

Namibia

## Air Services Act, 1949

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Republic of Namibia  
Annotated Statutes

## Air Services Act, 1949

### Act 51 of 1949

Published in [South African Government Gazette no. 4201](#) on 8 July 1949

**Assented to on 1 July 1949**

**Commenced on 1 March 1950 by [Proclamation 24 of 1950](#)**

*[Up to date as at 10 September 2021]*

*[Amended by [Air Services Amendment Act, 1964 \(Act 6 of 1964\)](#) on 21 February 1964]*

*[Amended by [Air Services Amendment Act, 1991 \(Act 6 of 1991\)](#) on 31 May 1991]*

*[Amended by [Posts and Telecommunications Companies Establishment Act, 1992 \(Act 17 of 1992\)](#) on 31 July 1992]*

*[Amended by [Air Services Amendment Act, 1998 \(Act 31 of 1998\)](#) on 16 November 1998]*

*[Amended by [Road Traffic and Transport Act, 1999 \(Act 22 of 1999\)](#) on 6 April 2001]*

*[APPLICABILITY TO SOUTH WEST AFRICA: Section 24, as amended by Act 6 of 1964 (and prior to amendment by Act 6 of 1991), stated “The provisions of this Act and any amendment thereof shall apply in respect of any air services provided by the Railway Administration, and shall also apply to the Territory of South-West Africa”. South-West Africa was defined in section 1 (as amended by Act 6 of 1964 and prior to repeal by Act 6 of 1991) to include “the Eastern Caprivi Zipfel referred to in section three of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”*

*TRANSFER 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. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence - the Transfer of Powers and Duties of the State President Act 97 of 1986 (RSA GG 10438) - which did not apply to South West Africa because it was not made expressly so applicable.*

*Section 3(1)(b) of the transfer proclamation excluded section 2(2) of the Act (which, prior to Namibian independence, referred to bilateral agreements between South Africa and other countries) from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the reference to the “Government of the Republic” in this section was not to be construed as a reference to the Administrator-General. Section 3(1)(h) of the transfer proclamation excluded section 15 of the Air Services Amendment Act 43 of 1973 (which*

never came into force) from the operation of section 3(1) of the General Proclamation. Section 3(2) of the transfer proclamation excluded the references to the “Republic” throughout the Act from the operation of section 3(1)(c) of the General Proclamation, and provided that “Republic” should be deemed to include “the territory”.

Section 3(2) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, excluded from transfer the provisions of any transferred law “which provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. This may have excluded from transfer the provisions of this Act relating to the National Transportation Commission (which was referenced in the Act prior to its amendment by Act 6 of 1991).

(RSA GG 3906). However, Act 43 of 1973 was never brought into force in respect of South Africa or South West Africa. Therefore, the amendments contained in it are not incorporated here. Act 43 of 1973 was repealed in South Africa by the Repeal of Laws Act 94 of 1981 (RSA GG 7855), which came into force on the date of publication: 28 October 1981. However, this repeal, which took place after the date of transfer, was not effective in respect of South West Africa.]

ACT

### To provide for the Licensing and Control of Air Carriers and Air Services.

BE IT ENACTED by the King’s Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[Act 6 of 1964 amends the Act throughout to substitute “Republic” for “Union”.

Act 6 of 1991 makes the following substitutions throughout the Act: \* “Namibia” for “the Republic”; \* “Permanent Secretary” for “Secretary for Transport”; and \* “State Revenue Fund” for “Consolidated Revenue Fund”. This Act as amended uses the spellings “subsection” and “sub-section” inconsistently.]

## 1. Definitions

In this Act, unless the context indicates otherwise

“**air carrier**” means a person who operates an air service;

“**air service**” means any service performed by means of an aircraft for reward, and includes an air transport service;

“**air transport service**” means a service by aircraft for the carriage of passengers or goods for reward, and includes such a service on charter terms;

“**commission**” means the Transportation Commission of Namibia established by section 2 of the Road Traffic and Transport Act, 1999;

[definition of “Commission” amended by Act 6 of 1991 and substituted by Act 22 of 1999]

“**international air transport service**” means an air transport service which passes through the air space over the territory of Namibia and at least one other State;

[definition of “international air transport service” amended by Act 6 of 1991]

“**licence**” means an air carrier’s licence granted under section nine, or deemed in terms of sub-section (4) of section twenty to have been so granted;

[There is no longer a subsection (4) in section 20 following the substitution of section 20 by Act 6 of 1991. However, this definition was not amended accordingly.]

“**Minister**” means the Minister of Works, Transport and Communication:

[definition of “Minister” inserted by Act 6 of 1991; the colon at the end of this definition should be a semicolon]

“**Permanent Secretary**” means the Permanent Secretary: Works, Transport and Communication or a person designated by him or her;

*[definition of "Permanent Secretary" inserted by Act 6 of 1991]*

*[definition of "person" deleted by Act 6 of 1991]*

**"prescribed"** means prescribed by regulation;

**"regulation"** means a regulation made under section twenty-two;

**"scheduled"** or "non-scheduled" in relation to an air transport service, shall be construed by reference to the definitions contained in the regulations made under paragraph (g) of section twenty-two;

*[definition of "South-West Africa" inserted by Act 6 of 1964 and deleted by Act 6 of 1991]*

**"this Act"** includes the regulations.

## 2. Air service not to be provided except under licence

- (1) Subject to the succeeding provisions of this section, no person shall use an aircraft for the provision of any air service, except under and in accordance with the terms and conditions of a licence granted to that person or deemed to have been so granted.

*[Subsection (1) is amended by Act 6 of 1964; the deletion of the phrase directed by this amending Act requires the deletion of the commas before and after it, although this is not reflected in the amending Act.]*

- (2) No licence shall be required in respect of a scheduled international air transport service which is being operated by an airline of another State in terms of any bilateral agreement concluded between the Government of Namibia and such other State.

*[Section 3(1)(b) of the transfer proclamation excluded subsection (2) from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the reference to the "Government of the Republic" in this section, prior to Namibian independence, was not to be construed as a reference to the Administrator-General.] (3) (a) The Minister may, if it appears to the Minister expedient to do so, by notice in the Gazette exclude or modify, to such extent as to him or her seems desirable, the application of subsection (1) to or in respect of visiting aircraft, registered as to nationality in another contracting State, which are engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services. (b) For the purposes of paragraph (a) "contracting State" means any State which is a party to the Convention on International Civil Aviation, signed at Chicago on the seventh day of December, 1944. [subsection (3) amended by Act 6 of 1964 and by Act 6 of 1991; not all of the changes made by Act 6 of 1991 are indicated by amendment markings]*

- (4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction, for a first offence, to a fine not exceeding R20 000, and for every subsequent offence, to a fine not exceeding R50 000.

*[subsection (4) amended by Act 6 of 1991]*

## 3. Functions of commission in relation to applications

- (1) It shall be the function of the commission, subject to the provisions of this Act, to hear and determine any application -

*[introductory phrase of subsection (1) amended by Act 6 of 1991]*

- (a) for the grant of a licence;
- (b) for the renewal, transfer, alteration, modification or amendment of a licence or the conditions thereof;
- (c) for an exemption from any of the provisions of this Act or any condition of a licence;
- (d) by or on behalf of any interested party, requesting the commission to make any order or give any direction, consent or approval which it may lawfully make or give, or with respect to any matter

which by this Act or any order or direction of the commission is prohibited, sanctioned or required to be done.

- (2) Every such application as is mentioned in sub-section (1) shall be addressed to the commission in the prescribed manner and form.
- (3) Whenever the commission has refused any such application as is mentioned in sub-section (1) or has varied the conditions of a licence under sub-section (5) of section nine or cancelled or suspended a licence under section seventeen, the commission shall, at the written request of the applicant or the holder of the licence concerned, as the case may be, and upon payment to the Permanent Secretary of the prescribed fee, furnish to him its reasons for such refusal, variation, cancellation or suspension.

#### **4. Particulars to be furnished in connection with application for air carrier's licence**

- (1) Every person who applies for the grant of a licence shall furnish to the commission:
  - (a) his full name, address and nationality, and if the applicant is a company, a copy of its memorandum and articles of association;
  - (b) proof, to the satisfaction of the commission, that he or she can provide a safe, satisfactory and reliable air service and has sufficient capital available for financing such safe, satisfactory and reliable air service, and a statement of the amount of such capital;  
*[paragraph (b) amended by Act 6 of 1991 and by Act 31 of 1998]*
  - (c) particulars of the air service which the applicant proposes to provide, and such particulars as the commission may require of the organization which the applicant has or proposes to set up for the purposes of such service;
  - (d) particulars of the number of aircraft (including reserve aircraft) to be used;
  - (e) such particulars as the commission may require, of the type or types of aircraft to be used;
  - (f) particulars concerning the availability of spare parts and of servicing, maintenance and repair facilities at terminal and intermediate points on the route over which the applicant proposes to provide the service;
  - (g) particulars concerning the personnel it is proposed to employ in connection with the air service, with particulars of the number of persons to be employed in each of the various classes of employment, the proposed rates of pay, travelling, subsistence and other allowances, benefits and privileges, normal hours of duty, and an estimate of the number of flying hours per month which each member of the crew of any aircraft will be required to complete;
  - (h) particulars concerning -
    - (i) the types and classes of traffic which the applicant proposes to convey;
    - (ii) the routes and towns proposed to be served and the airports to be used;
    - (iii) the frequency and time tables of the proposed air service;
    - (iv) the proposed tariff of charges or fares;
    - (v) the period of time which the applicant anticipates will elapse before the proposed air service can be commenced;
    - (vi) the applicant's previous experience, if any, in the operation of commercial air services.
- (2) An applicant for the renewal of a licence shall furnish with his application such particulars as may be prescribed in relation to the class of air service for which authorization is sought.

#### **5. Publication of particulars of applications**

As soon as practicable after receipt of any application mentioned in section three, the commission shall cause notice of the application to be given or published in the manner prescribed, setting out -

- (a) in the case of an application for the grant or renewal of a licence -
  - (i) the name of the applicant;
  - (ii) particulars of the air service which the applicant proposes to provide;
  - (iii) the proposed tariff of charges or fares;
  - (iv) a brief general description of the aircraft to be used; and
  - (v) where a licence for the operation of a regular air transport service is applied for, particulars of the proposed routes and the frequencies of the service;
- (b) in the case of any other application, such particulars or information concerning the nature thereof as may be prescribed.

## 6. Representations in support of or in opposition to application

- (1) Any interested person may, within twenty-one days after the date of first publication of particulars of an application in terms of section five, submit to the commission representations in writing in support of or in opposition to the application, and a copy of such representations in opposition to the application shall be sent by the objector to the applicant at the same time as they are sent to the commission: Provided that where an objector has failed to give notice of objection, or to give such notice timeously, the commission may, in its discretion, and on such terms as to postponement of the hearing or as to the lodging of a deposit under sub-section (4) of section seven, as it may think fit, condone the want of due notice and hear the objection.
- (2) Any allegation of fact made by a person in support of or in opposition to an application shall, if the commission so directs, be made under oath.

*[subsection (2) amended by Act 6 of 1964]*

## 7. Consideration and determination of applications

- (1) For the purpose of enquiring into, considering and determining any application mentioned in section three, the commission shall hold hearings, in public at such places as it may think fit: Provided that the commission may in any particular case hold a hearing in private if it considers it to be in the public interest. The commission shall cause notice to be given in the manner prescribed to the applicant and to every person who has made representations in support of or in opposition to the application, of the day, time and place appointed for the hearing.
- (2) An applicant or objector may appear at the hearing of an application either in person or by counsel, attorney or other duly authorized representative, but shall not, save as is provided in sub-section (5), be entitled to recover from any other party any costs incurred by him in the proceedings.
- (3) If the commission is of the opinion, having regard to the nature of an application or objection or the circumstances in which it is made, that it has prima facie little chance of success and that its making may cause needless expense to an objector or to the applicant, as the case may be, the commission may at any time during the proceedings after the lodging of an application or objection, order such applicant or objector to deposit with the commission a sum not exceeding R4 000 within a stated time, and in default of such deposit may refuse the application or disallow the objection.

*[subsection (3) amended by Act 6 of 1991]*

- (4) The commission may, as a condition of condonation of any default by an applicant or objector in complying with the prescribed procedure of application or objection, or of the grant of postponement or other indulgence, require such applicant, objector or party seeking indulgence to deposit with the commission a sum not exceeding R4 000 within a stated time.

*[subsection (3) amended by Act 6 of 1991]*

- (5) If the commission is satisfied that the making of an application which it has refused or of an objection which it has disallowed, or the default of or grant of indulgence to an applicant or objector, has caused unnecessary expense to another party to the proceedings, the commission may in its discretion order that out of any deposit made under sub-section (3) or sub-section (4) by such applicant or objector, such sum of money as it may think fit be paid to the party so damnified in reimbursement or part reimbursement of costs incurred by him, and may order further that there be paid out of the said deposit into the State Revenue Fund such sum as it may think fit. The remainder of any sum deposited or, if no such order is made, the whole of the sum deposited, shall be returned to the depositor.

*[The word "damnified" was probably intended to be "indemnified"]*

## **8. Power of commission to compel attendance of witnesses and production of documents, etc.**

- (1) The commission may for the purposes of any proceedings before it under this Act, by summons under the hand of the chairman or the secretary of the commission, require any person who it has reason to believe may be able to give material information concerning the subject-matter of the proceedings, or to produce any book, document or thing which has any bearing on the subject-matter of the proceedings, to appear personally before the commission, or any member of the commission designated by the commission, at a time and place stated in the summons, and to produce any such book, document or thing which he may be able to produce.
- (2) A summons referred to in sub-section (1) shall be in the form prescribed, and shall be served in the same manner as a subpoena in a criminal case issued by a magistrate's court.
- (3) The commission, or any member of the commission designated by the commission in terms of sub-section (1), before whom any person summoned in terms of sub-section (1) appears as a witness, may interrogate such person and require him to produce any book, document or thing mentioned in the summons which he may be able to produce, and for this purpose the chairman or, in his absence, any other member of the commission (if such person appears before the commission) or the member of the commission before whom such person appears, may administer an oath to him or require him to make affirmation of the truth of his testimony. Any book, document or thing produced by any person under this sub-section may be retained for a reasonable period for examination by or on the order of the commission.
- (4) Any person who, having been duly summoned under sub-section (1), without lawful excuse fails to appear in obedience to the summons or to remain in attendance until he is excused from further attendance, or who without lawful excuse refuses to be sworn or to make affirmation or to answer any relevant question lawfully put to him or to produce any book, document or thing referred to in sub-section (1) which he may be able to produce, or who, while he is under oath or affirmation, makes any false statement before the commission or the person interrogating him, which he knows to be false, shall be guilty of an offence: Provided that in connection with the interrogation of any such person or the production of any such book, document or thing, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any document or thing before a court of law, shall apply.
- (5) Any person who -
- (a) refuses or fails to comply to the best of his ability with any reasonable requirement of the commission, or any member of the commission designated in terms of sub-section (1), in connection with the exercise of its or his functions under this section; or
  - (b) wilfully hinders or obstructs the commission or any such member in the exercise of those functions,
- shall be guilty of an offence.
- (6) Any person convicted of an offence under this section shall be liable to a fine not exceeding R4 000.

*[subsection (6) amended by Act 6 of 1991]*



## 9. Grant or refusal of licence. Matters to be considered.

*[The two full stops appear in this heading in the Government Gazette.]*

- (1) The commission may in its discretion grant an application for a licence or for the renewal of a licence, subject to such conditions as may be attached to a licence under section eleven, or may refuse such application, or may grant a licence which in respect of area or distance of operation, or in any other respect, confers a less extensive authorization than the licence sought by the applicant.
- (2) *[subsection (2) deleted by Act 31 of 1998]*
- (3) In exercising its discretion the commission shall, having regard to the nature of the application before it, take into consideration the following matters:
  - (a) The extent to which it is probable that the applicant will be able to provide -
 

*[The word "the" at the beginning of paragraph (a) should not be capitalised.]*

    - (i) a safe air service; and
    - (ii) a satisfactory and reliable air service in respect of continuity, regularity of operation, frequency, punctuality, reasonableness of charges and general efficiency; and
  - (b) that the applicant has the financial resources to provide such safe, satisfactory and reliable air service,

and the commission shall take into consideration any representations in support of or in opposition to the application, duly made in accordance with the provisions of this Act.

*[subsection (3) substituted by Act 31 of 1998]*

- (4) The commission may grant wholly or in part any application by an air carrier for the amendment or modification of his licence or the conditions thereof, if in its opinion by reason of altered circumstances or for any other good and sufficient reason, including any consideration mentioned in subsection (3), it is desirable to do so in the public interest or in order to avoid hardship.

*[subsection (4) substituted by Act 31 of 1998]*

- (5) The commission may of its own motion in like circumstances vary the conditions attached by it to a licence, or may attach further conditions thereto: Provided that the commission shall not so vary any conditions of a licence or attach thereto any further condition, which has the effect, in either case, of restricting in any respect the authorization conferred by the licence, unless at least twenty-one days notice of its intention so to do has been given to the holder and he has been given an opportunity of being heard by the commission in opposition thereto: Provided further that the holder of the licence concerned shall be allowed a reasonable time by the commission within which to comply with any such variation of the conditions of his licence or with such new condition so attached to his licence.

## 10. \*\*\*

*[section 10 deleted by Act 31 of 1998]*

## 11. Matters to be specified in licence and conditions which may be attached thereto

- (1) No one licence shall authorize the provision of more than one of the classes of air service established by regulation, but licences to provide two or more different classes of air service so established may be granted to the same person.
- (2) Every licence shall specify -
  - (a) the name and address of the licensee;
  - (b) the class of air service authorized by the licence;

- (c) the period of validity of the licence;
  - (d) the area within or the route over or the points between which the air service may be provided.
- (3) The commission may attach to a licence such of the following conditions as may be applicable in respect of the particular class of air service authorized by the licence -
- (a) a condition that the aircraft to be used shall not operate at or from a specified aerodrome or shall only operate at or from one or more specified aerodromes: Provided that no air carrier shall be required to operate at an aerodrome which is not provided with telephonic means of communication;
  - (b) a condition that a certain class or description of goods other than mails shall or shall not be carried;
  - (c) a condition specifying the charges or the maximum or minimum charges which may be made in connection with the air service;
  - (d) a condition prohibiting the taking on or setting down of passengers or goods within a specified area or between specified points on a route;
  - (e) conditions as to the provision which shall be made by the air carrier for the payment of compensation in respect of the disablement or death of any of his employees resulting from any accident arising out of and in the course of such employee's employment, in any case where the provisions of the Workmen's Compensation Act, 1941 (Act 30 of 1941) do not apply in respect of the disablement or death of such employee;  
*[Paragraph (e) is amended by Act 6 of 1991. Act 30 of 1941 has been re-named the Employees' Compensation Act.]*
  - (f) a condition requiring a specified minimum frequency to be maintained on the service;
  - (g) a condition stipulating that the air service may be operated by day only, or by night only;
  - (h) a condition requiring the air service to be in full operation within a specified period, not exceeding two years, after the date upon which the licence is granted;
  - (i) a condition requiring the air carrier to give to the commission a specified period of notice of his intention to abandon the air service;
  - (j) a condition prohibiting the conveyance of mails without the authority of the Namibian Communications Commission established by section 2 of the Namibian Communications Commission Act, 1992 (Act 4 of 1992);  
*[Paragraph (j) is amended by Act 17 of 1992. The Namibian Communications Commission Act 4 of 1992 has been replaced by the Communications Act 8 of 2009.]*
  - (k) any other conditions which the commission considers desirable in the interests of public safety.  
*[paragraph (k) amended by Act 31 of 1998; a comma is deleted without being indicated by amendment markings]*

## 12. Period of validity of licences and renewal of licences

- (1) A licence may be granted for such period, not exceeding seven years, as the commission may in each case stipulate: Provided that every licence for the operation of a scheduled air transport service shall be granted for an initial period of seven years: Provided further that any licence may be renewed by the commission for such further period or periods, not exceeding five years at a time, as the commission may in each case deem desirable in the public interest, and subject to such conditions as are mentioned in section eleven.
- (2) An application for the renewal of a licence shall be submitted to the commission not later than twelve months prior to the date of expiration of the licence and if any such application is submitted to the commission not less than eighteen months prior to the date of expiration of the licence, the decision of

the commission thereon shall be communicated to the applicant not less than twelve months prior to that date.

- (3) The period of validity of a licence may, in the discretion of the commission, be expressed to commence as from a date subsequent to that on which the licence is actually granted.
- (4) If at the date on which a licence expires, proceedings are pending on an application for the renewal of the licence, the expired licence shall be deemed to continue in force until such application has been finally determined.

### **13. Air transport service not to be commenced until operating certificate obtained**

*[The amendments to section 13 by Act 6 of 1964 remove the word "transport" from the text of the section, but do not change the heading of the section accordingly.]*

- (1) An air carrier to whom a licence for the provision of an air service has been granted, shall not commence such service and an air carrier whose licence for the provision of such a service has been renewed shall not continue such service until the Director: Civil Aviation referred to in section 5 of the Civil Aviation Act, 1962 (Act 74 of 1962) has issued to such air carrier an operating certificate certifying that the holder is adequately equipped and able to conduct a safe air service over the route or within the area in respect of which the licence was granted.

*[subsection (1) amended by Act 6 of 1964 and by Act 6 of 1991; the amendment markings in Act 6 of 1991 are incomplete]*

- (1bis) Any certificate issued for the purposes of sub-section (1) shall lapse upon the expiration of the period for which the relevant licence was granted or renewed.

*[subsection (1)bis inserted by Act 6 of 1964]*

- (2) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to the penalties prescribed by sub-section (4) of section two.

### **14. Licence fees**

There shall be paid to the Permanent Secretary by an air carrier in respect of each licence issued to him, and in respect of the renewal or transfer of any such licence, such fee as may be prescribed in relation to the class of licence in question.

### **15. Transfer and termination of licences**

- (1) A licence may, on the application of the holder, be transferred by the commission to another person for the remaining period of its validity, and the commission may make its consent to the transfer subject to such conditions as it may in the public interest deem desirable.
- (2) If any condition subject to which the consent of the commission to the transfer of a licence was obtained, is not fulfilled in connection with the transaction of which the transfer forms a part, or if it appears that any false information has been furnished to the commission in connection with an application for such a transfer, the commission may forthwith withdraw its consent to the transfer and thereupon the licence shall become null and void.
- (3) With every application for the transfer of a licence there shall be submitted to the commission in form prescribed sworn declarations, by the holder and the proposed transferee of the licence, setting forth full particulars of the transaction of which the proposed transfer of the licence forms a part or to which it is incidental, including particulars of the full consideration passing from the transferee to the holder.
- (4) A licence shall automatically lapse in the event of the sequestration of the estate of the holder or, if the holder is a company, in the event of its being wound up.

## 16. Insurance

Every licensed air carrier shall insure and at all times remain insured, in such sums or to such extent as may be prescribed in relation to the class of air service provided by such air carrier, against claims of a nature or class likewise so prescribed, which may arise out of the use of aircraft by such air carrier under the authority conveyed by his licence.

*[section 16 amended by Act 6 of 1991; the amendment markings are incomplete]*

## 17. Cancellation or suspension of licences

(1) The commission may, subject to the provisions of sub-sections (2) and (3), at any time cancel a licence, or suspend it for such period as the commission may think fit, or vary or add to the conditions thereof, if the holder has in the opinion of the commission committed any act prejudicial to the national security of Namibia or has contravened or failed to comply with -

- (a) any provision of this Act or of any law relating to aviation; or
- (b) any lawful order or requirement of the commission under this Act; or
- (c) any condition of his licence; or
- (d) the terms of any exemption granted to him under this Act,

or if the holder has failed to operate the air service in terms of his licence, or if, in the case of an air transport service, the service provided by the holder of the licence does not meet fully and satisfactorily the air transportation requirements of the public over the route or within the area in respect of which the service was licensed or if, in the case of a holder who has a controlling interest in any company, whether incorporated in Namibia or not, which is not the holder of a licence, such company has in the opinion of the commission committed any act prejudicial to the national security of Namibia or has contravened or failed to comply with any provision referred to in paragraph (a).

*[subsection (1) amended by Act 6 of 1964]*

(2) The commission shall not exercise any of its powers under sub-section (1) unless it has given the licensee reasonable notice of the action which it is proposed to take and of the grounds therefor, and has afforded the licensee an opportunity of showing cause, either in writing or by appearance in person or by a representative before the commission, why the proposed action should not be taken, and no licence shall be cancelled or suspended on the ground of failure to comply with a condition unless it appears to the commission that the failure has been repeated or persistent, or has been deliberate and serious.

(3) The temporary abandonment, suspension, diversion or interruption of an air service, necessitated or brought about by adverse weather conditions, considerations of safety, illness or other emergency, shall not be taken to constitute a breach of any condition of the licence authorizing such service, but the commission may, in any such case, require the licensee to furnish it with a full report on the occurrence, and the licensee shall submit the report in such manner and form and within such period as the commission may direct.

(4) If any person acquires a controlling interest in a company after the issue or renewal of a licence to such company, such licence shall, unless the commission has given its approval to the acquisition of that interest, automatically be suspended with effect from the twenty-first day after the date of such acquisition or from such later date as the commission may determine, and until the commission has given its approval to such acquisition.

*[subsection (4) inserted by Act 6 of 1964]*

(5) For the purposes of sub-sections (1) and (4) the expression “controlling interest”, in relation to a company, means any interest held in that company by another company by virtue of which such other company is, in relation to the firstmentioned company, a holding company as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973), and includes any like interest held in any company by a natural person.

*[Subsection (5) is inserted by Act 6 of 1964 and amended by Act 6 of 1991. The amendment markings in Act 6 of 1991 are incomplete. The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]*

## 18. Returns

The commission may by order in writing require air carriers or any particular class of air carrier to render to it in such manner and form and at such times as may be prescribed by the commission, such returns in relation to any class or classes of air service provided by such carriers or class of carrier, as the commission may deem necessary for the effective carrying out of its duties and functions under this Act.

## 19. Exemptions

- (1) The commission may on the application of any air carrier, exempt him from the operation of sub-section (1) of section two or from the operation of any other provision of this Act or any condition of his licence, if in the opinion of the commission the air carrier concerned is providing or proposes to provide an air service on a non-profit basis for charitable purposes, or for purposes incidental to social welfare, or that the granting of such exemption will assist in saving life.
- (2) Any exemption granted under sub-section (1) may be limited so as to apply only in respect of one or more aircraft or one or more particular routes, journeys or transactions, or may be limited as to time, area or distance, or otherwise as the commission may think fit.
- (3) Whenever the commission is of opinion that the delay involved in publishing in terms of section five particulars of an application for exemption, would defeat the object of the application, and that non-publication of such particulars would not be detrimental to the general public interest, the commission may dispense with such publication and grant the application forthwith.
- (4) Any person who uses an aircraft for the provision of an air service in contravention of the terms of an exemption granted to such person under this section shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000.

*[subsection (4) amended by Act 6 of 1991; the amendment markings are incomplete]*

## 20. Provision with regard to existing licences

- (1) Subject to the provisions of subsections (2) and (3) any licence to provide an air transport service granted under this Act before the amendment thereof by the Air Services Amendment Act, 1991, shall be deemed to have been granted by the commission in accordance with the provision of the Act as so amended.
- (2) Every licence referred to in subsection (1) shall remain in force for the period specified in the licence, but nothing in that subsection contained shall curtail the power of the commission under this Act to cancel or suspend or otherwise deal with such a licence.
- (3) If, in any licence referred to in subsection (1), a period has been specified within which the licensee was required to commence the operation of the air service authorized by the licence, and such period has, at the date of commencement of the Air Services Amendment Act, 1991, not yet expired, it shall not be competent for the commission, during the currency of such period, to grant to any other person a licence for a similar class of service within substantially the same area or over substantially the same route as that in respect of which such first-mentioned licence was granted.

*[section 20 substituted by Act 6 of 1991]*

## 21. Presumptions

In any proceedings under this Act -

- (a) an aircraft which is being used for the provision of an air service shall, until the contrary is proved, be presumed to be so used or caused to be so used by the person in whose name that aircraft is registered in terms of any law relating to the registration of aircraft as to nationality;

- (b) an aircraft which is registered in the name of a person who is a licensed air carrier, and which is being used for the provision of an air service otherwise than in accordance with the terms and conditions of such air carrier's licence, shall, until the contrary is proved, be presumed to be so used or caused to be so used by such air carrier;
- (c) the conveyance in an aircraft of any person in addition to the normal operating crew, or of any goods shall, until the contrary is proved, be presumed to be a conveyance for reward;
- (d) a document purporting to be a licence issued under this Act, or a copy of any such licence certified in writing as such by the chairman or secretary of the commission or by any person acting in that capacity, shall be accepted as prima facie evidence of the facts stated therein;
- (e) a certificate signed by the chairman or secretary of the commission or by any person acting in that capacity, that a licence has not been granted by the commission to a specified person, shall be accepted as prima facie evidence of the facts stated therein.

## 22. Regulations

The Minister may make regulations not inconsistent with this Act, with regard to -

- (a) the manner and form in which any application under this Act shall be addressed to the commission;
- (b) the nature of the particulars to be furnished with any application under this Act;
- (c) the manner of publication and the contents of any notice under section five;
- (d) the manner in which notice of hearings shall be given in terms of section seven;
- (e) the form of any licence, certificate, summons or other document to be used for the purposes of this Act;
- (f) the fees payable in respect of the issue, renewal or transfer of licences;
- (g) the establishment and definition of classifications or groups of air carriers or air services;
- (h) any other matter which by this Act is required to be or may be prescribed or which it may be necessary or expedient to prescribe in order that this Act may be effectively and conveniently administered.

*[Section 22 is amended by Act 6 of 1964, to substitute "Minister of Transport" for "Governor-General". Section 6(2) of Act 6 of 1964 includes the following transitional provision: "Any regulations made under section twenty-two of the principal Act and in force on the date of commencement of this Act shall be deemed to have been made by the Minister of Transport in terms of that section as amended by sub-section (1) of this section." Section 22 is also amended by Act 6 of 1991.]*

## 23. Revenue and expenditure under this Act

All expenditure incurred by the commission in the administration of this Act shall be defrayed from the State Revenue Fund and all moneys received under this Act shall be paid into the said Fund.

## 24. Jurisdiction of magistrate's courts

Notwithstanding anything to the contrary in any law contained, any magistrate's court shall have jurisdiction to impose any sentence provided for in this Act.

*[Section 24 is amended by Act 6 of 1964, with effect from 1 March 1950 (in terms of section 7 of Act 6 of 1964), and substituted by Act 6 of 1991.]*

## 25. Short title and commencement

This Act shall be called the Air Services Act, 1949.

*[Section 25 is amended by Act 6 of 1964 to delete " , and shall come into operation on a date to be fixed by the*

*Governor-General by proclamation in the Gazette”.]*