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 1 November 2021

**BY E-MAIL**

**FOR ATTENTION: MR HLUPHEKA MTILENI**

 **THE CHAIRPERSON**

**SELECT COMMITTEE ON TRANSPORT**

**PUBLIC SERVICE AND ADMINISTRATION**

**PUBLIC WORKS AND INFRASTRUCTURE**

**NATIONAL COUNCIL OF PROVINCES**

**PARLIAMENT OF SOUTH AFRICA**

**COMMENTS-DRAFT CIVIL AVIATION AMENDMENT BILL(B-44-2018) AS AMENDED BY THE PORTFOLIO COMMITTEE ON TRANSPORT (NATIONAL ASSEMBLY)**

**Dear Mr M K MMOILEMENG, MP,**

In response to the call for comments dated 22 September 2021 regarding the said Bill, I herewith respectfully submit an electronic copy of my comments relating to the said Bill (as amended by the Portfolio Committee on Transport) for consideration. I had the advantage of verifying my comments with Mr Rennie van Zyl who has over 60 year’s experience in all facets of aviation, and with whom I worked together in both the National Department of Transport and the South African Civil Aviation Authority.

**1.0 AD CLAUSE 1- SECTION 1 OF THE PRINCIPAL ACT.**

* 1. **THE DEFINITION OF “AIRPORT”.**

1.1.1The definition of “airport” appears in the Principal Act. The said definition has been amended in the draft Bill and now reads basically the same as the definition of aerodrome’ which is also contained in the principal Act. The big difference lies in the fact that in the definition of the word “airport” reference is made to the departure and arrival of ‘” aeroplanes “which are of a fixed- wing nature, while in the definition of “aerodrome” reference is made to “aircraft” ‘which also includes helicopters. From a perusal of the draft Bill, it is apparent that the word “aerodrome” is being used to replace the word “‘airport” in certain provisions which are have been amended. In light of the wide meaning of the word “aerodrome” it replaces the words “airport’ and “heliport” in the draft Bill.

1.1.2 However, the word ‘airport” still appears in section of the principal Act, which is are not subject to proposed amendments. It is unclear whether it is the intention to utilise the definition of the word “airport” (which relates to the arrival and departure of fixed-wing aircraft) in those sections of the principal Act). In this context the following is noted:

1.1.2.1 the words “airport” and heliport” appears in section 134 of the Act;

1.1.2.2 the words “airport”, “heliport” and ‘helistop” appear in section 139 of the Act;

1.1.2.3 the word ‘airports” appear in section 155(1)(vi) of the Act;

1.1.2.4 the words “airports” and “co-ordinated airports” appear in section 155(1)(xi) of the Act;

1.1.2.5 the words “airports” and ‘heliports” appear in section 155(1)(e) of the Act;

1.1.2.6 the words “designated airports” appear in section 155(1)(n)(x) of the Act;

1.1.2.7 the words “airport management” appear in section 155(10(ff) of the Act;

1.1.2.8 the words” airports”,” heliport” and “helistops” appear in section 155(1) (gg)(i) of the Act;

1.1.2.9 the words “designated airport”, “airport” and “heliport” appear in section 155(1)(I) (gg of the Act); and

1.1.2.10 the words “designated airports” and ‘heliports’ appear in section 155(2) of the Act.

1,1.3 The words=s ‘aerodrome” and ‘airport’ cannot be used interchangeably.

**1.4 THE DEFINITION OF “HELIPORT”**

1.4.1 As the word “heliport” is being included in the definition of “aerodrome “in the draft Bill, the said word can be deleted in the Principal Act. The word “helistop” now defines a “heliport”.

1.4.2 Regulation 1.00.1 of the Civil Aviation Regulations,2011 also contains a definition of a “heliport” which is identical to the one contained in the said Act.

1.4.32 In Subpart 3 of Part 139 of the Civil Aviation Regulations,2011, the licensing and operational aspects of heliports are dealt with.

**1.5 THE DFINITION OF “AIR SERVICE”**

1.5.1The definition of “air service” ad amended by the Portfolio Committee on Transport is in conflict with the definition of “air service” as contained in Article 96 of the Chicago Convention,1944, as well as the definition of “air service’ as contained in section 1 of the Air Services Licensing Act,1990(Act No.115 of 1990)

**1.6 THE DEFINITION OF THE EXPRESSION “EXECUTIVE RESPONSIBLE FOR THE AIRCRAFT ACCIDENT A6D INCIDENT INVESTIGATION “-CLAUSE 1(g)**

1.6.1 The said expression does not appear in the text of Chapter IV oof the principal act. In Part 12 of the Civil Aviation regulations,2011, there are a number of regulations in which the said expression appears. In this regard regulation 12 is relevant. The referred to Executive is entrusted with a number of functions, relating to inter alia designation (Subpart 1 of Part 12),notification (Subpart 2 of Part 12), the protection of accident and incident records (Subpart 3 of Part 12), reporting Regulation 12.05.3(1), and re-opening of an investigation (Regulation 12.05.3(3).The functions and powers of the Aviation Safety investigation Board” (ASIB)” as set out in clauses 29 and 30 of the draft Bill, basically corresponds to the functions and powers of the Executive responsible for Aircraft Accidents and Incident Investigation.

1.6.2 The only reference to an “Executive” is contained in the proposed amended section 28(1) (Clause 8) which is to the effect that investigators are to report to the ASIB “through an Executive designated for that purpose”. It would appear the appointment of accident and incident investigators is by implication being entrusted to the said Executive in terms of the relevant definition. In the Explanatory Memorandum it is stated that the appointment and management powers of investigators do not fall within the ASIB’s jurisdiction.

1.6.3 The said Executive, in view of his or her rank, would surely be entitled to provide advice, guidance and assistance to investigators during investigations. He or she would also be entitled to check and verify factors before the report is sent to the ASIB under his or her signature. I

1.6.4 It would therefore, be necessary to indicate the powers, functions and duties of the said Executive in the Act as the words “responsible for the appointment and management of investigators are ambiguous. It should be expressly stated that the “management” function will include the designation of investigators to investigate do aircraft accidents and incidents. In clause 8 relating to section 33(1) of the draft Bill, ASIB is empowered to designate investigators-in-charge and investigators, which is not in line with the meaning of the word “management”.

1.6.5 The Executive’s role cannot be limited to non-operational issues.

**2.0 AD CLAUSE 10 -AMENDMENT OF SECTION 71 OF THE PRINCIPAL ACT**

2.1 It is submitted that the period of four months’ notice of an increase in fees, charges and levies is too long in view if the following: In the case of a proposed increase in fees and charges the CARCoM process (as detailed in sections 156 to 161 of the Act and Subpart 3 of Part 11 of the Civil Aviation Regulations,2011) has to be followed. This process includes the publishing of the proposal (which the said Committee has to approve for publishing for comment, and a consideration by CARCoM of the comments received before a recommendation is made to the Minister for consideration. It has to be borne in mind that CARCoM only convenes every two months. (Note has been taken of the proposed amendment of section 155(5) which is to the effect that an amendment of fees does not need to be determined in consultation with the Minister of Finance).

2.2 It is not clear why a distinction in the consultative process between charges and fees is being made.

2.3 It has also to be borne in mind that the recommendation as to a proposed increase in charges has to be furnished firstly to the Minister of Finance and then to the Minister of Transport, which from experience can take a period of up to three months.

2.4 In terms of section 2(3) of the Civil Aviation Authority Levies Act, (Act No. 41 of 1998), the Minister of Transport, in the event of receiving a notification from the SACAA in respect of a proposed increase in Levies, has to, within 60 days of the receipt of the relevant document, in consultation with the Minister of Finance, indicate if the proposal is accepted or not. There is no requirement that the process of an increase in fees has to follow the CARCoM route

2.5 In practical terms this means that in the case of an amendment of fees and levies, the period from initiating the process up to the publication in the Government Gazette, can take up to 8 months. The establishment of a Fees Committee as envisaged in section 155 (1) will not shorten the period ,as is pointed out in paragraph 8 below that, a CARCoM Sub-Committee relating to fees (Section 159 of the principal Act and Subpart 2 of Part 11 of the Civil aviation Regulations, 2011), is already in place as part of the consultative forum and has been considered in determining the length of the period that stretches from the start of an amendment until it is published in the Government Gazette.

2.6 From the above-mentioned factors it appears that the minimum period of the running of the process, before publication of the proposed increase in fees, charges and levies is approved by the Minister of Transport can be 6 months, which means that from start to finish the process to publish an increase in fees, charges and levies may take a minimum period of 10 months.

**3.0 AD CLAUSE 13 -AMENDMENT OF SECTION 76 OF THE PRINCIPAL ACT**

3.1 The amended clause intends to prevent the CAA Board to compromise or to obstruct the Commissioner in the execution of his or her duties. It is proposed that the words “or attempting to influence the Commissioner” be added to the text.

**4.0 AD CLAUSE 48-AMENDMENT OF SECTION 130 OF THE PRINCIPAL ACT**

4.1 This provision relates to the granting of exemptions to the regulations issued by the Minister in terms of the Principal Act as well as for technical standards issued by the Director in terms of the Principal Act. In terms of the draft Bill the power in respect of the granting of exemptions from the regulations is now been transferred to the Minister of Transport. Based on previous experience as a legal advisor in the Department of Transport for a period of 12 years and as a legal advisor in the SACAA for almost 17 years, this amendment will lead to administrative hold-ups and delays in finalising the applications, and should not be implemented.

4.2 In this context it has to be borne in mind that the administrative process currently involves the technical and operational divisions of the SACAA, before it goes to the legal division of the SACAA where it is allocated to a legal advisor who has to evaluate the application. Thereafter it has to go to the senior manager of the legal division and from there to the general manager of the legal division who then forwards it to the Director of Civil Aviation who has to consider the recommendation of the legal division. With the proposed amendment in place, the application would then have to be forwarded to the Department of Transport, where it would have to pass the scrutiny of a deputy director, a director, a chief director, the deputy director-general responsible for aviation, the director-general before it can be submitted to the Minister of Transport.

4.3 Even with the procedure currently involving only the SACAA, frequent delays are being experienced which results in applications not being finalised within SACAA determined timelines. This is especially true in the case of an exemptions which have to be finalised within three days, a higher fee being payable by the client for such a service. In a great number of instances, it was impossible to finalise the application, despite the technical and operational divisions of the SACAA being available on the same premises for consultations.

4.4 It also has to be noted that the offices of the Minister of Transport and the South African Civil Aviation Authority are located roughly 45 kilometres apart which results in time wasted in travelling should face-to -face meetings be required.

4.5 It has to be pointed out that the National Department of Transport does not possess technical and operational divisions, which will create further delays if the Minister requires further information from the technical and operational divisions concerned.

4.6 In the light of the proposal outlined above, it is further proposed that in the event of an application for an exemption from the Act itself (as distinct from the regulations and technical standards), or in the case involving an exemption involving the Commissioner, him-or herself, that the Minister handles such applications.

4.7 It is proposed that the same principles referred to in paragraphs 2.1 and 2.5above, have to be applicable to the recognition of an alternative means of compliance

**5.0 AD CLAUSES 52,56,57,58 AND 59-AMENDMENTS OF SECTIONS 140,145,146,147 AND 148 OF THE PRINCIPAL ACT**

5.1 In sections 140 (Prohibition and control of restricted areas) ,145(Search, seizure and powers of Arrest),146(Seizure or retention of harmful Articles),147(Powers of Arrest),148 (all for Identification) the existing powers, functions and duties granted authorised persons have been extended to authorised officers and inspectors. Certain powers granted to members of the SAPS and SANDF who are authorised persons appointed by the DCA are statutory powers in terms of parliamentary legislation. These powers include inter alia the powers of search, seizure and arrest. It is trite law that members of the SAPS and the SANDF receive in respect of basic training as to issues relating to search, seizure and arrest.

5.2 In the principal Act the powers, functions and duties of authorised officers and inspectors have been limited to safety issues, while the powers, functions and duties of authorised persons were limited to security issues, with specific reference to activities regarding aircraft and aerodromes. This distinction has been blurred by extending the powers, functions and duties of authorised persons in the draft Bill to authorised officers and inspectors. This blurring is not justified. The explanatory memorandum does not provide cogent reasons for such a drastic step.

**6.AD CLAUSE 60 -SECTION 155(1) OF THE PRINCIPAL ACT**

6.1 In this regard it has to be pointed out that with reference to the proposed establishment of a Fees Committee as per section 155(1) in the draft Bill, such a committee, which consists of members of the aviation industry already exists as one of six a sub-committee of the CARCoM (Section 159 of the principal Act and Subpart 2 of Part 11 of the Civil aviation Regulations, 2011). It

6.2 is therefore submitted that it would appear that the proposed Fees Committee is a duplicate of the existing Fees Sub-committee of CARCoM and is therefore not necessary.

**7.0 AD CLAUSE 61 -DELETION OF SECTION 163(3) OF THE PRINCIPAL ACT.**

7.1 it is submitted that the deletion of this particular sub-section is not justified for the following reasons:

7.1.1 The introduction of an international standard does not require a physical insertion in the appropriate Cats document

7.1.2 This means the content of the inserted international aviation standard cannot be contained in the applicable CATS document. As the text of the various Annexes are not contained in legal textbooks or the SACAA website, it can be difficult to obtain such texts.

7.1.3 The existing sub-section (2) has to remain as it indicates the process for the issuing of an international aviation standard.

7.1.4 The proposed amendment in the draft Bill does not address the matter of how international aviation standards can be made part of the CATS documents. The proposed sub-section does not cover the aspects mentioned in the existing sub-section (2).

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