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THE CIVIL AVIATION ACT

CAP. 394

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Civil Aviation Act

Cap. 394

Legislation as at 26 April 2024

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CIVIL AVIATION ACT

CAP. 394

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An Act of Parliament to repeal the Civil Aviation Act, to provide for the control, regulation and orderly development of civil aviation in Kenya; and for connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Civil Aviation Act, 2013.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"accident" means any occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which —

(a) a person is fatally or seriously injured as a result of—

(i) being in the aircraft, or

(ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or

(iii) direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

(b) the aircraft sustains damage or structural failure which—

(i) adversely affects the structural strength, performance or flight characteristics of the aircraft, and

(ii) would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes,

vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes), or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome; or

(c) the aircraft is missing or is completely inaccessible;

"acts of unlawful interference" means any acts, conspiracy or attempted acts intended to or which have the result of jeopardizing the safety of civil aviation and air transport and include—

(a) unlawful seizure of aircraft in flight or on the ground;

(b) hostage taking on board aircraft or on aerodromes;

(c) forcible intrusion on board an aircraft, at an aerodrome or on the premises of an aeronautical facility;

(d) introduction on board aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;

(e) communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviations facility;

(f) destroying or causing damage to air navigation facilities, or interfering with their operation, if any such act is likely to endanger the safety of aircraft in flight;

(g) violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft;

(h) causing destruction to an aircraft in service, or causing damage to an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;

(i) unlawfully and intentionally using any device, substance or weapon, to—

(i) perform an act of violence against a person at an airport serving civil aviation which causes or is likely to cause serious injury or death;

(ii) destroy or seriously damage the facilities of an airport serving civil aviation or an aircraft not in service located at the airport or disrupting the services of the airport, if that act endangers or is likely to endanger safety at that airport;

(j) use of an aircraft in service for the purpose of causing death, serious bodily injury, or threats of bodily harm to passengers and crew or persons not on the aircraft but whose safety are of interest to passengers or crew on the aircraft or serious damage to property or the environment;

"aerial work" means any purpose other than commercial transport for which an aircraft is flown if hire or reward is given or promised in respect of the flight or the purpose of the flight;

"aerodrome" means any defined area on land or on water, including any building, installation or equipment therein, used or intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft, and includes any such area as the Cabinet Secretary may by notice in the *Gazette* declare to be an aerodrome;

"air navigation" means the process of planning and directing the progress of an aircraft between selected geographic points or over a selected route;

"air navigation facility" means any facility used, available for use or designed for use, in aid of air navigation and any other structure or mechanism having a similar purpose for guiding or controlling flight on the movement areas in the air, or the landing and take-off of an aircraft;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air, other than reactions of the air against the earth's surface, and includes all flying machines,

aeroplanes, gliders, seaplanes, rotorcrafts, airships, balloons, gyroplanes, helicopters, ornithopters and other similar machines but excludes state aircraft;

"aircraft piracy" means any actual or attempted seizure or exercise of control, of an aircraft within the jurisdiction of Kenya, by force, violence or by any other form of intimidation, with wrongful intent;

"airway" means a designated control area or portion thereof established in the form of a corridor;

"air navigation services" means—

(a) communication services, whether ground to air or ground to ground, provided for the safety of the aircraft;

(b) navigational services, that is to say radio, radar and visual aids to navigation;

(c) air traffic services provided for the safety of aircraft; and

(d) aeronautical information services;

"air route" means navigable airspace between two points and the terrain beneath such air space identified, to the extent necessary, for the application of flight rules;

"air transport enterprise" includes persons, corporate bodies and unincorporated bodies, companies, firms, partnerships, societies and associations, now or hereafter operating an air transport service for public hire, under proper authority, in the transport of passengers, mail or cargo;

"air transport service" means any air service performed by aircraft for commercial transport of passengers, mail or cargo;

"Article 83 *bis*" means the provisions of Article 83 *bis* of the Convention on International Civil Aviation, 1944 (Chicago Convention);

"Article 83 *bis* Agreement" means an agreement between two Contracting States that have ratified Article 83 *bis*, in terms of which the State of Registry transfers all or some of its functions and duties to the State of the Operator;

"Authority" means the Kenya Civil Aviation Authority established under section 4 of this Act;

"authorised employee" means an employee authorised by the Director-General to exercise the powers or perform the duties and functions in respect of which the expression is used;

"aviation document" means any licence, permit, certificate including a medical certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

"aviation security" means a combination of measures, human and material resources intended to safeguard civil aviation against acts of unlawful interference;

"Board" means the Board of Directors of the Authority constituted under section 13 of this Act;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to civil aviation;

"cargo" means any movable property carried in an aircraft;

"Certification" means the process of determining that a person or organisation possesses the knowledge, skills and key competencies required of a specified operation;

"charges" means all sums received or receivable, charged or chargeable under this Act or regulations made thereunder for any service performed or facilities provided by the Authority;

"civil aircraft" means aircraft other than State aircraft;

"Convention" means the Convention on International Civil Aviation, signed at Chicago on December 7, 1944 and includes;

(a) any amendment to the Convention which has entered into force under Article 94 (a) of the Convention and has been ratified by Kenya;

(b) any annex or amendment thereto accepted under Article 90 of the Convention; and

(c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organization pursuant to Article 37 of the Convention;

"chief investigator" means the chief investigator appointed under section 53;

"commercial transport" means the carriage of passengers or cargo for hire or reward;

"Contracting State" means any State which is party to the Chicago Convention;

"controlled area" means a controlled airspace extending upwards from a specified limit above the earth;

"convention" means any international convention or protocol and any annex thereto relating to civil aviation to which Kenya is a signatory or has acceded, or to which Kenya is in any way party to, whether made, concluded, signed or acceded to before or after the commencement of this Act, and includes the Chicago Convention;

"crew" includes any person assigned by the owner to perform duty on an aircraft during flight;

"danger area" means an airspace of defined dimensions within which activities dangerous to the flight of aircraft may exist at specified times;

"dangerous goods" means goods capable of posing risk to health, safety or property when transported by air;

"Director-General" means the Director-General of the Authority appointed under section 19;

"domestic air transportation" means transportation by air carried out between places in Kenya;

"financial year" means the period of twelve months ending on the thirtieth June in each year;

"flight crew member" means licensed crew member charged with duties essential to the operation of an aircraft during a flight duty period;

"foreign aircraft" means any aircraft not registered in Kenya;

"foreign air carrier" means an air carrier, not being a Kenyan air operator engaged in commercial air transport operations within the borders or airspace of Kenya;

"former Authority" means the Kenya Civil Aviation Authority established under the repealed Civil Aviation Act (Cap. 394);

"Government aerodrome" means an aerodrome under the control of the Government;

"inappropriate use" means the use of aviation safety information for a different purpose other than the purpose for which it was collected, including use of information for disciplinary, civil, administrative and criminal proceedings against operational personnel and disclosure of the information to the public;

"incident" means an occurrence, other than an accident, associated with the operation of an aircraft which affects or may affect the safety of operation;

"in-flight" means at any time from the moment when the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation and in the case of forced landing, the flight shall be deemed to continue until the competent authorities take over responsibility for the aircraft and for the persons and property aboard;

"international air transportation" means transportation by air between a place in Kenya and a place outside thereof, or from and to a place in Kenya with a stopping outside thereof;

"investigator-in-charge" means the investigator appointed by the chief investigator on the basis of his or her experience and charged with the responsibility for the organisation, conduct and control of an investigation into a specific accident or incident;

"Kenya aircraft" means any aircraft registered in Kenya;

"licence" includes any certificate, permit or document, authorising any person to do or to omit to do anything under this Act;

"National Civil Aviation Security Programme" means an integrated set of Regulations and activities promulgated and performed by the State aimed at safeguarding civil aviation against acts of unlawful interference;

"operator" in relation to an aircraft, means a person having the management of the aircraft for the time being or, in relation to time, at the time;

"order" means a written directive of the Authority issued under this Act or regulations issued hereunder;

"owner" means, in relation to an aircraft or aerodrome, a person in whose name the aircraft or aerodrome is registered or licensed, and includes any person who is or has been acting as agent in Kenya for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

"passenger" means any person being conveyed by an aircraft and who is not a member of the crew;

"private aerodrome" means an aerodrome other than an aerodrome under the control of Government, Governmental agency, military or police;

"prohibited area" means an airspace of defined dimensions within which the flight of an aircraft is prohibited;

"publication" includes information given in any of the following publications issued, whether before or after the commencement of this Act—

(a) notices to airmen;

(b) aeronautical information publications;

(c) notices to licensed aircraft maintenance engineers and to owners of civil aircraft;

(d) civil aviation publications;

(e) aeronautical information circulars;

(f) manuals of procedures;

(g) advisory circulars and orders; and

(h) technical standards;

"regulated agent" means an agent, freight forwarder or any other entity approved by the appropriate Authority that conducts business with an air operator and provides security controls that are

accepted or required by the appropriate Authority in respect of cargo, courier and express parcels or mail;

"relevant person" means the pilot-in-command, operator, or the owner of the aircraft at the time of the accident or serious incident, or where the accident or serious incident occurs on or adjacent to an aerodrome in Kenya, the owner or operator of the aerodrome;

"restricted area" means an airspace of defined dimensions within which the flight of an aircraft is restricted in accordance with certain specified conditions;

"rocket" means any projectile for projection through the air by the combustion of its own contents and having a total weight before firing of more than 2.2 kilogrammes;

"safety factors" means causal factors identified in the course of an aircraft accident or incident investigation including direct causes, root causes and contributory factors;

"safety information" means information contained in safety data collection and processing systems established for the sole purpose of improving aviation safety and qualified to be protected under specified conditions;

"safety recommendation" means a proposal of the chief investigator or the investigator-in-charge, based on information derived from an investigation or other sources, made with the intention of preventing accidents or incidents and not to apportion blame or liability;

"safety sensitive person" means a person who might endanger aviation safety if that person performs his or her duties and functions improperly and this includes technical air crew, cabin crew, aircraft maintenance personnel, air traffic controllers and security screeners;

"screening" means the application of technical or other means which are intended to identify or detect weapons, explosives or other dangerous devices, articles or substances which may be used to commit an act of unlawful interference;

"security programme" means any measures and procedures adopted to safeguard civil aviation against acts of unlawful interference;

"serious incident" means an incident involving circumstances indicating that there was a high probability of an accident associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down;

"state aircraft" means aircraft used in military, customs and police services of Kenya or of any other State or any other civil registered aircraft at the time performing a state function and fully converted to offer services to heads of States, military service, customs or police or to any other State;

"State Safety Programme" means an integrated set of regulations and activities promulgated and performed by the State aimed at improving safety and efficient delivery of aviation services;

"Tribunal" means the National Civil Aviation Administrative Review Tribunal established under section 66 of this Act;

"unmanned aerial vehicle" means a pilotless aircraft which is flown without a pilot -in-command on-board and is either remotely and fully controlled from another place (ground, another aircraft, space) or programmed and fully autonomous;

"unmanned aerodrome" means any aerodrome where air traffic services are not provided; and

"validation" means a written acceptance by the Director-General of an action of the civil aviation authority of another State in lieu of an action that this Act assigns to the Authority.

(2) Any reference in this Act to goods or articles shall be construed as including a reference to baggage, mail and animals.

(3) *Deleted* by Act No. 42 of 2016, s. 2. [Act No. 18 of 2014, Sch., Act No. 19 of 2014, s. 97, Act No. 42 of 2016, s. 2, Act No. 3 of 2024, Sch.]

3. Application of the Act

(1) The provisions of this Act or any regulations made thereunder shall, except where expressly excluded, apply to—

(a) aerodromes used for civil aviation in Kenya;

(b) air services established or operating in Kenya;

(c) any aircraft registered by the Authority;

(d) any foreign aircraft within the Kenya territory;

(e) aviation personnel and training schools certified by the Authority;

(f) enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft and aircraft parts or components; and

(g) air navigation facilities and services in Kenya.

(2) The provisions of this Act shall not, except where expressly included or if the Cabinet Secretary so directs by order published in the *Gazette*, apply to state aircraft or to any class or classes of state aircraft.

(3) Despite the provisions of subsection (2), in the interest of aviation safety, all aircraft shall be subject to the requirements of this Act in respect of rules of the air.

(4) Despite the provisions of subsection (1), the Authority may, by agreement made with the appropriate foreign civil aviation authority under the Chicago Convention-

(a) transfer to the concerned civil aviation authority of another State all or part of the Authority's responsibilities for a Kenya aircraft operated by a foreign operator; or

(b) vest in the Authority all or part of the responsibilities of the civil aviation authority of another State for an aircraft registered by that State and operated by a Kenyan operator.

[Act No. 42 of 2016, s. 3.]

Part II – ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE KENYA CIVIL AVIATION AUTHORITY

4. Establishment of Authority

(1) There is established an authority to be known as the Kenya Civil Aviation Authority.

(2) The Authority shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding and disposing of movable and immovable property;

(c) borrowing money with the approval of the Cabinet Secretary and the Cabinet Secretary for the time being responsible for matters relating to finance;

(d) entering into contracts; and

(e) doing or performing all such other things or acts necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The Authority shall be the state agency for the management of aviation safety and security in Kenya.

[Act No. 42 of 2016, s. 4.]

5. Headquarters.

The Headquarters of the Authority shall be in Nairobi.

6. Objectives of the Authority.

The object and purpose for which the Authority as established shall be, to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of this Act.

7. Functions of the Authority

(1) The Authority shall be responsible for—

(a) the licensing of air services;

(b) the provision of air navigation services;

(c) the establishment and maintenance of a system for the registration and the marking of civil aircraft;

(d) securing sound development of the civil aviation industry in Kenya;

(e) advising the Government on matters concerning civil aviation;

(f) the co-ordination and direction of search and rescue services;

(g) the facilitation and provision of all the necessary support for the aircraft accident and incident investigations conducted by the chief investigator;

(h) carrying out investigations on incidents that are not classified as accidents and serious incidents;

(i) the safety, security, economic and technical regulation of civil aviation;

(j) dealing with incidents of unlawful interference with aviation security;

(k) *deleted* by Act No. 42 of 2016, s. 5;

(l) the certification of aircraft operators;

(m) enforcement of approved technical standards of aircraft;

(n) the licensing and monitoring of aeronautical personnel;

(o) the provision of technical services for the design, installation, and modification of electronic, radio and other equipment used in the provision of air navigation services;

(p) ensuring the integrity of the systems, equipment and facilities of the Authority;

(q) the issuance and dissemination of the publications referred to in this Act;

(r) the production of accurate, timely comprehensive and relevant air transport information for planning and decision making purposes;

(s) the approval, certification and licensing of aircraft maintenance organisations and regulation of aviation training institutions in Kenya;

(t) the establishment, management and operation of training institutions for the purposes of the Authority;

(u) the registration of rights and interests in aircraft;

(v) the planning, development and formulation of the airspace master plan for the safe and efficient utilization of Kenyan airspace;

(w) the establishment, co-ordination and maintenance of state aviation safety and security programmes;

(x) licensing, certification, registration and surveillance of aerodromes;

(y) certification and surveillance of air navigation service providers;

(z) licensing and certification of regulated agents;

(aa) implementing and enforcing the provisions of this Act, regulations and directives issued hereunder and treaties to which Kenya is a party;

(bb) taking measures to minimize, to the extent possible, any disturbance to the public and any adverse effect on the environment from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation;

(cc) performing economic oversight of air services, protecting consumer rights, environment and ensuring fair trading practices;

(dd) giving effect to the Chicago Convention and other international agreements relating to civil aviation to which Kenya is party to; and

(ee) the performance of such other functions as may, from time to time, be conferred on it by the Cabinet Secretary or by any other written law.

(2) The Authority shall provide air navigation services in Kenya airspace, and for any areas outside of Kenya for which Kenya has, in pursuance of international arrangements, undertaken to provide air navigation services, alerting service and to co-ordinate search and rescue, therein.

(3) The Authority shall carry out its functions in a manner consistent with the Chicago Convention, any Annex to the Convention relating to international standards and recommended practices and any amendment thereto or other international conventions and protocols relating to civil aviation that Kenya is party to.

(4) The Authority shall be responsible for the performance of any obligations required by any agreement, treaty or arrangement between Kenya and any other country, inter-Governmental organisation or other body with respect to the safety, regularity and efficiency of air navigation and aviation safety and security in general.

(5) In the discharge of its responsibility for aviation safety and security, the Authority shall co-ordinate its activities with other agencies of the Government, including the Kenya Airports Authority, the Department of Defence and the National Police Service.

[Act No. 18 of 2014](akn/ke/act/2014/18), Sch. Act No. 42 of 2016, s. 5.]

8. Powers of the Authority

(1) The Authority shall have all the powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority shall have power to—

(a) determine, set out and levy rates, charges, dues or fees for any services performed by the Authority, or for use by any person of the facilities provided by the Authority or for the grant, renewal or validation of a licence permit or certificate, subject to the approval of the Cabinet Secretary;

(b) receive any gifts, grants, donations or endowments made to it or any other monies in respect of it and to make legitimate disbursement therefrom in accordance with the provisions of this Act;

(c) invest any monies not immediately required for its purposes in the manner provided in this Act or any other written law;

(d) enter into contracts, arrangements, agency, associations or partnerships with any person, Government agency or authority, whether, within or outside Kenya, subject to any limitations that may be set out by the Cabinet Secretary;

(e) acquire, hire, hold, lease out, or dispose of all types of assets or property including land:

Provided that the Authority shall not sell, let or otherwise dispose of any buildings, land or other assets vested in it by virtue of section 40 except with the consent of and subject to any conditions that may be set out by the Government.

9. Power to obtain information, documents and evidence.

(1) Where the Authority has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, the Director-General may, by summons signed by himself or a delegated officer of the Authority and served on that person, require the person—

(a) to furnish the information in writing signed by the person served and in the case of a body corporate, signed by a competent officer of the body corporate;

(b) to produce the document to the Authority; and

(c) to appear before the Authority to give evidence.

(2) A summon under this section shall specify the required time and manner of compliance.

(3) The Authority may require that any evidence referred to under this section be given in writing.

(4) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty:

Provided that such information, documents or evidence shall not be put to inappropriate use.

(5) Where the Authority has reason to believe that a person is in possession or control of any information or document which may assist in the performance of its functions and that the person has refused or failed to supply such information or document, the Director-General may apply to the Tribunal for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

10. Protection of Safety and Security Information

Aviation safety and security information obtained, gathered voluntarily or otherwise given to the Authority under this Act or regulations made thereunder shall not be put to any inappropriate use:

Provided that the Authority shall not be precluded from sharing aviation safety and security information with other Civil Aviation Authorities in the Contracting States subject to appropriate safeguards.

[Act No. 42 of 2016, s. 6.]

11. Failure to comply with summons or giving of misleading information

A person who without lawful excuse refuses or fails to comply with a summon, gives false or misleading information or evidence either voluntarily in any proceedings of the Authority or in purported compliance with a summon under this section, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings.

12. Reference to Tribunal

(1) When any matter to be determined by the Authority under this Act appears to it to involve a point of law, the Authority may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction.

(2) Where any matter has been referred to the Tribunal under subsection (1), the Authority and the parties to the proceedings shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or be represented by an advocate of the High Court.

13. Board of Directors

(1) There shall be a Board of Directors of the Authority which shall be the governing body of the Authority consisting of—

(a) Chairperson, who shall be appointed by the President;

(b) the Director-General, appointed under section 19;

(c) the Principal Secretary of the Ministry for the time being responsible for matters relating to civil aviation or his representative;

(d) the Principal Secretary to the National Treasury or his representative;

(e) the Principal Secretary of the Ministry for the time being responsible for matters relating to internal security or his representative;

(f) five other persons, not being public officers, appointed by the Cabinet Secretary through a competitive process and who shall be independent upon appointment and maintain such independence during their term of service on the Board, and of whom-

(i) two shall have demonstrable knowledge and experience in the field of civil aviation;

(ii) one shall have qualification and expertise in financial management or accounting and be a *bona fide* member of a professional body regulating the accountancy or the auditing profession, and in compliance with the requirements thereof;

(iii) one shall have demonstrable knowledge and experience in aviation law or business; and

(iv) one shall have demonstrable knowledge and experience in management.

(1A) For the purposes of subsection (1), a Board member shall be considered independent if he or she-

(a) is not in the Service of the national government or county government or of any statutory body or institution owned or controlled by the national government or county govemment and who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the Authority;

(b) has not been employed by the Authority in an executive capacity within the last five (5) years;

(c) is not associated to an advisor or consultant to the Authority or a member of the Authority's senior management or a significant customer, operator or supplier of the Authority;

(d) has no personal service contract with the Authority or a member of the Authority's senior management;

(e) is not a member of the immediate family of any person described herein.

(2) A person shall not qualify for appointment as Chairperson under subsection (1) (a) unless that person—

(a) is a citizen of Kenya;

(b) meets the requirements of Chapter Six of the Constitution; and

(c) has knowledge and experience in matters relating to administration or has such other qualifications and experience of proven ability in such other fields as the Cabinet Secretary may deem necessary.

(3) A person shall not be appointed a member of the Board under subsection (1)(f) unless that person—

(a) is a citizen of Kenya;

(b) meets the requirements of Chapter Six of the Constitution; and

(c) does not hold a position or have such interests that are likely to place him in a position of conflict of interest or impose undue influence on the Authority or its employees in discharging its functions under this Act or regulations made thereunder.

(4) The members appointed under subsection (1)(a) and (f) shall serve for a period of three years on such terms and conditions as may be specified in their instruments of appointment and shall be eligible for re-appointment for a further one term of three years subject to a favourable evaluation.

(5) A member of the Board appointed under subsection (1) (a) and (f) shall cease to be a member of the Board if that member-

(a) dies;

(b) resigns; or

(c) assumes a political office or is found to have contravened the provisions of Chapter Six of the Constitution.

(6) The Chairperson shall notify the Cabinet Secretary as soon as a vacancy occurs in the membership of the Board, and the Cabinet Secretary shall, appoint a member through an open and competitive process to fill such vacancy within three months of receiving the notice and the person so appointed shall hold office until the expiration of the term of office of the member in whose place he or she was appointed.

[Act No. 42 of 2016, s. 7]

13A. Conflict of interest

(1) The Chairperson or a member of the Board, who has a direct or indirect personal interest in a matter being considered or to be considered by the Board, shall as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of such interest.

(2) A disclosure of interest made under subsection (l) shall be recorded in the minutes of the meeting and the Chairperson or a member shall not take part in the consideration or discussion on or vote during any deliberations on the matter.

(3) A person who fails to make the requisite disclosure under this section commits an offence.

(4) A member of the Board shall excuse himself or herself from proceedings before the Board in which he or she has apparent or perceived conflict of interest.

[Act No. 42 of 2016, s. 8]

14. Termination of appointment of Directors.

(1) The Cabinet Secretary may terminate the appointment of a member appointed under section 13(1) (a) and (g) if that person—

(a) has been absent from three consecutive meetings of the Board without permission;

(b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(c) is convicted of an offence involving dishonesty or fraud;

(d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(e) is incapacitated by prolonged physical or mental illness; or

(f) fails to comply with the provisions of this Act relating to disclosure of interest.

(2) A member appointed under section 13(1) (a) or (g) may resign his office in writing under his hand to the Cabinet Secretary.

15. Functions of the Board

(1) The Board shall be responsible for the general control of the performance and management of the undertakings and affairs of the Authority, and shall include a general duty to ensure that the functions of the Authority are carried out in an efficient, transparent and ethical manner and that no particular person or body is given undue preference or subjected to any undue disadvantage.

(2) The Board shall consider and advise the Cabinet Secretary on the development and maintenance of civil aviation policy framework and the objectives of the Authority.

(3) Without prejudice to the generality of subsection (1) and (2), the Board shall—

(a) consider and advise the Cabinet Secretary—

(i) in relation to the establishment of air services;

(ii) on legislative proposals relating to civil aviation including legislation to give effect to the Chicago Convention, and other international conventions and instruments relating to civil aviation;

(iii) on measures for the promotion or support of any airline designated by the Government for the purpose of any international air services agreement;

(iv) in relation to fares and freight rates and related matters including any resolution of the International Air Transport, Association or any body which succeeds that Association;

(v) in relation to the establishment, maintenance and development of air navigation facilities and services;

(vi) on such other matters affecting civil aviation as it considers desirable in the interest of civil aviation in Kenya;

(b) determine and set priorities for the general performance targets by the Authority;

(c) consider and determine the strategic and business plans and budgets of the Authority;

(d) ensure that measures for the development of civil aviation are initiated and implemented.

16. Powers of the Board

The Board shall have all the powers necessary for the proper performance of the functions of the Authority in accordance with the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

(a) control and oversee the administration of the assets of the Authority in such manner and for such purposes as best promote the purposes for which the Authority is established; and

(b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority.

17. Meetings of the Board

(1) The Board shall meet at least four times in every financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.

(2) The quorum at a meeting of the Board shall be six members excluding the Director-General.

(3) The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule.

18. The common seal of the Authority

(1) The Common Seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The Common Seal of the Authority when affixed to a document and duly authenticated, shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

19. Appointment of Director-General

(1) There shall be a Director-General of the Authority who shall be appointed by the Cabinet Secretary, from a list of at most three qualified persons recommended by the Board following a competitive recruitment process.

(2) Subject to this section, the terms and conditions of service of the Director-General shall be determined by the Board.

(3) The Director-General shall be the Chief Executive Officer of the Authority and shall neither engage in any other paid employment nor hold a position or have such interests that are likely to place him or her in a position of conflict of interest or impose undue influence on the Authority or its employees in discharging its functions under this Act or regulations made thereunder.

(4) A person shall not qualify for appointment as the Director-General under subsection (1) unless that person—

(a) is a citizen of Kenya;

(b) meets the requirements of Chapter Six of the Constitution; and

(c) possesses management and technical experience in the field of civil aviation of not less than ten years;.

(5) The Director-General shall hold office for a term of four years from the date of appointment but shall, upon the recommendation of the Board, be eligible for re-appointment for one further term of four years.

(6) The Cabinet Secretary may, in consultation with the Board, terminate the appointment of the Director-General if he or she—

(a) has been absent from three consecutive meetings of the Board without the permission from the Chairperson;

(b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;

(c) is convicted of an offence involving dishonesty or fraud;

(d) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;

(e) is incapacitated by prolonged physical or mental illness;

(f) is found to have contravened the provisions of Chapter Six of the Constitution; or

(g) fails to comply with the provisions of this Act relating to disclosure of interest.

(7) The Director-General may, at any time, resign his or her office by notice in writing to the Cabinet Secretary.

[Act No. 42 of 2016, s. 9]

20. Responsibilities and powers of the Director-General

(1) The Director-General shall be responsible to the Board for the day to day management of the Authority and shall be responsible for the exercise of all powers and the discharge of all functions of the Authority and shall have control over all personnel and activities of the Authority.

(2) The Director-General shall exercise such powers as are necessary for the performance of the functions of the Authority to enable the objectives, implementation and applications of the regulations made under this Act and in particular, but without prejudice to the generality of the foregoing, the Director-General shall have power to—

(a) inspect, board, or detain an aircraft if serious safety and security concerns are identified or recall an aircraft in flight and search such aircraft during routine inspections or where he or she has reasonable grounds to suspect that the aircraft is being used in contravention of this Act or any regulations made thereunder or that it contains any matter which may be used as evidence in respect of an offence under this Act or the regulations;

(b) ensure that the provisions of this Act and any rules and regulations made thereunder are complied with to the extent necessary in the interest of aviation;

(c) encourage and foster the safe development of civil aviation in Kenya;

(d) plan, develop and formulate safe, secure and efficient utilization of the Kenya airspace;

(e) acquire, establish and improve air navigation facilities where necessary within the limits of available appropriation;

(f) establish a school or schools for the purpose of offering instruction and training in matters related to the aviation industry;

(g) promulgate rules and procedures governing the notification and reporting of accidents and incidents involving aircraft so as to facilitate investigations;

(h) use, with their consent the available services, equipment and facilities of other agencies and to co-operate with those agencies in the establishment, and use of services, equipment and facilities of the Authority;

(i) monitor the deployment and utilization of the movable and immovable property of the Authority;

(j) prepare the annual report and financial statement of the Authority;

(k) implement, co-ordinate and supervise the defined activities related to the management of aviation safety and aviation security as the accountable executives of the State Safety Programme and the National Civil Aviation Security Programme; and

(l) assess and audit the performance standards of the State Safety Programme functions of other State aviation agencies identified by the Cabinet Secretary, to ensure that the State Safety Programme is performing effectively as required.

(3) Without limiting the powers of the Director-General as provided for under subsections (1) and (2) of this section, the Director-General-

(a) shall exercise the powers and duties of the Authority specified under section 7 of this Act;

(b) shall establish a safety oversight system which shall be implemented in accordance with-

(i) the provisions of this Act and Regulations made thereunder;

(ii) the State system and functions of the Authority;

(iii) technical guidance of qualified technical personnel, tools and provision of safety-critical information;

(iv) licensing, certification, authorization or approval obligations;

(v) surveillance obligations;

(vi) the resolution of safety concerns;

(c) shall search any aircraft for compliance with documents stipulated under the Chicago Convention;

(d) shall prohibit an aircraft from flying until an unsafe condition is rectified;

(e) shall prohibit a person from exercising the privileges of any aviation document;

(f) shall suspend, revoke or vary the privileges of any aviation document or any other authorisation issued by the Authority;

(g) shall impose operating restrictions and sanctions on the operators or holders of aviation documents in the event of non-compliances with approval, licensing and certification requirements or unresolved safety and security deficiencies or concerns;

(h) shall determine the technical and financial capability of a prospective operator to conduct the proposed operations;

(i) shall, where he or she believes on reasonable grounds that an unsafe condition exists in any aircraft or aeronautical product and may, by notice in writing, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design; and

(j) may prohibit a foreign registered aircraft from flying if a major defect or damage is found whilst within Kenya.

[Act No. 42 of 2016, s. 10]

21. Suspension or revocation of privileges of a licence

Where the Director-General has reasonable grounds to believe that a violation of this Act, the regulations and any other rules made thereunder has occurred, he or she may in respect of the offending entity specified under section 39, make an order to detain, prohibit, suspend, revoke or vary the privileges of a licence, certificate or any other authorisation issued by the Authority.

22. Delegation by the Director-General

(1) The Director-General may, from time to time, in writing, either generally or particularly, delegate to any person all or any of the powers, exercisable by him under any written law, but not including this present power of delegation.

(2) Subject to any general or special direction given or condition attached by the Director-General, a person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section, shall be presumed to be acting within the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder or holders for the time being of a specified public office or class of public officers.

(5) Every delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the Director-General.

(6) Any such delegation shall, until revoked, continue in force according to its tenure, despite the fact that the Director-General by whom it was made may have ceased to hold office and shall continue to have effect as if made by the person for the time being holding office as Director-General.

23. Appointment of Corporation Secretary

(1) There shall be a Corporation Secretary who shall be appointed by the Board on such terms and conditions as the Board may determine and who shall perform such duties as the Board may, from time to time, assign.

(2) In the performance of his duties under this Act, the Corporation Secretary shall be responsible to the Director-General.

24. Staff of the Authority.

(1) The Director-General may appoint such staff of the Authority as are necessary for the proper discharge of the functions of the Authority under this Act upon such procedures, terms and conditions of service as the Board may determine.

(2) The Board may review salaries, wages and other terms and conditions of service of the staff of the Authority from time to time.

25. Protection from personal liability

(1) No action or thing done by a member of the Board or by any officer, employee or agent of the Authority shall, if the action or thing is done in good faith for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their direction personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

26. Principles of operation

The Authority shall perform its functions in accordance with sound financial principles and shall ensure, as far as reasonably practicable, that expenditure of the Authority is properly charged to its revenue.

27. Funds of the Authority

(1) The funds of the Authority shall consist of —

(a) monies that may accrue to the Authority in the discharge of its functions;

(b) grants and loans from the Government;

(c) grants and loans from any body, organization or persons;

(d) interest on savings made by the Authority;

(e) such monies that may be provided by Parliament for the purposes of the Authority; and

(f) money collected under the Air Passenger Service Charge Act, No. 21 of 2013 and from any other source.

(2) The Authority may open and operate its own bank accounts in both domestic and foreign currencies in banks approved by the Board.

(3) The Authority may, with the approval of the Cabinet Secretary, invest any funds of the Authority not immediately required for use by the Authority in such securities as the Board deems fit.

(4) The Government may provide appropriations to meet operating deficits and capital funding of the Authority.

[Act No. 42 of 2016, s. 11]

28. Commercial ventures

The Authority may, with a written approval of the Cabinet Secretary —

(a) subscribe to or purchase shares, debentures or other securities of a company;

(b) form a company that would be a subsidiary of the Authority;

(c) enter into partnership with any body, organisations or enterprise whose objectives are compatible with the purposes for which the Authority has been established.

29. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for the financial year concerned, and in particular shall provide for—

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority and the members of the Board;

(b) the payment of the pensions, gratuities and other charges in respect of retirement benefits to staff of the Authority;

(c) the proper maintenance of buildings and the grounds of the Authority;

(d) the proper maintenance, repair and replacement of the equipment and other movable property of the Authority;

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters pertaining to the Authority as the Board may decide;

(f) the provisions of air navigation services;

(g) the provision of personnel training.

(3) The annual estimates shall be submitted to the Cabinet Secretary for approval before the commencement of the financial year to which they relate provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Cabinet Secretary.

(4) An expenditure shall not be incurred for purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorisation of the Cabinet Secretary.

30. Business plan

(1) The Authority shall prepare a five-year business plan which shall be reviewed yearly.

(2) The business plan shall contain financial targets and performance indicators for the Authority.

(3) When preparing the business plan, the Authority shall consider—

(a) standards of aviation safety and security;

(b) the objectives and policies of the Government;

(c) funds of the Authority;

(d) assets and liabilities of the Authority;

(e) any other consideration the Authority deems appropriate.

(4) The business plan and the revisions thereof shall be prepared by the Authority at least six months prior to the commencement of the Authority's financial year.

[Act No. 42 of 2016, s. 12.]

31. Borrowing powers

(1) The Authority may borrow funds by the issue of loan stock on such terms as may be approved by the Cabinet Secretary responsible for matters relating to finance upon recommendation of the Cabinet Secretary.

(2) The Authority may in line with principles of public finance management as set out in the Constitution and the Public Finance Management Act (Cap. 412A), borrow money or obtain credit in Kenya or abroad for carrying out its functions with the concurrence of and subject to such limitations as may be set out by the Cabinet Secretary responsible for matters relating to finance.

(3) Stock issued under subsection (1), and such moneys borrowed or credit obtained under subsection (2), for the purposes of this section, and all interest and other charges payable in respect of such stock or credit, shall, unless the instrument or note evidencing or supporting such borrowing shall otherwise provide, be charged upon all the property, undertakings and revenue of the Authority by operation of this section and without further charge or instrument.

(4) Any stock issued by the former Authority which, by virtue of an order made under subsection (3) becomes the liability of the Authority and shall, subject to the terms of such order, be deemed to be the stock issued by the Authority and shall be held in the same right and on the same powers, privileges, provisions and charges as those in, or subject to which such stock was issued.

(5) Except as provided in this section, the Authority shall not give or execute any mortgage or charge over any of its property by way of security for borrowed money.

32. Financial year

The financial year of the Authority shall be the twelve calendar months commencing on the 1st day of July in each year and ending on the 30th day of June the following year.

33. Records and accounts of the Authority

(1) The Board shall cause to be kept all proper books and records of the income, expenditure, assets and liabilities of the Authority.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General or an auditor appointed under subsection (3), the accounts of the Authority together with—

(a) a statement of income and expenditure during that year; and

(b) a statement of the assets and liabilities of the Authority as at the last day of the financial year.

(3) The accounts of the Authority shall be audited by the Auditor-General or by an auditor appointed by the Board with the written approval of the Auditor-General.

(4) The appointment of an auditor shall not be terminated by the Board without the prior written consent of the Auditor-General.

(5) The Auditor-General may give general or special directions to an auditor appointed under subsection (3) and the auditor shall comply with those directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor-General on any matter relating to the directions given under subsection (5) of this section.

(7) Despite anything in this Act, the Auditor-General may submit to the Cabinet Secretary a special report on any matters incidental to his or her powers under this Act, and relevant sections of the Public Audit Act (Cap. 412B), shall apply, with necessary changes, to any report made under this section.

(8) The Cabinet Secretary shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him.

(9) The fee for any auditor, not being a public officer, shall be determined and paid by the Board.

34. Annual report by the Authority

The Director-General shall, within six months after the end of each financial year prepare a report of the operations of the Authority during that year and shall submit such report to the Cabinet Secretary, through the Board, who shall cause it to be presented to the National Assembly together with the report of the Auditor-General and certified copies of the accounts referred to in section 33(2).

[Act No. 3 of 2024, Sch.]

35. Charges and fees

(1) The Authority may determine, set out and levy charges—

(a) for any services performed by the Authority; or

(b) for use of the facilities provided by the Authority; or

(c) for the grant of a license, permit or certificate, based on the transparent principle of cost recovery, principles of public finance management as set out in the Constitution and the Public Finance Management Act (Cap. 412A) and subject to the approval by the Cabinet Secretary.

(2) The schedule of charges shall be published in an Aeronautical Information Circular.

(3) The schedule of charges shall come into force on a date specified therein, which shall be at least thirty days following publication in the Aeronautical Information Circular.

(4) If any amount due and payable under this section is not paid by any party after demand by the Authority and remains unpaid beyond the time specified for payment thereof, the Authority may deny, withdraw service, licence or certificate, seize the aircraft or other property of the debtors after giving reasonable notice of the intention to seize the aircraft or property of the owner or operator of the aircraft and the Authority shall detain the aircraft or property until payment is made.

35A. Establishment of Fund

There is established a Fund to be known as the Kenya Civil Aviation Authority Fund (hereinafter referred to as "the Fund").

[Act No. 42 of 2016, s. 13]

35B. Sources of Fund

There shall be paid into the Fund-

(a) a prescribed portion of the proceeds from the charge collected under the Air Passenger Service Charge Act (Cap. 475);

(b) any monies appropriated by Parliament for the purposes of the Authority;

(c) the rates, charges, dues, or fees levied by the Authority under this Act;

(d) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust; and

(e) all moneys from any other sources provided for or donated or lent to the Authority.

[Act No. 42 of 2016, s. 13]

35C. Payments out of Fund

There shall be paid out of the Fund any expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

[Act No. 42 of 2016, s. 13]

36. Contracting out

The Authority may contract out any of its services provided that such contracting out shall not abrogate from the Authority's regulatory functions and compromise safety and security standards.

37. Consultation with users or departments

(1) In the performance of its functions and exercise of its powers, the Authority shall, where appropriate, consult with Government departments, other authorities, bodies or persons and users of the Authority's facilities and services.

(2) The Authority shall establish any consultative mechanism it deems necessary to obtain the views of the users of the Authority's facilities and services.

38. Authorisation to provide air navigation services

The Authority may authorise an aerodrome to provide air navigation services for the use of such aerodrome subject to such conditions as may be set by the Authority.

39. Inspection of Aircraft, Aerodromes, premises and documents.

(1) The Director-General shall inspect-

(a) any aerodrome used for civil aviation operations; or

(b) any premises or facilities of a holder of aviation document issued by the Authority; or

(c) any Kenyan registered aircraft wherever it may be, for reasons of aviation safety and security, economic regulation, facilitation, aviation consumer protection or for any other reasons for which the Authority is established; or

(d) any aircraft and crew of any other state whilst in Kenya.

(2) ln the performance of the functions under this section, the Director-General shall have unhindered access to aerodromes, premises of a holder of aviation document, any aircraft wherever it may be, any aviation facilities and installations, and to any records or related documents, information and explanation that may be required.

[Act No. 42 of 2016, s. 14]

39A. Investigation and Enforcement

(1) The Director-General shall have power to carry out investigations into complaints, occurrences, save for accidents and serious incidents, after due notice to the person concerned.

(2) A complaint may be-

(a) filed with the Director-General by any person in writing; or

(b) initiated by the Director-General on any matter, with respect to an action committed or omitted by any person in contravention of any provision of this Act or its regulations for investigation and appropriate action.

(3) The Director-General shall have the same power to proceed with an investigation of a complaint instituted on the Director-General's own initiative as though it had been made by another person.

(4) The Director-General shall, after investigations on a complaint filed by the person or initiated by him or her, and has established that there has been violation of the provisions of this Act or its Regulations, require a person in default to take corrective action to comply with, and prevent further violation of the provisions of this Act and its Regulations.

(5) If the Director-General finds, after having required the person in default to take corrective action under subsection (4) of this section, such person has failed to take corrective action to comply with the provisions of this Act, the Director-General shall, consistent with the provisions of this Act and its Regulations, impose appropriate penalty or refer such violations to the Tribunal.

(6) The trial of any offence under this Act shall be by the Tribunal.

(7) Without prejudice to the provisions of subsection (1), the Director-General may investigate a holder of aviation document if he or she-

(a) believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security;

(b) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of this Act and Regulations made thereunder;

(c) considers that the privileges or duties for which the aviation document or any other authorisation has been granted are being carried out by the holder in a careless or incompetent manner;

(d) establishes that the aviation document was eroneously issued based on a mistake, misrepresentation, dishonesty or fraud; or

(e) considers it necessary to investigate for any other cause in the course of exercising his or her functions under this Act.

(8) If the Director-General is satisfied after such investigation that a person is violating any provisions of this Act, Regulations, Rules or Orders, as the case may be, he or she shall by order require that person to take such action consistent with the provision of this Act, Regulations, Rules or Orders as may be necessary in his or her opinion to prevent further violation of the provisions of this Act, Regulations, Rules or Orders.

(9) The Director-General shall have power to take all steps reasonably necessary, including issuance of infringement notice as provided for under the Second Schedule, ground any aircraft and to close the premises of any air transport service provider or provider of allied aviation service, in order to ensure compliance with the provisions of this Act, Regulations, Rules and Orders made thereunder.

(10) Where the Director-General issues an infringement notice under subsection (9), the notice shall state the particulars of the violation, the period within which to comply and the attendant penalty for the stated violation.

(11) A holder of an aviation document or any person aggrieved by any of the matters raised by the infringement notice issued by the Director-General shall have a right to appeal for review to the Director-General within twenty eight days from the time of issuance of the infringement notice.

(12) The Director-General may upon receipt of an appeal consider the grounds for review and may-

(a) confirm, set aside or vary the order or decision in question;

(b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or

(c) make such other order as he may deem just and expedient.

(13) Any person aggrieved by the order of the Director-General under subsection (12) of this section may appeal to the Tribunal in accordance with the relevant provisions of this Act.

[Act No. 42 of 2016, s. 15.]

39B. Aviation personnel certificates

(1) Any person having the requisite qualifications may file with the Authority an application for an aviation personnel certificate.

(2) Where the Authority finds, after investigation, that the applicant possesses the proper qualifications for, and is physically able to perform, the duties pertaining to the aviation personnel certificate sought, it shall issue such certificate.

(3) The Authority may consider prior issuance of an aviation personnel certificate by a foreign country that is a member of the International Civil Aviation Organization as satisfactory evidence, in whole or in part, that the applicant possesses the qualifications and physical ability to perform the duties pertaining to the aviation personnel certificate sought.

(4) The certificate may contain such terms and tests of physical fitness as the Authority may determine to be necessary to assure safety in civil aviation.

(5) The Authority may adopt rules to determine the categories and eligibility requirements of certificates to be issued to aviation personnel including personnel in charge of training and inspection of crew members or personnel engaged in the maintenance of aircraft, aircraft engines, propellers and appliances.

(6) The Authority may issue certificate of validation with respect to an aviation personnel certificate issued by another state.

(7) A holder of an aviation document or any person affected by this Act shall observe and comply with any rules, orders, directives, circulars, notices, regulation, licence or certificate issued under this Act.

[Act No. 42 of 2016, s. 15]

39C. Aircraft in distress

(1) The Authority shall provide such measures of assistance to aircraft in distress within Kenya as it may consider practicable.

(2) In the provision of the assistance referred in subsection (1), the Authority shall collaborate in coordinated measures which may be recommended from time to time in pursuant to the provisions of the Convention.

(3) The Authority may enter into mutual arrangements with other States in respect to the provision of the assistance and for coordination purposes mentioned in subsections (1) and (2) of this section.

(4) Subject to the control of the Kenyan authorities, the Authority shall permit the owners and operators of the aircraft or authorities of the State in which the Aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances.

[Act No. 42 of 2016, s. 15.]

39D. Search and Rescue

(1) The Authority shall-

(a) establish search and rescue units which shall render such assistance as may be required by any aircraft missing or in distress within the territory of Kenya;

(b) co-ordinate government offices and other organizations to pool resources and manpower for the conduct of aircraft search and rescue services.

(2) ln the event the aircraft missing or in distress is registered in another State, the Authority may permit the owner of the aircraft or the authorities of such other State to provide such measures of assistance as may be required under the circumstances, provided that the furnishing of any such assistance shall, at all time, be under the control of the Authority.

(3) The Authority may consider requests by another State or international organization to render search and rescue assistance to aircraft missing or in distress in adjacent territories.

[Act No. 42 of 2016, s. 15.]

40. Acquisition of land for purposes of the Authority

(1) Where land is required by the Authority for its use, the Authority may either—

(a) if such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof; or

(b) if such land is public land or if the Authority is unable to acquire it by agreement in accordance with paragraph (a), it shall notify the Cabinet Secretary responsible for matters relating to lands that the land specified in the notice is required for the purposes of the Authority.

(2) When notice has been given under subsection (1)(b) then—

(a) if the land is public land, the Cabinet Secretary responsible for matters relating to lands may, in his discretion and upon such terms and conditions as he may think fit, place such land at the disposal of the authority to be utilized for the purposes of the Authority, or

(b) if the land is not public land, any provision in any written law which empowers the President or the Cabinet Secretary responsible for matters relating to lands to acquire or direct the acquisition of such land for any specific purpose shall be, deemed to include a power enabling the President or the Cabinet Secretary responsible for matters relating to land to acquire or direct the acquisition of such land for the purposes of the Authority.

(3) Where any compensation is payable to any person in respect of any land specified in the notice given under subsection (1)(b) acquired by the President or the Cabinet Secretary responsible for lands, and such land after being so acquired is placed at the disposal of the Authority in accordance with subsection (2)(a), the amount of compensation payable to that person, in accordance with the provisions of the law under which the land was acquired, shall be paid by the Authority in line with the relevant law dealing with compulsory acquisition of private land.

(4) The Authority may at any time, in consultation with the Board, convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender:

Provided that such land shall be surrendered to the Government and shall be conveyed or transferred to another public institution and not a private person in line with the provisions of Article 62 of the Constitution.

(5) The provisions of subsection (4) shall apply to land vested in the Authority by any written law, including this Act, as well as land conveyed to it or otherwise placed at its disposal.

41. Limitation of actions

Where an action or other legal proceeding is commenced against the Authority for any act done pursuance, or execution or intended in execution of this Act or any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act, or of any such duty of authority, the following provisions shall have effect—

(a) the action or legal proceedings shall not be commenced against the Authority until at least one month after written notice containing the particulars of the claim, and of the intention to commence the action or legal proceedings, has been served upon the Director-General by the plaintiff or his agent;

(b) the action or legal proceedings shall not lie or be instituted unless it is commenced within three years next after the act, neglect, omission or default complained of or in the case of a continuing injury or damage, within six months next after the cessation thereof.

42. Transfer of Government assets and liabilities

(1) Upon the commencement of this Act, all existing assets used in the provision of services for which the Authority has been established shall be transferred to vest in the Authority.

(2) Subject to subsection (3), the Cabinet Secretary may, by order published in the *Gazette*, transfer to the Authority any property or asset belonging to the Government which appears to him to be necessary or useful to the Authority for the performance of its functions under this Act, which property or asset shall vest in the Authority by virtue of the order and without further assignment.

(3) An order under subsection (2) may contain such incidental, consequential or supplemental provisions as the Cabinet Secretary thinks necessary or expedient.

(4) All liabilities incurred in the provisions of services for which the Authority has been established, shall vest in the Authority without further assignment.

43. Restriction in the execution against property of the Authority

Despite anything to the contrary in any law -

(a) where any judgment or order has been obtained against the Authority, no execution or attachment or process in the nature thereof, shall be issued against the immovable property of the Authority or any of its vehicles, vessels, aircraft or its other operational equipment, machinery, fixtures or fittings, but the Director-General shall cause to be paid out of the revenue of the Authority such amount as may, by the judgment or order or decree, be awarded against the Authority to the person entitled thereto;

(b) no immovable or movable property of the Authority or any of its current assets or any vessels, vehicles, aircraft or its equivalent, machinery, fixture or fittings, shall be seized or taken by any person having by law, power to attach or distrain property without the previous written permission of the Director-General.

[Act No. 42 of 2016, s. 16]

44. Service of notice on the Director-General

Any notice, summons, warrant, process or any other document required or authorised under this Act or any other law to be served on the Authority or the Director-General may be served—

(a) by delivering the notice or document to the Director-General or to any authorised employee,

(b) by leaving it at the office of the Director-General; or

(c) by sending it by registered post to the Director-General.

45. Recovery of debts

All debts owed to the Authority under this Act shall be recoverable summarily.

Part III – SAFETY AND SECURITY OF AIRCRAFT AND PERSONS ON BOARD

[Act No. 42 of 2016, s. 17]

46. Imperiling, permitting or interfering with the safety and security of aircraft and persons on board.

(1) A person shall not willfully or negligently—

(a) imperil the safety and security of an aircraft or any person on board, whether by interference with any member of the crew of the aircraft or by tampering with the aircraft or its equipment, or by disorderly conduct or by any other means;

(b) cause or permit an aircraft to endanger any person or property;

(c) interfere or tamper with an air navigation facility.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings.

[Act No. 42 of 2016, s. 18]

46A. Documents to be carried on Board

(1) No person shall fly an aircraft within the airspace of Kenya unless the following documents are carried on board-

(a) a certificate of registration;

(b) the certificate of airworthiness;

(c) the aviation personnel certificate of each flight crew member;

(d) the journey logbook;

(e) the aircraft radio license;

(f) the passengers list or the cargo manifest, if carried;

(g) the flight manual; and

(h) in case of commercial flight, the air operator certificate.

(2) Documents carried aboard an aircraft registered in another State shall be in conformity with the requirements of that State, but the Authority shall have the power to require the production of such documents for examination.

[Act No. 42 of 2016, s. 19]

46B. Prohibited, restricted or danger areas

(1) Any pilot-in-command of an aircraft flying over or maneuvering within the Kenyan airspace shall adhere to the air routes as established by the Authority and shall avoid those areas designated as prohibited, restricted or danger areas.

(2) Any aircraft deviating from an established air route or entering a prohibited, restricted or danger area shall be considered as unauthorized operation and pilot-in-command involved in such an unauthorized operation shall take immediate corrective measures to resume the authorized course and shall strictly comply with any special instructions of the competent authorities, including any instruction to land at a designated location.

[Act No. 42 of 2016, s. 19]

47. Being under the influence of alcohol or drugs in aircraft or while on duty

(1) A safety sensitive person shall not, when involved in aviation safety and security operations or operation of any aircraft whether in-flight or on the ground or being carried in any aircraft for the purpose of so acting be under the influence of alcohol or drugs.

(2) An employee of the Authority shall not report on duty or be on duty when under the influence of alcohol or drugs.

(3) Without prejudice to the provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act, 2007 (No. 4 of 2007) and the Employment Act, 2011 (No. 11 of 2011) a person who contravenes the provisions of subsections (1) and (2) commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or a suspension of his or her privileges, withdrawal or cancellation of licence or any other sanction on the certificate or licence as the Director-General may deem fit.

48. Requirement for drug and alcohol testing system

(1) An operator shall have an effective drug and alcohol testing system approved by the Authority.

(2) An operator who contravenes the provisions of subsection (1) commits an offence and shall be liable upon conviction to a penalty not exceeding two million shillings or may have suspension of his or her privileges withdrawal or cancellation of licence or any other sanction on the certificate or licence as the Director-General may deem fit.

49. Exemption by the Director-General

(1) The Director-General may grant exemption or special authorisation on any civil aviation matter upon an application by a holder of aviation document or any authorisation, as the case may be, on such terms and conditions as may be necessary, with respect to the application of any regulations made under this Act:

Provided that any such exemptions granted shall not compromise aviation safety and security standards and shall be in the interest of the public.

(2) Without limiting the provisions of subsection (1), exemptions shall be issued in accordance with the procedure for applications and approvals prescribed in the regulations.

[Act No. 42 of 2016, s. 20]

50. *Repealed*

Repealed by Act No. 42 of 2016, s. 21.

Part IV – POWERS AND RESPONSIBILITIES OF THE CABINET SECRETARY

51. Powers of the Cabinet Secretary

(1) The Cabinet Secretary shall have powers to determine the policy framework within which the Authority shall operate and for that purpose but with due regard to the need to uphold the Authority's autonomy the Cabinet Secretary may—

(a) give directions of a general nature to the Board regarding the operations of the Authority;

(b) approve alterations in the tariffs, rates, fees and any other charges levied for the services and facilities provided by the Authority;

(c) approve any individual capital work for the purposes of the Authority, whose estimated cost exceeds prescribed limit set by the Cabinet Secretary, from time to time;

(d) from time to time, in writing, either generally or particularly, delegate to the Director-General any of the powers, exercisable by him under any written law, but not including this present power of delegation.

(2) The Director-General may exercise the delegated powers under subsection (1)(d) in the same manner and with the same effect as if they had been conferred on him or her directly by this section and not by delegation subject to any direction given or condition attached by the Cabinet Secretary;

(3) Every delegation under this section shall be revocable and no such delegation shall prevent the exercise of any power by the Cabinet Secretary.

(4) Any such delegation under this section shall, until revoked, continue in force according to its tenure, despite the fact that the Cabinet Secretary by whom it was made may have ceased to hold office.

52. International obligations

The Cabinet Secretary shall be responsible for—

(a) civil aviation policies;

(b) investigation of civil aircraft accidents and incidents for the sole purpose of prevention of further occurrence of similar accidents and incidents;

(c) establishment of incident reporting systems to facilitate collection of information on actual and potential safety deficiencies;

(d) establishment and review of air services agreement in an open and transparent manner;

(e) submission of variations to the Chicago Convention, any Annex to the Convention relating to international standards and recommended practices and any amendment thereto, or other international conventions and protocols, relating to civil aviation that Kenya is party to.

[Act No. 18 of 2014, Sch., Act No. 42 of 2016, s. 22]

53. Appointment of investigators of accidents

(1) For the purposes of carrying out responsibilities under section 52(b) and (c), the Cabinet Secretary shall appoint, by way of *Gazette* notice, investigators of accidents from whom he or she shall appoint a chief investigator of air accidents and his or her Deputy.

(2) The investigation of an accident or incident under this Act shall be conducted to determine the facts, conditions, circumstances and safety factors, and where possible the probable cause of the accident, with the sole objective of prevention of future accidents and incidents and not to apportion blame or liability.

(3) Investigators appointed under subsection (1) shall have a professional pilot's background, or an aeronautical engineering qualification, or air traffic control qualification or, as appropriate, experience in specialized areas of aviation such as operations, aerodynamics and aircraft design.

(4) The Cabinet Secretary may appoint in writing any persons with special skills or knowledge in specialized areas of aviation in an advisory capacity in any case where it appears to the Cabinet Secretary that such special skills or knowledge are required for proper completion of the investigation.

[Act No. 18 of 2014, Sch.]

54. Accident Investigation procedure

(1) Where the whole or any part of the investigation is carried out in Kenya, the chief investigator, the investigator-in-charge shall have—

(a) free and unhindered access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;

(b) powers to secure and preserve the scene of the accident; and

(c) free access to any relevant information or records held by the owner, the operator, the operator's maintenance contractors and sub-contractors, the hirer, the designer or the manufacturer of the aircraft and by the authorities for civil aviation or airport operation or Air Traffic Service.

(2) The Cabinet Secretary shall establish an incident reporting system to facilitate collection of information on actual and potential safety deficiencies.

(3) Upon completion of the accident investigation, the investigator-in-charge shall submit a final report of the findings to the Cabinet Secretary for publication in the *Gazette*.

(3A) No part of the final report referred to under subsection (3) shall be admissible as evidence in a court of law or used in any suit or action for damages arising out of any matter mentioned in such reports.

(4) The investigator-in-charge may, at any stage of an investigation—

(a) recommend to the appropriate authorities, including those in other Contracting States, any preventive action that he or she considers necessary to be taken promptly to enhance aviation safety; and

(b) communicate to the relevant person or authorities in Kenya, the recommendations referred above or those received from another Contracting State.

(5) Any person or authority in Kenya to whom a recommendation has been communicated under subsection (4), shall take that recommendation into consideration and, where appropriate, act upon it or provide a full explanation as to why no measures shall be taken to implement the recommendation.

(6) Information gathered in the course of an accident investigation and through the incident reporting system shall not be put to inappropriate use.

(7) Where the chief investigator has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of an investigation, the chief investigator may by summons signed by himself or herself or the investigator-in-charge and served on that person, require the person—

(a) to furnish the information in writing signed by the person served, and in the case of a body corporate, signed by a competent officer of the body corporate;

(b) to produce documents; and

(c) to give evidence.

(8) A summon made under subsection (7) shall specify the required time and manner of compliance.

(9) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty:

Provided that such information, documents or evidence shall not be admissible against that person other than proceedings under this Act.

(10) A person who, without lawful excuse, refuses or fails to comply with a summon under this section commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term not less than six months or to both.

(11) Where the chief investigator has reason to believe that a person is in possession or control of any information or document which may assist in the performance of an investigation and that person has refused or failed to supply such information or document, the chief investigator may apply to the Tribunal for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

(12) Any person, who knowingly gives false or misleading information or evidence in purported compliance with a summons under this section, commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months.

[Act No. 18 of 2014, Sch.]

55. Inspection and assessment

(1) The Cabinet Secretary shall assess and audit the performance standards of the functions of the Authority to ensure that they meet prescribed international standards at such time intervals as he or she may consider desirable.

(2) The Cabinet Secretary may appoint audit inspectors to carry out the assessment and audit referred to in subsection (1).

(3) The audit inspectors appointed under subsection (2) shall have unhindered access to all records, information, facilities and installations and to any explanation that may be required in the course of their duties.

(4) The Cabinet Secretary may, on the advice of any audit inspector, take appropriate action to ensure that noted safety and security deficiencies are corrected and appropriate standards are maintained.

[Act No. 42 of 2016, s. 23]

Part V – PROVISIONS RELATING TO PROHIBITIONS, OFFENCES, EXEMPTIONS, ETC.

56. Restriction of building in declared areas

(1) Despite the provisions of any written law, or the terms of any deed, grant, lease or license concerning the use and occupation of land, the Cabinet Secretary may, where he considers it to be necessary in the interests of the safety of air navigation, by order published in the *Gazette*, prohibit the erection within a declared area of any building or structure above a height specified in the order.

(2) For the purposes of this section, "declared area" means any area adjacent to or in the vicinity of an aerodrome which the Cabinet Secretary may by notice in the *Gazette* declare to be a declared area.

(3) Any person who contravenes the provisions of an order made under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or to both.

57. Control of structures etc., on or near aerodromes.

(1) If the Director-General considers that provisions for civil aviation safety and security or efficiency of air navigation ought to be made—

(a) whether by lighting or otherwise for giving aircraft warning of the presence of any building, structure, tree or natural growth or formation on or in the vicinity of an aerodrome; or

(b) by the removal or reduction in height of any such obstruction or surface, he or she may by order, and subject to any conditions specified in the order, require or authorise either the owner or occupier of the land on which the obstruction is situated or any person acting on behalf of the Director-General to enter upon the land and carry out such work as is necessary to enable the warning to be given or the obstruction to be reduced in height.

(2) The Director-General shall before making an order under subsection (1), cause to be published, in such manner as he or she thinks best for informing persons concerned, notice of the proposal to make the order, and of the place where copies of the draft order may be obtained free of charge.

(3) The Director-General shall take into consideration any representations with respect to the proposed order under subsection (1) which may, within such period not being less than two months after the publication of the notice as may be specified therein, be made to him or her by any person appearing to him or her to have an interest in any land which would be affected by the order, and at the end of that period the order may, subject to the provisions of this section, be made with such modifications, if any, of the original draft as the Director- General thinks proper.

(4) Every order made under subsection (1) shall provide that—

(a) no work shall be executed on any land under the order until a period of at least fourteen days has elapsed from the date of publication thereof; and

(b) such compensation shall be paid to any person who had legally acquired the particular land or having an interest in land affected by the order for any loss or damage which that person may suffer in consequence of the order as may be agreed between that person and the Director-General, or; in default of agreement, as may be determined by an arbitrator having regard to the public interest.

(5) Any person who —

(a) willfully interferes with any works or things which to the knowledge of that person are executed or placed in, on or over land under an order under subsection (1); or

(b) willfully obstructs a person in the exercise of any powers conferred by such an order or;

(c) willfully disobeys or fails to comply with any order made under subsection (1),

commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or to both.

(6) Any person aggrieved by any action, order or condition set out by the Authority under the provisions of subsection (1), may lodge an appeal to the Tribunal, and the Tribunal shall have exclusive original jurisdiction for disputes arising under this Part.

58. Trespass

(1) Any person who trespasses on any land forming part of a Government aerodrome or an aerodrome licensed under regulations made under this Act commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding one year or to both:

Provided that a person shall not be liable to conviction under this section unless it is proved that, at the material time, notices warning trespassers of their liability under this section were posted so as to be readily seen and read by members of the public.

(2) Any person being the owner of or for time being having charge of, a domestic animal which trespasses in or upon a Government aerodrome or licensed aerodrome commits an offence and shall be liable on conviction ,

(a) in the case of a first offence, to a fine not exceeding fifty thousand shillings, and

(b) in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand shillings.

(3) The application of subsection (1) and (2) is without prejudice to the provisions of the Trespass Act provided that it shall be a good defence for an offender under this provision to prove to the satisfaction of the court that he has previously been charged for the same offence under subsection (1).

59. Nuisance and liability for damage

(1) An action shall not lie in respect of trespass or in respect of nuisance, by reason only of the flight, or the ordinary incidents of the flight, of an aircraft over any property at a height above the ground, which, having regard to wind, weather and all the circumstances of the case is reasonable, so long as the provisions of any written law or convention are complied with.

(2) Where material loss or damage is caused to any person or property on land or water by, or by a person in, or by an article or person falling from, an aircraft while in flight, taking off or landing, then, unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof

of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft:

Provided that where such material loss or damage is caused in circumstances in which—

(a) damages are recoverable in respect of such loss or damage by virtue only of the foregoing provisions of this subsection; and

(b) a legal liability is created in some person other than the owner to pay damages in respect of such loss or damage, the owner shall be entitled to be indemnified by that other person against any claim in respect of such loss or damage.

(3) Despite section 2, where an aircraft has been *bona fide* demised, let or hired out for any period exceeding fourteen days to any person by the owner thereof, and during such period no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as if for reference therein to the owner there were substituted a reference to the person to whom the aircraft has been so demised, let or hired out.

60. Nuisance caused by aircraft and aerodromes

(1) Regulations made under section 82 may provide for regulation of the conditions under which noise and vibration may be caused by aircraft and may provide that subsection (2) of this section shall apply to any aerodrome concerning which provision as to noise and vibration is so made.

(2) An action shall not lie in respect of nuisance by reason only of the noise and vibration caused by aircraft on an aerodrome to which this subsection applies by virtue of regulations made under section 82 so long as the provisions of any such regulations are complied with.

60A. Flying from unmanned aerodrome

(1) Where an aircraft is flown from any unmanned aerodrome or point within Kenya to another unmanned aerodrome or point within Kenya, the pilot- in-command of such aircraft and the operator of such aerodrome shall be required to provide such information as the Authority may specify from time to time.

(2) The information under subsection (1) shall include details of the flight and the nature of the operations.

[Act No. 42 of 2016, s. 24]

61. Dangerous flying

(1) Where an aircraft is flown in such a manner as to cause unnecessary danger to any person or property on land or water, the pilot or the person in charge of the aircraft and the owner thereof, unless he or she proves that the aircraft was so flown without his or her knowledge or consent commits an offence and shall be liable upon conviction to a fine not exceeding two hundred thousand shillings or a suspension of his or her privileges, withdrawal or cancellation of licence or any other sanction on the certificate or licence as the Director-General may deem fit.

(2) The provisions of this section shall be in addition to and not in derogation of the powers conferred upon the Cabinet Secretary under this Act or regulations made thereunder.

61A. Prohibition from flying without prior approval

(1) Where an aircraft is flown from any unmanned aerodrome or point within Kenya to another unmanned aerodrome or point within Kenya, the Pilot-In-Command of such aircraft and the operator of such aerodrome shall be required to provide such information as the Cabinet secretary may prescribe from time to time.

(2) The information under subsection (1) shall include details of the flight and the nature of the operations.

[Act No. 19 of 2014, s. 98]

61B. Use of weapons against civil aircraft

(1) A person shall not use weapon against civil aircraft in flight and in case of interception of civil aircraft in flight, lives of persons on board and safety of aircraft shall not be endangered.

(2) Without prejudice to the provisions of subsection (1), where an unauthorized civil aircraft is flown above the territory of Kenya, or if there are reasonable grounds to believe that the aircraft is being used for any purpose inconsistent with the provisions of this Act, or any convention to which Kenya is party to, the Authority may require the aircraft to-

(a) land at any airport within Kenya; or

(b) comply with any instruction given for the purpose of bringing to an end such violation,

and for this purpose, Kenya may resort to an appropriate means consistent with relevant rules of international law, the provisions of this Act and the regulations made thereunder regarding interception of civil aircraft.

(3) Every aircraft irrespective of the State of registry shall comply with an order given in pursuant to this section and to the provisions of any regulations made thereunder to effect the provisions of this Section.

(4) Any person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to a term not exceeding three (3) years, or to both.

[Act No. 42 of 2016, s. 25.]

61C. Aircraft piracy

(1) A person shall not commit or attempt to commit aircraft piracy, either while the aircraft is in flight or not in flight within the jurisdiction of Kenya.

(2) A person who contravenes this section commits an offence and shall be liable, upon conviction to a fine not exceeding five million shillings or to a tenn of imprisonment not exceeding three (3) years, or to both.

[Act No. 42 of 2016, s. 25.]

61D. Interference wrth air navigation

A person who intentionally and willfully-

(a) interferes or attempts to interfere with air navigation within the territory of Kenya;

(b) vandalizes navigation related equipment or system;

(c) produces, causes to be produced, exhibits or attempts to exhibit within the territory of Kenya-

(i) any light, signal, or communication at such place or in such manner that is likely to be mistaken for a true light or signal established pursuant to this Act or regulations made thereunder; or

(ii) a false light or signal in connection with an airport or other air navigation facility; or

(iii) such light, signal, or communication referred to under subparagraphs (i) and (ii) after due warning by the Director-General and continues to maintain any such misleading light, signal or communication;

(d) removes, extinguishes, or interferes or attempts to remove, extinguish or interfere with the operation of any such true light, signal or communication,

commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings, or to a term of imprisonment not exceeding one year, or to both.

[Act No. 42 of 2016, s. 25.]

61E. Dangerous Goods

A person who-

(a) delivers or transports, attempts to deliver or transport, or causes to be delivered or transported, cargo, baggage, or other property to an air operator for commercial air transport;

(b) offers or accepts, or attempts to offer or accept shipment of cargo, baggage or other property for civil air transport, whether originating or arriving in international flights to or from Kenya, or for flights within Kenya,

in contravention of the provisions of Annex 18 of the Convention commits an offence and shall be liable upon conviction, to a fine of not exceeding five million shillings or to a term of imprisonment for a period not exceeding three years, or both.

[Act No. 42 of 2016, s. 25.]

61F. False or misleading aircraft markings

A person who displays or causes to be displayed on any aircraft any marks or impressions that are false or misleading as to the nationality or registration of the aircraft commits an offence and shall be liable upon conviction, to a fine not exceeding one million shilling or to a term of imprisonment not exceeding six months, or to both.

[Act No. 42 of 2016, s. 25.]

61G. Operations of remotely operated aircraft

(1) A person shall not allow an aircraft capable of being flown without a pilot to be flown without a pilot over the territory of Kenya without special authorization by the Authority and in accordance with the terms of such authorization.

(2) When issuing a special authorization under subsection (1), the Authority shall ensure that the aircraft without a pilot is flown either-

(a) in controlled airspace as specified by the Authority; or

(b) if in airspaces open to civil aircraft, it is controlled so as to avoid endangering civil aircraft.

(3) The Civil Aviation (Rules of Air) Regulations shall be applicable to facilitate application and processing of the mandated requests for authorization under this section:

Provided that in all cases, regard is had on the safety of other airspace user, safety of persons and property on the ground.

(4) A person who contravenes the provisions of this section commits an offence under this Act or regulations made thereunder.

[Act No. 42 of 2016, s. 25.]

61H. Radio transmitting apparatus

No flight crew shall, when operating an aircraft registered in Kenya, carry radio transmitting apparatus, unless such flight crew holds a valid license to install and operate such apparatus issued by the Authority in accordance with regulations made under this Act.

[Act No. 42 of 2016, s. 25.]

61I. Issuance and compliance with the rules of the air

(1) The Authority shall issue rules of the air governing the maneuvre of an aircraft in flight applicable within the territory of Kenya, provided that such rules shall to the extent possible, be consistent with those established, from time to time, under the Convention.

(2) No person shall, within the territory of Kenya, fly or maneuvre an aircraft registered in Kenya wherever it may be, or an aircraft registered in another country, except in accordance with the rules and regulations relating to the flight and maneuver of aircraft issued under this section.

(3) Any pilot-in-command or co-pilot in charge of an aircraft shall be guilty of an offence punishable under this Act or regulations made thereunder where he or she violates-

(a) the Kenyan rules of the air when flying any aircraft over or in Kenyan air space;

(b) rules of the air of a foreign state when flying an aircraft registered in Kenya over or in the airspace of that state; or

(c) such rules of the air as established under the Convention when flying an aircraft registered in Kenya over the airspace of the high seas.

(4) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding two million shillings or imprisonment for a term not exceeding one year, or to both.

[Act No. 42 of 2016, s. 25.]

61J. Reporting and record keeping violations

An air operator, approved training organisation, approved maintenance organisation or any other person or organization involved in civil aviation activities who intentionally and wilfully fails or refuses to-

(a) submit a report to the Director- General as required; or

(b) maintain accounts, records, files or any other document pertaining to the activities of its respective civil aviation activities,

commits an offence and shall, upon conviction, be liable to a fine not less than one million shillings or to a term of imprisonment not exceeding six months, or to both.

[Act No. 42 of 2016, s. 25.]

62. Exemption from seizure of certain aircraft on patent claims

(1) Any lawful entry into Kenya or any lawful transit across Kenya, with or without landing, of an aircraft to which this section applies shall not entail seizure or detention of the aircraft or any proceedings being brought against the owner or operator thereof or any other interference therewith by or on behalf of any person in Kenya on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.

(2) The importation into and storage in Kenya of spare parts and spare equipment for aircraft to which this section applies and the use and installation thereof in the repair of such an aircraft shall

not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Kenya on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model:

Provided that this subsection shall not apply in relation to any spare parts or spare equipment, which are sold or distributed in Kenya or are, exported for sale or distribution.

(3) This section shall apply--

(a) to an aircraft registered in any country or territory in respect of which there is in force a notice made by the Cabinet Secretary and published in the *Gazette*, with a view to the fulfilment of the provisions of Article 27 of the Chicago Convention, that the benefits of those provisions apply to that country or territory; and

(b) to such other aircraft as the Cabinet Secretary may prescribe.

63. Detention of aircraft

Regulations made under this Act may provide for the detention of an aircraft to secure compliance with this Act or any regulations made thereunder and may make such further provisions as appear to the Cabinet Secretary to be necessary or expedient for securing such detention.

64. Jurisdiction

Any offence under this Act or regulations made under this Act and any offence committed on a Kenya aircraft shall, for the purpose of conferring jurisdiction, be deemed to have been committed in any place within Kenya where the offender may for the time being be:

Provided that if such offence is committed in or over Kenya, the offence may be tried by any court having jurisdiction in Kenya.

65. Liability of directors and officers of body corporate

Where an offence under this Act or regulations made thereunder is committed by a body corporate or any other association of individuals, every person who at the time of the commission of the offence was a director, partner or any other similar officer of the body corporate, or acting or purporting to act in management of its affairs, commits an offence unless that person proves that—

(a) the act or omission constituting the offence took place without his or her knowledge, consent or connivance; or

(b) he or she exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his or her functions in that capacity and to all the circumstances.

Part VI – THE NATIONAL CIVIL AVIATION ADMINISTRATIVE REVIEW TRIBUNAL

66. Establishment of a Tribunal

(1) There is established a tribunal to be known as the National Civil Aviation Administrative Review Tribunal which shall consist of-

(a) the chairperson;

(b) a Deputy Registrar of the Judiciary; and

(c) four other persons with management and technical experience of not less than ten years in the field of civil aviation.

(2) Subject to subsection (3), the chairperson of the Tribunal shall be appointed by the Judicial Service Commission.

(3) The Cabinet Secretary shall through a competitive process, select three and eight suitable nominees for the positions of a chairperson and members respectively, and forward their names to the Judicial Service Commission for appointment.

(4) The Judicial Service Commission shall subsequently appoint one of the three and four of the eight nominees as selected under sub-section (3) as chairperson and members of the Tribunal.

(5) In nominating and appointing chairperson and members of a Tribunal under this section, the Cabinet Secretary and the Judicial Service Commission shall respectively take cognizance of the provisions of the Constitution relating regional and other diversities of the people of Kenya.

(6) The members of the Tribunal shall elect a vice-chairperson amongst themselves and the chairperson and the vice-chairperson shall be persons of the opposite gender.

(7) The Tribunal established under subsection (1) of this section shall be a subordinate court under the Judiciary as provided for in Article 169(1) (d) of the Constitution.

[Act No. 42 of 2016, s. 26.]

67. Tenure and vacation of office

(1) A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Tribunal shall become vacant—

(a) at the expiration of three years from the date of his or her appointment;

(b) if he or she accepts any office the holding of which, if he or her were not a member of the Tribunal, would give rise to the existence of a conflict of interest with his or her membership to the Tribunal;

(c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary upon findings of an inquiry determining his or her failure to discharge the functions of his or her office (whether arising from infirmity of body or mind or from any other lawful cause) or for misbehavior;

(d) if he or she resigns the office of member of the Tribunal; or

(e) upon death.

(3) Members of the Tribunal shall be paid allowances approved by the Cabinet Secretary, in consultation with the Cabinet Secretary for the time being responsible for matters relating to finance.

68. Secretary to Tribunal

(1) The Tribunal shall have a Secretary who shall be a public officer appointed by the Cabinet Secretary through an open and competitive process.

(2) The Secretary shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his or her functions.

(4) The Secretary shall perform any other functions determined by the Tribunal.

69. Jurisdiction of Tribunal

The Tribunal shall have the jurisdiction to hear and determine complaints or appeals arising from—

(a) any refusal to grant a licence, a certificate or any other authorisation by the Authority or transfer of a licence under this Act or regulations made thereunder;

(b) the imposition of any condition, limitation or restriction on a licence under this Act or regulations made thereunder;

(c) any revocation, suspension or variation of a licence under this Act or regulations made thereunder;

(d) any amount of money which is required to be paid as a fee under this Act or regulations made thereunder;

(e) the imposition of any order or direction by the Authority under this Act or regulations made thereunder;

(f) consumer protection compliance and enforcement activities related to areas such as right violations, unfair and deceptive practices and unfair competition by air carriers and travel agents, deceptive airline advertising including fare, on-time performance, schedule, code sharing, and violations of rules concerning denied boarding compensation, ticket refunds, baggage liability requirements, flight delays and charter flights or

(g) any exercise of powers to make decisions, but not powers in respect of staff employment, granted to the Director-General or the Authority under this Act or regulations made thereunder.

70. Proceedings of Tribunal

(1) The Tribunal shall, upon an appeal made to it in writing, within thirty days after the occurrence of the event against which a party is dissatisfied, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any relevant committee thereof; as the case may be.

(2) The Tribunal shall sit at such times and in such places as it may appoint by *Gazette* Notice.

(3) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(4) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.

(5) A person who is party to the proceedings before the Tribunal may appear in person or be represented by an advocate of the High Court.

71. Powers of Tribunal

(1) On hearing of a complaint or an appeal, the

Tribunal shall have all the powers to—

(a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or

(b) summon expert evidence as may be necessary.

(2) Where the Tribunal considers it desirable for the purposes of minimising expenses, to avoid delay or for any special reason, it may receive evidence by affidavit and administer interrogatories and require the person to whom the interrogatories have been made to respond.

72. Awards of Tribunal

(1) The Tribunal may—

(a) award damages;

(b) confirm, set aside or vary the order or decision in question; or

(c) make an order for the maintenance of the status quo of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have power to award the costs of any proceedings before it and direct that the costs shall be taxed in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(3) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him or her a certificate stating the amount of the costs.

(4) Every certificate issued under subsection (3) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

(5) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto, and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act (Cap. 21) shall apply.

(6) Upon any appeal to the Tribunal under this section, the status quo of any matter or activity, which is the subject of the appeal, shall be maintained until the appeal is determined.

(7) All summons, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to be issued by the Tribunal.

73. Appointment of assessors

The Chairperson of the Tribunal, in consultation and with the concurrence of two other members of the Tribunal, may appoint in writing any person with special skills or knowledge on aviation issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

74. Contempt of Tribunal

Any person who —

(a) fails to attend the Tribunal after being summoned by the Tribunal to do so;

(b) refuses to take oath or affirmation before the Tribunal, or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;

(c) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or

(d) at any sitting of the Tribunal—

(i) willfully insults any member or officer of the Tribunal; or

(ii) willfully interrupts the proceedings or commits any contempt of the Tribunal;

(e) fails or neglects to comply with a decision order, direction or notice confirmed by the Tribunal, commits an offence under this Act and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings or imprisonment to a term not exceeding three months, or to both.

75. Quorum for Tribunal

For the purposes of hearing and determining any cause or matter under this Act, the Chairperson and two other members of the Tribunal shall form a quorum.

76. Disclosure of interest

A member of the Tribunal who has a direct interest in any matter that is the subject of the proceedings before the Tribunal shall disclose in writing the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

77. Appeals to the High Court

(1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court.

(2) A decision or order of the Tribunal shall be enforced forthwith except where an appeal has been lodged or commenced provided that the lodging or commencing of an appeal shall not on its own, operate as a stay.

(3) Upon the hearing of an appeal under this section, the High Court may—

(a) confirm, set aside or vary the decision or order in question;

(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem fit to give;

(c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

(d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

78. Appeals to the Court of Appeal

A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal on matter of law.

Part VII – GENERAL PROVISIONS

79. Protection from personal liability

The Chairperson or any other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of, and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal.

80. General penalty

A person who commits an offence under this Act for which no specific penalty is provided for shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

81. Compounding of offences

(1) Any employee of the Authority authorised by name in that behalf by the Director-General, or any police officer not below the rank of the inspector, may compound any criminal offence under this Act or Regulations.

(2) All fines or penalties levied for any offence under this Act or Regulations made under it, shall be paid to the funds of the Authority.

(3) Where an offence is compounded in accordance with the provisions of subsection (1) and any proceedings are brought against the offender for the same offence, it shall be a good defence for such offender to prove to the satisfaction of the court that the offence with which he or she is charged has been compounded under subsection (1).

[Act No. 42 of 2016, s. 27]

82. Regulations

(1) The Cabinet Secretary shall make regulations to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations —

(a) regulating, by establishing licensing authorities and a system of licensing and otherwise, the use of aircraft—

(i) for commercial transport; and

(ii) for aerial work;

(b) providing for the registration and marking of aircraft;

(c) prohibiting the flying of any aircraft—

(i) unless there is in force in respect of such aircraft a certificate of airworthiness or permit to fly issued or recognized in accordance with regulations made under this Act; and

(ii) except upon compliance with such conditions as to maintenance and repair as may be prescribed or specified in the certificate or permit;

(d) requiring the flight crew, and persons, performing prescribed functions in relation to the operation or maintenance of aircraft, air navigation services, design and construction of aircraft to be the holders of licences of specified kinds;

(e) providing for the manner and conditions of issue, validation, renewal, extension or variation of any licence required in regulations and for the form, custody, production, cancellation, suspension, endorsement and surrender of such;

(g) providing for the conditions under which and in particular the aerodromes to or from which, aircraft entering or leaving Kenya may fly and the conditions under which aircraft may fly from one part of Kenya to another;

(h) providing for the conditions under which passenger and cargo may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;

(i) minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation and air navigation services and prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;

(j) generally securing the safety, efficiency, and regularity of air navigation and safety of aircraft and of persons and cargo carried therein, and for preventing aircraft endangering other persons;

(k) requiring persons engaged in or in connection with meteorology to supply meteorological information for the purpose of air navigation;

(l) regulating the making of signals and other communications by or to aircraft and persons carried therein;

(m) subject to any other written law, prescribing a civil air ensign for Kenya and regulating the use of any other ensign established for purposes connected with air navigation;

(n) prohibiting aircraft from flying over such areas in Kenya as the Cabinet Secretary may by order published in the *Gazette* declare to be prohibited areas;

(o) prescribing the fees to be paid in respect of the issue, validation, renewal, extension or variation of any license, or the undergoing of any examination or test required by regulations made under this Act or any other matters in respect of which it appears to the Cabinet Secretary to be expedient to charge fees;

(p) prescribing charges or enabling some other authority to prescribe charges to be paid in respect of air navigation services, regulatory services and providing for the recovery of such charges;

(q) providing for consumer protection and any other related matter;

(r) exempting any aircraft or persons or classes of aircraft or persons from the provisions of any regulations made under this Act;

(s) providing for the investigation in such manner as may be prescribed, including by means of a tribunal established for the purpose, of any accident arising out of or in the course of air navigation and occurring either in or over Kenya or occurring elsewhere to Kenya aircraft;

(t) prohibiting access to or interference with aircraft to which an accident has occurred, and authorizing any person, so far as may be necessary for the purpose of an investigation, to have access to, remove, take measures for the preservation of, or otherwise deal with any such aircraft;

(u) requiring any person who owns an aircraft or who carries on the business of operating aircraft for hire or reward to furnish to such authorities as may be prescribed such information relating to the aircraft and the use thereof, the crew, the mail, the passengers and the cargo carried, as may be prescribed;

(v) providing for the licensing, inspection and regulation of aerodromes, access to places where aircraft, have landed or may land, access to aircraft factories or maintenance establishments or places where aircraft parts and engines are maintained, for the purpose of inspecting work therein carried on in relation to aircraft or parts thereof.

(w) regulating the firing of rockets;

(x) prohibiting or regulating in the vicinity of any aerodrome the emission or causing of smoke, soot, ash, grit, dust and any other substance whatever which obscures or may obscure visibility;

(y) controlling and regulating the selling of charters, booking of accommodation and selling of tickets for persons or cargo on flights in any part of the world;

(z) controlling and regulating aviation training institutions;

(aa) the classification and use of airspace and the control and use of air routes and provisions of search and rescue facilities;

(bb) the design, construction, repair, overhaul, maintenance, operation and use of aircraft, maintenance and repair of facilities and related equipment;

(cc) the control and operation of the aircraft within or directly above the aerodrome for the purpose of limiting or mitigating the effect of noise;

(dd) regulating aviation security operations and providing for security audits and inspections, tests of aircraft, aerodromes, regulated agents, catering operators and any pre-flight and post flight passenger processing and security operators;

(ee) providing for the regulation of the safe transport of dangerous goods by air; and

(ff) providing for the establishment of air accident and incident prevention programs.

(3) Separate or different regulations may be made for different classes of aircraft, aerodromes, persons or property and for different parts of Kenya.

(4) Any regulations made under this section may provide in respect of any contravention thereof or non-compliance therewith for the impositions of penalties not exceeding in the case of any particular offence a fine of two million shillings or imprisonment for a term not exceeding three years, or to both.

[Act No. 42 of 2016, s. 28.]

Part VIII – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

83. *Spent*

84. Saving provisions

(1) Despite the repeal of sections 13(1) and 66-

(a) the former Board constituted under the repealed section 13(1) of the Act shall continue to exist until the Board is constituted under the section 13(1) of this Act;

(b) the former Tribunal constituted under the repealed section 66 of the Act shall continue to exist and continue to discharge its mandate until the Tribunal is constituted under the section 66 of this Act; and

(c) any matter pending before the constitution of the Tribunal under section 66 shall be continued or disposed of by the Tribunal as if instituted before the repeal of section 66.

(2) For the purposes of this section-

(a) former Board means the Board of Directors constituted under repealed section 13(1); and

(b) former Tribunal means the Tribunal constituted under repealed section 66.

[Act No. 42 of 2016, s. 29.]

FIRST SCHEDULE [s. 17 (3)]

PROVISIONS RELATING TO THE MEETINGS OF THE BOARD OF DIRECTORS

1. The Chairperson may call a special meeting of the Board of Directors at any time, where he or she considers it expedient for the transaction of the business of the Board of Directors.

2. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of Directors shall be given to every member of the Board of Directors by the secretary.

3. The quorum at a meeting of the Board of the Directors shall be half of the members or a greater number determined by the Board of Directors, in respect of an important matter.

4. The Chairperson shall preside at the meetings of the Board of Directors and in his or her absence the vice-chairperson, and in the absence of a vice-chairperson, a member of the Board of Directors elected by the members present from among their number, shall preside.

5. The matters of the Board of Directors shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

6. The proceedings of the Board of Directors shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

7. At the first meeting of the Board of Directors, the members shall elect a vice-chairperson, not being an ex officio member, from among its members.

8. Subject to the provisions of this Schedule, the Board of the Directors may determine its own procedure and the procedure for any committee of the Board of Directors and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

SECOND SCHEDULE [s. 39A(9)]

INFRINGEMENT NOTICES

[Act No. 42 of 2016, s. 30.]

1. The purpose of this Schedule is to create a system of infringement notices for offences under the Act and the regulations made thereunder as an alternative to prosecution.

2. This Schedule does not—

   (a) affect the liability of a person to be prosecuted for an offence if an infringement notice is not issued to the person for the offence;

   (b) prevent the issue of two or more infringement notices to a person for an offence;

   (c) affect the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice for the offence; or

   (d) limit or otherwise affect the penalty that may be imposed by a court on a person convicted of an offence.

3. Fine Payable

   The fine for an offence payable under an infringement notice issued to the person for the offence is one-fifth of the maximum fine that a court could impose on the person for the offence.

4. Issue of infringement notices.

   (1) The Authority may issue infringement notice under this Act and regulations made thereunder from time to time.

   (2) Where an authorised person has reason to believe that a person has committed an infringement notice offence, the authorised person may issue a notice, called an infringement notice, to the person for the offence.

   (3) An authorised person who knowingly improperly issues an infringement notice, or who issues an infringement notice for any purpose other than to ensure aviation security and safety, commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

5. Contents of infringement notice.

(1) An infringement notice shall—

(a) bear a serial number;

(b) state the name of the authorised person who issued it;

(c) state its date of issue;

(d) state the full name, or the surname and initials, and the address, of the person to whom it is issued;

(e) give brief details of the offence of which it is issued, including—

(i) the date and time of the offence;

(ii) where the offence happened;

(iii) the provision of these Regulations contravened;

(f) state the penalty for the offence payable under the notice;

(g) state where and how that penalty can be paid, including, if the penalty can be paid by positing the payment, the place to which it should be posted;

(h) state that if the person to whom it is issued (the recipient) pays the penalty within twenty-eight days after the day on which the notice is served, or any longer time allowed in writing by an authorised person, then, unless the infringement notice is subsequently withdrawn and any penalty paid refunded —

(i) any liability of the recipient for the offence will be discharged;

(ii) the recipient will not be prosecuted in a court for the offence;

(iii) the recipient will not be taken to have been convicted of the offence;

(i) state the greatest penalty that a court could impose on the recipient for the offence;

(j) state that if the recipient is prosecuted in court and found guilty of the offence, the recipient may be convicted of the offence and ordered to pay a penalty and costs, and be subject to any other order that the court makes;

(k) state how and to whom the recipient can apply to be allowed more time to pay the penalty; and

(l) be signed by the authorised person who issued it.

(2) An infringement notice may contain any other information that the authorised person who issues it deems necessary.

6. Service of infringement notice.

(1) An infringement notice shall be served on the person to whom it is issued.

(2) An infringement notice may be served on individual—

(a) by giving it to the individual;

(b) by leaving it at, or by sending it by post, telex, fax or similar facility to, the address of the place of residence or business (the relevant place) of the individual last known to the authorised person who issues it;

(c) by giving it, at the relevant place, to someone who—

(i) lives or is employed, or apparently lives or is employed, there; and

(ii) is, or the authorised person who issued it has reason to believe is, over eighteen years of age.

(3) An infringement notice may be served on a corporation

(a) by leaving it at, or by sending it by post, telex, fax or similar facility to the address of the head office, a registered office or a principal office of the corporation;

(b) by giving it, at an office mentioned in subparagraph (a), to someone who is, or the authorised person who issued it has reason to believe is, an officer or employee of the corporation.

7. Time for payment of fine.

The fine stated in an infringement notice shall be paid —

(a) within twenty-eight days after the day on which the notice is served on the person to whom it is issued;

(b) if the person applied for a further period of time in which to pay the penalty, and that application is granted, within the further period allowed.

(c) if the person applies a further period of time in which to pay the penalty, and the application is refused, within seven days after the notice of the refusal is served on the person.

(d) if the person applies for the notice to be withdrawn, and the application is refused, within twenty-eight days after the notice of the refusal is served on the person.

8. Extension of time to pay fine.

(1) The person to whom an infringement notice is issued may apply, in writing, to the Authority for a further period of up to twenty-eight days in which to pay the fine stated in the notice.

(2) Within fourteen days after receiving the application, the Authority shall—

(a) grant or refuse a further period not longer than the period sought; and

(b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for it.

(3) Notice of the decision may be served on the recipient in any way in which the infringement notice could have been served on the recipient.

9. Effect of payment of fine.

(1) Where an infringement notice is not withdrawn, and the person to whom it is issued for an offence pays the fine stated in the notice—

(a) any liability of the person for the offence is discharged;

(b) the person may not be prosecuted in a court of law for the offence;

(c) the person is not taken to have been convicted of the offence.

(2) Where two or more infringement notices are issued to a person for the same offence, the person's liability to be prosecuted for the offence ceases if the person pays the fine stated in any of the notices.

10. Withdrawal of infringement notice.

(1) A person may apply in writing to the Authority, before the end of twenty eight days after receiving an infringement notice, for the infringement notice to be withdrawn.

(2) The Authority shall, within fourteen days after receiving the application—

(a) withdraw or refuse to withdraw the notice;

(b) notify the person in writing of the decision and, if the decision is a refusal, the reasons for the decision.

(3) Where the Authority fails to approve the withdrawal of the notice within the period allowed by paragraph (2), the Authority shall be deemed to have refused to approved the withdrawal of the notice.

(4) The Authority shall, before withdrawing or refusing to withdraw a notice, consider—

(a) whether the person has been convicted previously of an offence against these Regulations;

(b) the circumstances of the offences stated in the notice;

(c) whether the person has previously paid a penalty under an infringement notice issued to the person for an offence of the same type as the offence mentioned in the notice; and

(d) any other relevant matter.

(5) The Authority may withdraw an infringement notice without an application having been made.

11. Notice of withdrawal of infringement notice.

(1) Notice of the withdrawal of an infringement notice may be served on a person in any way in which the infringement notice could have been served on the person.

(2) A notice withdrawing an infringement notice served on a person for an offence—

(a) shall include the following information—

(i) the full name, or surname and initials, and address of the person upon whom it was issued;

(ii) the number of the infringement notice;

(iii) the date of issue of the infringement notice;

(b) shall state that the notice is withdrawn; and

(c) if the Authority intends to prosecute the person in court for the offence, shall state that the person may be prosecuted in a court for the offence.

12. Refund of fine.

Where an infringement notice is withdrawn after the fine stated in it has been paid, the Authority shall refund the fine to the person who paid it, within sixty days after the withdrawal of the notice.