



ANALYSIS

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A BILL INTITULED

An Act to amend the law relating to civil aviation in the Cook Islands

(13 May 2002)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short title – This Act may be cited as the Civil Aviation Act 2002.
2. Purpose – The purpose of this Act is to –
 - (a) Establish rules of operation and divisions of responsibility within the civil aviation system in order to promote aviation safety and security; and
 - (b) Ensure that the Cook Island's obligations under international aviation agreements are implemented.
3. Interpretation – In this Act, unless the context otherwise requires, –

“Accident” means an occurrence that is associated with the operation of an aircraft and takes place between the time any person boards the aircraft with the intention of flight and such time as all such persons have disembarked and the engine or any propellers or rotors come to rest, being an occurrence in which–

 - (a) A person is fatally or seriously injured as a result of–
 - (i) Being in the aircraft; or
 - (ii) Direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
 - (iii) Direct exposure to jet blast–
 except when the injuries are self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew; or
 - (b) The aircraft sustains damage or structural failure that–
 - (i) Adversely affects the structural strength, performance, or flight characteristics of the aircraft; and

- (ii) Would normally require major repair or replacement of the affected component—except engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or
- (c) The aircraft is missing or is completely inaccessible;

“Aerodrome” –

- (a) Means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft; and
- (b) Includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

“Aerodrome control service” means an air traffic control service provided for the control of aerodrome traffic;

“Aerodrome operator”, in relation to an aerodrome, includes the owner or other person in control of the aerodrome;

“Aerodrome flight information service” means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome;

“Aerodrome traffic” means—

- (a) All traffic in the manoeuvring area of an aerodrome; and
- (b) All aircraft flying in the vicinity of an aerodrome;

“Aerodrome traffic circuit” means the pattern flown by aircraft operating in the vicinity of an aerodrome;

“Aeronautical product” means anything that comprises or is intended to comprise any part of an aircraft, or that is intended to be installed in or fitted or supplied to an aircraft; and includes fuel and other similar consumable items necessary for the operation of the aircraft;

“Aircraft” means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

“Aircraft flying in the vicinity of an aerodrome” means any aircraft that is in, entering, or leaving an aerodrome traffic circuit;

“Air service” means an air transport service or an aerial work service, whether regular or casual;

“Air traffic” means all aircraft in flight or operating on any manoeuvring area of an aerodrome;

“Air traffic control service” means a service provided for the purposes of—

- (a) Preventing collisions—
 - (i) Between aircraft; and
 - (ii) Between aircraft and obstructions on any manoeuvring area; and
- (b) Expediting and maintaining a safe and efficient flow of air traffic;

“Air traffic service” includes—

- (a) Any aerodrome control service;
- (b) Any area control service;
- (c) Any approach control service;
- (d) Any flight information service;
- (e) Any aerodrome flight information service;
- (f) Any alerting service;
- (g) Any other air traffic service considered by the Director to be necessary or desirable for the safe and efficient operation of the civil aviation system;

“Airworthy condition” means the condition of an aircraft, including its components, fuel, and other materials and substances essential to the manufacture and operation of the aircraft, that complies with all the requirements prescribed by rules made under this Act relating to design, manufacture, maintenance, modification, repair, and safety;

“Alerting service” means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

“Approach control service” means an air traffic control service for arriving or departing controlled flights;

“Approved organisation” means—

- (a) An aeronautical authority of a contracting state of ICAO; and
- (b) An organisation or body declared to be an approved organisation by an Order in Executive Council made under section 108;

“Area control service” means an air traffic control service provided for controlled flights in controlled airspace;

“Aviation document” means any licence, permit, certificate, or other document issued under this Act, or rules made under this Act, to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

“Aviation related service” means any equipment, facility, or service (including any air traffic service but excluding any service of the Chief Investigator) operated in support of or in conjunction with the civil aviation system; and includes the provision of aeronautical products;

“Aviation security officer” means a person for the time being employed or engaged by an aerodrome operator for the purposes of aerodrome or other aviation related security;

“Chief Investigator”, except in Part 9, in relation to an accident or incident, means the Chief Investigator appointed to investigate that accident or incident under section 85;

“Civil Aviation Registry” means the Registry established under section 80;

“Controlled airspace” means an airspace of defined dimensions within which an air traffic control service is provided to controlled flights;

“Controlled flight” means any flight that is provided with or required by rules made under this Act to make use of an air traffic control service;

“Convention” –

- (a) Means the Convention on International Civil Aviation ratified by the Cook Islands through the Cook Islands’ Instrument of Adherence effective 19 September 1986; and
- (b) Includes–
 - (i) Any amendment to the Convention which has entered into force under Article 94(a) of the Convention and has been ratified by the Cook Islands; and
 - (ii) Any Annex or amendment thereto accepted under Article 90 of the Convention; and
 - (iii) The international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organisation pursuant to Article 37 of the Convention;

“Cook Islands registered aircraft” means any aircraft that is for the time being registered by the Director in accordance with section 25(1)(a);

“Cook Islands Register of Aircraft” means the register of that name that is established under section 79;

“Court” means the High Court of the Cook Islands;

“Dangerous goods” means articles or substances that are—

- (a) Capable of posing significant risk to health, safety, or property when transported by air; and
- (b) Classified in Chapters 1 to 10 of Part 2 of the Technical Instructions;

“Deemed aviation document” means a document deemed to be an aviation document under section 113(1).

“Director” means the person who is for the time being appointed as the Director of Civil Aviation under section 8;

“Flight information service” means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;

“Holder” in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document;

“ICAO” means the International Civil Aviation Organisation established under the Convention; and includes any successor to the Organisation;

“Incident” means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation;

“Judicial officer” means a Judge, a Justice of the Peace, or a Court Registrar (other than a member of the Police);

“Make further notification”, in relation to a notice made or issued by a person in the Cook Islands Gazette, means to—

- (a) Publish a copy of that notice in one or more Cook Islands newspapers; and
 - (b) Make such other notifications as that person considers appropriate, having regard to the contents of that notice and the persons likely to have an interest in that notice—
as soon as practicable after making or issuing the Gazette notice; and
- “further notification” has a corresponding meaning;

“Manoeuvring area” –

- (a) Means that part of an aerodrome to be used for the take off and landing of aircraft and for the surface movement of aircraft associated with take off and landing; but
- (b) Does not include areas set aside for loading, unloading, or maintenance of aircraft;

“Minister” means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for civil aviation;

“Ministry” means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act;

“Navigation installation” –

- (a) Means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation; and
- (b) Includes any land adjacent to any such building, facility, work, apparatus, equipment, or place, and used in connection therewith;

“Operate”, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft; and “operator” has a corresponding meaning;

“Owner”, in relation to any aircraft, includes any person lawfully entitled to the possession of the aircraft for 28 days or longer;

“Pilot-in-command”, in relation to any aircraft, means the pilot responsible for the operation and safety of the aircraft;

“Prescribed” means prescribed by this Act or by regulations or rules made under this Act;

“Rules” means ordinary rules made by the Minister, and emergency rules made by the Director, under Part 3 of this Act;

“Secretary” means the person who is for the time being head of the Ministry;

“Technical Instructions” means the Technical Instructions for the Safe Transport of Dangerous Goods by Air approved and published by decision of the Council of the International Civil Aviation Organisation under Annex 18 of the Convention.

4. Act to bind Crown – (1) This Act binds the Crown.

(2) Except as otherwise expressly provided in this Act or any other Act, or in the regulations or rules concerned, nothing in this Act or in any regulations or rules made under this Act applies to any Cook Islands defence force.

5. Application of Act – (1) This Act and all regulations and rules made under this Act apply to the following:

- (a) Every person, aircraft, aerodrome, aeronautical product, air service, and aviation related service, in the Cook Islands;
- (b) Every Cook Islands registered aircraft whether within or outside the Cook Islands;
- (c) Every holder of an aviation document while outside the Cook Islands and exercising or purporting to exercise privileges accorded by that document;
- (d) Every foreign registered aircraft operating in the Cook Islands.

(2) Notwithstanding subsection (1) the Minister, acting on the recommendation of the Secretary or Director may, by agreement with the appropriate foreign aeronautical authority–

- (a) Transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a Cook Islands registered aircraft operated by that foreign operator that the Secretary or the Director has under this Act or regulations or rules made under this Act;
- (b) Vest in the Secretary or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a Cook Islands operator that arises under this Act or regulations or rules made under this Act;
- (c) Grant exemptions from this Act, and from regulations and rules made under this Act, relevant to any exercise of the Minister's powers under this subsection.

(3) Every Cook Islands registered aircraft must, while being operated over the high seas, be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.

(4) Except where an act or omission is required in order to comply with the laws of any foreign state, every holder of an aviation document who, while outside the Cook Islands and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in the Cook Islands, is deemed to have committed an offence under this Act and may be proceeded against in the Cook Islands as if the act or omission had occurred within the Cook Islands.

(5) Nothing in this section requires a person or aircraft to contravene or be operated in contravention of a law of a foreign state that applies to or in respect of the person or aircraft.

(6) Nothing in this Act limits the privileges or immunities of–

- (a) Any foreign military aircraft; or
- (b) The officers and crew of any foreign military aircraft.

PART 1
FUNCTIONS, POWERS, AND DUTIES OF MINISTER, SECRETARY,
DIRECTOR, AND PARTICIPANTS IN THE CIVIL AVIATION SYSTEM

6. Functions of Minister – (1) The principal function of the Minister is to promote safety and security in civil aviation at a reasonable cost, and to ensure that the Cook Islands' obligations under international civil aviation agreements are implemented.

(2) Without limiting subsection (1), the Minister also has and may exercise the following functions:

- (a) Administering the Cook Islands' participation in the Convention and any other international aviation convention, agreement, or understanding to which the Government of the Cook Islands is a party;
- (b) In consultation with the Secretary and the Director, contracting with one or more approved organisations for the provision of advice and recommendations to the Director in relation to the granting and renewal of aviation documents.

(3) For the purposes of subsection (1), a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.

(4) Nothing in subsection 2(b) prevents the Minister or anyone else from contracting with any person for the provision of advice or recommendations in relation to the exercise of any other function, power, or duty under this Act or regulations or rules made under this Act.

7. Functions and powers of Secretary – (1) The principal function of the Secretary is to undertake activities that promote safety and security in civil aviation at a reasonable cost.

(2) Without limiting subsection (1), the Secretary has and may exercise the following functions:

- (a) Ensuring that regular reviews of the civil aviation system are carried out, to promote the development and improvement of the system's safety and security;
- (b) Maintaining and preserving records and documents relating to activities within the civil aviation system, and in particular maintaining the Cook Islands Register of Aircraft and the Civil Aviation Registry;
- (c) Ensuring the collection, publication, and provision of charts and aeronautical information, and entering into arrangements with any other person or organisation to collect, publish, and distribute such charts and information;
- (d) Providing information, advice, services, and other resources to the Minister, the Director, or a Chief Investigator, to assist in the implementation of this Act and regulations and rules made under this Act;

- (e) Such other functions as may be—
 - (i) Conferred or imposed on the Secretary by this Act, regulations or rules made under this Act, or any other enactment; or
 - (ii) Delegated to the Secretary under this Act.

(3) The Secretary must carry out such other civil aviation functions as the Minister may from time to time prescribe by notice in the Cook Islands Gazette followed by further notification.

- (4) The Secretary has and may exercise all such powers as may be—
 - (a) Conferred or imposed on the Secretary by this Act, regulations or rules made under this Act, or any other enactment; or
 - (b) Delegated to the Secretary under this Act; or
 - (c) Reasonably necessary or expedient to enable the Secretary to carry out his or her functions.

(5) In the exercise of his or her functions and powers under this Act, the Secretary must have regard to the policy of the Government in relation to civil aviation, and must comply with any directions relating to that policy given to the Secretary in writing signed by the Minister.

(6) As soon as practicable after giving a direction under subsection (4), the Minister must publish a copy of the direction in the Cook Islands Gazette and make further notification.

(7) The Minister must not give any direction under subsection (4) that requires the Secretary to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular person or persons.

8. Appointment of Director of Civil Aviation – (1) The Minister must appoint a person recommended by the Secretary as Director of Civil Aviation.

(2) Before making a recommendation under subsection (1), the Secretary must consult every approved organisation contracted by the Minister under section 6(2)(b).

(3) The Secretary must not make a recommendation under subsection (1) unless the Secretary considers that the person recommended, having regard to the functions, powers, and duties of the Director, –

- (a) Is qualified for appointment by virtue of that person's knowledge, experience, or expertise relevant to civil aviation; and
- (b) Will represent the public interest in civil aviation.

(4) The Director must be appointed for a term of 3 years, and may be reappointed under this section.

- (5) The Secretary must employ or engage the Director—
 - (a) Under the Public Service Act 1995-96 (under section 26 of that Act or otherwise); and
 - (b) On terms and conditions determined by the Secretary, subject to this Act.

(6) The Director may be removed from office only—

- (a) By the Minister; and
- (b) On grounds of bankruptcy, neglect of duty, disability, or misconduct.

9. Functions and powers of Director of Civil Aviation – (1) The Director has and may exercise the following functions:

- (a) Exercising control over entry into the civil aviation system through the granting of aviation documents;
- (b) Taking such action as may be appropriate in the public interest to enforce the provisions of this Act, and regulations and rules made under this Act, including carrying out inspections, audits, and monitoring;
- (c) Such other functions as may be—
 - (i) Conferred or imposed on the Director by this Act, regulations or rules made under this Act, or any other enactment; or
 - (ii) Delegated to the Director under this Act.

(2) For the purposes of granting or renewing aviation documents, the Director may set, conduct, and administer examinations and tests and carry out such other functions in relation to such examinations and tests as may be necessary.

(3) The Director has and may exercise all such powers as may be—

- (a) Conferred or imposed on the Director by this Act, regulations or rules made under this Act, or any other enactment; or
- (b) Delegated to the Director under this Act; or
- (c) Reasonably necessary or expedient to enable the Director to carry out his or her functions.

(4) The Director must act independently, and is not responsible to the Minister or the Secretary for the performance or exercise of any function or power of the Director in respect of any particular case, particularly in the matters specified in subsection (5).

(5) Subsection (4) refers to the following matters:

- (a) The granting or renewal of aviation documents;
- (b) The suspension of aviation documents;
- (c) The revocation of aviation documents;
- (d) The granting of exemptions;
- (e) The enforcement of the provisions of this Act or any other Act, or of rules or regulations made under any such Act.

10. Director may require or carry out safety and security inspections, audits, and monitoring – (1) The Director may in writing require any person who—

- (a) Holds an aviation document; or
- (b) Operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure—

to undergo or carry out such inspections, audits, and monitoring as the Director considers necessary in the interests of civil aviation safety or security.

(2) The Director may, in respect of any person described in paragraph (a) or paragraph (b) of subsection (1), carry out such inspections, audits,

and monitoring as the Director considers necessary in the interests of civil aviation safety or security.

(3) For the purposes of any inspection, audit, or monitoring carried out in respect of any person under subsection (2), the Director may in writing require from that person such information as the Director considers relevant.

11. Power of Director to suspend aviation document or impose conditions

– (1) The Director may suspend any aviation document or impose conditions in respect of any aviation document, if he or she considers such action necessary in the interests of safety, and if he or she—

- (a) Considers such action necessary to ensure compliance with this Act or regulations or rules made under this Act; or
- (b) Is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 22; or
- (c) Is satisfied the holder has contravened or failed to comply with section 54; or
- (d) Considers that the privileges or duties for which the document has been granted are being exercised or carried out by the holder in a careless or incompetent manner.

(2) Without limiting subsection (1), the Director may suspend any aviation document relating to the use of any aircraft, aeronautical product, or the provision of any service, or impose conditions in respect of any such document, if he or she considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the document relates.

(3) The suspension of any aviation document or conditions imposed in respect of any such document remains in force until the Director has determined, after due investigation, the action to be taken in respect of the causes requiring the suspension or imposition of conditions; but the duration of any such suspension or conditions must not exceed 14 days unless the Director directs that a further specified period is necessary for the purposes of the investigation.

(4) If, after investigation, the Director considers such action to be warranted, he or she may suspend for a further period the aviation document or impose further conditions, and he or she must cause the appropriate endorsement to be made on the document concerned.

(5) Any person whose aviation document has been suspended or made subject to conditions under this section must forthwith produce that document to the Director for appropriate endorsement.

(6) The whole or any part of an aviation document may be suspended under this section.

(7) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 73.

12. Power of Director to revoke aviation document – (1) If, after an investigation under section 11, the Director believes that any relevant aviation document should be revoked, the Director may revoke that document.

(2) Where the Director proposes to revoke an aviation document under subsection (1), the Director must by notice in writing—

- (a) Notify the person directly affected by the proposed decision of the proposed decision; and
- (b) Inform that person of the grounds for the proposed decision; and
- (c) Specify a date by which submissions may be made to the Director in respect of the proposed decision, which date must not be less than 21 days after the date on which notice is given; and
- (d) Specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and
- (e) Notify the person of the person's right of appeal under section 73, in the event of the Director proceeding with the proposed decision; and
- (f) Specify such other matters as in any particular case may be required by any provision of this or any other Act.

(3) Any person whose aviation document has been revoked must forthwith surrender that document to the Director.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 73.

13. Criteria for action taken under section 11 or section 12 – (1) This section applies for the purpose of determining whether an aviation document should be suspended or made subject to conditions under section 11 or revoked under section 12.

(2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:

- (a) The person's compliance history with transport safety regulatory requirements;
- (b) Any conviction for any transport safety offence, whether or not—
 - (i) The conviction was in a Cook Islands court; or
 - (ii) The offence was committed before the coming into force of this Act;
- (c) Any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any regulation or rule made under this Act.

(3) The Director is not confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.

(4) The Director may—

- (a) Seek and receive such information as the Director thinks fit; or
- (b) Consider information obtained from any source.

(5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director must as soon as practicable

disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) requires the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person, or to disclose any information before suspending an aviation document or imposing conditions in respect of an aviation document under section 11.

14. Power of Director to amend or revoke aviation document in other cases

– (1) The Director may, if so requested in writing by the holder of any aviation document, amend that document in the manner requested, or revoke that document.

(2) Subject to subsection (3), the Director may do all or any of the following:

- (a) Amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being exercised or carried out, or is no longer able to be exercised or carried out, by the holder;
- (b) Revoke any aviation document if none of the privileges or duties for which the document has been granted are being exercised or carried out, or are able to be exercised or carried out, by the holder;
- (c) Amend any aviation document to correct any clerical error or obvious mistake on the face of the document.

(3) Before taking any action under subsection (2), the Director must notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend an aviation document under this section includes–

- (a) Power to revoke the document and issue a new document in its place; and
- (b) Power to impose reasonable conditions.

(5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder must forthwith produce the document to the Director.

15. Power of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions – (1) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property, the Director may, if authorised by a warrant given by a judicial officer on written application on oath, do all or any of the following:

- (a) Detain the aircraft or any aircraft of that class;
- (b) Seize the aeronautical product or any aeronautical products of that class;
- (c) Prohibit or impose conditions on the operation of the aircraft or aircraft of that class, or the use of any aeronautical product or any aeronautical products of that class.

(2) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following:

- (a) Prohibit or impose conditions on the operation of the aircraft or all aircraft of that class;
- (b) Prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class;
- (c) Detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.

(3) Any seizure or detention under subsection (1) or subsection (2) may be maintained only for such time as is necessary in the interest of safety; but, if aircraft, aeronautical products, or parts thereof are—

- (a) Required for the purpose of evidence in any prosecution under this Act, those aircraft, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose; or
- (b) Considered by the Director as necessary in the interests of safety to be permanently removed from the aviation system then those aircraft, products, or parts thereof may be destroyed or otherwise permanently removed from the aviation system by the Director.

(4) The Director must, if requested by the owner or the person for the time being in charge of an aircraft detained or an aeronautical product seized under subsection (1) or (2), provide in writing to the owner or that person the reasons for the seizure or detention.

(5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 73.

(6) For the purpose of subsections (1) and (2), the Director must notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

16. Power of Director to search for, seize, and detain dangerous goods —

(1) The Director may search any receptacle, container, or goods, offered for carriage by air where the Director believes on reasonable grounds that the receptacle, container, or goods, may contain dangerous goods that are—

- (a) Forbidden for carriage under the Technical Instructions; or
- (b) Not classified, documented, certificated, described, packaged, marked, or labelled in accordance with the Technical Instructions; or
- (c) Not in the condition for shipment prescribed by the Technical Instructions.

(2) The Director may seize and detain any dangerous goods offered for carriage by air that are of a nature described in any of paragraphs (a) to (c) of subsection (1) for the purposes of—

- (a) Preventing the carriage by air of such dangerous goods; or
- (b) Use as evidence in any prosecution under this Act; or
- (c) The safe disposal of such dangerous goods, if authorised by this or any other Act.

(3) Any seizure or detention under subsection (2) may be maintained only for such time as is necessary to achieve the relevant purpose in subsection (2).

17. Power of Director to make airworthiness directive – (1) Where the Director believes on reasonable grounds that an unsafe condition—

- (a) Exists in an aircraft or aeronautical product; or
- (b) Is likely to exist or develop in an aircraft or aeronautical product—

the Director may, by notice in the Cook Islands Gazette, make an airworthiness directive in respect of that aircraft or aeronautical product, or other aircraft or aeronautical products of the same design.

(2) The Director must make further notification of the Gazette notice referred to in subsection (1).

(3) An airworthiness directive made under subsection (1) may—

- (a) Prohibit the use of any aircraft or aeronautical product; or
- (b) Restrict the use of any aircraft or aeronautical product; or
- (c) Impose conditions on the use of any aircraft or aeronautical product; or
- (d) Impose any other requirement relating to the aircraft or aeronautical product.

(4) An airworthiness directive made under subsection (1) comes into force on the date specified in the notice.

18. General power of entry – (1) For the purposes of carrying out the Director's functions, duties, or powers under this Act or regulations or rules made under this Act, an authorised person has right of access at any reasonable time to the following:

- (a) Any aircraft, aerodrome, building, or place;
- (b) Any document or record concerning any aircraft, aeronautical product, or aviation related service.

(2) Without limiting the power conferred by subsection (1), where an authorised person has reasonable grounds to believe that—

- (a) Any breach of this Act or of regulations or rules made under this Act is being or about to be committed; or
- (b) A condition imposed under any aviation document is not being complied with; or

- (c) A situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property—

that authorised person may at any reasonable time enter any aircraft, aerodrome, building, or place, and carry out an inspection to determine whether or not a matter referred to in any of paragraphs (a) to (c) exists.

(3) Every person who may enter any aircraft, aerodrome, building, or place under subsection (1) or subsection (2) may require the owner, occupier, or operator—

- (a) To state and produce satisfactory evidence of his or her name and address; and
- (b) To produce and surrender any aviation document, certificate, book, manual, record, list, notice, or other document required by this Act or by regulations or rules made under this Act to be kept by that owner, occupier, or operator.

(4) The right of access and the powers conferred by this section may not be used to gain a right of access to, to inspect, or to require the production or surrender of—

- (a) A cockpit voice recording from an aircraft or a transcript of a cockpit voice recording from an aircraft; or
- (b) A cockpit video recording from an aircraft or a transcript of a cockpit video recording from an aircraft.

(5) Nothing in this section confers on any person the power to enter any dwelling house unless the entry is authorised by a warrant given by a judicial officer on written application on oath; and such warrant must not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(6) Every warrant issued under subsection (5) must be directed to a named person and is valid for a period of one month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity must be shown in the warrant.

(7) Every person exercising the power of entry conferred by subsection (1) or subsection (2) must carry, in the case of—

- (a) The Director, documentary evidence of his or her appointment as Director; and
- (b) Any other person, a warrant of authority issued by the Director specifying—
 - (i) The name and the office or offices held by the person; and
 - (ii) That the person is authorised by the Director to exercise the power conferred by this section to enter aircraft, aerodromes, buildings, and places, and to carry out inspections.

(8) Every person exercising the power of entry conferred by subsection (1) or subsection (2) must produce the document required to be carried, and where applicable the warrant issued under subsection (5), –

- (a) If practicable on first entering the aircraft, aerodrome, building, or place; and
 - (b) Whenever subsequently reasonably required to do so.
- (9) In this section, “authorised person” means–
- (a) The Director;
 - (b) Any person authorised by the Director in terms of subsection (7)(b).

19. Delegation of function or power by Minister, Secretary, or Director –

(1) The Minister may from time to time, either generally or particularly, delegate to the Secretary or the Director any function or power of the Minister under this Act, or under regulations or rules made under this Act.

(2) The Minister’s power to delegate under subsection (1) is subject to section 29(8).

(3) The Secretary may, either generally or particularly, delegate to any person any function or power of the Secretary under this Act, or under regulations or rules made under this Act, including any function or power delegated to the Secretary under this Act.

(4) The Secretary must not, without the written consent of the Minister, –

- (a) Delegate a function or power delegated to the Secretary by the Minister; or
- (b) Delegate a function or power to any person other than the Director or an employee of the Ministry.

(5) The Director may, either generally or particularly, delegate to any person any function or power of the Director under this Act, or under regulations or rules made under this Act, including any function or power delegated to the Director under this Act.

(6) The Director must not delegate–

- (a) The power under section 11 to suspend aviation documents or impose conditions; or
- (b) The power under section 12 to revoke aviation documents; or
- (c) The power under section 44 to suspend or revoke aviation documents.

(7) The Director must not, without the written consent of the Minister, –

- (a) Delegate a function or power delegated to the Director by the Minister; or
- (b) Delegate a function or power to any person other than the Secretary or an employee of the Ministry.

20. Further delegations by Ministry employees other than Director – An employee of the Ministry (not being the Director) to whom the Secretary or the Director has delegated a function or power may, either generally or particularly, further delegate that function or power to another employee of the Ministry, if–

- (a) The Secretary or the Director, as the case may be, has consented in writing to that further delegation; and
- (b) In the case where the Minister originally delegated that function or power to the Secretary or the Director, the Minister has consented in writing to that further delegation.

21. Delegations generally – (1) A delegation may be made to a specified person or class of persons, or to the holder or holders for the time being of a specified office or class of offices.

(2) Every delegation must be in writing, and is revocable in writing at will.

(3) Subject to any general or special directions given or conditions imposed by the person making the delegation, a delegate may perform or exercise the delegated function or power in the same manner and with the same effect as if that function or power had been conferred or imposed on the delegate directly by this Act, or by regulations or rules made under this Act, and not by delegation.

(4) In the absence of proof to the contrary, every delegate purporting to act pursuant to a delegation is presumed to be acting in accordance with the terms of the delegation.

(5) Every delegate purporting to act under a delegation must produce evidence of his or her authority to so act, when reasonably requested to produce such evidence.

(6) Notwithstanding the fact that the person making the delegation may cease to hold office, a delegation until revoked–

- (a) Continues in force according to its tenor; and
- (b) Continues to have effect as if made by the person for the time being holding that office.

(7) No delegation affects or prevents the performance of any function or the exercise of any power by the person making that delegation; nor does any delegation affect the responsibility of the person making the delegation for the actions of the delegate.

(8) In this section, –

- (a) “Delegate”, in relation to a delegation, means the person to whom the delegation is made; and
- (b) “Delegation” means a delegation made under section 19 or section 20.

22. General requirements for participants in civil aviation system –

(1) Every person who does anything for which an aviation document is required (in the succeeding provisions called a participant) must ensure that he or she holds the appropriate aviation documents and all the necessary qualifications and other documents.

(2) Every participant must comply with this Act, the relevant regulations and rules made under this Act, and the conditions attached to the relevant aviation documents.

(3) Every participant must ensure that the activities or functions for which the aviation document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety and security standards and practices.

(4) Every participant who holds an aviation document that authorises the provision of a service within the civil aviation system—

- (a) Must, if so required by rules made under this Act, establish and follow a management system that will ensure compliance with the relevant prescribed safety and security standards and the conditions attached to the document; and
- (b) Must provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety and security standards and the conditions attached to the document, and to promote safety and security; and
- (c) Must provide sufficient resources to ensure compliance with the relevant prescribed safety and security standards and the conditions attached to the document.

23. Duties of pilot-in-command – (1) The pilot-in-command of an aircraft—

- (a) Is responsible for the safe operation of the aircraft in flight, the safety and well-being of all passengers and crew, and the safety of cargo carried; and
- (b) Has final authority to control the aircraft while in command and for the maintenance of discipline by all persons on board; and
- (c) Subject to subsections (2) to (7), is responsible for compliance with all relevant requirements of this Act and regulations and rules made under this Act.

(2) Subject to subsections (3) and (7), in an emergency that arises in flight, the pilot-in-command may breach the provisions of this Act or of regulations or rules made under this Act.

(3) For the purposes of subsection (2), a breach of any prescribed requirement is permitted only if the pilot-in-command is satisfied that—

- (a) The emergency involves a danger to life or property; and
- (b) The extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
- (c) There is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and

- (d) The degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

(4) Subject to subsections (5) to (7), where an emergency (not being an emergency that arises in flight) necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command of the aircraft or the operator of the aircraft may breach the provisions of this Act or of regulations or rules made under this Act.

(5) For the purposes of subsection (4), a breach of any prescribed requirement is permitted only if—

- (a) The emergency involves a danger to life or property; and
 - (b) The extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
 - (c) There is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) The degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.
- (6) Nothing in subsection (4) permits—
- (a) The operation of an aircraft that is not registered in the Cook Islands or elsewhere; or
 - (b) The breach of any prescribed requirement as to the airworthy condition of an aircraft; or
 - (c) The operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.

(7) Where, in any emergency described in this section, a pilot-in-command or an operator breaches this Act or regulations or rules made under this Act in accordance with the provisions of this section, the pilot-in-command or the operator, as the case may be, must—

- (a) Immediately notify the relevant air traffic service of the action; and
- (b) As soon as practicable, notify the Director of the action and the circumstances which necessitated it and, if requested by the Director, provide a written report of the action.

24. Drugs and alcohol restricted – (1) No person may consume on board an aircraft an intoxicating liquor unless the intoxicating liquor—

- (a) Has been served to that person by the operator of the aircraft; or
- (b) Where no flight attendant is on board, has been provided by the operator of the aircraft.

(2) No operator of an aircraft may provide or serve any intoxicating liquor to a person on board the aircraft if there are reasonable grounds to believe that the person's faculties are impaired by alcohol or a drug to an extent that may present a hazard to the aircraft or to persons on board the aircraft.

(3) Subject to subsection (4), no operator of an aircraft may allow a person to board the aircraft, where there are reasonable grounds to believe that the person's faculties are impaired by alcohol or a drug to an extent that may present a hazard to the aircraft or to persons on board the aircraft.

(4) The operator of an aircraft may allow a person whose faculties are impaired by a drug to board an aircraft, where the drug was administered in accordance with a medical authorisation and the person is under the supervision of an attendant.

(5) In this section, "intoxicating liquor" means a beverage that contains more than 2.5 per cent proof spirits.

PART 2

ENTRY INTO THE CIVIL AVIATION SYSTEM

25. Requirement to register aircraft – (1) Except as otherwise provided in this Act or rules made under this Act, every person lawfully entitled to the possession of an aircraft for a period of 28 days or longer of an aircraft which flies to, from, within, or over Cook Islands territory must register that aircraft and hold a valid certificate of registration for that aircraft from—

- (a) The Director; or
- (b) The appropriate aeronautical authorities of a contracting state of ICAO; or
- (c) The appropriate aeronautical authorities of another state that is party to an agreement with the Government of the Cook Islands which provides for the acceptance of each other's registrations.

(2) No aircraft may be registered in or remain registered in the Cook Islands if it is registered in any other country.

(3) The Director may decline to register any aircraft in accordance with the rules.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 73.

26. Requirement for aviation document – (1) The rules may specify that an aviation document is required by or in respect of all or any of the following:

- (a) Cook Islands registered aircraft;
- (b) Aircraft pilots;
- (c) Flight crew members;
- (d) Air traffic service personnel;
- (e) Aviation security services personnel;
- (f) Aircraft maintenance personnel;
- (g) Air services;
- (h) Air traffic services;
- (i) Aerodromes and aerodrome operators;
- (j) Navigation installation providers;
- (k) Aviation training organisations;
- (l) Aircraft design, manufacture, and maintenance organisations;
- (m) Aeronautical procedures;

- (n) Aviation security services;
- (o) Aviation meteorological services;
- (p) Aviation communications services;
- (q) Any persons, services, or things within any of the classes specified in paragraphs (a) to (p) of this subsection;
- (r) Such other persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be specified in the rules.

(2) The requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued, must be prescribed by the rules.

(3) Subject to any rules, an aviation document may be issued by the Director for such specified period and subject to such condition as the Director considers appropriate in each particular case.

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 73.

27. Application for aviation document – (1) Every application for the grant or renewal of an aviation document must be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.

(2) Every applicant for an aviation document must include in the application the applicant's address for service in the Cook Islands including, where applicable, telephone and facsimile numbers.

(3) The Secretary must ensure that a record of all information provided under this section is maintained at the Civil Aviation Registry.

(4) Every holder of an aviation document must maintain the currency of the information provided under subsection (2) by promptly notifying the Secretary of any changes to the address, telephone number, or facsimile number.

(5) Service of any notification under this Act on a holder of, or applicant for, an aviation document is effective service if served on the address last provided by that holder or applicant under this section.

28. Grant or renewal of aviation document – (1) After considering any application for the grant or renewal of an aviation document, the Director must, as soon as is practicable, grant the application if he or she is satisfied that—

- (a) All things in respect of which the document is sought meet the relevant prescribed requirements; and
- (b) The applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document—

- (i) Either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Director under subsection (2); and
 - (ii) Is a fit and proper person to have such control or hold the document; and
 - (iii) Meets all other relevant prescribed requirements; and
 - (c) It is not contrary to the interests of aviation safety or security for the document to be granted or renewed.
- (2) In considering any application for the grant or renewal of an aviation document, the Director—
- (a) Must have regard to, and give such weight as the Director considers appropriate to, the advice and recommendations provided by approved organisations contracted by the Minister under section 6(2)(b); and
 - (b) May, subject to any provisions in the rules, accept such foreign qualifications or recognise such foreign certifications as he or she considers appropriate in each case.
- (3) It is a condition of every current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in subsection (1)(b)(ii).
- (4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 73.

PART 3

RULES

29. Power of Minister to make ordinary rules – (1) The Minister may from time to time make rules (in this Act called ordinary rules) for all or any of the following purposes:

- (a) The implementation of the Cook Islands' obligations under the Convention;
- (b) The provision of aviation meteorological services, search and rescue services, and civil aviation security programs and services;
- (c) Any matter related or reasonably incidental to any of the following;
 - (i) The Minister's functions under section 6 of this Act;
 - (ii) The Secretary's functions under section 7 of this Act;
 - (iii) The Director's functions under section 9 of this Act;
- (d) Any other matter contemplated by any provision of this Act.

(2) An ordinary rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of aircraft, aerodrome, aeronautical product, aeronautical procedure, or aviation related service in different circumstances.

(3) An ordinary rule may apply generally throughout the Cook Islands or within any specified part or parts of the Cook Islands.

(4) The commencement of an ordinary rule may be wholly suspended until the Minister brings it into force by notice in the Cook Islands Gazette followed by further notification.

(5) No ordinary rule is invalid because it confers any discretion upon or allows any matter to be determined or approved by the Secretary, the Director, or any other person, or allows the Secretary, the Director, or any other person to impose requirements as to the performance of any activities.

(6) Every ordinary rule is deemed to be a regulation for the purposes of section 8 of the Regulations Act 1971-1972 but is not a regulation for the purposes of any other section of that Act, and is not a statutory instrument for the purposes of the Legislative Services Act 1968-69.

(7) So far as an Island Council Ordinance or bylaw is inconsistent with or repugnant to any ordinary rule in force in the same locality as that Ordinance or bylaw, that Ordinance or bylaw must be construed subject to the rule.

(8) The Minister must not delegate his or her power to make ordinary rules under this section.

30. Rules relating to safety and security – Without limiting the power conferred by section 29, the Minister may make all or any of the following ordinary rules in the interests of safety or security within the civil aviation system:

- (a) Rules providing for the use of aerodromes and other aviation related facilities, including but not limited to the following:
 - (i) The provision of identification procedures for persons, aircraft, and any other aviation related things;
 - (ii) The prevention of interference with aerodromes and other aviation related facilities;
- (b) General operating rules, air traffic rules, and flight rules, including but not limited to the following:
 - (i) The conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft;
 - (ii) The prevention of aircraft endangering persons or property;
- (c) Rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following:
 - (i) The safe carriage of firearms and other dangerous or hazardous goods or substances by air;
 - (ii) The construction, use, or operation of anything likely to be hazardous to aviation safety.

31. Rules relating to airspace – Without limiting the power conferred by section 29, –

- (a) In the interests of safety or security within the civil aviation system; or
- (b) In the interests of national security; or
- (c) For any other reason in the public interest, –

the Minister may make ordinary rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including airspace used by aircraft used by any Cook Islands defence force or a visiting force within the meaning of the Visiting Forces Act 1992-93.

32. Rules for noise abatement purposes – Without limiting the power conferred by section 29, the Minister may make ordinary rules prescribing flight rules, flight paths, altitude restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes.

33. Rules relating to general matters – Without limiting the power conferred by section 29, the Minister may make ordinary rules for all or any of the following purposes:

- (a) The designation, classification, and certification of all or any of the following:
 - (i) Aircraft;
 - (ii) Aircraft pilots;
 - (iii) Flight crew members;
 - (iv) Air traffic service personnel;
 - (v) Aviation security services personnel;
 - (vi) Aircraft maintenance personnel;
 - (vii) Air services;
 - (viii) Air traffic services;
 - (ix) Aerodromes and aerodrome operators;
 - (x) Navigation installation providers;
 - (xi) Aviation training organisations;
 - (xii) Aircraft design, manufacture, and maintenance organisations;
 - (xiii) Aeronautical procedures;
 - (xiv) Aviation security services;
 - (xv) Aviation meteorological services;
 - (xvi) Aviation communications services;
 - (xvii) Any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system;

- (b) The setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including but not limited to the following:
 - (i) The specification of the privileges, limitations, and ratings associated with licences or other forms of approval;
 - (ii) The setting of standards for training systems and techniques, including recurrent training requirements;
 - (iii) The setting of medical standards for personnel;
 - (iv) The requirement for proof of access to appropriate weather services;
 - (v) The specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products;
 - (vi) The requirements for notification of insurance coverage for air services;
 - (vii) The format of aviation documents, forms, and applications, including the specification of information required on all application forms for aviation documents;
 - (viii) The provision of information to the Secretary or the Director by applicants for or holders of aviation documents;
- (c) The conditions of operation of foreign aircraft and international flights to, from, or within the Cook Islands;
- (d) The definitions, abbreviations, and units of measurement to apply within the civil aviation system;
- (e) Prescribing the design and colours of the Cook Islands Civil Air Ensign, and where and by whom it may be flown.

34. Power of Director to make emergency rules – (1) Subject to subsection (2), the Director may from time to time, in accordance with section 38, make such emergency rules as may be necessary to alleviate or minimise any risk of the death of or serious injury to any person, or of damage to any property.

(2) The Director must not make any emergency rules unless it is impracticable in the circumstances of the particular case for ordinary rules to be made to effectively alleviate or minimise the risk concerned.

(3) The Minister may revoke any emergency rule made under subsection (1), and the revocation must be notified as if it were an emergency rule.

(4) Every emergency rule is hereby deemed a regulation for the purposes of section 8 of the Regulations Act 1971-1972 but is not a regulation for the purposes of any other section of that Act, and is not a statutory instrument for the purposes of the Legislative Services Act 1968-69.

(5) So far as an Island Council Ordinance or bylaw is inconsistent with or repugnant to any emergency rule in force in the same locality as that Ordinance or bylaw, that Ordinance or bylaw must be construed subject to the rule.

35. Procedures relating to rules – (1) Every ordinary rule must–

- (a) Be signed by the Minister; and
- (b) Contain a statement specifying the objective of the rule and the extent of any consultation under section 37; and
- (c) Set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under section 39.

(2) Every emergency rule must–

- (a) Be signed by the Director; and
- (b) Contain a statement specifying the objective of the rule and the extent of the consultation under section 38 that took place before the making of the rule; and
- (c) Set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under section 39.

36. Matters to be taken into account in making rules – (1) The ordinary rules made by the Minister and the emergency rules made by the Director must not be inconsistent with the following:

- (a) The standards of ICAO relating to aviation safety and security, to the extent adopted by the Cook Islands;
- (b) The Cook Islands' international obligations relating to aviation safety and security.

(2) In making any rule the Minister or the Director, as the case may be, must have regard to, and must give such weight as he or she considers appropriate in each case to, the following:

- (a) The recommended practices of ICAO relating to aviation safety and security, to the extent adopted by the Cook Islands;
- (b) The level of risk existing to aviation safety in each proposed activity or service;
- (c) The nature of the particular activity or service for which the rule is being established;
- (d) The level of risk existing to aviation safety and security in the Cook Islands in general;
- (e) The need to maintain aviation safety and security;
- (f) The costs of implementing aviation safety and security measures;
- (g) The international circumstances in respect of aviation safety and security; and
- (h) Such other matters as the Minister or the Director considers appropriate in the circumstances.

37. Procedure for making ordinary rules – (1) Before an ordinary rule is made, the Minister must–

- (a) Publish in the Cook Islands Gazette, and make further notification of, a notice of his or her intention to make the ordinary rule; and
- (b) Give interested persons a reasonable time to make submissions on the proposed ordinary rule; and
- (c) Ensure consultation is carried out with such persons, representative groups within the aviation industry or elsewhere, Government departments, Island Councils, and others as the Minister in each case considers appropriate.

(2) Subject to subsection (3), the Minister must notify every ordinary rule in the Cook Islands Gazette, followed by further notification, specifying a place where the rule is available for inspection free of charge and for purchase, and, as soon as practicable afterwards the Secretary must make a copy of that rule available for purchase by members of the public at a reasonable price.

(3) Where for reasons of safety or security it is inappropriate to notify an ordinary rule under subsection (2), the Minister must notify such persons as he or she considers appropriate or necessary in the circumstances, and service of notification may be effected by facsimile, telephone, or such other manner as the Minister considers appropriate or necessary in the circumstances, and the rule applies only to the persons so notified.

(4) Every ordinary rule comes into force on the date of its notification in the Cook Islands Gazette or on such later day as may be specified in the rule or under section 29(4) of this Act or, where notified by service on any person under subsection (3), immediately upon service of the rule upon that person and in respect of that person only.

38. Procedure for making emergency rules – (1) Before making an emergency rule, the Director must consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, Island Councils, and others as the Director in each case considers appropriate.

(2) Subject to subsection (3), the Director must notify every emergency rule in the Cook Islands Gazette, followed by further notification, specifying a place where the rule is available for inspection free of charge and for purchase, and as soon as practicable afterwards, the Secretary must make a copy of that rule available for purchase by members of the public at a reasonable price.

(3) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule under subsection (2), the Director must notify such persons as he or she considers appropriate or necessary in the circumstances and service of such notification may be effected by facsimile, telephone, or such other manner as the Director considers appropriate or necessary in the circumstances.

(4) Every emergency rule comes into force immediately upon its being notified in the Cook Islands Gazette, or, where notified by service on any person under subsection (3) immediately upon service of notification upon that person and in respect of that person only.

(5) An emergency rule may be in force for a period not exceeding 90 days and may be renewed by the Director once only for a further period not exceeding 30 days.

(6) At any time while an emergency rule is in force in accordance with subsection (5), the Minister may by notice in the Cook Islands Gazette, followed by further notification, renew the rule in accordance with subsection (7) for a further period not exceeding 180 days from the date of notification in the Cook Islands Gazette.

(7) Before renewing an emergency rule under subsection (6), the Minister must consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, Island Councils, and others as the Minister considers appropriate.

(8) So far as any emergency rule is inconsistent with or repugnant to any ordinary rule made under this Act, the emergency rule prevails.

39. Incorporation by reference – (1) The following may be incorporated by reference into an ordinary rule made by the Minister or an emergency rule made by the Director:

- (a) Standards, requirements, or rules prescribed under law by any other contracting State of ICAO;
- (b) Standards, requirements, or recommended practices of international aviation organisations;
- (c) Standards, requirements, or rules of any aviation sport or aviation recreational organisation;
- (d) Any other written material or document that, in the opinion of the Minister or the Director, as the case may be, is too large or impractical to be printed as part of the rule.

(2) Any material incorporated in a rule by reference under subsection (1) is deemed for all purposes to form part of the rule.

(3) Unless otherwise provided in the rules, every amendment to any material incorporated by reference under subsection (1) that is made by the person or organisation originating the material is, upon notice being given under subsection (4), deemed to amend the material incorporated by reference and for all purposes to form part of the rule.

(4) The Secretary may by notice in the Cook Islands Gazette followed by further notification specify the date on which any amendment to material incorporated by reference under subsection (1) that is made by the person or organisation originating the material takes effect.

(5) All material incorporated by reference under subsection (1), and any amendment to that material that has been incorporated under subsection (3), must be made available at the Civil Aviation Registry for inspection by the public free of charge.

40. Exemption power of Director – (1) The Director may, if he or she considers it appropriate and upon such conditions as he or she considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any ordinary rule made by the Minister under this Act.

(2) The Director must not grant an exemption under subsection (1) unless he or she is satisfied in the circumstances of each case that—

- (a) The requirement has been substantially complied with and that further compliance is unnecessary; or
- (b) The action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
- (c) The prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
- (d) Events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case, —

and that the risk to safety and security will not be significantly increased by the granting of the exemption.

(3) The Director must periodically (as the Director sees fit) notify in the Cook Islands Gazette the number and nature of exemptions granted under subsection (1), and must make further notification.

(4) This section applies notwithstanding any provision contained in any material incorporated by reference under section 39(1), or any amendment to such material incorporated under section 39(3), specifying that no exemptions are to be granted.

PART 4 **FEES AND CHARGES**

41. Prescribing fees and charges — (1) Without limiting the power to make regulations conferred by section 106, the Queen's Representative may from time to time, by Order in Executive Council, make regulations prescribing, or providing for the fixing of, fees or charges, or both, payable for all or any of the following purposes:

- (a) To provide funds for the establishment, maintenance, and operation of works, facilities, and services under this Act or regulations or rules made under this Act;
- (b) To defray the costs and expenses incurred by the Ministry and its employees, the Secretary, the Director, and any other person in the exercise of functions, powers, and duties, and in providing services, under this Act or regulations or rules made under this Act;
- (c) Generally for the purposes of civil aviation.

(2) Different rates of fees and charges may be so prescribed or fixed in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, air traffic services, or aeronautical procedures, or on the basis of different times of use, or on any other differential basis.

(3) Any such regulations may—

- (a) Specify the persons by whom and to whom any fees or charges are payable;
- (b) Prescribe penal or overtime or additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays;

- (c) Prescribe additional charges for reimbursement of travelling time, accommodation, and other expenses;
- (d) Require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns;
- (e) Provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.

(4) No fee or charge may be prescribed in respect of the use of any aerodrome except on the recommendation of the Minister made after consultation with the operator of the aerodrome concerned.

(5) The power to prescribe, or provide for the fixing of, fees and charges in respect of any matter under this Act includes the power to prescribe, or provide for the fixing of, fees or charges, or both, in respect of any matter.

42. Rebates – (1) The person or authority to whom any fees or charges are payable under regulations made under this Act may grant a rebate of such fees or charges to any person who is liable to pay them.

(2) Every rebate of fees or charges granted under subsection (1) must—

- (a) Be based on the quantity of services used by the person liable to pay the fees or charges; and
- (b) Be offered on an equal percentage basis to any other person using a similar quantity of such services; and
- (c) Be granted in accordance with any regulations made for this purpose under this Act.

43. Payment of fees and charges – (1) Except as otherwise provided in regulations made under this Act, every application under this Act or regulations or rules made under this Act must be accompanied by payment of all relevant prescribed or fixed fees and charges.

(2) Any regulations made under this Act may—

- (a) Prescribe a date by which any such fee or charge is payable or authorise the Secretary to fix the date by which the fee or charge is payable; or
- (b) Provide for a discount for early payment of any such fee or charge or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee or charge.

44. Suspension or revocation of aviation document where fee or charge unpaid – (1) Where any fee or charge payable under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the aviation document to which the unpaid fee or unpaid charge relates.

(2) Where any fee or charge payable under this Act is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the aviation document to which the fee or charge relates.

(3) Before suspending an aviation document under subsection (1), or revoking an aviation document under subsection (2), the Director must notify the holder of that document of—

- (a) The Director's intention to suspend or revoke the document; and
- (b) The right of appeal available to the holder of that document in the event of the document being suspended or revoked.

(4) Where a fee or charge is payable in respect of an application, or the provision of a service, under this Act or regulations or rules made under this Act, the Secretary, the Director, or any other person asked to process the application or provide the service, as the case may be, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements have been made for the payment of the fee or charge that are acceptable to the Secretary, the Director, or that other person asked to process that application or provide that service, as the case may be.

(5) The holder of an aviation document that has been suspended under subsection (1) or revoked under subsection (2) may appeal against that decision to the High Court under section 73.

45. Recovery of fees and charges – (1) Subject to subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by the Secretary or the Director in respect of any aircraft, the person whose name appears on the Cook Islands Register of Aircraft in respect of that aircraft is deemed liable to pay that fee or charge.

(2) Any person who would otherwise be liable to pay a fee or charge in relation to any aircraft in terms of subsection (1) is not so liable if that person—

- (a) Proves that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
- (b) Has taken all reasonable steps to supply the Secretary with such information as would identify the actual user.

PART 5 **OFFENCES AND PENALTIES**

Safety Offences

46. Endangerment caused by holder of aviation document – (1) Every holder of an aviation document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, if the act or omission causes unnecessary danger to any other person or to any property.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$25,000.

(3) The provisions of this section are in addition to and not in derogation of any regulations or rules made under this Act.

47. Operating aircraft in a careless manner - (1) Every person commits an offence who operates any aircraft in a careless manner.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to a fine not exceeding \$1,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$15,000.

(3) The provisions of this section are in addition to and not in derogation of any regulations or rules made under this Act.

48. Dangerous activity involving aircraft, aeronautical product, or aviation related service – (1) Every person commits an offence who–

- (a) Operates, maintains, or services; or
 - (b) Does any other act in respect of–
- any aircraft, aeronautical product, or aviation related service in a manner that causes unnecessary danger to any other person or to any property.

(2) Every person commits an offence who–

- (a) Causes or permits any aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or
- (b) Causes or permits any other act to be done in respect of any aircraft, aeronautical product, or aviation related service, –

in a manner that causes unnecessary danger to any other person or to any property.

(3) Every person who commits an offence against subsection (1) or subsection (2) is liable, –

- (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$25,000.

(4) The provisions of this section are in addition to and not in derogation of any regulations or rules made under this Act.

49. Failure to comply with inspection, audit, or monitoring requirement – (1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director made under section 10.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to a fine not exceeding \$2,500 and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day or part of a day during which the offence is continued; or
- (b) In the case of a body corporate, to a fine not exceeding \$25,000 and, if the offence is a continuing one, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence is continued.

50. Court may disqualify holder of aviation document or impose conditions on holding of document – (1) In addition to any penalty the Court may impose under any of sections 46 to 49, the Court may, on convicting any person of an offence against any of those sections, –

- (a) Disqualify the person convicted from holding or obtaining an aviation document or a particular aviation document; or
- (b) Impose on any aviation document held by or issued to the person convicted, such restrictions or conditions or both as the Court, having regard to the circumstances of the offence, thinks fit for such period not exceeding 12 months as the Court thinks fit.

(2) Nothing in subsection (1) affects or prevents the exercise by the Director of his or her powers under section 28.

51. Acting without necessary aviation document – (1) Every person commits an offence who–

- (a) Operates, maintains, or services; or
- (b) Does any other act in respect of–

any aircraft, aeronautical product, or aviation related service, either without holding the appropriate current aviation document or knowing that a current aviation document is required to be held in respect of that aircraft, product, or service before that act may lawfully be done and knowing that the appropriate aviation document is not held.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$25,000.

52. Additional penalty for offences involving commercial gain – (1) In addition to any penalty the Court may impose under any of sections 46, 48, 49, or 51, the Court may, on convicting any person of an offence specified in any of those sections, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the Court is satisfied that the offence was committed in the course of producing a commercial gain.

(2) For the purpose of subsection (1), the Court must assess the value of any gain, and the amount ordered to be paid is recoverable in the same manner as a fine.

General Offences

53. Applying for aviation document while disqualified – (1) Every person commits an offence who applies for or obtains an aviation document while disqualified by an order of the Court from obtaining such document and any such document so obtained is of no effect.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to imprisonment for a term not exceeding 4 months or a fine not exceeding \$1,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$15,000, –

and the Court may order the person to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the Court thinks fit.

54. Communicating false information or failing to disclose information – (1) Every person commits an offence who, –

- (a) By any means provides information relevant to the Secretary's, the Director's, or the Chief Investigator's exercise of powers or functions under this Act or regulations or rules made under this Act, knowing the information to be false or reckless as to whether it is false; or
- (b) Being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Director information known to that person that is relevant to the Director's exercise of powers under this Act or regulations or rules made under this Act; or
- (c) Being the holder of an aviation document, fails, without reasonable excuse, to provide to the Director information known to that person that is relevant to the condition specified in section 28(3) of this Act.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,500; or

- (b) In the case of a body corporate, to a fine not exceeding \$25,000.

55. Interference with investigation or obstruction of persons performing or exercising function, duty, or power – (1) Every person commits an offence who threatens, assaults, or intentionally obstructs or intentionally impedes any person acting in the performance or exercise of any function, duty, or power conferred on him or her by this Act, or by regulations or rules made under this Act.

(2) Every person commits an offence who, without reasonable excuse, fails to comply with a requirement made under section 88(1)(b) or a direction given under section 88(1)(e).

(3) Every person commits an offence who, without lawful authority, wilfully interferes with—

(a) Any thing, or the site of any accident or incident, in respect of which access is prohibited or restricted under section 88(1)(d); or

(b) Any thing directed to be taken to any place under section 88(1)(e).

(4) Every person who commits an offence against this section is liable, —

(a) In the case of an individual, to imprisonment for a term not exceeding 4 months or a fine not exceeding \$1,500; or

(b) In the case of a body corporate, to a fine not exceeding \$15,000.

(5) A member of the Police may arrest without warrant any person who the member of the Police believes on reasonable grounds has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against this section.

56. Failure or refusal to produce or surrender documents – (1) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a requirement made under section 18(3).

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$1,000.

57. Trespass – Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000 who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain by any of the following:

(a) The Director, or a person duly authorised by the Director for that purpose; or

(b) In relation to an aerodrome or any part of an aerodrome,—

(i) A manager appointed by the aerodrome operator; or

(ii) An aviation security officer employed or engaged by the aerodrome operator; or

- (c) A member of the Police; or
- (d) A notice posted by a person specified in any of paragraphs (a) to (c).

58. Failure to maintain accurate records – (1) Every person commits an offence who contravenes any provision of this Act or any rule made under this Act that requires that person—

- (a) To make accurate entries in a record; or
- (b) To maintain an accurate record; or
- (c) To produce to the Secretary or the Director an accurate record.

(2) Every person who commits an offence against subsection (1) is liable, —

- (a) In a case of an individual, to a fine not exceeding \$1,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$7,500.

59. Failure to notify emergency breach of Act or regulations or rules – Every person commits an offence and is liable to a fine not exceeding \$5,000 who, without reasonable excuse, fails to comply with section 23(7) (which relates to the notification of breaches of this Act, or regulations or rules made under this Act, that are committed during an emergency).

60. Failure to notify accident or incident – (1) Every person commits an offence who, without reasonable excuse, fails to comply with any of subsections (1) to (3) of section 82 (which subsections relate to the notification of an accident or incident).

(2) Every person commits an offence who, without reasonable excuse, fails to comply with a request for additional information made under subsection (5) of section 82.

(3) Every person who commits an offence against subsection (1) or subsection (2) is liable, —

- (a) In the case of an individual, to a fine not exceeding \$1,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$7,500.

61. Failure to comply with drug or alcohol restrictions – (1) Every person commits an offence who fails to comply with section 24(1).

(2) Every person commits an offence who fails to comply with subsection (2) or subsection (3) of section 24.

(3) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$1,500.

(4) Every person who commits an offence against subsection (2) is liable, —

- (a) In the case of an individual, to a fine not exceeding \$1,500; or

- (b) In the case of a body corporate, to a fine not exceeding \$7,500.

62. Contravention of ordinary rule, emergency rule, directive, prohibition, or condition – (1) Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with–

- (a) An ordinary rule or emergency rule made under this Act; or
- (b) A prohibition or condition notified under section 15; or
- (c) An airworthiness directive made under section 17.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to a fine not exceeding \$2,500; or
- (b) In the case of a body corporate to a fine not exceeding \$15,000.

63. Flight over foreign country without authority or proper purpose –

(1) This section applies to–

- (a) Any aircraft that is registered or required to be registered in the Cook Islands under this Act;
- (b) Any other aircraft operated by a person who is a permanent resident of the Cook Islands or whose principal place of business is in the Cook Islands.

(2) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or health of, or the safety of air navigation in relation to, that country or territory.

(3) In any prosecution for an offence against subsection (2), where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to the security of, public order or health of, or the safety of air navigation in relation to, the foreign country or territory, in the absence of evidence to the contrary the defendant is presumed to know that the aircraft was being so used.

(4) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where–

- (a) The flight is not duly authorised; or
- (b) There are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory,–

unless the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.

(5) In any prosecution for an offence against subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction

that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary the defendant is presumed to know that the direction had been given.

(6) The requirement in subsection (4) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.

(7) For the purposes of this section, "appropriate aeronautical authority" includes any person, whether a member of the military authorities or the civil authorities of the foreign country or territory, who is authorised under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.

(8) Every person who commits an offence against subsection (2) or subsection (4) is liable, –

- (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$25,000.

64. Communicating false information affecting safety or security –

(1) Every person commits an offence who by any means provides to another person information relating to the safety or security of an aircraft, aerodrome, aeronautical product, aviation related service, or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or reckless as to whether it is false.

(2) Every person who commits an offence against subsection (1) is liable, –

- (a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,500; or
- (b) In the case of a body corporate, to a fine not exceeding \$25,000.

(3) Where the commission of an offence against subsection (1) causes financial loss to any person and where the Court imposes a fine under subsection (2) in respect of that offence, the Court may order that such part of the fine as it thinks fit, but in any event not more than one half of the fine, be awarded to that person.

65. Offences relating to disclosure of records – (1) Every person commits an offence who discloses a record specified in section 92(2) or section 93(2) in breach of section 92 or section 93.

(2) Every person commits an offence who contravenes section 100(2).

(3) Every person who commits an offence against this section is liable, –

- (a) In the case of an individual, to a fine not exceeding \$3,000; or
- (b) In the case of a body corporate, to a fine not exceeding \$10,000.

66. Offences relating to publication of proceedings or records – (1) Every person commits an offence who contravenes section 99 or section 100(4).
- (2) Every person who commits an offence against this section is liable, –
- (a) In the case of an individual, to a fine not exceeding \$3,000; or
 - (b) In the case of a body corporate, to a fine not exceeding \$10,000.

Disqualification

67. Effect of disqualification – (1) Where the holder of an aviation document is disqualified by a Court order from holding or obtaining an aviation document, the document is deemed to be suspended while the disqualification continues in force, and during the period of suspension the document is of no effect.

(2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document, the document on the expiration of the disqualification continues to be of no effect until the holder of it undergoes and passes such tests and fulfils such requirements as the Director may from time to time specify.

68. Commencement of a period of disqualification – Where a Court order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification commences on the date of the making of the order unless the order directs that the period of disqualification commences on a later date.

69. Retention and custody of document – (1) Where by a Court order the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made must forthwith, and whether or not demand is made, surrender the document to the Director.

(2) The Director must endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.

(3) If the person entitled to the document is a person to whom section 67(2) applies, the document must not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

70. Removal of disqualification – (1) Subject to this section, any person who by a Court order is disqualified for a period exceeding 6 months from holding or obtaining an aviation document may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the Court to remove the disqualification.

(2) On an application under this section the Court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.

(3) Notice of every application under this section must be served on the Director, who has a right to appear and be heard in respect of the matter.

71. Particulars of disqualification orders, etc., to be sent to Director – Where the Court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions (or both) on any aviation document held by or issued to any person or makes an order under section 70 removing any disqualification, the Registrar of the Court must send particulars of the order to the Director.

72. Appeals against disqualification – (1) For the purposes of Part II of the Judicature Act 1980-81, a Court order by which any person is disqualified from holding or obtaining an aviation document is deemed to be a sentence or part of a sentence, as the case may be. If a notice of appeal against any such order is filed, the Court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order has immediate effect.

(2) Any person who is disqualified by a Court order from holding or obtaining an aviation document and who applies for a removal of that disqualification and whose application is refused, may appeal against the refusal to the Court of Appeal, and in any such case the provisions of Part II of the Judicature Act 1980-81 apply with the necessary modifications.

(3) If an appeal under subsection (1) or subsection (2) is allowed to proceed, the Registrar of the High Court must send notice thereof to the Director who has a right to appear and be heard in respect of the matter.

(4) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section must be disregarded.

PART 6

RIGHTS OF APPEAL

73. Appeal to High Court – (1) Where any section of this Act provides that any person has a right of appeal under this section against a decision in respect of that person, that person may appeal to the High Court against that decision in accordance with this Part of this Act.

(2) The exercise of any power conferred on the Director by any section that confers a right of appeal of the kind referred to in subsection (1) is, except where that section specifies that the right of appeal applies to a particular decision or particular decisions, a decision in respect of a person within the meaning of that section and may be appealed against under this section.

(3) The right of appeal against any decision referred to in subsection (1) may be exercised by–

- (a) The holder of the aviation document; or
- (b) The owner or the person for the time being in charge of the aircraft or aeronautical product; or
- (c) The owner or the person for the time being in charge of any aircraft or aeronautical product of any class, –

as the case may be, in respect of whom or which the decision was taken.

74. Procedure – (1) Every appeal under section 73 must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the High Court may allow.

- (2) In determining an appeal under section 73 the High Court may—
 - (a) Hear all evidence tendered and representations made by or on behalf of any party to the appeal, whether or not that evidence would be otherwise admissible in that Court; and
 - (b) Either—
 - (i) Confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Director as may be necessary to give effect to the Court's decision; or
 - (ii) Refer the matter back to the Director, with directions to reconsider the whole or any specified part of the matter.
- (3) An appeal under this section must be by way of rehearing.
- (4) Subject to section 76, the decision of the High Court is final.
- (5) For the purposes of this Part of this Act the High Court must be presided over by a Judge or 3 Justices sitting together.

75. Decision of Director to continue in force pending appeal, etc. –

(1) Every decision of the Director that is appealed against under section 73 continues in force pending the determination of the appeal, and no person may be excused from complying with any of the provisions of this Act or regulations or rules made under this Act, or the decision, on the ground that any appeal is pending.

(2) Notwithstanding that any appeal under section 73 may have been determined in favour of the appellant, the Director may, subject to the same right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with in accordance with the provisions of this Act or regulations or rules made under this Act any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or restored in compliance with the decision of the High Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

76. Appeal to Court of Appeal on question of law – (1) Every party to an appeal under section 73 may, with the leave of the High Court or, if that leave is declined, with special leave of the Court of Appeal, appeal to the Court of Appeal on a question of law.

(2) On any appeal under subsection (1), the Court of Appeal may make such order or determination as it thinks fit.

(3) Every appeal under this section must be heard and determined in accordance with the rules of court.

77. Evidence and proof – (1) In any proceedings for an offence against this Act, –

- (a) A copy of any aviation document that is certified correct by the Secretary, the Director, or a Ministry employee authorised for this purpose by the Secretary or the Director, in the absence of proof to the contrary, is sufficient to prove that document;
- (b) Evidence of the contents of the Cook Islands Register of Aircraft maintained under Part 7 of this Act given by a certificate signed by the Secretary, the Director, or a Ministry employee authorised for this purpose by the Secretary or the Director, is sufficient evidence of the matters stated in the certificate, until the contrary is proved;
- (c) The production of a certificate signed by the Secretary, the Director, or a Ministry employee authorised for this purpose by the Secretary or the Director, to the effect that on a specified date a person or organisation was or was not the holder of any aviation document or any specified type of aviation document is sufficient evidence of the matter certified, until the contrary is proved;
- (d) It is presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Secretary, the Director, or a duly authorised employee of the Ministry, until the contrary is proved.

(2) Without limiting any other method of proof, the production in any proceedings of a copy of–

- (a) Any ordinary rule purporting to have been made by the Minister under Part 3 of this Act; or
- (b) Any emergency rule purporting to have been made by the Director under section 34 of this Act–

is, until the contrary is proved, sufficient evidence of the rule and of the fact that it has been made in accordance with the provisions of Part 3 of this Act.

78. Evidence of air traffic services provider – (1) Any document used in recording services in relation to the movement of any aircraft and purporting to have been initiated at the time of the movement by an employee of a person providing air traffic services is admissible in every Court and in every judicial examination or proceeding as prima facie evidence that the air traffic services described in such document were provided on the date and for the aircraft referred to in the document.

(2) A document certified by an employee of a person providing air traffic services purporting to be a computer record of the provision of air traffic services, the particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, is admissible as if it were a document to which subsection (1) applies.

(3) For the purposes of this section, the expression "computer record" includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.

PART 7

REGISTRIES AND INFORMATION SERVICES

79. Cook Islands Register of Aircraft – (1) The Secretary must establish a register to be called the Cook Islands Register of Aircraft.

(2) The Secretary must enter into the Register such particulars as may be prescribed of every Cook Islands registered aircraft.

80. Civil Aviation Registry – (1) The Secretary must establish a Civil Aviation Registry.

(2) Copies or appropriate evidence of the following must be recorded and maintained at the Registry:

- (a) Every current aviation document;
- (b) The Cook Islands Register of Aircraft;
- (c) Every regulation made under this Act, and every rule notified in the Cook Islands Gazette and for the time being in force;
- (d) Any material incorporated into a rule by reference under section 39;
- (e) Every accident and incident notification given under section 82;
- (f) Every airworthiness directive issued by the Director under section 17;
- (g) Every delegation, authorisation, and exemption granted in writing under this Act;
- (h) The address for service of every current applicant for an aviation document and of every current aviation document holder;
- (i) All information published under section 81.

(3) The Secretary must make documents kept at the Registry available for inspection by the public free of charge.

81. Information services – (1) The Secretary must ensure that an information service is provided that comprises the collection and dissemination of aeronautical information and instructions relating to the safety, regularity, and efficiency of air navigation.

(2) The Secretary must ensure that such information and instructions are readily available to any person upon payment of a reasonable charge fixed by the Secretary.

PART 8
ACCIDENT AND INCIDENT INVESTIGATION

82. Obligation to notify all accidents and incidents – (1) The pilot-in-command of any aircraft that is involved in an accident must notify the accident to the Secretary as soon as practicable.

(2) Every person who–

(a) Operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, or aviation related service; and

(b) Is involved in an incident, –

must, where required to do so under rules made under this Act, notify the incident to the Secretary.

(3) If, due to injuries or death, the pilot-in-command is unable to give the necessary notice under subsection (1), the operator must provide the necessary notice.

(4) The co-ordinator of any search and rescue operation for any aircraft must notify the Secretary of the operation as soon as practicable.

(5) The Secretary may, on being notified under any of subsections (1) to (4), request such additional information, in such form as he or she considers appropriate in each specific case, and the pilot-in-command, operator, or other person of whom the request is made must provide the additional information forthwith.

83. Secretary to further notify certain accidents and incidents – (1) The Secretary must as soon as practicable notify the Minister and the Director of every notification received by the Secretary relating to–

(a) An accident involving aircraft; or

(b) A serious incident in accordance with the provisions of the Convention.

(2) Without limiting subsection (1), the Secretary must advise the Minister to appoint a Chief Investigator to investigate an accident or incident where it appears to the Secretary that the accident or incident–

(a) Is required by the Convention to be investigated; or

(b) Involves circumstances–

(i) Which have, or are likely to have, significant implications for civil aviation safety; or

(ii) Which may allow a Chief Investigator to establish findings or make recommendations that increase civil aviation safety.

(3) If an aircraft to which an accident has occurred is registered in a State other than the Cook Islands, the Secretary must forward to the State of registry a copy of the relevant notification received by the Secretary and a copy of all relevant information held by the Secretary, together with advice as to the nature of the inquiry being conducted in respect of the accident.

84. Director to take further action – (1) Where an accident or incident is notified to the Director under section 83(1), the Director must–

(a) Consider what action, if any, to take under this Act or regulations or rules made under this Act; and

- (b) Investigate and review the accident or incident; and
 - (c) Take any other action appropriate in the circumstances.
- (2) If the accident or incident is referred to a Chief Investigator under section 85(3), paragraph (b) of subsection (1) is subject to the limitations set out in section 89.

85. Appointment of Chief Investigator and referral of accident or incident

– (1) The Minister must appoint a Chief Investigator recommended by the Secretary where–

- (a) The Secretary advises the Minister to do so under section 83(2); or
 - (b) The Minister considers that an accident or incident notified to the Minister under section 83(1) should be referred to and investigated by a Chief Investigator.
- (2) The Secretary must employ or engage the Chief Investigator–
- (a) Under the Public Service Act 1995-96 (under section 26 of that Act or otherwise); and
 - (b) For the duration that the Secretary considers necessary for the Chief Investigator to properly discharge his or her functions under section 86 in relation to the accident or incident referred to him or her; and
 - (c) On terms and conditions determined by the Secretary, subject to this Act.
- (3) The Secretary must refer the relevant accident or incident to the Chief Investigator by forwarding to the Chief Investigator the notification received and all relevant information held by the Secretary.

86. Functions of Chief Investigator – (1) The principal function of the Chief Investigator is to investigate the accident or incident referred to him or her under section 85(3) to determine the circumstances and causes of that accident or incident, with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person.

(2) Without limiting subsection (1), the Chief Investigator also has and may exercise the following functions:

- (a) To make such inquiries and conduct such investigation as he or she considers appropriate in order to ascertain the cause or causes of the accident or incident;
- (b) To co-ordinate and direct the investigation and to determine which other parties (if any) should be involved in the investigation;
- (c) To make available to the Minister any preliminary report or preliminary recommendation that has major consequences for civil aviation safety or security.
- (d) To deliver a written report to the Minister following the investigation, setting out findings and any recommendations for changes and improvements that the Chief Investigator considers will ensure the avoidance, or minimise the risk, of such an accident or incident in the future;

- (e) To co-operate and co-ordinate with accident investigation organisations overseas, including taking evidence on their behalf;
- (f) To perform any other function or duty conferred on him or her by this Act.

(3) As soon as practicable after the expiry of 21 days from the date that the report referred to in subsection (2)(d) is delivered to the Minister, the Chief Investigator must do the following in respect of that report:

- (a) Publish it; and
- (b) Make it available for inspection by the public free of charge; and
- (c) Issue it to any person who asks for it on payment of a reasonable charge fixed by the Chief Investigator.

87. General powers of Chief Investigator – (1) For the purposes of carrying out his or her functions and duties under this Act, the Chief Investigator has the same powers as are conferred on a Commission of Inquiry by the Commissions of Inquiry Act 1966, and subject to the provisions of this Act, sections 4 to 12 of the Commissions of Inquiry Act 1966 apply accordingly with the necessary modifications.

(2) The Chief Investigator also has and may exercise all such powers as may be—

- (a) Conferred on him or her by this Act; or
- (b) Reasonably necessary or expedient to enable him or her to carry out his or her functions.

(3) For the avoidance of doubt, the Chief Investigator may investigate an accident or incident that involves any combination of military and non-military persons or things.

88. Powers of entry and investigation – (1) Without limiting the powers conferred by section 87, for the purposes of carrying out the Chief Investigator's functions, duties, or powers under this Act, an authorised investigator may—

- (a) Enter any aircraft, aerodrome, building, or place, and inspect any thing where the authorised investigator believes on reasonable grounds that it is necessary to do so for the purposes of investigating an accident or incident;
- (b) Require the owner, operator, or occupier, of the aircraft, aerodrome, building, or place, to state, and produce satisfactory evidence of, his or her name and address;
- (c) Inspect, make copies of, or take extracts from, or retain any document or record that the authorised investigator believes on reasonable grounds is relevant to the investigation of an accident or incident;

- (d) Where the authorised investigator believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any place or thing involved in any manner in an accident or incident, prohibit or restrict access of persons or classes of persons to the site of any accident or incident or to any thing involved in the accident or incident;
- (e) Where the authorised investigator believes on reasonable grounds that any thing is or contains evidence relevant to the investigation of any accident or incident, direct that the thing be taken to a place nominated by the authorised investigator;
- (f) Without limiting paragraphs (a) to (e), seize, detain, remove, preserve, protect, or test any place or thing that the authorised investigator believes on reasonable grounds will assist in establishing the cause of an accident or incident.

(2) Nothing in this section confers on any person the power to enter any dwelling house unless the entry is authorised by a warrant given by a judicial officer on written application on oath; and such warrant must not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(3) Every warrant issued under subsection (2) must be directed to a named person and is valid for a period of one month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity must be shown in the warrant.

(4) Every person exercising the power of entry conferred by subsection (1) must carry, in the case of—

- (a) The Chief Investigator, documentary evidence of his or her appointment as Chief Investigator;
- (b) Any other person, a warrant of authority issued by the Chief Investigator specifying—
 - (i) The name and the office or offices held by the person; and
 - (ii) That the person is authorised by the Chief Investigator to exercise the power conferred by this section to enter aircraft, aerodromes, buildings, and places, and to carry out inspections.

(5) Every person exercising the power of entry conferred by subsection (1) must produce the document required to be carried, and where applicable the warrant issued under subsection (2), —

- (a) If practicable on first entering the aircraft, aerodrome, building, or place; and
 - (b) Whenever subsequently reasonably required to do so.
- (6) In this section, “authorised investigator” means—
- (a) The Chief Investigator;

- (b) Any person appointed under section 90(1) and authorised in terms of subsection (4)(b) by the Chief Investigator.

89. Conduct of investigation – (1) When an accident or incident is under investigation by the Chief Investigator, the Chief Investigator is in charge of that investigation.

(2) The Chief Investigator must permit the participation or representation of such foreign organisations in any investigation as is provided for in the Convention.

(3) Except with the consent of the Chief Investigator, which consent must not be unreasonably withheld, no other person (including the Secretary or the Director) may–

- (a) Participate in any investigation being undertaken by the Chief Investigator; or
- (b) Undertake any independent investigation at the site of any accident or incident being investigated by the Chief Investigator; or
- (c) Examine or cause to be examined any material removed from the site of any accident or incident being investigated by the Chief Investigator.

(4) Where the Chief Investigator refuses consent under subsection (3), he or she must give the person refused consent a written statement of the reasons for his or her refusal.

(5) Where any preliminary report issued by the Chief Investigator states or infers that the conduct of any person has contributed to the cause of an accident or incident being investigated by the Chief Investigator, the Chief Investigator must, before issuing a final report on the matter–

- (a) Give that person an opportunity to comment on or refute that statement or inference, either in a written statement or at a hearing, or both; and
- (b) Have regard to that person's statement or other evidence.

90. Appointment of investigators or assessors – (1) The Chief Investigator may, with the approval of the Secretary, appoint any suitably qualified person that he or she considers necessary to assist the Chief Investigator with any investigation under this Act.

(2) With the approval of the Secretary, the Chief Investigator may, either generally or particularly, delegate to any person appointed under subsection (1) any function or power of the Chief Investigator under this Act, and section 21 (except subsection (6)) with the necessary modifications applies to such a delegation.

(3) The Secretary may, if the Secretary considers appropriate, employ or engage any person appointed under subsection (1) –

- (a) Under the Public Service Act 1995-96 (under section 26 of that Act or otherwise); and
- (b) On terms and conditions determined by the Secretary, subject to this Act.

PART 9
DISCLOSURE AND ADMISSIBILITY OF ACCIDENT AND INCIDENT
INVESTIGATION INFORMATION

91. Interpretation – For the purposes of this Part, unless the context otherwise requires, –

“Chief Investigator” –

- (a) Means the Chief Investigator appointed under section 85; and
- (b) Includes any person appointed by the Chief Investigator under section 90(1);

“Disclose”, in relation to a record referred to in this Part, includes–

- (a) Relating the whole or part of the contents of the record orally; and
- (b) Producing the record, or a copy of the record, in whole or in part in any form; –

and “disclosed” and “disclosure” have corresponding meanings;

“Proceedings” means–

- (a) Proceedings before a court or tribunal, including a service court or a service authority within the meaning of section 2 of the Visiting Forces Act 1992-93;
- (b) Proceedings before any coroner;
- (c) An arbitration under the Arbitration Act 1908;
- (d) Proceedings before–
 - (i) A Commission of Inquiry under the Commissions of Inquiry Act 1966; or
 - (ii) A body, other than the Chief Investigator, having the powers or any of the powers of a Commission of Inquiry;
- (e) An inquiry or investigation by any person other than the Chief Investigator.

92. Circumstances of disclosure, and admissibility, of certain investigation records – (1) A record specified in subsection (2) –

- (a) May only be disclosed by the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; and
- (b) Is not admissible in any proceeding.

(2) A record referred to in subsection (1) is–

- (a) A statement or submission made to the Chief Investigator in the course of an investigation; or

- (b) A recording of an interview by a person engaged in an investigation by the Chief Investigator that is generated in the course of an investigation, or a transcript of such a recording; or
- (c) A note or opinion of a person engaged in an investigation by the Chief Investigator that is generated in the course of an investigation; or
- (d) Information relating to an investigation that is provided in confidence by the Chief Investigator to any other person (unless that information is a record specified in section 93(2)).

(3) Notwithstanding subsection (1), a person who made a statement or submission referred to in paragraph (a) of subsection (2), or who supplied any statement contained in a record referred to in paragraph (b) or paragraph (c) of subsection (2), may disclose the information contained in the statement or submission to any person.

93. Circumstances of disclosure of cockpit recordings, and certain investigation records supplied to Chief Investigator – (1) A record specified in subsection (2) may only be disclosed–

- (a) By the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; or
 - (b) By order of the High Court under section 95 or section 96.
- (2) A record referred to in subsection (1) is–
- (a) A cockpit voice recording from a non-military aircraft or a transcript of a cockpit voice recording from a non-military aircraft; or
 - (b) A cockpit video recording from a non-military aircraft or a transcript of a cockpit video recording from a non-military aircraft; or
 - (c) A document or other record held by the Chief Investigator that contains information about an identifiable natural person that was supplied to the Chief Investigator in the course of an investigation (not being information included in any statement, submission, recording, transcript, or note referred to in any of paragraphs (a), (b), or (c) of section 92(2)).

(3) Nothing in subsection (1) prevents a person who is recorded on a record referred to in paragraph (a) or paragraph (b) of subsection (2), or who supplied information contained in a record referred to in paragraph (c) of subsection (2), from making a statement to any person about the accident or incident.

94. Admissibility of cockpit recordings, and certain investigation records supplied to Chief Investigator – (1) A record specified in section 93(2) is not admissible in–

- (a) Civil proceedings other than proceedings of a kind to which section 96 applies;
- (b) Proceedings before a service court or a service authority within the meaning of section 2 of the Visiting Forces Act 1992-93.

(2) A record specified in section 93(2) is not admissible against a member of the flight crew of a military or a non-military aircraft in any proceedings.

(3) Nothing in subsection (2) affects the admissibility of a record specified in section 93(2) against a person other than a member of the flight crew of a military or a non-military aircraft.

(4) A record specified in section 93(2) is only admissible in particular civil proceedings of a kind to which section 96 applies if it was disclosed in relation to those proceedings in accordance with an order made under section 95 or section 96.

(5) Nothing in this section renders admissible any record that is inadmissible under any other enactment or rule of law.

95. Disclosure of record before civil proceedings commenced – (1) This section applies to civil proceedings if the amount of the damages claimed exceeds the amount specified as the maximum civil jurisdiction of the High Court presided over by 3 Justices under the Judicature Act 1980-81.

(2) A person who is or may be intending to commence civil proceedings of the kind specified in subsection (1) may apply to the High Court for the disclosure of a record specified in section 93(2).

(3) The Court may order the disclosure of a record to a person who applies under subsection (2) if–

- (a) It appears to the Court that–
 - (i) The person is or may be entitled to claim relief in the proceedings; and
 - (ii) It is impossible or impracticable for the person to formulate the person's claim without reference to the record sought; and
- (b) The Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

96. Disclosure of record in civil proceedings – (1) This section applies to civil proceedings if the amount of the damages claimed exceeds the amount specified as the maximum civil jurisdiction of the High Court presided over by 3 Justices under the Judicature Act 1980-81.

(2) A party to any civil proceedings may apply to the High Court for the disclosure of a record specified in section 93(2).

(3) The Court may order the disclosure of a record under this section if the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

97. Provisions relating to application under section 95 or section 96 –

(1) Subject to this section, an application under section 95 or section 96 must be made and dealt with in accordance with the rules of court applicable to interlocutory applications.

(2) The applicant must notify the following persons of the making of the application:

- (a) The person who has possession of the record; and
- (b) Any natural person who is the subject of the record or, if that person is deceased, that person's next of kin; and
- (c) The owner of the record.

(3) A person who is served with a notice of an application, and any other person who satisfies the Court that he or she has a legitimate interest in the application, may appear before the Court and be heard in respect of the application.

(4) Only the following persons are permitted to be present at the hearing of an application under this section:

- (a) The presiding Judge;
- (b) Officers of the Court;
- (c) The applicant and the applicant's counsel;
- (d) Other parties to the proceedings to which the application relates (or intended parties in the case of an application under section 95) and their counsel;
- (e) Witnesses;
- (f) Any person referred to in subsection (3).

(5) The Court may exclude any witness, or any person referred to in subsection (3), from any part of the hearing of the application.

(6) The Court may adjourn the hearing of an application under section 95 or section 96 at any time if it appears to the Court, on the application of any person or on the Court's own motion, that the making of a disclosure order will prejudice any investigation into an accident or incident that is being undertaken by the Chief Investigator.

(7) Subsection (6) does not limit any other power of the Court to adjourn proceedings.

98. Court may order record to be produced – (1) For the purpose of determining whether a record should be disclosed under section 95 or section 96, the Court may order any person who has possession of the record to produce it to the Court.

(2) Subject to section 100, the Court may deal with the record as it thinks fit.

99. Restriction on publication of reports of proceedings – (1) No person may publish any report of an application under section 95 or section 96 without the leave of the Court.

- (2) Despite subsection (1), a person may publish—
- (a) The names and addresses of the parties;
 - (b) The name of the presiding Judge;
 - (c) The order made by the Court.

100. Further provisions relating to disclosure of record — (1) If the High Court makes a disclosure order under section 95 or section 96, the order relates only to the parts of the record that are relevant to the purpose for which the disclosure was ordered, and any part of the record that is not relevant must not be disclosed.

(2) The record may be used only for the purpose for which the disclosure was ordered, and no person is permitted to copy the record or make notes from the record without the leave of the Court.

(3) The record must be returned to the person who produced the record to the Court when the record is no longer needed for the purpose for which the disclosure was ordered.

(4) No record that is ordered to be disclosed under section 95 or section 96 may be broadcast or published in the media.

101. Certain actions do not constitute disclosure — The following actions do not constitute disclosure of a record referred to in section 92 or section 93:

- (a) The inclusion of the whole or part of a record in any finding, recommendation, or report, whether preliminary or otherwise, made, issued, or published by the Chief Investigator in the course of or following an investigation;
- (b) The return of a recording to its owner with the consent of all the individuals recorded on it;
- (c) The broadcast or publication in the media of any information disclosed to any person under section 92(3) or any statement made under section 93(3).

102. Admissibility of accident or incident findings, recommendations, or report — No finding, recommendation, or report, whether preliminary or otherwise, made, issued, or published by the Chief Investigator following an investigation is admissible as evidence in any proceedings except—

- (a) A coroner's inquest; or
- (b) An application for judicial review of a decision of the Chief Investigator.

103. Investigators not compellable to give opinion evidence in certain proceedings — No person engaged in an investigation by the Chief Investigator is compellable to give evidence in any proceedings to which the Chief Investigator is not a party as to—

- (a) That person's opinion concerning any aspect of an investigation; or
- (b) Any matter included in any analysis, findings, or recommendations made in the course of or following an investigation.

104. No search warrant may be issued for records – No person may issue a search warrant in respect of a record specified in section 92(2) or section 93(2).

PART 10

MISCELLANEOUS PROVISIONS

105. Nuisance, trespass, and responsibility for damage – (1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any rules made under this Act, so long as the provisions of the rules are duly complied with.

(2) No action lies in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, so long as the provisions of this Act and of rules made under this Act are duly complied with.

(3) Where material damage or loss is caused to persons, or property, on land or water by–

- (a) An aircraft in flight, taking off, landing, or alighting; or
- (b) Any person or thing in, falling from, or being released from, any such aircraft, –

damages are recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his or her fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.

(4) Where damage or loss is caused in the manner described in subsection (3) and in circumstances in which–

- (a) Damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of subsection (3); and
- (b) Some person other than the owner is liable to pay damages in respect of the damage or loss, –

the owner is entitled to be indemnified by that other person against any claim in respect of that damage or loss.

(5) In respect of damage or loss caused by a person descending from the aircraft by parachute, –

- (a) Damages are not recoverable under subsection (3) from the owner of an aircraft;
- (b) Damages are, instead, recoverable under subsection (3) from the person descending as if the person descending were the owner of the aircraft;
- (c) The provisions of subsection (4), with the necessary modifications, apply as if the person descending were the owner of the aircraft.

(6) Subsection (5) does not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death.

(7) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section applies as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.

(8) For the purposes of this section, –

- (a) The term “fault” means negligence, breach of statutory duty, or other act or omission that gives rise to a liability in tort; and
- (b) The expression “material damage or loss”, and the terms “damage” and “loss”, include death and personal injury.

106. General regulations – (1) The Queen’s Representative may, from time to time, by Order in Executive Council, make regulations for all or any of the following purposes:

- (a) Prescribing, or providing for the fixing of, fees or charges payable under this Act;
- (b) Prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or in place of any of the provisions of Part 11 of this Act; and without limiting the generality of the foregoing, any such regulations may provide that, subject to such conditions as are specified in the regulations, –
 - (i) Specified provisions of the enactment repealed or regulations revoked by this Act apply with such modifications as may be set out in the regulations in the circumstances specified in the regulations;
 - (ii) Specified provisions of or classes of regulations, Orders in Executive Council, documents, or publications saved or continued in force by this Act cease to apply, or cease to be in force, in the circumstances specified in the regulations;
- (c) Such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Any regulations made under subsection (1) may be so made that different regulations apply with respect to–

- (a) Different classes of persons, aerodromes, aircraft, aviation documents, aeronautical products, aviation related services, aeronautical procedures, or other thing; or
- (b) To the same class of person, aerodrome, aircraft, aviation documents, aeronautical product, aviation related service, aeronautical procedure, or other thing in different circumstances.

107. Removal of hazardous obstructions – (1) Where a building, structure, erection, tree, or other thing (whether on land or water) exists that is likely to be hazardous to aviation safety in relation to any aircraft operating in the vicinity of an aerodrome, the Queen's Representative may, by Order in Executive Council made at the recommendation of the Minister, require the owner, occupier, or person in charge of that thing–

- (a) To remove that thing; or
- (b) To alter that thing in the manner specified in the Order.
- (2) The Order must specify–
 - (a) The aerodrome concerned; and
 - (b) The removal or alteration required; and
 - (c) The person or class of persons who must carry out the removal or alteration; and
 - (d) The time within which that person or class of persons must carry out the removal or alteration.

(3) The Order may authorise another person or class of persons to enter the land or water concerned and carry out the removal or alteration in the event that the removal or alteration is not carried out within the time specified in the Order.

108. Declaration of approved organisation – The Queen's Representative may, from time to time, by Order in Executive Council, declare an organisation or body to be an approved organisation for the purposes of section 6(2)(b).

109. Protection of persons acting under authority of Act – No person who does any act or omits to do any act in pursuance of any of the functions, powers, or duties conferred on that person by or under this Act or regulations or rules made under this Act, shall be under any civil or criminal liability in respect of that act or omission, whether on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless that person has acted, or omitted to act, in bad faith or without reasonable cause.

110. Repeals and revocations – (1) The enactment specified in Schedule 1 is repealed.

- (2) The regulations specified in Schedule 2 are revoked.

PART 11

TRANSITIONAL AND SAVINGS

111. Saving of regulations – Notwithstanding section 110, the regulations listed in Schedule 3–

- (a) Continue in force as if the Civil Aviation Act 1985 had not been repealed by this Act; and
- (b) Are deemed for the purposes of this Act to be regulations made under this Act; and
- (c) May be amended and revoked under section 106 of this Act.

112. Saving of Orders in Executive Council – (1) The Rarotonga Airport (Obstruction Removal) Order 1969 continues in force as if it was made under section 107 of this Act, and may be amended and revoked accordingly.

(2) The Rarotonga Airport (Land Use Restrictions) Order 1972 continues in force as if it was an ordinary rule made by the Minister under Part 3 of this Act, and may be amended and revoked accordingly.

113. Continuation of licences and other documents – (1) Every licence, rating, certificate, permit, authorisation, approval, or other document issued under the Civil Aviation Act 1985 or the Civil Aviation Regulations 1953, that is in force immediately before the coming into force of this Act, is deemed to be an aviation document issued under this Act, and has effect and is subject to the provisions of this Act and regulations and rules made under this Act accordingly.

(2) The Director may revoke a deemed aviation document on the grounds that the Director is satisfied that rules have been made under this Act that adequately govern the privileges accorded by the document.

(3) Section 12(2), (3), and (4) of this Act applies to a revocation under subsection (2) of this section as if it were a revocation under section 12(1) of this Act.

(4) Nothing in subsection (2) limits the Director's other powers (including the power to revoke an aviation document) under this Act or regulations or rules made under this Act.

(5) Notwithstanding subsection (1), the Director may renew a deemed aviation document in accordance with either or both of the following, as applicable to that document:

- (a) The Civil Aviation Act 1985, as if that Act had not been repealed by this Act;
- (b) The Civil Aviation Regulations 1953, including the publications continued in force by section 114 of this Act.

114. Continuation of orders and other publications – (1) Every order, notice, requirement, circular, and other publication issued under regulation 8A of the Civil Aviation Regulations 1953, and in force immediately before the coming into force of this Act, continues in force as if the Civil Aviation Act 1985 had not been repealed by this Act.

(2) The Director may at any time amend or revoke a publication referred to in subsection (1) by notice in the Cook Islands Gazette followed by further notification.

115. Continuation of enforcement proceeding, prosecution, or inquiry – (1) Any enforcement proceeding, prosecution or inquiry taken under the Civil Aviation Act 1985 and as yet undetermined at the time of the coming into force of this Act continues in force and may be maintained under the Civil Aviation Act 1985 as if the Civil Aviation Act 1985 had not been repealed by this Act.

(2) Notwithstanding subsection (1), the Minister may determine that any enforcement proceeding, prosecution, or inquiry must proceed under the corresponding or similar provision under this Act and thereafter it must proceed as if taken under that provision.

116. Transition of Director of Civil Aviation – (1) The person who, immediately before the coming into force of this Act, held office as the Director of Civil Aviation, is the Director under this Act until the Minister makes an appointment under subsection (2).

(2) The Minister must appoint a Director of Civil Aviation in accordance with section 8 of this Act within one year of this Act coming into force.

(3) For the avoidance of doubt, the Minister may reappoint the person referred to in subsection (1) for the purposes of subsection (2).

117. Expiry of section 111 and sections 113 to 116 – Section 111 and sections 113 to 116 of this Act expire–

- (a) On a date to be appointed by the Queen's Representative by Order in Executive Council; or
- (b) On the date 5 years from the date that this Act comes into force, –

whichever first occurs, and, as from the close of that date of expiry, these sections are deemed to be repealed and the Civil Aviation Regulations 1953 are deemed to be revoked.

118. Saving of references – Unless the context otherwise requires, in any enactment, document, or agreement (whether in writing or not), in force immediately before the coming into force of this Act, –

- (a) Every reference to the Minister of Civil Aviation must be treated as a reference to the Minister;
- (b) Every reference to the Secretary of Civil Aviation must be treated as a reference to the Secretary;
- (c) Every reference to the Director of Civil Aviation must be treated as a reference to the Director;
- (d) Every reference to the Department of Civil Aviation must be treated as a reference to the Ministry;
- (e) Every reference to the Chief Inspector of Air Accidents or the Office of Air Accidents Investigation must be treated as a reference to the Chief Investigator appointed under this Act;
- (f) Every reference to an Inspector of Air Accidents must be treated as a reference to a person appointed by the Chief Investigator under section 90(1) of this Act.

This Act is administered in the Ministry of Transport.

SCHEDULE 1

Section 110(1)

ENACTMENT REPEALED

Civil Aviation Act 1985

(1985 No. 4)

SCHEDULE 2**Section 110(2)****REGULATIONS REVOKED**

Civil Aviation (Accident Investigation) Regulations 1978

(S.R.1978/112)

SCHEDULE 3**Section 111****REGULATIONS TO CONTINUE IN FORCE**

Civil Aviation Regulations 1953	(S.R.1953/108)
Civil Aviation Regulations 1953 Amendment No. 1	(S.R.1955/143)
Civil Aviation Regulations 1953 Amendment No. 2	(S.R.1956/134)
Civil Aviation Regulations 1953 Amendment No. 3	(S.R.1959/3)
Civil Aviation Regulations 1953 Amendment No. 4	(S.R.1959/158)
Civil Aviation Regulations 1953 Amendment No. 5	(S.R.1960/71)
Civil Aviation Regulations 1953 Amendment No. 6	(S.R.1961/109)
Civil Aviation Regulations 1953 Amendment No. 7	(S.R.1962/139)
Civil Aviation Regulations 1953 Amendment No. 8	(S.R.1964/2)
Civil Aviation Regulations 1953 Amendment No. 9	(S.R.1965/16)
Civil Aviation Regulations 1953 Amendment No. 10	(S.R.1965/206)
Civil Aviation Regulations 1953 Amendment No. 11	(S.R.1966/147)
Civil Aviation Regulations 1953 Amendment No. 12	(S.R. 1968/143)
Civil Aviation Regulations 1953 Amendment No. 13	(S.R.1968/203)
Civil Aviation Regulations 1953 Amendment No. 14	(S.R.1970/136)
Civil Aviation Regulations 1953 Amendment No. 15	(S.R.1970/253)
Civil Aviation Regulations 1953 Amendment No. 16	(S.R.1972/91)
Civil Aviation Regulations 1953 Amendment No. 17	(S.R.1972/172)
Civil Aviation Regulations 1953 Amendment No. 18	(S.R.1973/158)
Civil Aviation Regulations 1953 Amendment No. 19	(S.R.1973/301)
Civil Aviation Regulations 1953 Amendment No. 20	(S.R.1975/91)
Civil Aviation Regulations 1953 Amendment No. 21	(S.R.1975/143)
Civil Aviation Regulations 1953 Amendment No. 22	(S.R.1979/18)
Civil Aviation Regulations 1953 Amendment No. 23	(S.R.1982/90)
Civil Aviation Regulations 1953 Amendment No. 24	(S.R.1983/100)
Civil Aviation Regulations 1953 Amendment No. 25	(S.R.1986/3)
