

PROPOSED AMENDMENTS TO DRAFT BILL SUBMITTED TO PORTFOLIO COMMITTEE ON TRANSPORT ON 22 OCTOBER 2008

The undermentioned amendments to the draft Bill are proposed, submitted on 22 October 2008 for deliberation by the Portfolio Committee on Transport:

1. Preamble:

- 1.1 On page 2 in line 10, substitute the word *"safety"* with the word *"security"*.

2. Arrangement of sections:

- 2.1 On page 10, part 4, 100A remove the word *"civil"*.
- 2.2 On page 30, clause 4(4), insert the words *"and set strategic goals for the Civil Aviation Authority"*.
- 2.3 On page 30, in the heading of clause 5, insert the word *"transit agreement"*.
- 2.4 On page 30, clause 5(1) insert the words *"and the transit agreement referred to in Schedule 4"*.
- 2.5 On page 53, clause 25(6) omit the words *"with the approval of the Minister"*.
- 2.6 On page 56, clause 30(1)(c) omit the words *"but ownership in immovable property may be acquired or disposed of only with the consent of the Minister"* and insert the words *"whether movable or immovable"*.
- 2.7 On page 56, clause 30(1)(e) omit the word *"should"* and substitute with the word *"will"*.
- 2.8 On page 57, clause 30(2)(a), insert the words *"grant"* and the word *"off"*, as well as the words *"and may grant inspection thereof"*.
- 2.9 On page 57, clause 30(4) insert the word *"aircraft"*.
- 2.10 On page 76, clause 50, in the heading, substitute the words *"peace officers"* with the word *"coroner"*.
- 2.11 On page 82, clause 63(1) omit the words *"subject to the approval of the Minister"*.

- 2.12 On page 82, clause 63(1)(a) to include the words *"in which"*.
- 2.13 On page 96, clause 81(3) insert a new sub-clause (3) as follows:
- "In the execution of the functions contemplated in sub-section (2)(a), (b) and (c) the Civil Aviation Authority Board may not compromise or obstruct the execution of the safety and security oversight functions of the Director as contemplated in this Act"*.
- 2.14 On page 113, clause 93(1)(a) insert the following *"is responsible for the carrying out of the functions as contemplated in Section 72 of this Act"*.
- 2.15 On page 116, clause 100B in sub-clause (a) substitute the word *"co-ordination"* with *"development"*.
- 2.16 On page 116, clause 100B in sub-clause (b) omit the word *"frequent"*.
- 2.17 On page 116, clause 100B in sub-clause (c) omit the words *"guidelines"* as well as *"civil"*.
- 2.18 On page 116, clause 100B in sub-clause (d) substitute the word *"operational"* with the word *"technical"*.
- 2.19 On page 117, clause 100B in sub-clause (f) substitute the word *"conduct"* with the words *"to ensure that"*, and insert the words *"and security measures as well as"*.
- 2.20 On page 117, clause 100B in sub-clauses (i) and (j) are to be omitted and inserted as new clauses (j) and (k) in clause 72(1) on page 89.
- 2.21 On page 117, clause 100B sub-clause (k) is omitted.
- 2.22 On page 117, clause 100B sub-clause (m) to include the word *"policy in respect of the"* as well as omit the word *"civil"*.
- 2.23 On page 117, clause 100B in sub-clause (o) to omit the words *"and recommendations"* and omit the words *"and evaluation methodology"*, and omit the words *"in order to adapt airports to security requirements"*.
- 2.24 On page 132, clause 107(2)(a) to insert the words *"and 143(2)(c)"*.
- 2.25 On page 153, clause 129(4), omit this sub-clause.

2.26 On page 178, clause 143(b) omit the word "and".

2.27 On page 178, clause 143 (c), omit the previous sub-clause (c) and substitute with the following:

- "(c) such other persons appointed by those stakeholders and recognised by the Director which must include representation from:*
- (i) the general aviation, recreational aviation and commercial aviation industry;*
 - (ii) the Air Traffic and Navigation Services Company Limited contemplated in Section 2 of the Air Traffic and Navigation Services Company Act, 1993 (Act No 45 of 1993);*
 - (iii) the South African Police Services;*
 - (iv) The South African National Defence Force;*
 - (v) the Airports Company contemplated in Section 2 of Act 44 of 1993;*
 - (vi) the Department; and*
 - (vii) any other stakeholder as determined by the Director."*

To repeal, consolidate and amend the aviation laws giving effect to certain International Aviation Conventions; to provide for the control and regulation of aviation within the Republic; to provide for the establishment of a South African Civil Aviation Authority with safety and security oversight functions, to provide for the establishment of an independent Aviation Safety Investigation Board in compliance with Annex 13 of the Chicago Convention, to give effect to certain provisions of the Convention on Offences and Certain other Acts Committed on Board Aircraft; to give effect to 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 provide for the National Aviation Security Program; to provide for additional measures directed at more effective control of the safety and security of aircraft, airports and the like; and to provide for matters connected thereto.

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(3) With the written consent of the Minister any person in whom any discretion is vested as is contemplated in subsection (2), may delegate any such power with the written consent of the Minister to exercise such discretion on his or her behalf to any other specified person.

(4) The Minister must designate the Civil Aviation Authority as the appropriate authority for the purposes of carrying out the functions of this Act and Convention **and set strategic goals for the Civil Aviation Authority.**

(5) The Minister may, in addition to the company airports defined in section 1 of the Airports Company Act, 1993 (Act No. 44 of 1993), by notice in the *Gazette*, designate any other airport for the purposes of this Act.

Enactment of Conventions, Transit Agreement and Protocol

5. (1) The Conventions referred to in Schedules 3 **and the Transit Agreement referred to in Schedule 4** have, subject to this Act, the force of law in the Republic.

(2) The Minister may by notice in the *Gazette* amend Schedules 3 and 4 to reflect any changes made to the Conventions and the Protocols if those changes are binding on the Republic in terms of section 231 of the Constitution.

CHAPTER 3

PART 1

ACQUISITION OF LAND AND RIGHTS IN CONNECTION WITH AIRPORTS AND CONSULTATION WITH INTERESTED PARTIES

(3) In the performance of its administrative and secretarial functions under this Act, the Aviation Safety Investigation Board is assisted by officers in the public service made available for such purpose by the Director-General.

(4) (a) The Aviation Safety Investigation Board, may in the exercise of its powers and the performance of its functions in terms of this Act, the Constitution or any other law, enter into contracts for the purpose of obtaining the services of persons having technical or specialised knowledge of civil aviation or any other related field.

(b) The Aviation Safety Investigation Board with the concurrence of the Minister of Finance annually determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of the persons referred to in paragraph (a).

(5) Every person employed by the Aviation Safety Investigation Board must preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her duties where except in so far as the publication of such matter or information is necessary for the purpose of the report of the Aviation Safety Investigation Board.

(6) If there would be no conflict of interest created, the Chairperson may engage on a temporary basis, the services of persons having technical or specialised knowledge to assist the Aviation Safety Investigation Board in carrying out its duties under this Act, and may pay them such remuneration and expenses as the Aviation Safety Investigation Board, with the approval of the Minister, may determine.

Agreements between Aviation Safety Investigation Board and Director

26. (1) The Aviation Safety Investigation Board and the Director may enter into agreements with regard to—

- (f) submit a final report to all recipient States in compliance with Chapter 6 of Annex 13 to the Convention concerning any aircraft accident or aircraft incident investigated by the Aviation Safety Investigation Board; and
- (g) monitor the implementation of safety recommendations as issued by Contracting States.

Powers of Aviation Safety Investigation Board

30. (1) The Aviation Safety Investigation Board may do all that is necessary or expedient to perform its functions effectively, which includes the power to—
- (a) determine its own staff establishment subject to section 25 having due regard to available funds;
 - (b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;
 - (c) acquire or dispose of any right in or to property whether movable or immovable; but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
 - (d) investigate aircraft accidents and aircraft incidents;
 - (e) determine categories of aircraft accidents and aircraft incidents that should will be investigated by the Aviation Safety Investigation Board;
 - (f) make rules for the internal procedure for the investigation of aircraft accidents and aircraft incidents by the Aviation Safety Investigation Board;
 - (g) delegate the investigation of any aircraft accident or aircraft incident to any other Contracting State, in accordance with the Annex 13 of the Convention;
 - (h) collect and disseminate relevant information;

- (i) reopen any investigation in compliance with Annex 13 to the Convention;
- (j) establish an aircraft accident and aircraft incident reporting system in compliance with Annex 13 to the Convention and to facilitate the a database system for collection of information on actual or potential safety deficiencies;
- (k) upon request conduct investigations on behalf of other contracting States;
- (l) open and operate its own bank accounts;
- (m) insure itself against any loss, damage or risk;
- (n) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
- (o) institute or defend any legal action; and
- (p) do anything that is incidental to the exercise of any of its powers.

(2) If the accident occurred within the Republic, the Aviation Safety Investigation Board has the power to—

- (a) summon and examine witnesses under oath and to call for the production and ~~grant~~ inspection ~~of~~ books, logs, certificates, licences, medical records and other documents, and may grant inspection thereof; and
- (b) summon any person to give evidence before it, or to produce any official document or such other information or object as may be necessary for the performance of the Aviation Safety Investigation Board's functions.

(3) The Aviation Safety Investigation Board may make rules in relation to the conduct and procedure of its meetings.

(4) The Aviation Safety Investigation Board may make rules in relation to the investigation of aircraft accidents and aircraft incidents and the conduct and procedures of its investigations, including the participation of accredited representatives, advisers, experts and observers in compliance with Annex 13 to the Convention.

- (b) be required to produce an on-board recording or give evidence relating to it in any legal, disciplinary or other proceedings.

Access by Aviation Safety Investigation Board

48. Despite section 47 any on-board recording that relates to an aircraft accident or aircraft incident being investigated under this Act must be released to an investigator who requests it for the purposes of the investigation.

Use of on-board recording by Aviation Safety Investigation Board

49. The Aviation Safety Investigation Board may make such use of any on-board recording obtained under this Act as it considers necessary in the interests of aviation safety, but, subject to section 51, must not knowingly communicate or permit to be communicated to anyone any portion thereof that is unrelated to the causes or contributing factors of the aircraft accident or aircraft incident under investigation or to the identification of safety deficiencies.

Access to on-board recording by coroner peace officers, inquests and other investigators

50. The Aviation Safety Investigation Board must make available any on-board recording obtained under this Act to—

- (a) a coroner who requests access thereto for the purpose of an investigation that the coroner is conducting; or

PART 6

RULES

Rules

63. (1) The Aviation Safety Investigation Board may, ~~subject to the approval of the Minister,~~ make rules—

- (a) prescribing the manner ~~in which~~ to exercise or carry out any of its powers, duties and functions under this Act and, generally, for its efficient operation;
- (b) regulating the keeping and preservation of records, documents and other evidence relating to aircraft accidents and aircraft incidents;
- (c) regulating the attendance of interested persons at tests to destruction conducted under section 34;
- (d) defining, for the purposes of an investigation, the site or sites of an aircraft accident and aircraft incident and for the protection of those sites;
- (e) for defining the rights or privileges of persons attending investigations as accredited representatives, advisers, experts, and observers or with observer status;
- (f) regarding the tariff of fees and expenses to be paid to any witness attending at an investigation or at a public inquiry conducted under section 37 and the conditions under which a fee or expenses may be paid to any such witness;
- (g) regarding the procedures and rules to be followed in conducting public inquiries under section 37;
- (h) regarding the tariff of travel and living expenses to be paid to any member or member of staff of the Aviation Safety Investigation Board; and
- (i) generally for carrying out the purposes and provisions of this Act.

- (c) **determine and compile the corporate governance plan in respect of the Civil Aviation Authority.**

Functions of Civil Aviation Authority Board

81. (1) The Civil Aviation Authority Board—

- (a) must determine the remuneration policy of employees of the Civil Aviation Authority;
- (b) must determine the policy in respect of allowances, subsidies and other service benefits of the employees of the Civil Aviation Authority; and
- (c) must compile an annual report on the financial state of affairs of the Civil Aviation Authority in conjunction with the annual report of the Director;

(2) As accounting authority, the Civil Aviation Authority Board is responsible for—

- (a) all income and expenditure of the Civil Aviation Authority;
- (b) all revenue collected by the Civil Aviation Authority;
- (c) all assets and the discharge of all liabilities of the Civil Aviation Authority; and
- (d) the proper and diligent implementation and adherence to the provisions of the Public Finance Management Act.

(3) In the execution of the functions contemplated in subsection (2)(a),(b) and (c) the Civil Aviation Authority Board may not compromise or obstruct the execution of the safety and security oversight functions of the Director as contemplated in this Act.

(43) Generally perform all such acts as in the opinion of the Civil Aviation Authority Board are necessary for or incidental to the attainment of the objects for which the Civil Aviation Authority Board is established.

(b) is or becomes a political office bearer, or

(c) is convicted of an offence during his or her term of office and sentenced to a period of imprisonment without the option of a fine.

Duties of Director

92. (1) The Director is the head of the Civil Aviation Authority's administration and manages the Civil Aviation Authority.

(2) The Director has the powers and must perform the duties conferred or imposed upon him or her by this Act and such powers and duties that may be assigned to him or her by the Minister.

(3) In the exercise of the powers and performance of duties referred to in this Act, the Director is accountable—

- (a) solely and directly to the Minister in respect of issues relating to civil aviation safety and security oversight; and
- (b) to the Civil Aviation Authority Board in respect of the implementation of governance policies as directed by the Civil Aviation Authority Board.

Responsibilities

93. (1) Subject to this Act the Director—

(a) is responsible for the carrying out of the functions as contemplated in section 72 of this Act;

(b) may take any decision in the exercise by the Civil Aviation Authority of its powers;

PART 4**AVIATION SECURITY****National Civil Aviation Security Policy**

100A. (1) Subject to this Act the Department is responsible for development of National civil Aviation Security Policies.

National Civil Aviation Security responsibilities of Department

100B. Subject to this Act the Department is responsible for—

- (a) the compilation, revision and development of the National Aviation Security Program (NASP) in compliance with Annex 17 to the Convention;
- (b) the responsibility for the establishment, production, promulgation and review of the national civil aviation security program to ensure it continues to meet the State's obligations and is consistent with Government policy;
- (c) the defining and allocating of tasks within government policy guidelines for implementation of the national civil aviation security program as between agencies, airline operators, airports and others concerned;
- (d) the establishment and promulgation of operational technical criteria to be met by those responsible for implementing security measures under the national civil aviation security program;
- (e) the constant analysis of the level of threat to civil aviation and initiate such action by airlines, airports, providers of security services and other organizations contributing to the programme, sufficient to effectively counter the perceived level of threat;

- (f) the policy to ensure that conduct surveys, inspections, audits, tests and investigations of security standards and security measures as well as operating procedures of airports, airlines and providers of security services for purposes of the compilation of the National Aviation Security Programme are conducted;
- (g) the receipt, collation, analysis and dissemination of information on any threat or incident and information on the numbers and types of prohibited articles discovered or confiscated and provide a technical reference and information centre for the use of the Civil Aviation Authority, airport administrations, operators and security services;
- (h) the fostering and promotion for good working relationships, cooperation and the exchange of relevant information and experience among States, particularly with adjacent States and those with which a State has major air transport relationships;
- (i) ~~the review and ensurance of the adequacy of security programmes and associated documentation produced by airports, aircraft operators and cargo operations, monitoring their implementation to ensure continuing effectiveness and incorporation of amendments as required;~~
- (j) ~~the enhancement of aviation security by the development and dissemination of progressive administrative and technical practices, promoting their use by security services, airport administrations and aircraft operators;~~
- (k) ~~the process of recommendations to Government, specialist committees and working groups;~~
- (ii) the ensurance that the State's National civil Aviation Security Programme is current, effective and upgraded from time to time as required by changing circumstances;
- (jm) advising of airport administrations and operators on the most effective use which can be made of human resources, methods, procedures, security devices and systems based on collected and correlated data;

(ka) the policy in respect of the development, promotion, production and dissemination of suitable training materials that can be used in the training of persons concerned with the implementation of the Nnational civil Aaviation Ssecurity Programme.

(lb) the development of national standards and recommendations relating to the specifications and evaluation methodology of security equipment, systems and airport design, in order to adapt airports to security requirements.

(mc) the coordination of security measures and procedures with appropriate organizations and agencies.

(nd) the development of effective strategies to secure compliance with aviation security standards;

(of) the assessment of security related decisions taken by industry at all levels for the impact on aviation security; and

(ps) the conducting of regular and timely assessment of international security developments.;

- (c) issuing certificates, licences, registrations and permits;
- (d) conducting comprehensive aviation industry surveillance, including assessment of safety-and security related decisions taken by industry management at all levels for their impact on aviation safety and security;
- (e) overseeing and regulating the flight inspection of navigational aids to aviation;
- (f) conducting regular reviews of the system of civil aviation safety and security in order to—
 - (i) monitor the safety performance of the aviation industry;
 - (ii) identify safety-and security related trends and risk factors; and
 - (iii) promote the development and improvement of the system;
- (g) conducting regular and timely assessment of international safety and security developments;
- (h) formulating and approving supporting regulations and technical standards through a consultative process with the aviation industry in terms of section 143 of this Act;
- (i) must monitor, implement and enforce the National Aviation Security Programme (NASP); and
- (j) the review and ensurance of the adequacy of security programmes and associated documentation produced by airports, aircraft operators and cargo operations, monitoring their implementation to ensure continuing effectiveness and incorporation of amendments as required;
- (k) the enhancement of aviation security by the development and dissemination of progressive administrative and technical practices, promoting their use by security services, airport administrations and aircraft operators; and
- (l) the formulating of a national aviation disaster plan.

Appeal against decisions of Director

107. (1) Any person or entity aggrieved by a decision taken by the Director referred to in subparagraph 2(a) to (e) may file a written appeal with the appeal committee against such decision within 30 days after receipt of the reasons for the decision.

(2) Any person or entity, as the case may be, may appeal against-

(a) a decision or decisions taken in terms of section 76(4),

105(3) and 143(2)(c).

(b) a decision by the Director to-

(i) refuse such person's or entity's application for exemption, registration, licence, certificate, approval or authorisation, or to designate one or more persons as inspectors, authorised officers or persons in terms of this Act,

(ii) issue, subject to any condition or restriction, such person's or entity's exemption, registration, licence, certificate, approval or authorisation in terms of this Act;

(iii) suspend, cancel, endorse or vary such person's or entity's exemption, registration, licence, certificate, approval or authorisation in terms of this Act;

(c) a decision taken in regard to the designation or withdrawal of a designation as inspectors, authorised officers or authorised persons contemplated in section 94(1) of this Act;

(d) a decision refusing to lift the grounding order as contemplated in section 102(2) of this Act;

the seizure, satisfies the Minister, by means of proof in writing submitted through the Director, that he or she did not know that the aircraft was used or intended to be used for the commission, or in connection with the commission, of any offence, or that he or she could not prevent such use.

Threat to security

129. (1) If the Minister, ~~after consultation with the Director~~, 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, aircraft, airport, heliport or aviation facility is being seriously and immediately threatened, he or she or any person designated by him or her for this purpose, may issue such orders as may be considered necessary to any person or group of persons to counter such action.

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

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

~~(4) — The Minister may, to such an extent as he or she may determine, with the concurrence of the Minister of Finance, compensate out of the National 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).~~

Institution of the Civil Aviation Regulations Committee

143. (1) The Director must institute a Civil Aviation Regulations Committee to advise the Minister on proposals with regard to-

- (a) the introduction of any regulation to be made under section 141 of this Act;
- (b) the amendment or withdrawal of any regulation made under section 141 of this Act;
- (c) the introduction of any technical standard to be issued under section 148 of this Act;
- (d) the amendment or withdrawal of any technical standard issued under section 148 of this Act;
- (e) any matter relating to civil aviation, including any such matter referred to it by the Director.

(2) The members of the committee shall consist of-

- (a) the Director;
- (b) the Chairperson of each subcommittee established by the committee in terms of section 145 of this Act; and
- (c) such other persons appointed by those stakeholders and recognised by the Director which must include representation from:
 - (i) the general aviation, recreational aviation and commercial aviation industry;
 - (ii) the Air Traffic and Navigation Services Company Limited contemplated in section 2 of Air Traffic And Navigation Services Company Act, 1993 (Act No 45 of 1993);
 - (iii) the South African Police Services;
 - (iv) the South African National Defence Force;

(v) the Airports Company contemplated in section 2 of act 44 of 1993;

(vi) the Department; and

(vii) any other stakeholder as determined by the Director.

(3) Subject to the provisions in this section, the committee shall in consultation with the Director, determine the procedures to be followed in the performance of its functions.

(4) The Director appoints the Chairperson of the committee as contemplated in subsection (1).