

No. 20



of 2008

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 54 of Act No. 33 of 2004
3. Substitution of section 57 of the Act

**An Act to amend the Civil Aviation Authority Act (Act No. 33 of 2004) to provide for the saving of certain provisions from the Civil Aviation Act (Cap. 71:01), and to provide for matters connected with or incidental thereto.**

*Date of Assent:* 18.12.2008

*Date of Commencement:* On Notice

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Civil Aviation Authority (Amendment) Act, 2008 and shall come into operation on such date as the Minister may, by Order, appoint.

Short title  
and  
commencement

2. The Civil Aviation Authority Act, in this Act referred to as “the Act”, is amended in section 54 by substituting for the words “Attorney-General” which appear in subsection (2), the words, “Director of Public Prosecutions”.

Amendment  
of section 54  
of Act No. 33  
of 2004

3. The Act is amended by substituting for section 57, the following new section —

Substitution  
of section 57  
of the Act

“Repeal of  
Cap. 71:01

57. (1) The Civil Aviation Act is hereby repealed.

(2) Notwithstanding the repeal effected under subsection (1), the provisions of sections 6, 11, 12, 13, 14 and 16 of the Civil Aviation Act, as set out in the Schedule to this Act are hereby saved.

(3) The Minister may, at any time, repeal the Schedule to this Act.”.

**“SCHEDULE OF SECTIONS 6, 11, 12, 13, 14 AND  
16 OF CAP. 71:01**

Dangerous  
flying, etc.

**6.** (1) Where an aircraft is flown in such a manner as to cause danger to any person or property on land or water, or in contravention of any regulations made under this Act, the pilot or other person in charge of the aircraft and the owner of the aircraft shall be guilty of an offence and liable for a first offence to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both, and for a second or subsequent offence to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two years, or to both.

(2) In any proceedings against the owner of an aircraft in respect of an offence under this section, it shall be a defence to prove that the act constituting the offence was done without the knowledge or consent of the owner.

(3) In this section, “owner”, in relation to an aircraft and an offence, includes any person by whom the aircraft is hired at the time the offence was committed.

Trespass  
on aerodromes

**11.** If any person trespasses on any land forming part of a Government aerodrome or a licensed aerodrome he shall be guilty of an offence and liable to a fine not exceeding P50.

Action for  
nuisance

**12.** No action for nuisance shall lie by reason only of the noise and vibration caused by aircraft on an aerodrome so long as the provisions of regulations made under this Act in force in respect of that aerodrome are complied with.

Aircraft and  
spares not  
liable to  
seizure

**13.** (1) No aircraft to which this subsection applies, making any lawful entry into Botswana or any lawful transit across Botswana, with or without landings, shall be seized or detained, nor shall any proceedings be taken against the owner or operator of such aircraft, nor shall the aircraft be otherwise interfered with by or on behalf of any person in Botswana, on the ground that the construction, mechanism, parts, accessories or operations of the aircraft is or are an infringement of any patent, design or model.

(2) The importation into and storage in Botswana of spare parts and spare equipment for an aircraft to which this subsection applies and the use and installation thereof in the repair of such an aircraft shall not entitle any seizure or detention of aircraft or of the spare parts or spare equipment or any proceedings 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 Botswana on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

(3) Subsections (1) and (2) shall apply —

(a) to any aircraft registered in a country or territory which is a party to the Chicago Convention; and

(b) to such other aircraft as the Minister may, by order published in the Gazette, specify:

Provided that subsection (2) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Botswana.

(4) Where it is alleged by any person interested that a foreign aircraft which is not an aircraft to which subsection (1) applies and which is making a passage through or over Botswana infringes in itself or part of it any invention, design or model which is entitled to protection in Botswana, it shall be lawful, subject to and in accordance with rules of court, to detain the aircraft until the owner of it deposits or secures in respect of the alleged infringement a sum (hereinafter in this section referred to as “the deposited sum”) and thereupon the aircraft shall not, during the continuance of the passage, be subject to any lien, arrest, detention or prohibition, whether by order of a court or otherwise, on account of the alleged infringement.

(5) The deposited sum shall be such sum as may be agreed between the parties interested or, in default of agreement, as may be fixed by the Minister; and the payment of the deposited sum shall be made or secured to the Minister in such manner as may be approved by him.

(6) The deposited sum shall be dealt with by such tribunal and in accordance with such procedure as may be prescribed by rules of court and such rules may provide generally for carrying the provisions of subsections (4) and (5) into effect.

(7) For the purposes of subsection (4), the expression “owner” includes the actual owner of the aircraft and any person claiming through or under him, and the expression “passage” includes all reasonable landings and stoppages in the course of the passage.

**14.** (1) Mail shall not be carried by any aircraft without the consent in writing of the Director of Postal Services, and any written law relating to the dispatching, conveying and delivering of mail and all incidental services relating thereto shall with such modifications, adaptations and such consequential and supplementary provisions as may be declared by the Minister by order published in the *Gazette* to be expedient and necessary, apply to the dispatching, conveying and delivering of mail by aircraft.

Carriage of  
mail in aircraft

(2) No radiotelegraphic or other system of telegraphic or telephonic communication shall be installed, maintained, or operated in any aircraft or at any aerodrome or landing ground except by the Chief Executive of the Botswana Telecommunications Authority or under and in accordance with licences or other authorizations in respect of either or both personnel and apparatus granted or recognized by the Chief Executive of Botswana Telecommunications Authority.

**16.** (1) The Minister may make regulations for the better carrying out of any of the purposes of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), the powers of the Minister shall in particular include power to make regulations for the following purposes —

- (u) for the investigation of accidents arising out of or in the course of air navigation and either occurring in or over Botswana or occurring to Botswana aircraft wherever they may be, and in particular —
  - (ii) applying with or without modifications, for the purpose of investigations held with respect to any such accidents, any of the provisions of any written law relating to the investigation of deaths or accidents;

- (iii) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred and authorizing any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any such aircraft;
- (iv) authorizing or requiring the cancellation, suspension, endorsement or surrender of any licence or certificate granted in Botswana in pursuance of this Act or the withdrawal or suspension of any validation conferred in Botswana of a licence granted by a competent authority elsewhere, where it appears on investigation that the licence, certificate or validation ought to be so dealt with, and requiring the production accordingly of any such licence or certificate;
- (v) enabling a person in charge of an investigation or other inquiry to grant immunity to any person giving evidence in the course of such investigation or inquiry from prosecution for offences disclosed by or arising from such evidence;
- (vi) providing for the costs of any investigation or inquiry to be paid by any person found on investigation or as a result of an inquiry to be wholly or partly responsible for any accident.”.

PASSED by the National Assembly this 10th day of December, 2008.

E.S. MPOFU,  
*Clerk of the National Assembly.*