

AIR SERVICES LICENSING ACT

NO. 115 OF 1990

[ASSENTED TO 28 JUNE, 1990][DATE OF  
COMMENCEMENT: 1 JULY, 1991]

(except Schedule, Part I, on 1 July, 1990)

(Afrikaans text signed by the State President)

as amended by

Air Services Licensing Amendment Act, No. 15 of 1992

International Air Services Act, No. 60 of 1993

General Law Sixth Amendment Act, No. 204 of 1993

Air Services Licensing Amendment Act, No. 83 of 1995

ACT

To provide for the establishment of an Air Service Licensing Council; for the licensing and control of domestic air services; and for matters connected therewith.

1. Definitions.—In this Act, unless the context otherwise indicates—

“air service” means any service operated by means of an aircraft for reward, but shall not include—

(a)the hiring out of an aircraft together with the crew to a licensee;

(b)a service operated solely for the benefit of a company or a group of companies, or any subsidiary thereof, in its commercial activities by a person who is a member or in the employ of such company or group of companies or subsidiary, and which is not offered for reward to the public in general;

(c)the conducting of flight testing or assessment of skills in respect of flying an aircraft;

(d)the prescribed type of training or instruction in respect of flying an aircraft conducted in the prescribed manner and on the prescribed conditions;

(e)the participation in an air race of an aircraft which is sponsored on condition that the trade name of the sponsor is affixed to the aircraft for the duration of the air race;

[Definition of “air service” substituted by s. 1 (a) of Act No. 83 of 1995.]

“authorized officer” means an authorized officer as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);

[Definition of “authorized officer” inserted by s. 1 (b) of Act No. 83 of 1995.]

"close corporation" means a close corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984);

[Definition of "close corporation" inserted by s. 1 (b) of Act No. 83 of 1995.]

"Commissioner for Civil Aviation" means the Commissioner as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);

[Definition of "Commissioner for Civil Aviation" inserted by s. 1 of Act No. 15 of 1992.]

"company" means a company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition of "company" inserted by s. 1 (c) of Act No. 83 of 1995.]

"council" means the Air Service Licensing Council established under section 3 (1);

"department" means the Department of Transport;

"Director-General" means the Director-General: Transport;

"domestic air service" means an air service excluding an international air service;

"inspector" means an inspector as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);

[Definition of "inspector" inserted by s. 1 (d) of Act No. 83 of 1995.]

"international air service" means an air service which passes through the air space over the territory of the Republic and at least one other country: Provided that an air service which passes through the air space over the territory of another country without operating an air service in the territory of that other country, and the route or journey of which started and ended within the territory of the Republic, shall not be an international air service;

"licence" means an air service licence referred to in section 12 or 33 (1);

"licensee" means the person to whom a licence was issued in terms of section 16 (2) or (4) or to whom a licence is deemed in terms of section 33 (1) to have been issued;

"Minister" means the Minister of Transport;

"operating certificate" means an operating certificate issued in terms of section 22 or deemed in terms of section 33 (1) to have been so issued;

"prescribed" means prescribed by regulation;

"regulation" means a regulation made under section 29;

"resident of the Republic" means a person who has his ordinary residence (within the meaning of the expression as it appears in section 10 (1) (d) of the South African Citizenship Act, 1949 (Act No. 44 of 1949)), in the Republic and who is a South

African citizen or is in possession of a permit for permanent residence in the Republic issued in terms of section 4 of the Aliens Act, 1937 (Act No. 1 of 1937);

"this Act" includes the regulations.

2. Application of Act.—This Act shall apply only to the operation of a domestic air service.

3. Air Service Licensing Council.—(1) There is hereby established a council to be known as the Air Service Licensing Council, which shall be a juristic person.

(2) The council shall make known its office and postal address by notice in the Gazette.

4. Constitution of council.—(1) The members of the council shall be appointed by the Minister and shall consist of—

(a) a chairman;

(b) a vice-chairman; and

(c) not more than three other persons,

who, in the opinion of the Minister, have appropriate knowledge and experience regarding aviation, or who are well versed in law, finance, transportation or engineering.

(2) The Minister may, in appointing the members of the council, in his discretion consult with representatives of consumers of air services and representatives of the organized commerce, industry, transport and aviation sectors.

(3) If the chairman is unable to perform his duties in terms of this Act, the vice-chairman shall act as chairman of the council, and whilst the vice-chairman is thus acting, he shall exercise all the powers and perform all the duties of the chairman.

5. Term of office.—A member of the council shall hold office for a period not exceeding three years: Provided that a member shall be eligible for reappointment at the expiry of his term of office.

6. Disqualification for membership of council.—(1) No person shall be appointed as a member of the council if he—

(a) is an unrehabilitated insolvent;

(b) has at any time been convicted of an offence for which he has been sentenced to imprisonment without the option of a fine for a period of not less than twelve months, unless he has received a grant of amnesty or a free pardon, or unless the period of such imprisonment expired at least five years before the date of his appointment;

(c) is an officer or employee as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984); or

(d) is of unsound mind and has been so declared by a competent court.

(2) A member of the council shall vacate his office if he—

(a) becomes subject to any disqualification mentioned in subsection (1);

(b)in writing tenders his resignation as a member to the Minister;

(c)has been absent without the leave of the council from three consecutive meetings; or

(d)is relieved of his office under subsection (3).

(3) A member of the council may at any time be relieved of his office by the Minister if such member—

(a)has, in the opinion of the Minister, been guilty of improper conduct; or

(b)is, in the opinion of the Minister, unable to perform efficiently his duties as such member.

(4) If a member of the council dies or vacates his office before the expiration of the period for which he was appointed, the Minister may, subject to the provisions of section 4, appoint another person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

7. Remuneration of members.—A member of the council shall receive, from moneys appropriated by Parliament for this purpose, such remuneration and allowances as may be determined by the Minister, with the concurrence of the Minister of Finance, in general or in any particular case.

8. Meetings of council.—(1) The council shall hold meetings at such times and places as may from time to time be determined by the chairman.

(2) (a) The chairman or, in his absence, the vice-chairman shall preside at every meeting of the council if he is present.

(b) If both the chairman and the vice-chairman are absent from a meeting of the council, the members present shall from among their number elect a person to preside at that meeting.

(3) Three members of the council shall constitute a quorum for a meeting of the council.

(4) If a member of the council in his personal capacity, or his spouse or child, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the council, such member shall not—

(a)attend that meeting as a member during the consideration of such matter;

(b)in any manner take part as member in the consideration of such matter by the council; or

(c)in any manner endeavour to influence the opinion or vote of any other member of the council in connection with such matter.

(5) The decision of the majority of the members of the council present at a meeting thereof shall constitute the decision of the council, and in the event of an equality of votes the member presiding at the meeting concerned shall have a casting vote in addition to his deliberative vote.

(6) No decision taken by the council or act performed under

authority of the council shall be invalid merely by reason of an interim vacancy on the council, or because a person who was not entitled to sit as a member or attend such meeting, sat as such member or attended such meeting at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members who were present at the time and who were entitled to sit as members of the council or attend the meeting.

(7) The procedures to be followed at meetings of the council shall be determined by the chairman.

(8) The council shall cause minutes to be kept of every meeting thereof.

(9) The member of the council presiding at a meeting referred to in section 16 (3), shall keep record of the proceedings at such meeting or cause it to be kept.

(10) The minutes and records referred to in subsections (8) and (9), shall be kept at the offices of the council.

(11) Copies of the record referred to in subsection (9), or of any part thereof, may be obtained against payment of the prescribed fee.

[Sub-s. (11) amended by s. 2 of Act No. 83 of 1995.]

9. Administration.—All administrative work, including the payment and receipt of money as well as secretarial work, in connection with the performance of the functions or the exercise of the powers of the council, shall be carried out by officers and employees in the department designated for such purpose by the Director-General.

10. Annual report.—(1) The council shall as soon as practicable after 31 March of each year but not later than 31 December of that year submit to the Minister a report (hereinafter referred to as the annual report) giving particulars regarding the activities of the council during the year which ended on the first-mentioned date.

(2) The Minister shall lay a copy of the annual report upon the Table in Parliament within thirty days after it has been received by him if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within thirty days after the commencement of its next ensuing ordinary session.

11. Power of council to compel attendance of witnesses and production of documents, etc.—(1) The council may, for the purposes of any proceedings before it under this Act, by summons under the hand of the chairman, direct any person who, in the opinion of the council, may be able to give material information concerning the subject matter of the proceedings, or to produce any book, document or thing which has any bearing on the subject matter of the proceedings, to appear personally before the council, at a time and place stated in the summons, and to produce any such book, document or thing which may be in his possession or custody or under his control.

(2) A summons referred to in subsection (1) shall be in the prescribed form and shall be served in the same manner as a subpoena in criminal proceedings in the magistrate's court.

(3) The council may interrogate any person summoned to appear in terms of subsection (1) and direct him to produce any

book, document or thing mentioned in the summons, and for this purpose the member presiding at the meeting concerned may administer an oath to him or require him to make an affirmation of the truth of his testimony.

(4) Any book, document or thing produced by any person in terms of subsection (3) may be retained for a reasonable period for examination by the council or any person directed thereto by the council.

12. Operating of air service.—(1) Subject to the provisions of this Act, no person shall operate or attempt to operate an air service, unless it is or is to be operated under and in accordance with the terms and subject to the conditions of an air service licence issued to that person in terms of this Act or deemed to have been so issued.

(2) The council may upon application, exempt any applicant from the provisions of subsection (1) or from any other provision of this Act if, in the opinion of the council, the applicant is operating or proposes to operate an air service on a non-profit basis for purposes incidental to social welfare or charity, or for purposes of salvage on humanitarian grounds, or where the granting of the exemption will assist in saving life.

(3) Any exemption granted under subsection (2) shall be limited so as to apply only in respect of one or more aircraft, or one or more particular routes, journeys or transactions, and shall be limited as to time, area or distance, or otherwise as the council may deem fit.

(4) The council shall publish the prescribed particulars in respect of each exemption referred to in subsection (2) which was granted for a period of 90 days or more by notice in the Gazette.

[S. 12 substituted by s. 3 of Act No. 83 of 1995.]

13. Classes and types of air services and categories of aircraft.—(1) (a) The council shall issue a licence in respect of the prescribed class of air service.

(b) The class of air service in respect of which a licence has been issued, shall be indicated on the licence concerned.

(2) A licence referred to in subsection (1) (a) shall authorize the holder thereof to operate the prescribed type of air service with the prescribed category of aircraft, and the said type of air service and category of aircraft shall be specified on such licence.

14. Application for licence or amendment thereof.—(1) An application for a licence shall be made to the council on the prescribed form.

(2) If a licensee desires to—

(a) amend the type of air service or the category of aircraft specified on his, her or its licence;

(b) in the case of a partnership, amend the particulars of any partner associated in the partnership;

(c) in the case of a close corporation—

(i) amend the particulars of any member associated in the close

corporation; or

(ii) amend its legal status by means of a conversion into a company in terms of section 29C of the Companies Act, 1973 (Act No. 61 of 1973);

(d) in the case of a company—

(i) amend the controlling shareholding of the company; or

(ii) amend its legal status by means of a conversion into a close corporation in terms of section 27 of the Close Corporations Act, 1984 (Act No. 69 of 1984);

(e) amend the particulars of the prescribed personnel appointed by the licensee to be responsible and accountable for the safety and reliability of the air service,

he, she or it shall apply to the council on the prescribed form for such amendment.

[Sub-s. (2) substituted by s. 4 (a) of Act No. 83 of 1995.]

(3) An application for exemption from the provisions of section 16 (4) (e) shall be made to the council on the prescribed form.

[Sub-s. (3) substituted by s. 4 (b) of Act No. 83 of 1995.]

(4) An application referred to in subsection (1) or (2) shall contain all the particulars and information prescribed in respect of such application.

15. Processing of application.—(1) Subject to the provisions of section 16 (2), the council shall, within 21 days after the receipt of an application referred to in section 14 (1) or (2)—

(a) forward a copy of such application to the Commissioner for Civil Aviation; and

(b) make known the prescribed particulars in respect of the application concerned by notice in the Gazette.

(2) Any person may, after the publication of the notice referred to in subsection (1), obtain a copy of such application from the council: Provided that particulars pertaining to the financing of a proposed air service shall not be disclosed without the consent of the applicant.

[Sub-s. (2) amended by s. 5 (a) of Act No. 83 of 1995.]

(3) Any person may address in writing, within 21 days after the publication of the notice referred to in subsection (1), representations in the prescribed manner to the council against or in favour of such application: Provided that those representations shall be founded only on the applicant's ability to comply with the requirements referred to in section 16 (4).

[Sub-s. (3) amended by s. 5 (b) of Act No. 83 of 1995.]

(4) The council shall, within 7 days after the receipt of representations referred to in subsection (3), forward a copy of such representations to the Commissioner for Civil Aviation as well as the applicant.

(5) Within 14 days after the council forwarded a copy of the representations referred to in subsection (3) to the

Commissioner for Civil Aviation and the applicant or, if no such representations were received, within 36 days after the notice referred to in subsection (1) (b) was published in the Gazette—

(a) the Commissioner for Civil Aviation shall furnish the council with any information he possesses pertaining to the application and representations concerned; and

(b) the applicant may furnish the council with information pertaining to such representations.

16. Adjudication of application.—(1) As soon as practicable, but within 120 days, after the receipt of an application in terms of section 14 (1) or (2), the council shall consider such application together with all representations, information, evidence and other documents relating to such application and at the disposal of the council.

(2) The council may consider an application and issue a licence immediately after the receipt of an application for a temporary licence referred to in section 17 (2) if the council—

(a) is of the opinion that compliance with the procedures referred to in section 15 would defeat the object of such application; and

(b) is satisfied that the applicant conforms to the requirements specified in subsection (4):

Provided that the council may apply such procedures referred to in section 15 as it may deem necessary in order to enable it to reach a decision.

(3) (a) In order to obtain further information regarding an application, the council may order—

(i) that the applicant and the Commissioner for Civil Aviation appear before the council: and

(ii) that any person referred to in section 15 (3) may appear before the council, at a meeting of the council to be held, at the time and place determined by the chairman, in order to hear arguments against or in favour of such application.

(aA) (i) At such meeting the council may serve on the applicant a written request for further particulars to be supplied within 90 days.

(ii) The particulars so supplied shall be open for inspection by the persons referred to in paragraph (a) until the subsequent meeting date contemplated in subparagraph (iii).

(iii) If the council requests such further particulars the meeting shall be adjourned to any subsequent date in order to hear further arguments against or in favour of such application, taking into account the further particulars referred to in subparagraph (i).

[Para. (aA) inserted by s. 6 (a) of Act No. 83 of 1995.]

(b) Such meeting shall only be held after at least 21 days notice thereof to the parties referred to in paragraph (a) (i) and (ii).

(c) A meeting referred to in paragraph (a) shall be held in public and the parties concerned may appear in person at that meeting or may at their own expense be represented by counsel,



an attorney or other fully authorized representative.

[Para. (c) substituted by s. 6 (b) of Act No. 83 of 1995.]

(d) If the council directed any person under section 11 to give evidence at such meeting, that party may also be interrogated by any party referred to in paragraph (a) (i) and (ii) or by the counsel, attorney or representative of such party, as the case may be.

(4) An application is granted and a licence issued or amended, subject to the provisions of this Act, if the applicant satisfies the council—

(a) that the air service will be operated in a safe and reliable manner;

(b). . . . .

[Para. (b) deleted by s. 6 (c) of Act No. 83 of 1995.]

(c) that, subject to the provisions of subsection (5), he—

(i) if he is a natural person, is a resident of the Republic; or

(ii) if he is not a natural person, is incorporated in the Republic and at least 75 per cent of the voting rights in respect of such person is held by residents of the Republic;

(d) that the person referred to in paragraph (c) will be actively and effectively in control of the air service; and

[Para. (d) substituted by s. 6 (d) of Act No. 83 of 1995.]

(e) that, subject to the provisions of subsection (6), the aircraft which will be used in operating the air service is a South African aircraft as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962).

(5) The council shall exempt an applicant, on the conditions determined by the Minister, from the provisions of subsection (4) (c) if the Minister, after considering an application on the prescribed form, directed the council to exempt such applicant.

(6) The council may, in its discretion, exempt an applicant from the provisions of subsection (4) (e) and issue or amend such licence subject to the conditions the council deems fit regarding the operation and maintenance of the aircraft concerned.

[Sub-s. (6) substituted by s. 6 (e) of Act No. 83 of 1995.]

(7) The parties referred to in subsection (3) (a) may request the council to furnish reasons for the approval or refusal of the application for a licence: Provided that such reasons shall be furnished to the Commissioner for Civil Aviation free of charge.

[Sub-s. (7) amended by s. 6 (f) of Act No. 83 of 1995.]

(8) The council shall publish the prescribed particulars in respect of each licence issued or amended in terms of subsection (4) by notice in the Gazette.

[Sub-s. (8) added by s. 6 (g) of Act No. 83 of 1995.]

(9) (a) If an applicant ignores an order contemplated in

subsection (3) (a) to appear before the council at a meeting or fails to appear on two successive occasions without furnishing reasons to the satisfaction of the council, or if an applicant fails to respond to a request contemplated in subsection (3) (aA) (i), and thereby delays the final adjudication of such application, the council may in its discretion order that the application be struck off the roll whereupon the applicant shall forfeit the application fee paid.

(b) If an application is struck off the roll in terms of paragraph (a) the applicant shall not be allowed to proceed on the same papers, but shall lodge a new application if he, she or it wishes to proceed therewith.

[Sub-s. (9) added by s. 6 (g) of Act No. 83 of 1995.]

17. Form and period of validity of licence.—(1) The council shall issue a licence on the prescribed form.

(2) A licence thus issued shall be valid for an indefinite period: Provided that a temporary licence shall be valid—

(a) for the period determined by the council but not for a period exceeding 30 days; or

(b) for such occasion or occasions as may be determined by the council.

18. Register of licences.—(1) The council shall keep a register of licences issued in terms of this Act.

(2) The register concerned shall be kept in the prescribed manner and shall contain the prescribed particulars.

(3) Information from such register shall be furnished by the council to any person who, in the opinion of the council, on reasonable grounds requires such information.

[Sub-s. (3) substituted by s. 7 of Act No. 83 of 1995.]

19. Conditions of licence.—A licence is issued—

(a) on condition that the licensee shall at all times during the operation of his air service comply with the requirements specified in section 16 (4);

(b) on condition that the licensee shall not commence or, subject to the provisions of section 22 (7), continue with an air service, unless he is in possession of a valid operating certificate;

(c) on condition that the licensee shall within the period determined by the council, which period shall not exceed 12 months from the date of the issuing of the licence, commence with the air service and the operation of that air service shall not be interrupted for a period exceeding 12 months;

(d) on condition that a licence shall lapse as soon as the estate of the licensee is sequestrated or wound up, as the case may be;

(e) on condition that the licensee is insured as prescribed in relation to the class and type of air service, and the category of aircraft mentioned on his, her or its licence, and in respect of the prescribed nature, class or kind of insurance.

[Para. (e) added by s. 8 of Act No. 83 of 1995.]

20. Failure of licensee.—(1) The council may, if it on reasonable grounds suspects that a licensee has failed to comply with a provision of this Act—

(a) direct such licensee to comply with such provision within the period de-termined by the council;

(b) suspend the licence concerned, on the conditions determined by the council, for a period not exceeding two years; or

(c) cancel the licence concerned.

(2) No licence shall be suspended or cancelled in terms of subsection (1) (b) or (c) unless—

(a) the council has notified the licensee in writing of its suspicions, stating the grounds for such suspicions; and

(b) the council has given the licensee the opportunity to address representations to the council, within the period determined by the council, regarding those suspicions.

(3) (a) The council may, in order to conduct a proper investigation into a failure referred to in subsection (1), hold a meeting as contemplated in section 16 (3).

(b) Section 16 (3) shall apply mutatis mutandis to such meeting: Provided that the parties who shall attend such meeting shall be the licensee and the Commissioner for Civil Aviation and that the parties who may attend such meeting shall be any person who addressed submissions to the council in which he alleged that the licensee failed to comply with the provisions of this Act.

21. Surrender of licence.—If a licence is cancelled by the council, or the licensee ceases to comply with a condition referred to in section 19 (c), the licensee shall return such licence, together with the prescribed form, to the council.

22. Operating certificate.—(1) A licensee shall apply to the Commissioner for Civil Aviation on the prescribed form for the issuing of an operating certificate.

(1A) A licensee shall apply to the Commissioner for Civil Aviation in the prescribed manner for the approval of an operations manual.

[Sub-s. (1A) inserted by s. 9 (a) of Act No. 83 of 1995.]

(2) An application in terms of subsection (1) shall be accompanied by the prescribed particulars and documents.

[Sub-s. (2) substituted by s. 9 (b) of Act No. 83 of 1995.]

(3) In considering such application the Commissioner for Civil Aviation may conduct the investigation he deems necessary.

(4) The Commissioner for Civil Aviation shall issue an operating certificate to a licensee on the prescribed form if that licensee satisfies the Commissioner for Civil Aviation that he will not operate the air service concerned contrary to any provision of this Act, the Aviation Act, 1962 (Act No. 74 of 1962), or the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972).

(5) If the Commissioner for Civil Aviation is not thus satisfied,

he shall notify the licensee thereof, stating his grounds in the notification, and grant the licensee the opportunity to rectify or supplement any defect within the period determined by the Commissioner for Civil Aviation, after which period the Commissioner for Civil Aviation shall grant or refuse the application concerned.

(6) An operating certificate shall, subject to the provisions of subsection (7), be valid for such period as may be determined by the Commissioner for Civil Aviation: Provided that such period shall not exceed a period of twelve months from the date of issuing thereof.

[Sub-s. (6) substituted by s. 2 of Act No. 15 of 1992.]

(7) If the holder of an operating certificate applies, at least 30 days before the expiry thereof, for a new operating certificate, that first-mentioned operating certificate shall, notwithstanding the provisions of subsection (6), remain in force until such holder is notified by the Commissioner for Civil Aviation of the result of his application for a new operating certificate.

(8) (a) If the Commissioner for Civil Aviation is of the opinion—

(i) that the holder of an operating certificate is operating the air service concerned contrary to the laws mentioned in subsection (4); or

(ii) that the particulars and documents furnished in terms of subsections (1) and (2) are defective and misleading,

the Commissioner for Civil Aviation may suspend that operating certificate: Provided that the Commissioner for Civil Aviation shall only suspend such operating certificate after he has given the holder thereof the opportunity to make representations and to show cause, within the period determined by him, why that operating certificate should not be suspended.

(b) Upon the expiry of the period referred to in paragraph (a), which period shall not be less than 21 days, the Commissioner for Civil Aviation may suspend the operating certificate concerned for such period and on such conditions as he may determine.

(c) The Commissioner for Civil Aviation shall notify the council of a suspension referred to in paragraph (b).

23. Register of operating certificates.—(1) The Commissioner for Civil Aviation shall keep a register of operating certificates issued in terms of this Act.

(2) The register concerned shall be kept in the prescribed manner and shall contain the prescribed particulars.

(3) Information from such register shall be furnished by the Commissioner for Civil Aviation to any person who, in the opinion of the Commissioner for Civil Aviation, on reasonable grounds requires such information.

[Sub-s. (3) substituted by s. 10 of Act No. 83 of 1995.]

24. Duties of licensee.—(1) The licensee shall—

(a) notify the Commissioner for Civil Aviation, in the prescribed manner, before any change is effected to the particulars on his,

her or its operating certificate;

(b) furnish the council within the prescribed period with the prescribed statistical information;

(c) keep his, her or its licence and operating certificate in a safe place and produce such licence and operating certificate to an authorized officer or inspector for inspection if so requested by such officer or inspector; and

(d) notify the council in writing of any prescribed change in respect of the operation of the air service concerned or any part thereof, and such notice shall reach the council at least 14 days before such change is effected.

(2) The council shall not disclose the statistical information referred to in subsection (1) (b) in such a manner that the activities of the licensee are identified thereby, unless the written permission of the licensee has been obtained.

[S. 24 substituted by s. 11 of Act No. 83 of 1995.]

25. Appeal.—(1) Any person who feels aggrieved—

(a) by the refusal of the council or the Commissioner for Civil Aviation to issue to him a licence or an operating certificate, as the case may be;

(b) by a decision of the council in terms of section 20 (1) (b) or (c); or

(c) by a decision of the Commissioner for Civil Aviation in terms of section 22 (8) (b),

may in the prescribed manner appeal against such refusal or decision to the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area within which such person is resident, within 30 days after he, she or it became aware of such refusal or decision, or within such further period, not exceeding two months, as the said court may allow on good cause shown.

[Sub-s. (1) amended by s. 12 of Act No. 83 of 1995.]

(2) The court referred to in subsection (1) may—

(a) confirm, vary or set aside the refusal or decision of the council or Commissioner for Civil Aviation, as the case may be;

(b) give such other decision as the council or the Commissioner for Civil Aviation, as the case may be, was able to give; or

(c) remit the case to the council or the Commissioner for Civil Aviation, as the case may be, with such instructions as that court may deem fit.

(3) The court concerned may issue any order regarding costs which the court under the circumstances deems fair.

(4) A decision given in terms of subsection (2) shall, for the purposes of this Act, be deemed to be a decision of the council or the Commissioner for Civil Aviation, as the case may be.

26. Offences and penalties.—(1) Any person who—

(a) fails to comply with a direction referred to in section 11 (1)

or (3), or fails to remain in attendance after appearing in terms of section 11 (1), or refuses to be sworn or to affirm as a witness or to be interrogated by the council in terms of section 11 (3), or any person in terms of section 16 (3) (d), or to answer questions during such interrogation;

(b)contravenes or fails to comply with section 12 or a term or condition referred to in section 12 or a condition referred to in section 19;

(c)refuses or fails to return a licence in terms of section 21;

(d)refuses or fails to fulfil the duties referred to in section 24;

(e)falsifies, counterfeits, alters, defaces or mutilates, or adds anything to, a licence, operating certificate or other document issued under this Act, or is in possession of a licence, operating certificate or other document which has been thus falsified, counterfeited, altered, defaced or mutilated, or to which an addition has been made;

(f)uses a licence, operating certificate or other document issued under this Act of which he, she or it is not the holder;

[Para. (f) substituted by s. 13 (a) of Act No. 83 of 1995.]

(f A)permits a licence, operating certificate or other document issued under this Act of which he, she or it is the holder, to be used by any other person;

[Para. (fA) inserted by s. 13 (b) of Act No. 83 of 1995.]

(g)for the purposes of any application or representations in terms of this Act or during interrogation in terms of section 11 (3) or 16 (3) (d), furnishes information or particulars which to his knowledge are false or misleading in any material respect;

(h)uses an aircraft which is being used in operating an air service in contravention of the terms of an exemption granted to him, her or it under section 12 (2),

[Para. (h) added by s. 13 (c) of Act No. 83 of 1995.]

shall be guilty of an offence.

(2) Any person who is convicted of an offence in terms of subsection (1) shall—

(a)in the case of an offence referred to in subsection (1) (a), (c) or (d), be liable to a fine or to imprisonment for a period not exceeding one year; or

[Para. (a) substituted by s. 13 (d) of Act No. 83 of 1995.]

(b)in the case of an offence referred to in subsection (1) (b), (e), (f), (fA), (g) or (h), be liable to a fine or to imprisonment for a period not exceeding five years.

[Para. (b) substituted by s. 13 (d) of Act No. 83 of 1995.]

27. Presumptions and evidence.—In criminal proceedings under this Act—

(a)it shall be presumed, unless the contrary is proved, that an aircraft which is being used in operating an air service, is thus used by the person in whose name that aircraft is registered,

whether in terms of a provision in force in the Republic or elsewhere, or that such person caused it to be thus used;

(b)it shall be presumed, unless the contrary is proved, that an aircraft which is registered in the name of a licensee and which is being used in operating an air service contrary to the terms and conditions of such licence is thus used by that licensee or that such licensee caused it to be thus used;

(c)it shall be presumed, unless the contrary is proved, that the conveyance in an aircraft of any person, in addition to the normal operating crew, or of any goods is conveyance for reward;

(d)a certificate issued by the chairman of the council or the Commissioner for Civil Aviation stating that a licence or operating certificate, as the case may be, has not been granted or issued to a specified person shall, upon the mere production thereof, be accepted as prima facie proof of the facts mentioned therein;

(e)a copy of a licence shall, upon the mere production thereof, be accepted as prima facie proof of the fact that the person whose name appears as licensee on that copy, was the licensee in respect of the air service concerned at the time when the offence was committed;

(f)a certified extract from or a copy of any register kept in terms of this Act shall, upon the mere production thereof, be accepted as prima facie proof of the facts mentioned therein; and

(g)it shall be presumed, unless the contrary is proved, that a falsified, counterfeited, altered, defaced or mutilated licence, operating certificate or other document issued under this Act, has been thus falsified, counterfeited, altered, defaced or mutilated by the person in whose possession it has been found or that that person, in the case of an addition, has made the addition.

28. Delegation.—(1) The Commissioner for Civil Aviation may, subject to such conditions as he may deem necessary—

(a)delegate to an officer employed by the department any power conferred upon him in terms of this Act; or

(b)authorize an officer employed by the department to perform any duty assigned to him in terms of this Act.

(2) Any person to whom any power has been thus delegated or who has been authorized to perform any duty shall exercise that power or perform that duty subject to the directions of the Commissioner for Civil Aviation, and the Commissioner for Civil Aviation may at any time revoke such delegation or authorization.

(3) Any delegation under subsection (1) shall not prevent the Commissioner for Civil Aviation from exercising that power or performing that duty himself.

29. Regulations.—(1) The Minister may, after consultation with the council, make regulations regarding—

(a)any matter which in terms of this Act is required or permitted to be prescribed;

(a A)the information to be furnished by an applicant for the

purposes of section 16 (4) (a), and the standards and requirements to be complied with by an applicant for the purposes of that section in relation to the class of licence, type of air service and category of aircraft mentioned in his, her or its application;

(b)the issuing and safe-keeping of passenger air transport tickets and the particulars and endorsements to be contained in such tickets;

(c)the issuing and safe-keeping of air waybills and the particulars to be contained in such waybills;

(d)the compilation and safe-keeping of passenger lists and the particulars to be contained in such lists;

(e)the carrying out of in-flight inspections;

(f)the payment of fees in respect of any application made in terms of this Act;

(g)the payment of fees in respect of the reasons for the approval or refusal of an application for a licence;

(h)the payment of fees in respect of the issuance of a licence, or the amendment thereof, including the period within which such fees shall be paid;

(i)the payment of fees in respect of the issuance of an operating certificate, including the period within which such fees shall be paid;

(j)the payment of fees in respect of the providing of information from any register which is kept in terms of this Act; and

(k)any other matter the regulation of which, in the opinion of the Minister, may be necessary or desirable in order to achieve or promote the objects of this Act.

[Sub-s. (1) amended by s. 16 of Act No. 204 of 1993 and substituted by s. 14 (a) of Act No. 83 of 1995.]

(2) A regulation may for any contravention thereof or failure to comply therewith, prescribe a penalty which shall not exceed a fine of R2 000 or imprisonment for a period of six months or both such fine and such imprisonment.

(3) Before the Minister makes any regulation under this section, he or she shall publish the regulations he or she intends to make by notice in the Gazette.

[Sub-s. (3) added by s. 14 (b) of Act No. 83 of 1995.]

(4) After publication of the notice referred to in subsection (3), any interested person may, within a period stated in the notice, but not less than four weeks as from the date of publication of the notice, address representations in writing to the Director-General for submission to the Minister regarding the regulations concerned.

[Sub-s. (4) added by s. 14 (b) of Act No. 83 of 1995.]

(5) After considering the representations referred to in subsection (4), the Minister may, whether or not he or she has adjusted the regulations concerned, publish those regulations in their final form by notice in the Gazette.



[Sub-s. (5) added by s. 14 (b) of Act No. 83 of 1995.]

(6) Regulations referred to in subsection (1) shall, within 14 days after they have been published under subsection (5), be tabled in Parliament, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of the first ensuing ordinary session of Parliament.

[Sub-s. (7) added by s. 14 (b) of Act No. 83 of 1995.]

30. Service of documents and notices.—Any notice, order or any other document which is required in terms of this Act to be served or given to any person may be sent by post or may be delivered to such person personally or, at such person's residence or place of employment or business, to any other person who is apparently over the age of sixteen years.

31. Fees received and expenditure incurred.—(1) All fees received in terms of this Act shall be paid into the State Revenue Account referred to in section 81 of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983).

(2) All expenditure incurred by the council in the exercise of its powers or the performance of its duties shall be defrayed from moneys appropriated by Parliament for this purpose.

32. Act binds State.—The provisions of this Act, except the provisions which are applicable to criminal liability, shall bind the State.

33. Amendment of laws, and savings.—(1) An air carrier's licence or an operating certificate issued in terms of the Air Services Act, 1949 (Act No. 51 of 1949), and in force immediately prior to the commencement of this Act, shall be deemed to be an air service licence or operating certificate, as the case may be, issued in terms of this Act shall remain in force, subject to the conditions under which it was issued and in so far as it could have been issued under this Act, for a period of 12 months from the date of the commencement of this Act.

(2) The council may, in its discretion, exempt the holder of an air carrier's licence referred to in subsection (1) from furnishing the particulars or the information referred to in section 14 (4) if such holder applies for the issuing of a licence in terms of section 14.

(3) The laws mentioned in the Schedule are hereby amended to the extent indicated in Part I, II or III thereof.

34. Short title and commencement.—(1) This Act shall be called the Air Services Licensing Act, 1990, and shall, subject to the provisions of subsection (2), come into operation on 1 July, 1991.

(2) Part 1 of the Schedule shall come into operation on 1 July 1990.

Schedule

laws amended

(Section 33)

Part I

[Part I repealed by s. 47 (4) of Act No. 60 of 1993.]

Part II

[Part II repealed by s. 47 (4) of Act No. 60 of 1993.]

Part III

Amendment of the Aviation Act, 1962 (Act No. 74 of 1962), as follows:-

1. The amendment of section 1 by the deletion of the definition of "Commission".

2. The substitution for section 4 of the following section:

"Functions of Minister in connection with provisions of this Act

4. (1) The Minister shall be responsible for the carrying out of the provisions of this Act and of the Convention and of the Transit Agreement.

(2) Every person appointed under this Act or concerned with the carrying out of the provisions thereof, shall perform his functions and exercise any discretion expressly or impliedly vested in him, subject to the directions and approval of the Minister.

(3) With the written consent of the Minister any person in whom any discretion is vested as is contemplated in subsection (2), may delegate the power to exercise such discretion on his behalf to any other specified person."

3. The amendment of section 19 by the substitution for subsection (3) of the following subsection:

"(3) This section shall apply equally to the owner of an aircraft and to the pilot or person in charge thereof, unless the owner (except in the case of an air carrier as defined in section 1 of the International Air Services Act, 1949 (Act No. 51 of 1949), or in the case of a licensee as defined in section 1 of the Air Services Licensing Act, 1990) proves to the satisfaction of the court that the contravention, offence or failure in question occurred without his order, permission or connivance."

<http://www.transport.gov.za/library/legislation/air%20services%20licensing%20amendment%20act.txt>

AIR SERVICES LICENSING AMENDMENT ACT

NO. 15 OF 1992

[ASSENTED TO 3 MARCH, 1992][DATE OF COMMENCEMENT: 1 OCTOBER, 1992]

(Afrikaans text signed by the State President)

ACT

To amend the Air Services Licensing Act, 1990, so as to replace the expression "Director-General: Transport" for certain purposes by the expression "Commissioner for Civil Aviation"; and to provide that an operating certificate may be issued for a shorter period than twelve months; and to provide for matters connected therewith.

1. Amends section 1 of the Air Services Licensing Act, No. 115 of 1990, by inserting the definition of "Commissioner for Civil Aviation".
2. Amends section 22 of the Air Services Licensing Act, No. 115 of 1990, by substituting subsection (6).
3. Substitution for expression "Director-General" of expression "Commissioner for Civil Aviation" in Act 115 of 1990.—The principal Act is hereby amended by the substitution for the expression "Director-General" wherever it may occur in the principal Act, except in sections 1 and 9 and in Part I of the Schedule to the principal Act, of the expression "Commissioner for Civil Aviation".
4. Short title and commencement.—This Act shall be called the Air Services Licensing Amendment Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

[http://www.transport.gov.za/library/legislation/air03\\_95.txt](http://www.transport.gov.za/library/legislation/air03_95.txt)

AIR SERVICES LICENSING AMENDMENT ACT

NO. 83 OF 1995

[Assented to 28 September, 1995][Date of Commencement: 6 October, 1995]

(Unless otherwise indicated)

(English text signed by the President)

ACT

To amend the Air Services Licensing Act, 1990, so as to amend a definition and to define certain expressions; to delete the provision in terms of which the Air Service Licensing Council may hold a meeting in camera; to further regulate the operation of an air service; to extend the conditions under which a licensee has to apply for the amendment of a licence; to further regulate the processing of a licence; to further regulate the adjudication of an application for a licence or amendment thereof; to extend the conditions upon which a licence is issued; to provide for the approval of an operations manual; to further regulate the duties of the licensee; to provide for the manner in which a person may appeal against a decision by the Air Service Licensing Council or the Commissioner for Aviation; to further regulate certain offences and penalties; and to extend and to further regulate the power of the Minister to make regulations; and to provide for matters connected therewith.

1. Amends section 1 of the Air Services Licensing Act, No. 115 of 1990, as follows:—paragraph (a) substitutes the definition of “air service”; paragraph (b) inserts the definitions of “authorized officer” and “close corporation”; paragraph (c) inserts the definition of “company”; and paragraph (d) inserts the definition of “inspector”.
2. Amends section 8 of the Air Services Licensing Act, No. 115 of 1990, by deleting the proviso to subsection (11).
3. Substitutes section 12 of the Air Services Licensing Act, No. 115 of 1990.
4. Amends section 14 of the Air Services Licensing Act, No. 115 of 1990, as follows:—paragraph (a) substitutes subsection (2); and paragraph (b) substitutes subsection (3).
5. Amends section 15 of the Air Services Licensing Act, No. 115 of 1990, as follows:—paragraph (a) substitutes the words preceding the proviso to subsection (2); and paragraph (b) substitutes the words preceding the proviso to subsection (3) (date of commencement 30 August, 1991).
6. Amends section 16 of the Air Services Licensing Act, No. 115 of 1990, as follows:—paragraph (a) inserts subsection (3) (aA); paragraph (b) substitutes subsection (3) (c); paragraph (c) deletes subsection (4) (b); paragraph (d) substitutes subsection (4) (d); paragraph (e) substitutes subsection (6); paragraph (f) substitutes the words preceding the proviso to sub-section (7); and paragraph (g) adds subsections (8) and (9).
7. Amends section 18 of the Air Services Licensing Act, No. 115 of 1990, by substituting subsection (3).
8. Amends section 19 of the Air Services Licensing Act, No. 115 of 1990, by deleting the word “and” at the end of paragraph (c), and adding paragraph (e).
9. Amends section 22 of the Air Services Licensing Act, No. 115 of 1990, as follows:—paragraph (a) inserts subsection (1A) (date of commencement 30 August, 1991); and paragraph (b) substitutes subsection (2).
10. Amends section 23 of the Air Services Licensing Act, No. 115 of 1990, by substituting subsection (3).
11. Substitutes section 24 of the Air Services Licensing Act, No. 115 of 1990.
12. Amends section 25 (1) of the Air Services Licensing Act, No. 115 of 1990, by substituting the words following upon paragraph (c) (date of commencement 30 August, 1991).
13. Amends section 26 of the Air Services Licensing Act, No. 115 of 1990, as follows:—paragraph (a) substitutes subsection (1) (f); paragraph (b) inserts subsection (1) (fA); paragraph (c) adds subsection (1) (h); and paragraph (d) substitutes subsection (2) (a) and (b).
14. Amends section 29 of the Air Services Licensing Act, No. 115 of 1990, as follows:—paragraph (a) substitutes subsection (1) (date of commencement 30 August, 1991); and paragraph (b) adds subsections (3), (4), (5) and (6).
15. Short title and commencement of certain provisions.—This Act shall be called the Air Services Licensing Amendment Act,

1995, and sections 5 (b), 9 (a), 12 and 14(a) shall be deemed to have come into operation on 30 August 1991.