the hand baggage and personal effects of all persons, who intend to board an aircraft, or who have disembarked from an aircraft at the airport, aerodrome or heliport, as the case may be;
 - (ii) of any other baggage, or any cargo or goods, before such baggage, cargo or goods are loaded into, or off-loaded from, any aircraft at the airport, aerodrome or heliport.
 - (c) Any person who fails to comply with any direction in terms of paragraph (b), shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (2) Any air carrier may refuse to transport -
 - (a) a person or the hand baggage or personal effects of a person who refuses to be searched or to have his or her hand baggage or personal effects searched in terms of subsection (1);
 - (b) any other baggage, or any cargo or goods, for any person who refuses to have such baggage, cargo or goods searched in terms of subsection (1).
- (3)
 - (a) If an airport manager is of the opinion that it is necessary for the security of the airport that a person, or the baggage or personal effects of a person, who intends to enter a restricted area, or that any vehicle cargo or goods which are, to enter a restricted area, be searched, he or she may direct any authorized person to conduct, subject to the provisions of subsection (7), such search without a warrant.
 - (b) The Minister may direct the manager of any particular airport, or the manager of any organization conducting any business at any particular airport, that any person, or the baggage or personal effects of any person, who enters any restricted area at the airport, or that any vehicle, cargo or goods which are, to enter a restricted area at the airport, be searched, subject to the provisions of subsection (7), by an authorized person without a warrant.
 - (c) Any person who fails to comply with any direction in terms of paragraph (b), shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (4) Any authorized person may, subject to the provisions of subsection (7) without a warrant search -
 - (a) at any place, any building, structure, equipment or part thereof, or any vehicle, cargo or other goods;
 - (b) at any airport, aerodrome or heliport, any person or his or her baggage or personal effects, or any aircraft,

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if he or she has reasonable grounds to believe that the search is necessary for the security of any airport or any passengers or aircraft at any airport or of an air navigation facility of any airport, or to avoid interference with the operation of an air carrier, any airport or an air navigation facility of any airport.

(5) Any authorized person may without a warrant search any air navigation facility or the contents thereof, or, subject to the provisions of subsection (7), any person or article found thereat, if he or she has reasonable grounds to believe that the search is necessary for the security of the air navigation facility, or to avoid interference with the operation of such a facility of any airport.

- (6) (a) If a person refuses to be searched, or to have his or her baggage or personal effects searched in terms of subsection (1) or (3), an authorized person may, where such a person intends boarding an aircraft or entering a restricted area, in writing order such person to leave the airport, aerodrome or heliport immediately, as the case may be, and not to return thereto for a specified period, which period shall not exceed 24 hours.
- (b) If any person at any airport, aerodrome or heliport refuses to have any cargo, goods, vehicle or article searched under subsection (1) or (3), an authorized person may, where such cargo, article or goods are, to be consigned, or where such cargo, vehicle, article or goods are, to enter a restricted area, in writing order such person immediately to remove, or may himself or herself remove, the cargo, goods, vehicle or article from the airport, aerodrome or heliport, as the case may be.

[The word “vehicle” is misspelt in its first use in paragraph (b), as reproduced above.]

- (c) Any person who, in contravention of paragraph (a), refuses to leave an airport, aerodrome or heliport, or returns thereto before the expiration of the specified period, or who, in contravention of paragraph (b), refuses to remove any cargo, goods, vehicle or article from the airport or aerodrome shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(7) A search of any person, baggage, personal effects, cargo, goods, vehicle, aircraft, structure, building or equipment shall be conducted with strict regard to decency and order and shall not be excessively intrusive having regard to the purpose for the search, and a woman shall be searched by a woman only, and if no female authorized person is available, the search shall be made by a woman designated for such purpose by an authorized person: Provided that the correspondence or home of a person shall not be subject to any interference unless such interference is necessary for a purpose referred to in Article 13(1) of the Namibian Constitution.

[section 2F inserted by Act 9 of 1992]

Seizure or retention of harmful articles

2G. (1) An authorized person may seize any harmful article found during a search carried out in terms of section 2F, or retain such article for safe custody while the person in whose possession or custody or under whose control the article was found, remains on the aircraft or in the restricted area or at or in the air navigation facility, as the case may be.

(2) A harmful article seized in terms of subsection (1) shall be delivered to a police official, as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977), and shall

be dealt with and be disposed of in terms of the provisions of Chapter 2 of that Act as if it were an article seized, and delivered to such a police official, in terms of that Chapter.

[section 2G inserted by Act 9 of 1992]

Powers of arrest

2H. (1) An authorized person may without a warrant arrest any person -

- (a) who, in his or her presence, commits any offence in relation to any provision of section 2, 2A, 2B, 2C, 2E or 2F(6)(c);
- (b) whom he or she reasonably suspects of having committed any offence in relation to any provision of section 2, 2A, 2B, 2C, 2E or 2F(6)(c).

(2) If an authorized person attempts to arrest any person under subsection (1) and such a person -

- (a) resists the attempt and cannot be arrested without the use of force; or
- (b) flees when it is clear that an attempt to arrest him or her is being made, or resists such attempt and flees,

the authorized person may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing, and may call on any competent person to assist him or her to effect the arrest.

[section 2H inserted by Act 9 of 1992]

Powers of peace officers

2I. No provision of this Act shall derogate from any power in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977), of a peace officer, as defined in section 1 of that Act, who is an authorized person in terms of this Act.

[section 2I inserted by Act 9 of 1992]

Powers of Minister in respect of any action which is a threat to safety

2J. (1) If the Minister is of the opinion that any action by any person or any group of persons is of such a nature that the safety of any person on or in any aircraft or at any airport, aerodrome, heliport or air navigation facility, or of any aircraft, airport, aerodrome, heliport or air navigation facility, or of any property at any airport, aerodrome, heliport or air navigation facility, is being seriously and immediately threatened, he or she or any person designated by him or her for such purpose may issue such orders as may be deemed necessary, to any person or group of persons to counter such action.

(2) An authorized person may take such steps as he or she may in the circumstances deem necessary to ensure that an order referred to in subsection (1) is complied with.

(3) Any person who fails or refuses to give effect immediately to an order issued in terms of subsection (1), shall be guilty of an offence and on conviction be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(4) The Minister may, to such extent as he or she may determine, compensate out of the State Revenue Fund any person who satisfies him or her that he or she has suffered any damage or bodily harm, or has incurred costs, in the execution of any order issued in terms of subsection (1).

[section 2J inserted by Act 9 of 1992]

Board of inquiry

2K. (1) When an offence has been committed in relation to any provision of section 2, 2A, 2B or 2C, or if any orders have been issued in terms of section 2J to counter any action contemplated in that section, the Minister may appoint a board of inquiry, which shall consist of so many persons as the Minister may determine, to inquire into any aspect of such offence or such action or any circumstance relating thereto, which the Minister may refer to the board, and to report to him or her thereon and make such recommendations in relation thereto as the board may deem fit.

(2) The board shall determine its own procedure and, where it consists of more than one member, have a chairperson designated by the Minister.

(3) The board shall have the power to summon and examine witnesses on oath or affirmation and to call for the production for examination by the board of any books, documents or other matter.

(4) The laws and rules governing magistrates' courts shall *mutatis mutandis* apply in relation to procuring the attendance of witnesses, their examination, the production of books and documents, and for such purpose the chairperson of the board or, where the board consists of one person only, such person, shall have power to sign such documents as may be necessary for the purpose of the inquiry, in the same manner as the magistrate or the clerk of the court has power to do under the magistrates' courts rules.

(5) Any process to be served for the purposes of the board shall be served by the messenger of the court for the district in which the person upon whom service is to be made, resides, or by a member of the Namibian Police Force.

(6) The chairperson of the board or, where the board consists of one person only, such person, may direct, subject to the provisions of Article 12(1)(a) of the Namibian Constitution, that the public or any category thereof shall not be present at the proceedings, or any part of the proceedings, of the board.

(7) Where an offence or any action contemplated in subsection (1) is associated with an accident as referred to in section 12 of the Aviation Act, 1962 (Act 74 of 1962), the Minister may appoint one board consisting of the same member or members, to conduct a joint inquiry under that Act and this Act in accordance with the provisions of this section.

[section 2K inserted by Act 9 of 1992]

Regulations

2L. (1) The Minister may make regulations relating to -

- (a) the establishment, constitution and functions of a committee to advise the Minister and interested persons with regard to the safety of civil aviation and the effective application of the provisions of this Act;

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- (b) the drawing-up of plans in relation to measures which shall be adopted in order to promote or ensure the security of civil aviation and the effective application of the provisions of this Act (hereinafter in this section referred to as security plans), the approval by the Minister of security plans and the secrecy thereof;
 - (c) the designation of officers in the public service to apply the provisions of this Act or any security plan, and the other functions of such officers;
 - (d) the designation, training, qualifications and functions of persons charged with the application of security measures at particular airports and in respect of flights with aircraft;
 - (e) the administrative steps which shall precede the designation by the Minister, in accordance with the provisions of the definition of "airport", of any aerodrome or heliport as an airport;
 - (f) (i) the part of the expenses incurred in connection with the application of the provisions of any security plan or of this Act which shall be met by the State;
 - (ii) the duty of airport managements and air carriers to render available particular equipment at airports and to employ persons for the purposes of the application of the provisions of this Act or any security plan;
 - (g) the levying of charges or the re-imbursement of expenses in relation to the provision of security services for aircraft or at airports;
 - (h) the prohibition or the control of the publication of incidents relating to security or affecting the safe and orderly operation of an air carrier, airport, aerodrome or heliport, or of an aircraft in flight, or of the publication of any particulars or information relating to any measures dealing with the security of an aircraft, airport, aerodrome or heliport or air navigation facility, including particulars or information relating to any plan or programme, staff, device or system, agreement or special procedure in connection with security;
 - (i) the serving and consumption of intoxicating liquor on aircraft, the responsibility of air carriers and the training and powers of crew members of aircraft in this regard, the manner in which beverage containers shall be stored and handled and the admission to aircraft of persons who are under the influence of intoxicating liquor or drugs;
 - (j) generally, any matter which the Minister may consider necessary for the better achievement of the objects, and the better administration of the provisions of this Act.
- (2) The regulations may provide for penalties in respect of any contravention of, or failure to comply with, any provision thereof or of any security plan approved by the Minister.
- (3) Different regulations may be made in respect of different air carriers, airports, aerodromes, or air navigation facilities.
- (4) No charges or rates of compensation shall be prescribed under these regulations, except in consultation with the Minister of Finance.

Delegation of powers

2M. The Minister may delegate to the Permanent Secretary: Works, Transport and Communication any power conferred upon him or her by sections 2F(1)(b) and (3)(b) and 2J(1).

[section 2M inserted by Act 9 of 1992]

Compensation to Company

2N. The Minister may to such extent as he or she may determine and in consultation with the Minister of Finance, out of moneys appropriated by Parliament, compensate the Company for any costs which it incurs as a direct result of the performance of its functions in terms of this Act and which the Company cannot readily recover from the users of a Company aerodrome as defined in section 1 of the Airports Company Act, 1998.

[section 2N inserted by Act 25 of 1998;
the Airports Company Act referred to is Act 25 of 1998]

Acts or omissions taking place outside Namibia

3. (1) Any act or omission taking place on board a Namibian aircraft in flight elsewhere than in or over Namibia and which, if taking place in or over Namibia, would be an offence, shall constitute that offence.

(2) Any act contemplated in section 2 and committed outside Namibia on board any aircraft in flight, other than a Namibian aircraft, and any act of violence against passengers or crew committed on any such aircraft by a person in connection with an act contemplated in section 2(1)(a)(i), shall -

- (a) if such aircraft lands in Namibia with the person who committed any such act, still on board;
- (b) if such aircraft is leased without crew to a lessee who has his or her principal place of business or, if he or she has no such place of business, his or her permanent residence, in Namibia; or
- (c) if that person is present in Namibia,

be deemed to have been committed also in Namibia.

[subsection (2) amended by Act 9 of 1992]

Jurisdiction

4. Any offence contemplated in section 3(2) shall for the purposes of jurisdiction be deemed to have been committed in any place where the accused happens to be.

Extradition

- 5.** (1)

[subsection (1) deleted by Act 29 of 1974]

(2) For the purposes of the application of the Extradition Act, 1962 (Act No. 67 of 1962), to an offence committed on board an aircraft in flight -

[Subsection (2) is amended by Act 29 of 1974. The Extradition Act 67 of 1962 has been replaced by the Extradition Act 11 of 1996.]

- (a) any aircraft registered in any convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country;
- (b) if such aircraft lands in any other convention country with the offender still on board, the offence shall be deemed to have been committed also in that country;
- (c) if such aircraft was leased without crew to a lessee who has his principal place of business or, if he has no such place of business, his permanent residence in any other convention country, the offence shall be deemed to have been committed also in that country.

Powers of commander of aircraft and certain other persons on board an aircraft

6. (1) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft -

- (a) that he has done or is about to do any act on the aircraft in flight which jeopardizes or may jeopardize -
 - (i) the safety of the aircraft or of persons or property on board the aircraft; or
 - (ii) good order and discipline on board the aircraft; or
- (b) that he has done on the aircraft in flight any act which in the opinion of the commander is a serious offence under the law in force in the country in which the aircraft is registered,

then, subject to the provisions of subsection (3), the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary -

- (i) to protect the safety of the aircraft or of persons or of property on board the aircraft; or
- (ii) to maintain good order and discipline on board the aircraft; or
- (iii) to enable the commander to disembark or deliver that person in accordance with the provisions of subsection (4).

(2) Any member of the crew of an aircraft and any other person on board may, at the request or with the authority of the commander of the aircraft, and any such member shall, if so required by the commander, render assistance in restraining any person whom the commander is entitled, under subsection (1), to restrain, and at any time while an aircraft is in flight any such member or other person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in the said subsection (1) which he has reasonable grounds to believe are reasonably necessary to protect the safety of the aircraft or of persons or of property on board the aircraft.

(3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsections (1) and (2), shall not be continued after the time when the aircraft first thereafter ceases to be in flight, unless before or as soon as is reasonably practicable after that

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time the commander of the aircraft causes notice of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, and may, if such notice has been so sent, be continued after that time -

- (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able, with any requisite consent of the appropriate authorities, to disembark or deliver the person under restraint in accordance with subsection (4); or

- (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

(4) The commander of an aircraft -

- (a) if, in the case of any person on board the aircraft, he has reasonable grounds -

- (i) to believe as mentioned in subsection (1)(a); and
- (ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,

may disembark that person in any country in which that aircraft may be; and

- (b) if, in the case of any person on board the aircraft, he has reasonable grounds to believe as mentioned in subsection (1)(b), may deliver that person -

- (i) in Namibia, to a member of a police force established in terms of any law, or to an immigration officer; or
- (ii) in any other convention country, to an officer having functions corresponding to the functions, in Namibia, either of such a member or of an immigration officer.

(5) The commander of an aircraft -

- (a) if he disembarks any person in terms of subsection (4) (a), in the case of a Namibian aircraft, in any country, or, in the case of any other aircraft, in Namibia, shall report the disembarkation, and the reasons therefor, to -

- (i) an appropriate authority in the country of disembarkation; and
- (ii) the appropriate diplomatic or consular office of the country of nationality of that person;

- (b) if he intends to deliver any person in terms of subsection (4)(b) in Namibia, or, in the case of a Namibian aircraft, in any other convention country, shall before or as soon as reasonably practicable after landing, give notice of his intention and of the reasons therefor -

- (i) where the country in question is Namibia, to a member of a police force established in terms of any law, or to an immigration officer, or, in the case of any other country, to an officer having functions corresponding to the

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functions, in Namibia, either of such a member or of an immigration officer; and

- (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of that person.

(6) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (5), shall be guilty of an offence and on conviction liable to a fine not exceeding two hundred rand.

(7) The provisions of subsections (1) to (4) shall apply for the purposes of any proceedings before a court in Namibia.

Admissibility of certain statements as evidence

7. (1) If in any proceedings before a court in Namibia for an offence committed on board an aircraft the evidence of any person is required and the court is satisfied that that person cannot be found in Namibia, there shall be admissible in evidence before that court any statement in writing relating to the subject matter of those proceedings previously made on oath by that person outside Namibia and which was so made -

- (a) in the presence of the person charged with the offence; and
- (b) in any other convention country to an officer having functions corresponding to the functions, in Namibia, either of a judge or of a magistrate or of a consular officer.

(2) Any such statement shall be authenticated by the signature of the officer before whom it was made, who shall certify that the person in question was present at the taking of the statement.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such statement or to have given such a certificate, and such certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the statement.

(4) Nothing in this section contained shall prejudice the admission as evidence of any statement which is admissible in evidence apart from this section.

Aircraft to which Act does not apply

8. This Act shall not apply to aircraft used in military, customs or police services.

9.

[section 9 deleted by Act 9 of 1992]

Repeal of section 16 of Act 74 of 1962

10. Section 16 of the Aviation Act, 1962, is hereby repealed.

Short title and commencement

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11. This Act shall be called the Civil Aviation Offences Act, 1972, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

[The Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, provides that any reference to the *Government Gazette* of the Republic shall be construed as a reference to the *Official Gazette*. However, such a construction would be illogical with respect to the term “*Gazette*” in section 11, given that the Act commenced prior to the operation of the transfer proclamation.]

REPEALED