

REPUBLIC OF SOUTH AFRICA

AVIATION LAWS AMENDMENT
BILL

(As introduced in the National Assembly)

(MINISTER OF TRANSPORT)

[B 110-97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP
LUGVAARTWETGEWING

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN VERVOER)

[w 110-97]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments
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BILL

To amend the Aviation Act, 1962, so as to further define a certain expression; to amend the Air Services Licensing Act, 1990, so as to further define a certain expression; to amend the Convention on the International Recognition of Rights in Aircraft Act, 1993, so as to define the expression “Commissioner for Civil Aviation”; and to substitute that expression for the word “Director-General”, wherever it occurs in the said Act; to amend the International Air Services Act, 1993, so as to extend the period within which the Commissioner for Civil Aviation must publish certain prescribed particulars; and to further regulate the period of validity of a foreign operator’s permit; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 22A of Act 74 of 1962, as substituted by section 5 of Act 98 of 1996

1. Section 22A of the Aviation Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection: 5

“(6) For the purposes of this section, ‘international aviation standard’ means—

- (a) any international standard or recommended practice or procedure adopted by the International Civil Aviation Organization for the purposes of Article 37 of the Convention; 10
- (b) any standard, rule or requirement prescribed by the law of any other contracting State of the International Civil Aviation Organization; or
- (c) any other technical standard which is contained in a document which in the opinion of the Commissioner is too voluminous to be published in the normal manner.”. 15

Amendment of section 1 of Act 115 of 1990, as amended by section 1 of Act 15 of 1992 and section 1 of Act 83 of 1995

2. Section 1 of the Air Services Licensing Act, 1990, is hereby amended by the

substitution for paragraph (d) of the definition of “air service” of the following paragraph:

“(d) any type of training or instruction in respect of flying an aircraft.”.

Amendment of section 1 of Act 59 of 1993

3. Section 1 of the Convention on the International Recognition of Rights in Aircraft Act, 1993, is hereby amended— 5

(a) by the insertion of the following definition before the definition of “Convention”:

“ ‘Commissioner for Civil Aviation’ means the Commissioner as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);” and 10

(b) by the deletion of the definition of “Director-General”.

Substitution for word “Director-General” of expression “Commissioner for Civil Aviation” in Act 59 of 1993

4. The Convention on the International Recognition of Rights in Aircraft Act, 1993, is hereby amended by the substitution for the word “Director-General”, wherever it occurs, of the expression “Commissioner for Civil Aviation”. 15

Amendment of section 24 of Act 60 of 1993, as amended by section 8 of Act 10 of 1996

5. Section 24 of the International Air Services Act, 1993, is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) The Commissioner for Civil Aviation—

(a) shall, within [14] 21 days after the receipt of an application referred to in section 23(1) or (2), make known by notice in the *Gazette* the prescribed particulars in respect of the application concerned, if he or she is of the opinion that that application does not comply with the prescribed requirements referred to in section 25(2)(d); or 25

(b) may, within [14] 21 days after the receipt of an application referred to in section 23(1) or (2), make known by notice in the *Gazette* the prescribed particulars in respect of the application concerned, if he or she is of the opinion that that application does comply with the prescribed requirements referred to in section 25(2)(d).” 30

Amendment of section 26 of Act 60 of 1993

6. Section 26 of the International Air Services Act, 1993, is hereby amended by the substitution for paragraph (i) of the proviso to subsection (2) of the following paragraph:

“(i) be subject to the provisions of an air transport service agreement if such an agreement applies to the permit concerned; **[and]** or”. 35

Short title and commencement

7. This Act shall be called the Aviation Laws Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE AVIATION LAWS AMENDMENT BILL, 1997

1. The Bill seeks to amend legislation relating to civil aviation. The need for the amendments were identified whilst the aviation regulations were reviewed by the Department of Transport. The review forms the subject of a project aimed at enhancing the safety of civil aviation by ensuring that South African legislation complies with the minimum standards prescribed by the International Civil Aviation Organisation. The Department of Transport was assisted by a Steering Committee and various working groups representing the aviation industry.

1.1 Amendment of the Aviation Act, 1962 (Act No. 74 of 1962)

The need to extend the definition of "international aviation standard" to include certain standards, rules or requirements which form part of major international regulatory systems such as the American Federal Aviation Regulations was identified during the abovementioned review. The Aviation Regulations pertain particularly to the airworthiness of aircraft and are aimed at achieving maximum harmonisation and standardisation. It is also proposed that certain existing documents and manuals which are too voluminous to be published in the normal manner be included in the definition. In this way efficiency is ensured and expenses saved (clause 1).

1.2 Amendment of the Air Services Licensing Act, 1990 (Act No. 115 of 1990)

Since training and instruction are no longer regarded as an air service, it has been decided to transfer all such provisions to aviation safety legislation. The Bill seeks to exclude any form of training or instruction in respect of flying an aircraft from the provisions of the Air Services Licensing Act, 1990 (clause 2).

1.3 Amendment of the Convention on the International Recognition of Rights in Aircraft Act, 1993 (Act No. 59 of 1993)

The aircraft registration register referred to in Chapter 12 of the Air Navigation Regulations, 1976, promulgated in terms of section 22 of the Aviation Act, 1962, is maintained by the Commissioner for Civil Aviation (regulation 12.4). It is expedient to have the Commissioner also maintain the register of mortgages pertaining to aircraft referred to in section 4(1)(b) of the said Act as it is foreseen that both registers will have to be consulted in the event of the registration of an aircraft being changed or an aircraft being mortgaged. The Bill seeks to replace any reference to the Director-General: Transport with a reference to the Commissioner for Civil Aviation (clauses 3 and 4).

1.4 Amendment of the International Air Services Act, 1993 (Act No. 60 of 1993)

- (a) The amendment proposed in clause 5 brings the provisions of section 24(1)(u) of the International Air Services Act, 1993, in respect of the number of days after receipt of the application for a permit within which the application has or may have to be published in the *Government Gazette*, in line with the provisions of section 15 of the Air Services Licensing Act, 1990 (Act No. 115 of 1990).
- (b) The amendment proposed in clause 6 is necessitated by the need to provide for non-scheduled air transport services in bilateral air services agreements. Depending on the particular requirements of a country that is party to a bilateral agreement, the Commissioner for Civil Aviation must apply the provisions of the bilateral agreement when issuing a permit. However, if there is no such agreement the provisions of regulation 12 with regard to the prescribed maximum periods and the maximum number of flights to be undertaken in terms of the permit issued, are applicable. As the section is worded at present, however, the Commissioner is obliged to apply the

provisions of the relevant bilateral agreement as well as the provisions of regulation 12.

2. The Department of Transport and the State Law Advisers are of the opinion that the Bill must be dealt within terms of the procedure set out in section 75 of the Constitution.