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An Act to provide for the protection and security of aircraft, aerodromes, air navigation installations and persons or property on board aircraft and at aerodromes and other matters connected with aviation security.

Date of Assent: 20.09.2011

Date of Commencement: ON NOTICE

ENACTED by Parliament of Botswana.

PART I — Preliminary

Short title and commencement

1. This Act may be cited as the Aviation Security Act, 2011 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

- 2.** (1) In this Act, unless the context otherwise requires —
- “act of violence” means any act which would constitute the offence of assault, murder, attempted murder or manslaughter, or any other act of which violence or threat is an essential ingredient;
- “acts of unlawful interference” means an act or acts; or attempted act or acts intended or likely to jeopardise the safety of civil aviation;
- “aerodrome” means a defined area on land or water intended to be used either wholly or in part for arrival, departure and surface movement of aircraft and includes airport;
- “aerodrome operator” means —
- (a) in case of an aerodrome, the person responsible for the management, administration and operation of an aerodrome or the agent or representative of that person;
 - (b) in the case of an air navigation installation which does not form part of an aerodrome, the person in charge of that air navigation installation, and includes an employee, agent or representative of that person;
- “aircraft registered or operating in Botswana” means any aircraft which is either —
- (a) an aircraft registered in Botswana; or
 - (b) an aircraft not registered in Botswana which is, for the time being, allocated for use on flight and will for that purpose land at or take off from one or more aerodromes in Botswana;
- “air navigation installation” means any building, works, apparatus or equipment used wholly or mainly for the purpose of assisting air traffic control, or as an aid to air navigation, together with any land contiguous or adjacent to that building, works, apparatus or equipment and used wholly or mainly for that purpose;
- “article” includes any substance, whether in solid or liquid form or in the form of a gas or vapour;
- “authorised person” means a person designated under section 17 to perform any act, function or duty;

“Authority” means the Civil Aviation Authority of Botswana established under the Civil Aviation Act;

Cap. 71:04

“aviation security” means human and material resources intended to safeguard civil aviation against acts of unlawful interference and acts of violence;

“aviation security officer” means a person employed by the Authority or aerodrome operator as an aviation security officer or any other person employed in that capacity under section 18;

“Committee” means the National Security and Facilitation Committee;

“convention country” means a country in which the Tokyo, Montreal and Hague Conventions are in force;

“crew member” means a person performing the duties of flight crew or cabin crew member on an aircraft in flight or service;

“designated aerodrome” means an aerodrome designated as such under section 41;

“explosive” means any substance or mixture which is used or manufactured for purposes of producing a practical effect of explosion;

“firearm” includes arms, ammunition, air pistol or air gun as defined under the Arms and Ammunition Act;

Cap. 24:01

“Hague Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on the 16th of December, 1970 as last revised or amended;

“hazardous device or substance” means —

(i) any explosives or articles manufactured or adapted to have the appearance of explosives, whether in the form of a bomb or a grenade, or anything which appears as such, whether capable of explosion or not;

(ii) any article or substance including biological or chemical agents made or adapted for use or capable of being used to cause injury, incapacitate a person or destroy property;

“Montreal Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on the 23rd of September, 1971 as last revised or amended;

“operator” includes an aerodrome operator, an aircraft operator, a regulated agent and a catering operator;

“pilot-in-command” means the pilot designated by the aircraft operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight;

“property” includes any land, building, works, aircraft, vehicle, baggage, cargo or other article of any description;

“regulated agent” means an agent, freight forwarder or any other entity or person who conducts business with an aircraft operator and provides security controls that are accepted or required by the Authority in respect of cargo, courier and express parcels or mail;

“restricted area” means any area of an aerodrome or an air navigation installation which does not form part of an aerodrome, that is identified as an area to which access is restricted by its operator under section 35;

“Tokyo Convention” means the Convention on Offences and Certain Other Acts Committed on Board Aircraft signed in Tokyo on the 14th of September, 1963; as last revised or amended;

“weapon” includes any firearm or article which is capable of being used in such a manner likely to cause injury;

(2) For the purposes of this Act —

(a) an aircraft is in flight from the moment all its external doors are closed following embarkation to the moment when at least one of the doors is opened for disembarkation, but in the case of forced landing, to the moment the appropriate authority takes over responsibility for the aircraft and the persons and property on board; and

(b) an aircraft is in service from the pre-flight preparation of the aircraft until 24 hours after the aircraft lands, having completed that flight, including the period the aircraft is in flight.

Application of
the Act

3. (1) This Act shall not apply to state aircraft.

(2) State aircraft includes —

(a) aircraft used or commanded by the Botswana Defence Force, the Botswana Police Service, Directorate of Intelligence and Security or customs service;

(b) aircraft used in the military, security, customs or police services of a foreign state.

Objects of the
Act

4. The objects of the Act are —

(a) to provide for the safety of passengers, crew members, ground personnel and the general public and property involved in aviation;

(b) to prevent and safeguard against acts of violence or acts of unlawful interference with aviation and to ensure that appropriate action is taken when interference occurs or is likely to occur;

(c) to develop and implement practices and procedures which promote secure and reliable aviation services within, to and from Botswana; and

(d) to generally protect passengers, crew members, ground personnel, aircraft, airports, aerodromes and other aviation installations.

PART II — *Offences against aviation safety*

Hijacking

5. Any person who, by use of force, threats, other form of intimidation or any technological means —

(a) seizes or takes control of the aircraft; or

(b) attempts to seize or take control of the aircraft,

commits the offence of hijacking and is liable to imprisonment for life.

6. Any person who —

- (a) destroys or causes damage to an aircraft which is likely to endanger the safety of the aircraft;
- (b) performs an act of violence against any person on board an aircraft, thereby endangering the safety of an aircraft;
- (c) takes hostage of any person on board an aircraft;
- (d) places or causes to be placed any weapon, hazardous device, or substance on an aircraft which is likely to endanger the safety of an aircraft;
- (e) subject to subsection 8 (4), knowingly communicates false information to a responsible officer, thereby endangering the safety of an aircraft;
- (f) destroys or damages any air navigation installation or interferes with its operation; thereby endangering the safety of an aircraft;
- (g) uses an aircraft for the purpose of causing death or bodily injury;
- (h) uses an aircraft to cause damage to property or the environment; or
- (i) performs any act which is intended or is likely to endanger the safety of that air navigation installation or aircraft in service or in flight, or renders it incapable of operation or service,

commits an offence and is liable to imprisonment for life.

7. (1) Any person who unlawfully and intentionally, destroys or damages any aircraft which is not in service or any air navigation installation which may not affect an aircraft in service, commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

(2) Any person who —

- (a) attempts to commit an offence under subsection (1); or
- (b) is an accomplice to a person who commits or attempts to commit the offence under subsection (1),

commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

8. (1) Any person who, at any aerodrome or air navigation installation —

- (a) forcefully seizes an aircraft;
- (b) introduces any weapon or hazardous device or substance which is intended or is likely to be used for a criminal purpose;
- (c) forcefully intrudes on an aircraft; or
- (d) communicates false information intended to jeopardize the safety of or cause panic to passengers, crew members, ground personnel or the public,

commits an offence.

(2) Any person who unlawfully and intentionally interferes, destroys or damages any property used for the provision of air navigation service, including any land, building, boat, apparatus or equipment whether on board an aircraft or elsewhere, and the interference, destruction or damage is likely to endanger the safety of an aircraft in service or of any human life, commits an offence.

Endangering
the safety of
aircraft in
service

Damaging an
aircraft or
navigation
installation
not in service

Acts of
unlawful
interference

(3) Any person who communicates to a responsible authority any information which is misleading or deceptive in a material particular, where the communication endangers or is likely to endanger the safety of an aircraft in service or of any person, commits an offence.

(4) It shall be a defence for a person charged with an offence under subsection (3) or section 6 (e) to prove that —

(a) he or she believed and had reasonable ground to believe that the information was true; or

(b) when he or she communicated the information, he or she was lawfully employed to perform duties which included the communication of information and communicated the information in good faith in the performance of those duties.

(5) For the purposes of subsection (1) (b) weapon or hazardous device or substance includes —

(a) any firearm or article which appears as such, whether capable of being discharged or not;

(b) any explosives, manufactured or adapted bomb, grenade or anything which appears as such, whether capable of explosion or not;

(c) any article marked or labelled as an explosive; and

(d) any other article or substance, including biological or chemical agents, made or adopted for use or capable of being used to cause injury, incapacitate a person or destroy or damage property.

(6) Any person who commits an offence under subsections (1), (2) or (3) is liable to imprisonment for life.

9. (1) Any person who, without lawful authority or reasonable excuse, is in possession of a weapon, hazardous device or substance which is likely to be used for a criminal purpose —

(a) in any aircraft registered in Botswana, whether at a time when that aircraft is in Botswana or not;

(b) in any aircraft which is not registered in Botswana at a time when it is in, or in flight over Botswana;

(c) in any part of an aerodrome in Botswana; or

(d) in any air navigation installation in Botswana which does not form part of an aerodrome,

commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

(2) For the purpose of this section, a person shall be deemed to have possession of a weapon, hazardous device or substance in an aircraft, aerodrome or air navigation installation where the weapon or hazardous device or substance or an article in which it is contained has been brought or caused to be brought —

(a) in the aircraft, by that person as part of his or her baggage or as forming part of his or her other property carried on that flight; or

(b) in an aerodrome or air navigation installation, by that person as part of his or her baggage or as forming part of his or her other property to be carried on a flight from that aerodrome in which he or she is also to be a passenger.

Being in possession of a weapon in aircraft, etc.

(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which a person, would, apart from that subsection, be regarded as having in his or her possession an article referred to in subsection (1).

10. (1) Any person who, unlawfully and intentionally, using a weapon, hazardous device or substance —

Endangering
service of
civil aviation

(a) performs an act of violence against any person at an aerodrome serving civil aviation, which act causes or is likely to cause serious injury or death;

(b) destroys or seriously damages the facilities of an aerodrome serving civil aviation including an aircraft parked at the aerodrome or aircraft, which act endangers or is likely to endanger the safety of the aerodrome or aircraft; or

(c) disrupts the services of an aerodrome serving civil aviation which disruption, endangers or is likely to endanger the safety of the aerodrome,

commits an offence and is liable to imprisonment for life.

(2) Any person who —

(a) attempts to commit an offence under subsection (1); or

(b) is an accomplice to a person who commits or attempts to commit the offence under subsection (1),

commits an offence and is liable to imprisonment for life.

11. (1) Where any police officer, aviation security officer or an authorised person has reasonable grounds to suspect that a person —

Powers on
suspicion of
intended
offence

(a) about to embark on an aircraft in Botswana; or

(b) on board an aircraft,

intends, in relation to that aircraft, to commit an offence under this Part of the Act, that police officer, aviation security officer or authorised person may prevent that person from embarking on or remove him or her from that aircraft.

(2) A police officer, aviation security officer or authorised person who prevents a person from embarking an aircraft or removes a person from an aircraft under subsection (1) may arrest that person without a warrant and detain him or her in accordance with the Criminal Procedure and Evidence Act.

Cap. 08:02

(3) Any person who intentionally obstructs or impedes any police officer, aviation security officer or authorised person acting under subsection (1) commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

12. (1) Where a pilot-in-command of an aircraft in service or in flight in Botswana has reasonable grounds to believe that a person on board that aircraft is performing or is about to perform an act which —

Powers of
pilot-in-
command

(a) is intended or is likely to jeopardize or endanger the safety of that aircraft in flight;

(b) may jeopardize good order or is likely to cause panic to passengers and crew members on board an aircraft; or

- (c) constitutes an offence under any law in force in Botswana or the country in which the aircraft is registered,

that pilot may take such reasonable steps as may be necessary to protect the safety of the aircraft or of persons and property on board that aircraft and to maintain good order and discipline.

(2) The pilot-in-command may, in the exercise of the powers under subsection (1) —

- (a) restrain the suspected person;
- (b) cause that person to disembark or be removed from the aircraft;
- (c) deliver that person to a police officer or immigration officer, where the aircraft is in Botswana and where the aircraft is in a convention country or any other country, to an officer whose functions correspond to those of a police or immigration officer in Botswana; or
- (d) take any other action that he or she may deem fit.

(3) Where the pilot-in-command restrains a person under subsection (2) (a), the restraint shall cease as soon as the aircraft lands at an aerodrome unless, before or soon after landing, the pilot-in-command notifies or causes to be notified, the appropriate authority in the country where the aircraft is landing that a person on board the aircraft is under restraint, giving reasons for the same and in that case the provisions of subsection (5) (b) shall apply.

(4) Where the pilot-in-command causes any person to disembark or to be removed from the aircraft under subsection (2) (b), he or she shall, in writing, report to —

- (a) the police and immigration officers at the country of disembarkation; and
- (b) the diplomatic or consular office of the country of nationality of the person involved,

giving the facts in details and reasons for the action taken.

(5) Where the pilot-in-command decides to deliver any person to the relevant officer under subsection (2) (c), he or she shall —

- (a) before the aircraft lands at the aerodrome or soon thereafter inform that relevant officer of the decision taken, in writing giving reasons for the decision; and
- (b) after the aircraft lands, restrain that person until such a time as —
 - (i) the appropriate authority authorises the pilot-in-command to cause that person to disembark from the aircraft, or
 - (ii) the pilot-in-command can deliver that person or cause him or her to be delivered to the relevant officer.

(6) Any pilot-in-command who, without reasonable cause, fails to comply with the provisions of this section commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

(7) Any crew member or any other person on board the aircraft shall, with the authority of the pilot-in-command, render assistance in restraining a person referred to under subsection (1); and that crew member or other person may take any of the measures specified under subsection (2) which he or she believes is necessary to protect the safety of the aircraft or persons and property on board that aircraft.

(8) Any person who, without reasonable cause, fails to render assistance under the provisions of subsection (7) commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

(9) Any person who, whether by assault, intimidation or threat —

- (a) interferes with the pilot-in-command or a crew member in the performance of his or her duties;
- (b) lessens the ability of the pilot-in-command or of a crew member to perform his or her duties; or
- (c) refuses to follow lawful instructions given by the pilot-in-command or by a crew member on behalf of the pilot-in-command under this section,

commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

(10) The pilot-in-command, a crew member, passenger, the owner or operator of the aircraft or a person on whose behalf the flight was performed shall not be held liable for any action taken or treatment extended to any person in the performance of any of the powers under this section.

13. (1) Any person who, on board an aircraft —

(a) smokes in a lavatory or any other place where smoking is prohibited;
or

(b) tampers with any smoke detector or other safety-related device, commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both.

(2) Any person who, on board an aircraft —

- (a) physically or verbally assaults, intimidates or threatens another person;
- (b) intentionally causes damage or destruction to property;
- (c) takes narcotic or illegal drugs;
- (d) excessively consumes alcoholic beverages; or
- (e) sexually assaults any person or molests a child,

thereby jeopardising good order and discipline, commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both.

(3) Any person who, on board an aircraft, operates a portable electric device, at a time when or in a place where it is prohibited, commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both.

14. Any person who, at any aerodrome or air navigation installation —

- (a) assaults, intimidates or threatens a police officer, aviation security officer or authorised person on duty, which act interferes with the performance of, or lessens the ability of the police officer, aviation security officer or authorised person to perform his or her duties;

Smoking and
jeopardising
good order
and discipline
on board

Offences
against police
officer, etc. at
an aerodrome

- (b) refuses to follow any lawful instructions given or issued by the Authority or aerodrome operator which is being enforced by a police officer, aviation security officer or authorised person for the purpose of —
- (i) ensuring safety at the aerodrome,
 - (ii) ensuring the safety of any person or property at the aerodrome, or
 - (iii) maintaining good order and discipline at the aerodrome; or
- (c) uses physical violence against a police officer, aviation security officer or authorised person,
- commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

PART III — *Protection of Aircraft, Aerodromes and Air Navigation Installations against unlawful interference*

A. Powers of the Authority

Responsibility of Authority in relation to aviation security

- 15.** (1) The Authority shall —
- (a) be responsible for the regulation of aviation security in Botswana;
 - (b) regulate the security of aerodromes, aircraft, regulated agents and catering operators, as the case may be, for purposes of —
 - (i) protecting passengers, crew members, aerodromes and other aviation facilities,
 - (ii) preventing acts of unlawful interference against civil aviation, and
 - (iii) ensuring that appropriate action is taken when an act or acts of unlawful interference occurs or is likely to occur;
 - (c) be responsible for the arrangement, in conjunction with other agencies of Government, of activities to prevent or deal with acts of unlawful interference with civil aviation; and
 - (d) generally have jurisdiction over all aspects of aviation security in Botswana.
- (2) For purposes of subsection (1), the Authority shall issue circulars, publications, requirements and directions prescribing any aviation security matter which may include —
- (a) requiring any owner or operator of a Botswana registered aircraft to establish, maintain and carry out at an aerodrome, in the aircraft and at any aviation facilities under his or her control, security measures that may be prescribed by regulations or which may be necessary for purposes of the regulations;
 - (b) requiring an operator of an aerodrome to maintain and carry out security measures at that aerodrome, including the recruitment of aviation security officers;
 - (c) the screening of passengers and cargo for security purposes;
 - (d) matters relating to submission by persons boarding an aircraft to search and screening by a police officer or aviation security officer or an authorised person;

- (e) the security of aerodromes in Botswana and of equipment and air navigation installations including those away from the aerodromes;
- (f) the monitoring of property of the Authority by a security force trained in aviation security; and
- (g) the inspection of all aircraft in Botswana territory, regardless of the place of registration or place of origin.

16. The Authority shall, in respect of each aircraft or aerodrome conduct —

- (a) security surveys to identify security needs;
- (b) security inspections and audits of security control methods and activities; and
- (c) security tests of security control methods and activities to assess their effectiveness.

Surveys,
inspections
and tests

17. (1) The Authority may, in writing, designate qualified persons by name or by title of office, to be authorised persons for purposes of this Act and shall state the functions and limit of operation of the authorised persons.

Designation of
authorised
persons

(2) A person designated to be an authorised person under subsection (1) may be assigned to do any of the following functions on behalf of the Authority —

- (a) inspection and verification of compliance with aviation security measures, emergency directions, interim orders and regulations by operators;
- (b) testing the effectiveness of equipment, systems and processes used by operators with respect to aircraft, aerodromes or other aviation facilities;
- (c) identification of security needs by operators in respect to aircraft, aerodromes and other aviation facilities;
- (d) perform any other function assigned by the Authority under subsection (1); or
- (e) carry out any other function or act that may be necessary or incidental to the carrying out of the above functions.

(3) Any person who —

- (a) intentionally obstructs an authorised person; or
- (b) falsely pretends to be an authorised person,

commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

18. (1) The Authority may —

- (a) employ or designate any person as an aviation security officer; or
- (b) in writing, authorise an aerodrome operator to employ any qualified person as an aviation security officer.

Aviation
security
officers

(2) An aviation security officer shall have power to —

- (a) screen goods to be carried by aircraft;
- (b) screen passengers and their cabin baggage;
- (c) stop any unauthorised person from entering any restricted area;
- (d) stop any unauthorised person from entering an aircraft; and
- (e) carry out any other function or act that may be necessary or incidental to the carrying out of the functions.

19. (1) The Authority shall have free and unobstructed access, at all times, to any aerodrome, any aircraft operating from or within Botswana, any land relating to an aerodrome and the premises of an operator in Botswana, for the purpose of —

- (a) inspecting security operations;
- (b) carrying out security survey and inspections, security audit and testing functions;
- (c) testing the effectiveness of equipment, systems and processes used by operators with respect to aircraft, aerodromes or other aviation facilities;
- (d) identifying security needs by operators in respect to aircraft, aerodromes and other aviation facilities; or
- (e) ascertaining compliance, by the operators, with the rules, bye-laws, circulars, publications, requirements and directions prescribed as may be prescribed.

(2) An authorised person shall have power to —

- (a) enter and where necessary detain any aircraft registered or operating in Botswana, at a time when it is in Botswana;
- (b) enter any part of an aerodrome in Botswana or any building, works or land in the aerodrome;
- (c) enter any land outside an aerodrome which is occupied for a particular business by a person who —
 - (i) also occupies or appears to be about to occupy land within an aerodrome for purposes of the same business, or
 - (ii) is permitted or appears about to be permitted to have access to a restricted area of an aerodrome for the same business;
- (d) require any operator or occupier of the land to furnish him or her with any information that he or she may require;
- (e) subject tests to any property found in an aircraft or aerodrome or to any apparatus or equipment installed therein;
- (f) ascertain the practices or procedures in relation to security, being followed by the operator; or
- (g) test the effectiveness of any practice or procedure relating to security, being followed by the operator.

(3) An authorised person may, for the purpose of exercising any of the powers conferred upon him or her under this section, use force to enter any aircraft, building and works or upon any land.

(4) Any person who —

- (a) wilfully obstructs or impedes an authorised person in the discharge of his or her functions or exercise of the powers under this Act;
- (b) fails without reasonable excuse, to comply with any requirement imposed on him or her under this section; or
- (c) furnishes to an authorised person with any information which he or she knows or has reason to believe is false in a material particular, commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

20. (1) The Authority may, by notice in writing, require the operator of any aircraft registered or operating in Botswana, or any aerodrome operator, to provide information on measures undertaken by that operator to protect the aircraft and persons and property in that aircraft, or as the case may be, the aerodrome, against any act of violence.

Powers to
require
information

(2) A notice under subsection (1) shall state the date, giving at least four weeks from the date on which the notice is served, by which the information required must be furnished.

(3) If, after submitting information to the Authority under subsection (1) an operator becomes aware of any change, he or she shall immediately inform the Authority of any modification, discontinuance, amendment, replacement, revocation or any other action made in his or her security measures.

(4) Any person who —

(a) refuses or fails, without reasonable excuse, to comply with the provisions of this section; or

(b) knowingly makes any statement which is false in a material particular in furnishing the information required under this section,

commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

21. (1) The Authority may, in writing and subject to this Act, direct any operator of one or more aircraft registered or operating in Botswana, any aerodrome operator, not to permit or cause to permit —

Power to
impose
restrictions in
relation to
aircraft

(a) property to be taken on board an aircraft or come or be taken into proximity of such aircraft, unless such property are individually subjected to a search or searches by a police officer, aviation security officer or other authorised person specified in the direction;

(b) persons to enter on board an aircraft or come or be taken into proximity of such aircraft, unless those persons are individually subjected to a search or searches by a police officer, aviation security officer or other authorised person specified in the direction;

(c) any aircraft to fly, unless a search or searches have been carried out by a police officer, aviation security officer or other authorised person specified in the direction;

(d) any aircraft to fly, unless such modifications or alterations of the aircraft or of apparatus or equipment installed in the aircraft, as may be specified in the direction, have been carried out; or

(e) any aircraft to fly, unless such additional apparatus or equipment as may be specified in the direction have been installed in the aircraft;

and the operator shall take all such steps as are practicable and necessary to ensure adherence to that direction.

(2) The Authority shall specify in a direction, given under subsection (1) (c) or (d), the period within which the requirements or measures to be taken must be effected, and the direction shall not be enforced before the end of that period.

- (3) A direction given under subsection (1) may relate to —
- (a) any number or all the aircraft registered or operating in Botswana of which, at the time of the direction or any subsequent time, that person is the operator;
 - (b) one or more persons or to persons of one or more descriptions, as may be specified in the direction; or
 - (c) a particular type of property, all property or to property of one or more descriptions.
- (4) A direction given under subsection (1) may, in respect to the operator's aerodrome, relate to —
- (a) any number or all the aircraft which, at the time of the direction or any subsequent time, are in any part of the aerodrome;
 - (b) one or more persons or to persons of one or more descriptions, as may be specified in the direction; or
 - (c) a particular type of property, all property or to property of one or more descriptions.
- (5) Any person who refuses or fails to comply with a direction given under this section commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both and for a second or subsequent offence, to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

Searches at
aerodromes

22. (1) An aerodrome operator shall, where a direction is given under section 21, or any suspicious act occurs, take all necessary measures to conduct or cause to conduct, by a police officer, aviation security officer or other authorised person, in relation to the aerodrome, searches of —

- (a) the aerodrome or any part of it;
 - (b) any aircraft which, at the time when the direction is given or the suspicious act occurs or at any subsequent time, is in any part of the aerodrome; and
 - (c) persons or property, other than an aircraft, which may be in any part of the aerodrome at the time of the direction or the act.
- (2) The Authority may give a direction in writing to any person present at an aerodrome to conduct or cause to conduct searches under subsection (1).
- (3) If a police officer, aviation security officer or authorised person has reasonable cause to suspect that an article or property containing a weapon or hazardous device or substance may be brought into any part of the aerodrome, the officer or authorised person may, under this section and without a warrant, search —
- (a) any part of the aerodrome;
 - (b) any aircraft, vehicle, goods, property or other movable property of any description; or
 - (c) any person,
- which or who is, for the time being, in any part of the aerodrome.

(4) A police officer, aviation security officer or authorised person carrying out a search under subsection (3) may, for that purpose —

- (a) enter upon any land, building or works in the aerodrome and, if necessary, may do so by force; or
- (b) stop any aircraft, vehicle, goods, property or person and may detain the same in accordance with the Criminal Procedure and Evidence Act or as may be appropriate.

(5) Any person who —

- (a) without reasonable excuse, fails to comply with the provisions of subsection (1) or (2); or
- (b) intentionally obstructs a police or aviation security officer or authorised person acting under the provisions of subsection (3) or (4), commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both; and for a second or subsequent offence, to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

23. (1) The Authority may, in writing, give any direction to any person other than an operator, who —

- (a) occupies any land forming part of an aerodrome in Botswana; or
- (b) is permitted to have access to a restricted area of an aerodrome in Botswana for purposes of activities relating to any business carried on by that person,

to take all necessary measures to conduct or cause to be conducted in relation to the aerodrome or any part thereof, searches by a police officer or an authorised person specified in the direction.

(2) Searches under subsection (1) may relate to —

- (a) the land or part thereof which that person occupies within the aerodrome;
- (b) persons who or property which may at any time be on that land; and
- (c) any land occupied outside the aerodrome for purposes of business carried on by that person.

(3) Any person who, without reasonable excuse, fails to comply with a direction given under subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both; and for a second or subsequent offence, to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

24. (1) For purposes of safety and guarding against acts of unlawful interference with civil aviation, the Authority may, in writing, give a direction to any operator or other relevant person; and an operator or other relevant person shall, where need arises do all that is necessary, to engage persons to guard —

- (a) an aircraft or all aircraft, in the case of an aircraft operator;
- (b) the aerodrome and persons or property, including aircraft, in any part of the aerodrome, in the case of an aerodrome operator;

Searches by persons other than operator

Directions relating to safety and guarding against acts of unlawful interference

- (c) the land occupied and persons or property in that land, in the case of a person occupying any land forming part of an aerodrome; and
- (d) any aircraft which is in any area of the aerodrome to which that person has access, business land occupied outside the aerodrome and vehicles, equipment and goods used in that person's business, in the case of a person permitted to have access to a restricted area of an aerodrome for purposes of activities relating to business carried on by that person.

(2) The Authority may, for purposes of safety and guarding against acts of unlawful interference with civil aviation, give directions of a specific or general nature to an operator or other relevant person and may require any measure specified in the direction to be taken, at such time or within such period as may be specified in the direction.

(3) The Authority may give a direction under subsection (1) or (2) to a person appearing to the Authority as —

- (a) an operator;
- (b) a person occupying land forming part of an aerodrome; or
- (c) a person permitted to have access to a restricted area in respect of activities relating to business carried on by that person,

but a direction given under this section shall not take effect until that person is proved to be an operator, a person occupying land forming part of an aerodrome or a person permitted to have access to a restricted area in respect of activities relating to business carried on by that person.

(4) A direction under this section shall not require —

- (a) any search, whether of persons or property;
- (b) the modification or alteration of any aircraft or its apparatus or equipment or the installation of additional apparatus or equipment; or
- (c) the prohibition of any aircraft from being caused or permitted to fly without —
 - (i) some modification or alteration being made on the aircraft or its apparatus or equipment; or
 - (ii) the installation of additional apparatus or equipment to the aircraft.

(5) Any person who —

- (a) fails, without reasonable excuse, to comply with a direction given under this section;
- (b) intentionally interferes with any building constructed or works executed on any land in compliance with a direction given under this section; or
- (c) intentionally interferes with anything installed on, over or across any land in compliance with a direction given under this section, commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both; and for a second or subsequent offence, to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

(6) Any person who makes a statement which he or she knows to be false in a material particular to the Authority, police officer, authorised person, operator or other relevant person or to an agent or employee of the Authority for purposes of obtaining an identification document or continued use of identification document relating to operations under this section, commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both; and for a second or subsequent offence, to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

(7) The ownership of any property shall not be affected by reason only that it is placed on, under or is affixed to any land in compliance with any direction given under this section.

B. General Provisions Relating to Directions

25. (1) The Authority may, in any direction given under section 21 or 23, specify —

Matters to include in directions

- (a) the minimum number of persons to be engaged by the operator or other relevant person in the carrying out of the direction;
- (b) the manner in which the direction may be carried out;
- (c) the apparatus, equipment or additional apparatus or equipment to be used by persons carrying out the direction;
- (d) the qualifications of persons to be engaged in carrying out the direction; and
- (e) that persons engaged in the carrying out of any modifications or alterations, or the installation of additional apparatus or equipment shall be persons approved by the Authority.

(2) Where a direction requires searches to be carried out or other measures to be taken by a police officer, the Authority may require the person to whom the direction is given to inform the Police Station Commander for the area in which the searches or other measures are to be taken or carried out to enable the police officer to be fully equipped and where necessary to carry a firearm in preparation for the task.

(3) Nothing in this section shall be construed as limiting the generality of the powers of the Authority on matters to include in any direction.

26. (1) A direction given under section 21, 22, 23 or 24 may be addressed generally —

Direction may be addressed generally

- (a) to one or all operators or other relevant persons under that section; or
- (b) to a particular category of operators or other relevant persons under that section.

(2) The Authority may, by notice in writing or otherwise, exempt any operator or other relevant person from the operation of a direction given under this Part.

- (3) An exemption given under subsection (2) shall cease to have effect —
 - (a) within 30 days from the date on which notice of exemption was given to the operator or other relevant person; or
 - (b) if a notice in writing is subsequently given to the operator or relevant person varying or revoking the exemption.

Scope of
direction under
this Part

27. (1) A direction given under this Part shall not apply to any aircraft which is operated by the government of a country other than Botswana or any of its departments or agency except where the aircraft is used for carriage of passengers or cargo for reward or where it has been allocated to another person or body by the government, department or agency for such use.

(2) A direction given under this Part shall not be construed as a requirement or authorisation for the person to whom it is given or that person's employee or agent to do anything which would constitute an act of violence; but that shall not stop an authorised person or any other person acting in exercise of the direction to use reasonable force, in carrying out the direction, where circumstances require so.

(3) A direction made under this Part in relation to an aircraft, requiring anything to be done or not to be done outside Botswana shall —

- (a) only have effect if the aircraft is registered in Botswana; and
- (b) not require anything to be done which is in contravention of any provision of a law in force in that country, except where it relates to a breach of a contract.

(4) Where a direction given to an aerodrome operator or other relevant person requires —

- (a) a building or other works to be constructed, executed, altered, demolished or removed on land outside the aerodrome; or
- (b) any other measure to be taken on land outside the aerodrome; that direction shall not be construed to give that person any restrictive right of use of, interest in or right of occupancy to that land if the right did not exist before the direction.

Notice of
objection to a
direction

28. (1) Any person to whom a direction is given under this Part, which direction requires measures including, the construction, execution, alteration, demolition or removal of a building or any other specified works may, where the direction is not notified as urgent, give to the Authority, in writing, a notice of objection within 30 days from the date on which notice giving the direction was issued.

(2) The notice of objection under subsection (1) shall specify the grounds for objection, which may include that the measures specified by the direction are —

- (a) unnecessary and should be dispensed with; or
- (b) excessively onerous or inconvenient and should be modified in a manner specified in the notice.

(3) The Authority shall, within 21 days of receipt of the notice of objection consider the grounds of objection and, after giving an opportunity to the person objecting to the direction to appear before the Authority may —

- (a) confirm the direction as originally given;
- (b) alter, vary or modify the direction; or
- (c) withdraw the direction.

29. (1) Where an authorised person is of the opinion that a person given a direction under this Part has failed to comply with the requirements of the direction, the authorised person may serve a notice of enforcement to that person specifying —

- (a) the general requirement of the direction with which that person has failed to comply; and
- (b) the measures to be taken in order to comply with the requirements of the direction.

(2) A notice of enforcement issued under subsection (1) may specify in details, measures which are described in general terms under the direction but, shall not include any requirements which were not included in the original direction.

(3) A notice of enforcement may give different or alternative ways of complying with the requirements of the direction.

(4) A notice of enforcement shall specify a reasonable period within which the person served with the notice shall have complied with the notice.

30. Any person who intentionally interferes with any building constructed, works executed or installation made on, over, under or across any land in compliance with a notice of enforcement commits an offence and is liable to a fine not exceeding P1 500 000, or to imprisonment for a term not exceeding three years, or to both.

31. (1) A person to whom a notice of enforcement is served under section 30 may give a notice of objection to the Authority within 30 days of receipt of the notice of enforcement.

(2) A notice of objection under subsection (1) shall specify the grounds for objection which may include that —

- (a) the general requirements in the direction which have been included in the notice of enforcement have been complied with;
- (b) the notice of enforcement includes requirements which were not in the original direction; or
- (c) the measures given to comply with the requirements of the direction —
 - (i) are unnecessary and should be dispensed with, or
 - (ii) are excessively onerous or inconvenient and should be modified in a manner specified in the objection.

(3) The Authority shall, within 21 days of receipt of the notice of objection under subsection (1), consider the grounds of objection and, after giving an opportunity to the person objecting to the notice to appear before it, may —

- (a) confirm the notice of enforcement as originally given;
- (b) alter, vary or modify the notice; or
- (c) cancel the notice.

Notice of enforcement

Offences relating to notice of enforcement

Objection to a notice of enforcement

32. (1) Subject to section 27, a direction or notice of enforcement under this Part shall have effect notwithstanding anything contrary included in a contract signed between any person and the operator or other relevant person to whom the direction or notice is given.

(2) No proceedings for a breach of a contract shall lie against any person, if the breach of the contract was as a result of lawful and proper compliance with a direction or notice of enforcement given under this Part.

(3) Nothing in this section shall preclude civil responsibility of a person where the direction or notice of enforcement leading to the civil liability was necessitated by the negligent or unlawful acts or omission on part of the operator or other relevant person to whom the direction or notice is given; or by the employee or agent of that person.

33. (1) The Authority or an authorised person may give a detention direction in respect of an aircraft where, in the opinion of the Authority or authorised person —

- (a) the operator has failed or is likely not to comply with a requirement of a direction given under this Part in relation to that aircraft;
- (b) the operator has failed to comply with the requirement of a notice of enforcement issued under section 30 in relation to that aircraft;
- (c) a threat has been made for an act of violence or unlawful interference against that aircraft or any person or property on board that aircraft; or
- (d) an act of violence or unlawful interference is likely to be committed against that aircraft or any person or property on board that aircraft.

(2) A detention direction under subsection (1) shall be in writing to the operator of the aircraft requiring that operator to ensure that the aircraft does not fly while the direction is in force.

(3) The Authority or authorised person who issues a detention direction may take steps to ensure that the aircraft does not fly while the direction is in force and may, for that purpose —

- (a) enter the aircraft;
- (b) arrange for another person to enter the aircraft;
- (c) arrange for a particular person or thing to be removed from the aircraft; or
- (d) use or authorise the use of reasonable force in the carrying out of the required steps.

(4) A detention direction under this section may be given in respect of any aircraft in Botswana or registered in Botswana and may be in relation to one aircraft or a class of aircraft.

(5) An operator given a detention direction under this section may give a notice of objection to the Authority within seven days of receipt of the direction.

(6) The provisions of section 32 (2) and (3) shall apply to a notice under this section.

(7) Any person who —

(a) without reasonable excuse fails to comply with the requirements of a detention direction; or

(b) intentionally obstructs a person acting under subsection (3),

shall be liable to a fine not exceeding P2 500 000, as the Authority may impose.

34. Any person aggrieved by a decision of the Authority in relation to an objection made under section 28 or 31 may, within 14 days from the date of receipt of the decision, lodge an appeal with the Appeals Tribunal established under the Civil Aviation Act.

Appeal against
decision of
Authority
Cap. 71:04

C. Designation of Restricted Areas

35. (1) An aerodrome operator or authority in charge of an air navigation installation may, for purposes of safety and security, designate any area within the aerodrome or air navigation installation to be a restricted area.

Restricted
areas

(2) The restricted area under subsection (1) shall be clearly and visibly marked “Restricted Area”.

(3) The aerodrome operator or authority in charge of an air navigation installation may, under subsection (1), designate the whole or part of the aerodrome or air navigation installation to be a restricted area.

(4) Where an aerodrome includes an air navigation installation, the aerodrome operator shall, before designating any area to be a restricted area, consult the authority in charge of the installation if it is different from the aerodrome operator and shall, during such consultations specify the intended area for designation.

(5) A person shall not enter or remain in a restricted area unless that person has in his or her possession an identity card or pass —

(a) issued by the aerodrome operator or authority in charge of the air navigation installation, as the case may be; and

(b) which complies with the conditions laid down by the aerodrome operator or authority in charge of the air navigation installation as may be prescribed by regulations made under this Act.

(6) Any person who enters or remains in any restricted area without an identity card or pass referred to under subsection (5) commits an offence and is liable to a fine not exceeding P1 000 000, or to imprisonment for a term not exceeding two years, or to both.

(7) A police officer, aviation security officer, aerodrome operator, authority in charge of the air navigation installation or a person acting on behalf of that person may use reasonable force to remove a person who refuses to comply with a request to leave a restricted area entered in contravention of this section.

(8) The provisions of this section shall apply only to air navigation installation within Botswana.

D. Provisions Relating to Air Navigation Installations

Application of notices and directions to navigation installations

36. (1) Subject to the provisions of this section, sections 19, 20, 22, 23, 24, 25 and 27 as they relate to notices and directions under this Part shall apply to any air navigation installation in Botswana which forms or does not form part of an aerodrome, with such modifications as may be necessary and, without limiting the generality of the foregoing, any reference to —

- (a) an aerodrome or part thereof shall be construed to refer to the air navigation installation or part thereof; and
- (b) operator shall be construed to refer to the authority in charge of the air navigation installation.

(2) Where an air navigation installation forms part of an aerodrome, a notice or direction under sections 20, 22, 23 or 24 may be served or given in respect of —

- (a) the aerodrome separately without including the air navigation installation;
- (b) the air navigation installation separately; or
- (c) the whole of the aerodrome including the air navigation installation.

(3) A direction given under section 23 or 24, with modifications required under this section, may relate —

- (a) to all air navigation installations in Botswana at the time of the direction or at any subsequent time;
- (b) to one or more air navigation installations; or
- (c) to a class of air navigation installations.

(4) A person inspecting any air navigation installation under section 19 shall not have any powers to test any apparatus or equipment which constitute or forms part of the air navigation installation and for that purpose, section 19 (2) (e) shall not apply.

E. Policing of Aerodromes

Prohibited items

37. (1) A person shall not, unless authorised by the Authority, have in his or her possession any prohibited item while —

- (a) in a restricted area of an aerodrome;
- (b) on board an aircraft; or
- (c) in an air navigation installation.

(2) The prohibited items referred to under subsection (1) includes —

- (a) firearms or articles appearing to be firearms, whether or not they can be discharged;
- (b) chemical or biological agents adapted, or capable of being used for causing injury to or incapacitating persons or damaging or destroying property;
- (c) explosives;
- (d) articles manufactured or adapted to have the appearance of explosives, whether in the form of a bomb, grenade or otherwise;

- (e) articles made or adapted for causing injury or incapacitate persons or damaging or destroying property;
- (f) any article which appears or resembles an article that is capable of causing injury or incapacitate persons or damaging or destroying property; and
- (g) any other dangerous article or substance or other item prescribed by the Authority to be a prohibited item.

(3) Any person who contravenes the provisions of this section, commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years; or to both.

38. Where a police officer or aviation security officer has reasonable grounds to suspect that any baggage or other object or item may constitute a security risk, whether because it is unidentified, unattended or for any other reason, that officer may remove the baggage, object or item for the purpose of subjecting it to appropriate security control and where security control requires, may destroy or dispose of it.

Unidentified baggage, etc.

39. (1) Where a police officer or aviation security officer has reasonable grounds to suspect that there is a stolen or prohibited article with any person or in any vehicle or aircraft, he or she may, without a warrant —

Power to stop and search persons, vehicles, etc.

- (a) stop and search any person, vehicle or aircraft in an aerodrome; or
- (b) search any property or article in the vehicle or aircraft at an aerodrome.

(2) For the purposes of exercising the powers under subsection (1), a police officer or aviation security officer may —

- (a) enter any part of an aerodrome; and
- (b) detain any person, vehicle or aircraft; or enter or board any vehicle or aircraft.

(3) A police officer or aviation security officer may seize any article found in the course of a search conducted under the provisions of subsection (1) if he or she has reasonable ground to believe or suspect that it is a stolen or prohibited article.

(4) Prohibited article under this section includes —

- (a) any article which can be used or adapted to commit act of violence or act of unlawful interference;
- (b) a weapon or hazardous device or substance; and
- (c) any item referred to under section 37 (2).

40. (1) A police officer or aviation security officer may remove from an aerodrome or any part thereof —

Power to remove a person, vehicle or article from aerodrome

- (a) any person who, having entered the aerodrome or any part thereof in contravention of this Act, fails or refuses to leave the aerodrome or any part thereof after being requested to do so;
- (b) any vehicle, article or thing brought to or left within the aerodrome or any part thereof in contravention of this Act or regulations made thereunder; or
- (c) any vehicle, article or thing within the aerodrome or part thereof which is likely to cause danger or obstruction to passengers or aircraft.

(2) A police officer or aviation security officer who reasonably believes that a person has previously committed an offence under this Act or regulations made thereunder may require that person to produce such evidence of identity and other information as the officer may specify.

(3) Any person who —

(a) refuses to produce evidence of identity or information required of him or her under subsection (1); or
(b) wilfully and knowingly furnishes to the police officer or aviation security officer information which he or she knows to be false, commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

(4) A police officer or aviation security officer may, without a warrant, arrest any person within an aerodrome —

(a) if the police officer or aviation security officer has reasonable grounds to believe that the person has contravened any provision of this Act and that person's name and address cannot be ascertained; or

(b) if that person, in contravention of this Act, fails or refuses to leave the aerodrome or any part thereof after being requested by the officer to do so.

Designated
aerodromes

41. (1) The Minister may, for the purpose of the preservation of peace and after consultation with the aerodrome operator and the Authority, declare any aerodrome to be a designated aerodrome.

(2) The policing of an aerodrome declared as a designated aerodrome under subsection (1) shall, in the interest of the preservation of peace and security, be the responsibility of the police under the direction of the Station Commander for the area in which the aerodrome is situated.

(3) No aviation security officer or person employed by the operator for purposes of security at a designated aerodrome, who is not a police officer, shall exercise at that aerodrome any duties, powers or responsibilities conferred upon a police officer under this section or section 42.

Prevention of
theft at
designated
aerodrome

42. (1) A police officer may, for purposes of preventing theft at a designated aerodrome —

(a) stop and inspect any goods carried by any person leaving a cargo area in that aerodrome;

(b) stop, search and inspect any goods carried in any vehicle or aircraft leaving a cargo area in that aerodrome;

(c) detain in the cargo area any goods found with any person or in any vehicle or aircraft leaving the cargo area, if no documents are produced, which are issued and signed by the aerodrome operator or a person acting in that behalf authorising the removal of the goods from the cargo area; or

(d) detain any vehicle or aircraft having goods for which no documents are produced authorising the removal of the goods from the cargo area.

(2) In this section, "cargo area" means the area which is wholly or mainly used for storage or handling of cargo in the designated aerodrome.

43. Movement of vehicles within a designated aerodrome shall be controlled by the police, air traffic controllers and operations officers as may be appropriate.

Control of vehicles at aerodrome

PART IV – National Civil Aviation Security and Facilitation Committee and Security Programme

44. (1) There shall continue to be a National Aviation Security and Facilitation Committee (herein after referred to as “the Committee”) consisting of the Chairperson, Vice Chairperson and the following other members —

Continuation of the National Civil Aviation Security and Facilitation Committee

- (a) the Commander of the Botswana Defence Force or a representative of the Commander;
- (b) the Commissioner of Police or a representative of the Commissioner;
- (c) the Commissioner General of the Botswana Unified Revenue Service or a representative of the Commissioner General;
- (d) the Director General of Intelligence and Security or a representative of the Director General;
- (e) the Chief Immigration Officer or a representative of the Chief Immigration Officer; and
- (f) two representatives of the aviation industry, who shall be appointed by the Minister from persons engaged in the industry.

(2) The Permanent Secretary of the Ministry responsible for civil aviation shall be the Chairperson of the Committee.

(3) The Chief Executive Officer of the Authority shall be the Vice Chairperson.

(4) Any decision made or action taken in good faith by the Committee, including a member representing a designated office or the industry under subsection (1), in the exercise of the functions of a member, shall bind that member’s employer, office holder or the industry, as the case may be.

45. The functions of the Committee shall be —

Functions of the Committee

- (a) to develop and monitor the implementation of a National Civil Aviation Security Programme;
- (b) to develop, implement and maintain a National Civil Aviation Security Quality Control Programme;
- (c) to advise and recommend to the Minister and the aviation industry on appropriate security measures to be taken by those concerned with aviation security and on aviation security measures generally;
- (d) to review the effectiveness of the aviation security and the security quality control measures and procedure;
- (e) in any case where the Authority is the operator, to conduct, in respect of the Authority as an operator —
 - (i) security surveys to identify security needs,
 - (ii) security inspections and audits of security controls, and
 - (iii) security tests on security control to assess their effectiveness;and

- (f) to approve the allocation of tasks and advise on and coordinate aviation security and security control activities between ministries, departments, agencies and organisations involved in aerodrome and aircraft operation in Botswana as well as other entities concerned with, involved in or responsible for the implementation of the security control programmes.

Meetings of the
Committee

46. (1) The Committee shall meet at such times and places as the Chairperson or in the absence of the Chairperson, the Vice Chairperson may determine, but at least once in four months.

(2) The Chairperson or in the absence of the Chairperson, the Vice Chairperson shall preside at any meeting of the Committee and in the absence of both the Chairperson and Vice Chairperson, the members present at the meeting shall elect a person from among themselves to preside at such meeting.

(3) Five members of the Committee shall form a quorum at any meeting of the Committee.

(4) The Committee may invite any person to attend and take part in the proceedings and participate in any discussion, but that person shall not have a right to vote at that meeting.

(5) The decision of a majority of the members present and voting shall constitute a decision of the Committee and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.

(6) The Committee shall regulate the procedure for its meetings.

47. (1) A National Aviation Security Programme to be developed by the Committee shall include –

National
Aviation
Security
Programme

- (a) measures and procedures to be taken by operators, agencies, organisations and other entities involved in civil aviation to safeguard against acts of unlawful interference with the safety of civil aviation;
- (b) measures, practices and procedures to be taken to protect the safety of persons, property and aircraft in flight;
- (c) practices and procedures to ensure the safety, regularity and efficiency of flights;
- (d) the allocation of responsibilities for implementation of the programme;
- (e) communication and coordination in the aviation industry;
- (f) security equipments to be used in the industry;
- (g) measures and procedures to be used in the protection of aerodromes, aircraft and air navigation installations;
- (h) security control of persons, items and property being placed on board aircraft;
- (i) personnel management, including selection criteria and training;
- (j) management of response to acts of unlawful interference;
- (k) evaluation of effectiveness of the programme; and
- (l) any other matter relating to security in the aviation industry as the Committee may deem necessary.

(2) The National Civil Aviation Security Programme developed by the Committee under subsection (1) shall be reviewed and updated once in each year.

- (3) The Committee shall —
- (a) ensure the implementation of the National Civil Aviation Security Programme by all those involved in civil aviation industry;
 - (b) approve the security and training programmes made in conformity with the National Civil Aviation Security Programme by an operator under section 58; and
 - (c) ensure and make available to aerodrome and aircraft operators in Botswana and other entities concerned with civil aviation, the relevant and appropriate written part of the National Civil Aviation Security Programme.

48. (1) The Committee shall develop, implement and maintain a National Civil Aviation Security Quality Control Programme for the purposes of —

- (a) determining and monitoring compliance with and validating the effectiveness of the National Civil Aviation Security Programme;
- (b) determining the adequacy and effectiveness of the National Civil Aviation Security Programme through audits, tests, surveys and inspections;
- (c) ensuring that all persons assigned aviation security duties or responsibilities are certified, verifiably trained and instructed to discharge those duties effectively;
- (d) ensuring that acts of unlawful interference are investigated; and
- (e) reviewing and re-evaluating security measures and controls immediately following an act of unlawful interference.

(2) The National Civil Aviation Security Quality Control Programme shall provide —

- (a) the structure, responsibilities, processes and procedures necessary to establish and promote the strengthening, enhancement and sustainability of the quality of aviation security;
- (b) the mode and method of ensuring that persons tasked with carrying out security duties do so efficiently and effectively;
- (c) direction for the effective application of the set methods of, and efficient discharge of activities in security control; and
- (d) for any other matter that may be necessary or required in the enhancement of the quality of aviation security.

(3) The Committee shall, in developing the National Civil Aviation Security Quality Control Programme ensure the incorporation of appropriate methods, means and procedure for —

- (a) ensuring that personnel carrying out security audits, tests, surveys and inspections are trained to appropriate standards for these tasks in accordance with the National Civil Aviation Security Training Programme;
- (b) ensuring that personnel carrying out security audits, tests, surveys and inspections are afforded the necessary authority to obtain information to carry out those tasks, and to enforce corrective actions;
- (c) establishing a reporting system for security information provided by sources including passengers, crew and ground personnel; and

National Civil
Aviation
Security
Quality
Control
Programme

Independence
in the
management
of control
programme

Aerodrome
Security
Committee

(d) establishing a process of analysing the reports and results of the National Civil Aviation Security Quality Control Programme, to contribute to the effective development and implementation of the National Civil Aviation Security Programme, including identifying the causes and patterns of non-compliance and verifying that corrective actions have been implemented and sustained.

49. The Committee shall ensure that the management, setting of priorities and organisation of the National Civil Aviation Security Quality Control Programme is undertaken independently from the entities and persons responsible for the implementation of the measures taken under the National Civil Aviation Security Programme.

50. (1) Every aerodrome shall establish an Aerodrome Security Committee.

(2) The functions of the Aerodrome Security Committee are —

(a) to coordinate the implementation and maintenance of security controls and procedures as specified in the Aerodrome Operator Security Programme established under section 53;

(b) to oversee the implementation of the policy decisions of the Committee;

(c) to oversee and monitor the aerodrome operator security programme, including measures introduced by the aerodrome administration, operators and other relevant persons;

(d) to draw up, maintain and review, from time to time, a list of vulnerable points, and essential equipment and facilities;

(e) to ensure that —

(i) basic minimum-security measures and procedures are adequate to meet threats and are under constant review, providing for normal situations and periods of heightened tension and emergency situations,

(ii) recommendations that improve security measures and procedures are implemented, and

(iii) security measures are incorporated in aerodrome expansions or modifications;

(f) to prescribe and co-ordinate security education, awareness and training of airport staff, other staff and the public; and

(g) do any other thing which the Minister may, by regulations prescribe.

(3) The Aerodrome Security Committee shall refer to the Committee, any matter relating to aviation security and which is within its functions under subsection (2), which cannot be resolved at the Aerodrome Security Committee level.

(4) The person in charge of the aerodrome management shall be the Chairperson of the Aerodrome Security Committee.

(5) The Chairperson shall appoint the other members of the Aerodrome Security Committee in accordance with subsection (6).

(6) The Aerodrome Security Committees shall, consist of members from all agencies engaged in the operation of the aerodrome which contribute to the establishment and implementation of security measures including —

- (a) persons in charge of aerodrome administration;
- (b) persons in charge of aviation security at the aerodrome;
- (c) immigration service;
- (d) local authorities;
- (e) the health sector;
- (f) postal services;
- (g) handling agents;
- (h) in flight caterer;
- (i) representative of the airlines;
- (j) representative of the aerodrome tenants;
- (k) fire and rescue services;
- (l) fuel suppliers;
- (m) air navigation services;
- (n) customs services;
- (o) security and intelligence services;
- (p) police services; and
- (q) armed forces.

(7) The Aerodrome Security Committee may invite any person to attend and take part in the proceedings of the committee and that person may participate in any discussion at the meeting but shall not have a right to vote.

(8) The Chairperson of the Aerodrome Security Committee shall convene every meeting of the committee and the committee shall meet for the discharge of business at least once in every three months to ensure that the security programme is up to date and effective and that its provisions are being properly applied.

(9) The Aerodrome Security Committee shall regulate the procedure of its meetings.

51. (1) A person shall not operate an airport serving civil aviation in Botswana without an Aerodrome Operator Security Programme and, if that person is not the Authority, the Programme shall be approved by the Authority.

Aerodrome
Operator
Security
Programme

(2) Every operator serving civil aviation in Botswana shall establish and implement a written Aerodrome Operator Security Programme that meets the requirements of the National Civil Aviation Security Programme and this Act.

(3) The Aerodrome Operator Security Programme shall be updated once in each year.

(4) A person who contravenes subsection (1) commits an offence and shall be liable to a fine of P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

52. (1) Where the aerodrome operator is made aware or is convinced that there is a threat that affects or may affect the security of the aerodrome or any part thereof the operator shall immediately —

Obligation of
aerodrome
operator

- (a) take all measures necessary to ensure the safety of the aerodrome, persons and property therein;
- (b) coordinate the implementation of appropriate measures to counter the threat; and
- (c) notify the Authority and other entities concerned with the nature of the threat.

Aircraft
Operator
Security
Programme

53. (1) A person shall not operate an aircraft serving civil aviation from or within Botswana without an Aircraft Operator Security Programme approved by the Authority.

(2) Every aircraft operator providing service from or within Botswana shall establish and implement a written Aircraft Operator Security Programme that meets the requirements of the National Civil Aviation Security Programme and this Act.

(3) The Aircraft Operator Security Programme shall be updated once in each year.

(4) A person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

Regulated
Agent Security
Programme

54. (1) A person shall not operate an enterprise or an organisation whose purpose is the movement of cargo, mail, baggage or goods by air from or within Botswana without a Regulated Agent Security Programme approved by the Authority.

(2) The requirements of the regulated Agent Security programme shall be set out in the National Aviation Security Programme.

(3) A person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

Catering
Operator
Security
Programme

55. (1) A person shall not operate an enterprise or an organisation whose purpose is the provision of commercial air transport of catering supplies and stores from Botswana or within Botswana without a Catering Operator Security Programme approved by the Authority.

(2) The requirements of the Catering Operator Security Programme shall be as set out in the National Aviation Security Programme.

(3) A person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

National
Aviation
Security
Training
Programme

56. (1) The Committee shall develop a National Aviation Security Training Programme for personnel of all entities involved in or responsible for the implementation of various aspects of the National Civil Aviation Security Programme.

(2) The Authority shall co-ordinate the implementation of the National Aviation Security Training Programme developed under subsection (1).

Operator
Aviation
Security
Training
Programme

57. Every operator shall develop and implement an Aviation Security Training Programme to ensure the effective implementation of their respective security operations, which Training Programme shall conform to the National Aviation Security Training Programme and approval by the Authority.

58. (1) Where the Authority determines that an operator's security or training programme requires amendment, the Authority may direct the respective operator to amend and submit the amended security or training programme to the Authority within a term specified in the direction.

Amendment of
Security or
Training
Programme

(2) The Authority shall, where an amended security or training programme is submitted under subsection (1), approve the programme in accordance with the procedure prescribed by regulations made under this Act.

59. (1) For the purposes of ensuring compliance and the implementation of —

Power to
enforce
compliance
with
Programmes

- (a) the National Civil Aviation Security Programme;
- (b) the National Civil Aviation Security Quality Control Programme;
- (c) any operator Security Programme; or
- (d) any other requirement under this Act;

the Authority, Committee or any other authorised person may adopt procedures for aviation security monitoring and enforcement approved by the Authority or, where applicable, the Committee.

(2) The procedures referred to under subsection (1) shall establish enforcement to ensure rectification of any matter, including but not limited to the following —

- (a) failure to comply with any rule, circular or direction issued under this Act;
- (b) failure to comply with any requirement under the National Civil Aviation Security Programme or respective operator security programme;
- (c) failure to comply with an oversight recommendation made by the Authority; and
- (d) failure to take into account unique or exceptional circumstances which, although not expressly provided under the National Civil Aviation Security Programme, or the applicable operator security programme, may expose an aerodrome, aircraft or catering facility risk.

PART V – *Miscellaneous*

60. (1) The Minister may, on such terms and conditions as he or she may consider necessary, exempt any person, aircraft, aerodrome, aviation facility or service, from application of any regulations, bye-laws, requirements, notices and information made or issued under this Act, if the exemption is in the public interest and is not likely to affect aviation security.

Exemptions

(2) The Minister may, by regulations, prescribe the conditions and procedure under which exemption may be granted under this section.

(3) Any exemption granted under this section shall be published by notice in the *Gazette*.

61. (1) This section shall apply to any situation where an operator or other relevant person, in compliance with a direction or enforcement notice, takes measures consisting of construction, execution, alteration, demolition or removal of a building or other works on land either within or outside an aerodrome or air navigation installation.

(2) Where, as a result of the measures taken in compliance with a direction or enforcement notice, the value of any interest in the land depreciated or the person having interest in that land suffers loss, that person shall be entitled to compensation equal to the depreciation or loss suffered.

(3) Where any land other than the land on which measures are taken is materially affected, any person having interest in that land who suffers any loss in consequence of the measures taken shall be entitled to compensation equal to the loss suffered.

(4) Compensation under this section shall be paid by the person who undertook the measures in question.

(5) No compensation shall be paid under this section unless, within one year from the date of completion of the measures, the person to whom it is payable serves a notice in writing to the person who undertook the measures, claiming compensation.

(6) Any dispute arising under this section as to the right to any compensation, the amount of compensation or any other matter in relation thereto may, in default of agreement by the parties, be determined by a single arbitrator in accordance with the Arbitration Act.

62. (1) Any notice, document containing direction and any other document to be served on or to any person under this Act, may be served or given —

- (a) by delivering it to that person or to that person's duly authorised agent;
- (b) by sending it to that person by registered mail at his or her usual or last known residence or place of business;
- (c) in the case of a body corporate, by delivering it to the secretary, clerk or similar officer of the body corporate at its registered or principal office in Botswana, or if it has no office in Botswana by sending it by registered mail to the secretary, clerk or similar officer of that body corporate wherever they are; or
- (d) by using electronic communication to send the documents where the person has agreed to accept electronic communication and an electronic address has been given by that person.

(2) A notice or document given or served under subsection (1) (d) shall be in a sufficiently permanent form to be used for subsequent reference.

(3) A notice or document given or served under subsection (1) (d) shall, unless the contrary is proved, be deemed to have been given or served on that person at the time the electronic communication is transmitted except where transmission is made outside that person's normal business hours, in which case it shall be taken to have been given or served on the next working day.

(4) For purposes of subsection (3) “working day” means any day other than a Saturday, Sunday or a public holiday under the Public Holidays Act.

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63. (1) The Minister may, on the recommendation of the Authority, make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, may make regulations for the purpose of —

Regulations

- (a) appointing aviation security officers at aerodromes or other aviation installation and their duties;
- (b) spelling out of the procedures for entry of persons, vehicles or goods into various parts of aerodromes, other aviation installations or aircraft, including the manner and circumstances under which a search can be carried out;
- (c) issuing of identity cards for entry into various parts of aerodromes or other aviation installations;
- (d) spelling out the contents and procedure for approval of operator security and training programmes;
- (e) setting out the safety of the public, passengers, crew members, aircraft and aerodromes and other aviation installations;
- (f) determining restricted areas in aircraft or at aerodromes or other aviation installations, including identification of such areas, access to them and their administration and management;
- (g) screening of persons boarding an aircraft, an aerodrome or other aviation installation;
- (h) screening of goods that are intended to be taken or placed on board an aircraft; or brought into an aerodrome or other aviation installation or which are inside an aircraft, an aerodrome or other aviation installation;
- (i) determining instances when seizure or detention of goods in the course of screening, as well as the destruction of the seized goods is necessary;
- (j) preventing acts of unlawful interference with civil aviation and the action to be taken if interference occurs;
- (k) requiring any person or class of persons to have security clearance as a condition of conducting any activity specified in this Act;
- (l) making of applications for security clearance and the information to be provided by the applicant;
- (m) establishing security requirements for the design or construction of aircraft, aerodromes or other aviation installation;
- (n) requiring security management systems to be established by the Authority and by aircraft and aerodrome operators or operators of other aviation installation;
- (o) establishing security requirements for equipment, systems, processes and procedures used in aircraft, aerodromes and other aviation installations by operators, passengers and consignors;

- (p) setting out the qualifications, training and standards of performance of classes of persons having responsibility for security in aircraft, aerodromes or other aviation installation;
- (q) testing the effectiveness of equipment, systems and processes used in aircraft, aerodromes or other aviation installation;
- (r) providing for aviation security related information;
- (s) determining methods for the disposal of unclaimed property on the premises of aerodromes or other aviation installation;
- (t) stipulating the conditions relating to the carriage of passengers subject to judicial or administrative proceedings;
- (u) determining deployment and carriage of in-flight security officers on board aircraft;
- (v) requiring any owner or operator of an aircraft registered outside Botswana which lands at or departs from Botswana, to establish, maintain and carry out an aerodrome, in the aircraft and at aviation facilities under his or her control, security measures that may be prescribed by regulations or which may be necessary for purposes of the regulations; or
- (w) stipulating any other matter affecting aviation security or any matter which is to be prescribed under this Act.

(2) Any person who contravenes any regulations made under subsection (1) shall be liable to a fine not exceeding P5 000 000, or to imprisonment for a term of 10 years, or to both.

(3) The Authority may impose an administrative penalty of an amount not exceeding that specified in subsection (1) where a person who contravenes any of the provisions of any regulations, bye-laws, requirements, directives, notices, circulars or information made under this Act.

Transitional provisions

64. (1) A person who, immediately before the commencement of this Act, was an operator, regulated agent or catering operator may, at the commencement of this Act, continue to operate as such but shall, within six months after the commencement of the Act, submit to the Authority a security programme for approval under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P2 500 000, or to imprisonment for a term not exceeding five years, or to both.

(3) Where a person is convicted of an offence under this Act, the court may, in addition to the punishment imposed under subsection (2), impose an order prohibiting that person from operating as an aerodrome or aircraft operator, regulated agent or catering operator.

65. (1) The Aviation Security Act is hereby repealed.

(2) Notwithstanding the repeal under subsection (1), any regulations made or anything done, including contracts concluded or any action taken or purported to have been done or taken under the repealed Act, shall in so far as it is not inconsistent with this Act be deemed to have been done or made under this Act.

(3) An aviation facility security permit, licence or identification card issued and in force before the commencement of this Act shall continue to be in force as if issued under this Act until it expires or is cancelled under this Act.

PASSED by the National Assembly this 18th day of August, 2011.

BARBARAN. DITHAPO,
Clerk of the National Assembly.