

MALAWI GOVERNMENT

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I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

18th August, 2017

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application

PART II—THE CIVIL AVIATION AUTHORITY

4. Establishment of the Civil Aviation Authority
5. Independence of the Authority
6. Functions of the Authority
7. Powers of the Authority
8. Composition of the Authority
9. Appointment of members
10. Disqualification from membership
11. Tenure of office of members
12. Vacation from office
13. Filling of vacancies
14. Meetings
15. Committees
16. Co-opted persons
17. Allowances of members
18. Director General

SECTION

19. Tenure of office
20. Removal from office
21. Duties of the Director General
22. Appointment of other staff of the Authority
23. Delegation of duties of the Director General
24. Protection from liability

PART III—FINANCIAL PROVISIONS

25. Funds of Authority
26. Business plan
27. Financial year
28. Annual estimates and budget
29. Borrowing powers
30. Bank accounts
31. Records, audits and accounts of the Authority

PART IV—USE OF AIR SPACE, SAFETY AND SECURITY IN CIVIL
AVIATION

32. Safety in civil aviation
33. Use of air space, air navigation facilities and services management
34. Air traffic rules
35. Dissemination of meteorological data
36. Safety and security of persons
37. Transport of dangerous goods by air
38. Inspection of aircraft and aerodromes
39. Right of access for inspection
40. Safety and Security Standards Inspectorate
41. Power to obtain information, documents and evidence
42. Use of aviation information

PART V—CERTIFICATES, LICENCES AND AUTHORIZATIONS

43. Issuance of certificates, licences and authorization
44. Variation, suspension and revocation of certificates or licences

PART VI—AERODROMES

45. Powers related to aerodromes
46. Acquisition of land
47. Access to land

SECTION

PART VII—AIR ACCIDENT AND INCIDENT INVESTIGATION

- 48. Accident investigation procedures
- 49. Investigation and enforcement proceedings

PART VIII—THE CIVIL AVIATION TRIBUNAL

- 50. Establishment of the Civil Aviation Tribunal
- 51. Jurisdiction of the Tribunal
- 52. Powers of the Tribunal
- 53. Composition of the Tribunal
- 54. Tenure and vacation of office
- 55. Allowances
- 56. Proceedings before the Tribunal
- 57. Awards by the Tribunal
- 58. Appointment of assessors
- 59. Contempt
- 60. Disclosure of interest
- 61. Appeals
- 62. Reference of matters to the Tribunal

PART IX—OFFENCES AND PENALTIES

- 63. Place of commission of offence
- 64. Operating aircraft without certificate, licence or authorization
- 65. False or misleading aircraft markings
- 66. Interference with air navigation
- 67. Interference with crew members
- 68. Interference with aircraft operations
- 69. Removal of parts of aircraft involved in accident
- 70. Aircraft piracy
- 71. Transportation of dangerous goods
- 72. Refusal to testify or produce documents
- 73. Giving of false information
- 74. Reporting and record keeping violations
- 75. Failure to comply with interception order
- 76. Dangerous flying of aircraft
- 77. Failure to comply with summons or giving of false information
- 78. General penalty

SECTION

PART X—MISCELLANEOUS

79. Exemptions
80. Trespass, nuisance and responsibility for damages
81. Noise and vibration
82. War and emergencies
83. Infringement of patents
84. Exemption of certain aircraft and parts from seizure or patent claims
85. Detention of aircraft
86. Requisition of search and rescue
87. Indemnification of the Government and certain officers
88. Capacity building
89. Rules, orders, directives, circulars and notices
90. Record keeping
91. Publications
92. Regulations
93. International obligations
94. Assessment and audits

PART XI—TRANSITIONAL PROVISIONS

95. Vesting of assets
96. Repeal and savings

An Act to provide for civil aviation matters and give effect to the Chicago Convention and related conventions; to provide for the establishment of the Civil Aviation Authority in order to ensure the control, regulation and orderly development of civil aviation in Malawi; to foster safe, sustainable development and security of civil aviation; and to provide for matters incidental thereto

ENACTED by the Parliament of Malawi—

PART I—PRELIMINARY

Short title and
commence-
ment

1. This Act may be cited as the Civil Aviation Act, 2017 and shall come into operation on a date to be appointed by the Minister, by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“accident” means any occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place

between the time a person boards the aircraft with the intention of flight until the time when all persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until the time when it comes to rest at the end of the flight and the primary propulsion system is shut down, in which—

(a) a person is fatally or seriously injured as a result of—

(i) being in the aircraft;

(ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or

(iii) direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew;

(b) the aircraft sustains damage or structural failure which—

(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 for engine failure or damage, when the damage is limited to a single engine, including its cowlings or accessories, to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin such as small dents or puncture holes, or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike including holes in the radome; or

(c) the aircraft is missing or is completely inaccessible;

“acts of unlawful interference” means any acts, conspiracy or attempted acts intended to, or which have the result of jeopardizing the safety of civil aviation and air transport and include—

(i) unlawful seizure of aircraft in flight or on the ground;

(ii) hostage taking on board aircraft or on aerodromes;

(iii) forcible intrusion on board an aircraft, at an aerodrome or on the premises of an aeronautical facility;

(iv) introduction on board aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;

(e) communication of false information that jeopardizes the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility;

(f) destroying or causing damage to air navigation facilities, or interfering with their operation, where the act is likely to endanger the safety of aircraft in flight;

(g) violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft;

(h) causing destruction to an aircraft in service, or causing damage to an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;

(i) unlawfully and intentionally using any device, substance or weapon, to—

(i) perform an act of violence against a person at an airport serving civil aviation which causes or is likely to cause serious injury or death; or

(ii) destroy or seriously damage the facilities of an airport serving civil aviation or an aircraft not in service located at the airport or disrupting the services of the airport, if that act endangers or is likely to endanger safety at that airport; or

(j) use of an aircraft in service for the purpose of causing death, serious bodily injury, or threats of bodily harm to passengers and crew or persons not on the aircraft but whose safety are of interest to passengers or crew on the aircraft or serious damage to property or the environment;

“aerial work” means an aircraft operation in which an aircraft is used for specialized services such as agriculture, construction, photography, surveying, observation and patrol, search and rescue or aerial advertisement;

“aerodrome” means any defined area on land or on water, including any building, installation or equipment therein, used or intended to be used either wholly or in part, for the arrival, departure and surface movement of aircraft, and includes any area as the Minister may, by notice published in the *Gazette* declare to be an aerodrome;

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth’s surface;

“aircraft engine” means any engine used, or intended to be used, for propulsion of aircraft;

"aircraft in flight" means the moment when all external doors of an aircraft are closed following embarkation until the moment when one such door is opened for disembarkation or, in case of a forced landing, until the competent authorities take over the responsibility of the aircraft, persons and property on board;

"aircraft piracy" means any actual or attempted seizure or exercise of control of an aircraft within the jurisdiction of Malawi by force, violence or by any other form of intimidation;

"air navigation" means the process of planning and directing the progress of an aircraft between selected geographic points or over a selected route;

"air navigation facility" means any facility used, available for use or designed for use, in aid of air navigation and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air, or the landing and take-off of an aircraft;

"air navigation services" means services provided to air traffic during all phases of operations including air traffic management, communication, navigation and surveillance, meteorological services for air navigation, search and rescue and aeronautical information services;

"air operator" means any organization which engages in domestic or international commercial air transport, whether directly or indirectly, by a lease or any other arrangement;

"Annexes to the Convention on International Civil Aviation" means the Annexes to the Convention on International Civil Aviation containing the Standards and Recommended Practices applicable to civil aviation;

"appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight, including parachutes, communication equipment and any other mechanism installed in or attached to aircraft during flight, and which is not part of aircraft, aircraft engine, or propeller;

"approved maintenance organization" means an organization approved by the Authority to perform aircraft maintenance activities;

"approved training organization" means an organization approved by the Authority to perform training in civil aviation;

“Authority” means the Civil Aviation Authority established under section 4 of this Act;

“aviation security” means a combination of measures, human and material resources intended to safeguard civil aviation against acts of unlawful interference;

“certification” means the process of determining that a person or organization possesses the knowledge and key competencies required of a specified operation;

“Chicago Convention” means the Convention on International Civil Aviation concluded in Chicago, United States of America on 7th December, 1944 and came into effect in 1947, and to which Malawi acceded, by notification, dated the 11th September, 1964;

“civil aircraft” means any aircraft other than a state or public aircraft;

“civil aviation” means the operation of any civil aircraft for the purpose of general aviation operations, aerial work or commercial air transport operations;

“commercial air transport” means an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;

“Contracting State” means any State which is party to the Chicago Convention;

“controlled area” means a controlled airspace extending upwards from a specified limit above the earth;

“crew member” means a person assigned to perform duties on an aircraft in flight;

“dangerous goods” means articles or substances which are capable of posing significant risks to health, safety or property when transported by air;

“Director General” means the Director General of the Authority appointed under section 18 of this Act;

“flight path” means the level of passage of an aircraft through the air;

“general aviation operation” means an aircraft operation other than a commercial air transport operation or an aerial work operation;

“ICAO” means the International Civil Aviation Organization;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or may affect the safety of aircraft operation;

"investigator-in-charge" means the investigator-in-charge appointed pursuant to section 48 of this Act;

"National Civil Aviation Security Programme" means an integrated set of regulations and activities promulgated and performed by the State aimed at safeguarding civil aviation against acts of unlawful interference;

"operator" means a person, organization or enterprise engaged in, or offering to engage in an aircraft operation;

"owner" in relation to an aircraft or aerodrome, means the person in whose name the aircraft or aerodrome is registered, and includes any person who is or has been acting as an agent in Malawi for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

"personnel licences" means licences issued by the Authority to personnel required by this Act to acquire licences to carry out specific functions in civil aviation;

"public aircraft" means an aircraft used exclusively in the service of any government but does not include any government owned aircraft engaged in operations which meet the definition of commercial air transport operations;

"publication" includes information given in any of the following publications issued, whether before or after the commencement of this Act—

- (a) notices to airmen;
- (b) aeronautical information publications;
- (c) notices to licenced aircraft maintenance engineers and to owners or operators of civil aircraft;
- (d) civil aviation publications;
- (e) aeronautical information circulars;
- (f) manuals of air traffic control instructions; and
- (g) other official publications issued for the purpose of enabling any of the provisions of this Act or regulations made there under to be complied with;

"regulated agent" means an agent, freight forwarder or any other entity approved by the appropriate authority that conducts business with an air operator and provides security controls that are accepted or required by the appropriate Authority in respect of cargo, courier and express parcels or mail;

“restructuring plan” means a plan to give effect to the institutional and financial reform of a state-owned enterprise or company and the release of individual assets or mobility services owned or provided by the enterprise or company;

“safety recommendation” means a proposal of the investigator-in-charge, based on information derived from an investigation or other sources, made with the intention of preventing accidents or incidents and which in no case has the purpose of presumption of blame or liability for an accident or incident;

“security programme” means any measure or procedure adopted to safeguard civil aviation against acts of unlawful interference;

“service provider” means an organization, serving operators and other providers, that is part of aviation activity and is functionally separated from the regulator;

“State aircraft” means aircraft used in military, customs and police services of Malawi or of any other State or any other civil registered aircraft at the time performing a state function and fully converted to offer services to heads of states, military service, customs or police or to any other state;

“National Safety Programme” means an integrated set of regulations and activities promulgated and performed by the Authority aimed at improving safety and efficient delivery of aviation services;

“Safety Management System” means a systematic approach to managing safety, including the necessary organizational structure, accountabilities, policies and procedures;

“Transit Agreement” means the International Air Services Transit Agreement drawn up on the 7th December, 1944 and which Malawi signed on 27th March 1975, together with amendments and additions as may be declared;

“Tribunal” means the Civil Aviation Tribunal established under Part VIII; and

“validation” means a written acceptance by the Director General of an action of the Authority of another country.

Application

3.—(1) This Act shall, except where expressly excluded, apply to—

(a) all aircraft registered by the Authority or any foreign aircraft while in Malawian airspace;

(b) all Malawian aircraft, its crew and other persons on board, wherever they may be;

- (c) air operators established in Malawi;
- (d) aviation training establishments in Malawi;
- (e) all aerodromes, airport operators; and service providers within aerodromes in Malawi;
- (f) organizations involved in the design, maintenance, repair and modification of aircraft parts or components of Malawian registered aircraft; and
- (g) air traffic and air navigation facilities and services operators in Malawi.

(2) This Act shall not apply to State aircraft except where expressly included or if the Minister so directs, by order published in the *Gazette*:

Provided that State aircraft shall comply with rules of the air.

(3) This Act shall apply to a State aircraft registered as civilian aircraft, and to military aircraft operating in controlled airspace.

PART II—THE CIVIL AVIATION AUTHORITY

4. There is hereby established the Civil Aviation Authority (in this Act, referred to as "the Authority") which shall be—

Establishment
of the Civil
Aviation
Authority

(a) a body corporate with perpetual succession and a common seal;

(b) in its corporate name, capable of suing and being sued;

(c) capable of acquiring, holding and disposing of movable and immovable property; and

(d) in the exercise of its duties, functions and powers, capable of doing or performing all such other things or which may be lawfully done or performed by a body corporate.

5. The Authority shall be independent in the performance of its functions and exercise its powers but shall give effect to any policy direction relating to its powers and functions which may be issued to it by the Minister, in accordance with this Act.

Independence
of the
Authority

6.—(1) The Authority shall regulate and be responsible for the safety, security, economic and technical oversight of civil aviation in Malawi generally.

Functions of
the Authority

(2) Notwithstanding the generality of subsection (1), the Authority shall—

(a) licence and certify aircraft, aeronautical personnel, aerodromes, aircraft operators, training organizations, regulated

agents and air navigation service providers;

(b) establish and maintain a system for the registration and the marking of civil aircraft, including rights and interest in aircraft;

(c) establish, coordinate and maintain national safety and security programmes;

(d) ensure the implementation of safety management systems by service providers;

(e) subject to other written laws, ensure fair trading practices and consumer protection;

(f) issue certificates of airworthiness and enforcement of approved technical standards of aircraft;

(g) approve, certify and licence aircraft manufacturing, testing and maintenance organizations;

(h) facilitate provision of all the necessary support for aircraft accident and incident investigations conducted by or involving Malawi;

(i) carry out investigations on incidents that are not classified as serious incidents;

(j) collaborate with the authority responsible for meteorological services to ensure the provision of meteorological services for air navigation;

(k) coordinate and direct search and rescue services;

(l) establish minimum knowledge and experience requirements for the technical personnel performing oversight functions and the provision of appropriate training to maintain and enhance their competencies;

(m) provide technical guidance, facilities and equipment to technical personnel to enable them perform their oversight functions;

(n) provide technical guidance to the aviation industry when necessary to enable compliance with this Act;

(o) issue and disseminate aviation publications;

(p) establish, produce, promulgate and review of the National Civil Aviation Security Programme, National Civil Aviation Security Training Programme, and their quality control programs, and National Air Transport Facilitation Programme in line with government policy;

(q) investigate incidents of unlawful interference;

(r) ensure the implementation of measures to facilitate clearance of formalities at airports;

(s) develop an aviation policy framework to address the environmental impacts of aircraft and airport operations arising from noise, vibrations, emissions and the effects of work carried out at airports;

(t) ensure aircraft and airport operators and other entities take measures to reduce, control or mitigate adverse environmental effects generated by airport and aircraft activities and make available appropriate information to the public about environmental effects of civil aviation in Malawi;

(u) plan, develop and formulate airspace master plans and aerodrome master plans for the safe and efficient utilization of Malawi airspace and land respectively;

(v) plan, develop and formulate the provision of technical services for the design, installation, and modification of electronic, radio and other equipment used in the provision of air navigation services;

(w) produce accurate, timely comprehensive and relevant air transport data and information for planning and decision making purposes;

(x) coordinate all international civil aviation related matters; and

(y) other functions as may be assigned to the Authority under written law from time to time.

(2) The Authority shall ensure the provision of air navigation services, alerting services and coordination of search and rescue in Malawi airspace, and any areas outside of Malawi for which Malawi has in pursuance of international arrangements undertaken to provide air navigation services.

(3) The Authority shall carry out its functions in a manner consistent with the Chicago Convention and its Annexes, and international best practices.

(4) In the discharge of its responsibility for aviation safety and security, the Authority shall co-ordinate its activities with other agencies of the Government, including the entities responsible for defence, foreign affairs and police service.

7.—(1) The Authority shall have power to—

Powers of the
Authority

(a) determine and recommend to the Minister, charges and fees for any services performed by the Authority, or for use by any person of the facilities provided by the Authority for the grant, renewal or validation of a licence, permit or certificate;

(b) provide regulatory safety oversight to airports;

(c) manage air traffic, and air navigation services, for a period of time as is required until restructuring plans for service providers in air navigation services and air traffic management are completed and to advise the Minister regularly on the progress of the restructuring plans;

(d) investigate, either upon request or by its own motion, any violation or potential violation of this Act or any other written law relating to civil aviation and take any action to redress the violation as it may deem fit;

(e) issue licences and certificates;

(f) register aircraft;

(g) determine terms and conditions of staff of the Authority;

(h) approve programmes proposed by the Director General including the National Safety and National Aviation Security Programmes and projects for the Authority on an annual basis or as and when it is required;

(i) approve the internal rules of the Authority;

(j) consider and approve business plans and annual work programmes of the Authority;

(k) examine and approve the annual budget of the Authority;

(l) appoint the Director General and other staff of the Authority;

(m) consider annual activities and financial reports and any other reports as may be required by the Authority or Minister;

(n) establish committees as it may consider necessary;

(o) approve the annual report prepared by the Director General for submission to the Minister; and

(p) do all such other things as are necessary for the implementation of this Act.

Composition of
the Authority

8.—(1) The Authority shall consist of—

(a) the following six persons appointed by the President, subject to confirmation by the Parliamentary Committee on Public Appointments—

(i) two persons from the aviation industry in Malawi;

(ii) one person of high moral character and integrity in the conduct of public affairs;

(iii) one legal practitioner, nominated by the Malawi Law Society;

(iv) an economist with qualifications in aviation related economics nominated by a public body of economists; and

(v) one person nominated by the Malawi Tourism Council;

(b) the following *ex-officio* members—

(i) the Secretary responsible for Transport or his designated representative;

(ii) the Secretary to the Treasury or his designated representative;

(iii) the Secretary responsible for Internal Security or his designated representative;

(iv) the Secretary responsible for Defence or his designated representative; and

(v) the Secretary responsible for Meteorological Authority or his designated representative.

(2) The President shall appoint a Chairperson from among the members of the Authority in subsection 1(a).

(3) The members of the Authority shall, at their first meeting, elect among their number, a vice chairperson.

(4) The Minister shall cause to be published in the *Gazette*, names of the members of the Authority as first constituted and any other subsequent members.

9.—(1) A person to be appointed as a member of the Authority shall— Appointment of members

(a) be a citizen of Malawi; and

(b) possess qualifications, expertise and experience in civil aviation matters or related fields.

(2) A person to be appointed as chairperson, shall, in addition to the qualifications in subsection (1), have knowledge and experience in matters relating to administration or possess other qualifications and experience of proven ability in other fields as the Minister may consider necessary.

10. A person shall be disqualified from being appointed as member of the Authority, if the person— Disqualification from membership

(a) has, at any time, been convicted in Malawi or elsewhere, of theft, fraud, forgery or perjury, corruption or an act of terrorism;

(b) is a Minister or Deputy Minister, Member of Parliament or Councillor of a Local Government authority;

(c) holds a position in a political party; or

(d) has any interest, whether monetary or otherwise, in any air transport-related enterprise, which conflicts or may conflict with his duties as a member of the Authority.

Tenure of
office

11. A member of the Authority, other than an *ex-officio* member, shall hold office for a period of three years and be eligible for appointment for a further term.

Vacation from
office

12.—(1) The office a member of the Authority, other than an *ex-officio* member, shall become vacant if a member—

- (a) resigns from office;
- (b) dies; or
- (c) is removed from office.

(2) A member may be removed from office, if the member—

- (a) is incapacitated by physical or mental illness;
- (b) is declared bankrupt;
- (c) becomes a Member of Parliament, a Councillor of a Local Government authority or member of a political party;
- (d) acquires any interest, whether monetary or otherwise, in any air transport-related enterprise;
- (e) has, without good and justifiable reason, been absent without the permission of the chairperson from three consecutive meetings of the Authority; or
- (f) would have otherwise have been disqualified from being appointed as a member of the Authority.

(3) A member of the Authority shall not be removed from office before he has been given an opportunity to be heard.

(4) A member may resign from office by giving a written notice to the Minister through the chairperson.

Filling of
vacancies

13. Where a vacancy occurs in the membership of the Authority, the Minister shall, within three months, appoint additional persons as may be necessary to ensure the composition of the Authority remains in accordance with section 8.

Meetings

14.—(1) The Authority shall hold meetings at least once every three months at a place and time to be determined by the chairperson.

(2) The Chairperson—

(a) may convene a meeting at any time by giving two weeks written notice to the members of the Authority; and

(b) shall convene such a meeting if he receives a written request signed by at least two members of the Authority, within twenty one days of the receipt of the notice.

(3) The Chairperson or in his absence, the vice chairperson, shall preside at meetings of the Authority:

Provided that where both the chairperson and vice chairperson are absent, the members present at a meeting shall choose one among their number to preside at the meeting.

(4) The quorum for any meeting of the Authority shall be five members.

(5) Decisions on matters before the Authority shall be made by a simple majority vote of the members of the Authority.

(6) In the event of an equality of votes, the chairperson shall have and exercise a casting vote.

(7) The Authority shall, for the purpose of dealing with any matter before it, adopt its own internal rules and procedures.

15.—(1) The Authority may, for the purpose of performing its functions under this Act, establish committees of the Authority, and delegate to the committees any of its functions as it considers necessary. Committees

(2) The chairperson of every committee shall be a person who is a member of the Authority.

(3) The Chairperson shall not be a member of a committee.

16. The Authority or any of its committees may co-opt, by invitation, any person with specific knowledge, information or expertise to attend any of its meetings and address it on a matter, but the person so invited shall not be eligible to vote at the meeting on any decision of the Authority. Co-opted persons

17.—(1) A member of the Authority or committee shall be paid allowances or other benefits as the Minister may prescribe to cover expenses incurred for attendance of meetings. Allowances of members

(2) The allowances and other benefits referred to in subsection (1) shall be paid from the funds of the Authority.

18.— (1) The Authority shall appoint a Director General who shall be the chief executive officer of the Authority and be responsible for the day to day operations of the Authority, including the direction of and supervision over the work and staff of the Authority. Director General

(2) The Director General shall be a person with sufficient knowledge, experience and qualifications in civil aviation or any of the following areas—

(a) any field related to aviation at degree level;

(b) at least ten years' management or technical experience in aviation or a field related to aviation; and

(c) finance or law.

(3) A person shall not qualify to be appointed as a Director General where that person—

(a) has been adjudged or otherwise declared insolvent or bankrupt and has not been discharged;

(b) has made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

(c) has been convicted of an offence and sentenced to a term of imprisonment without an option of a fine; or

(d) is a Member of Parliament, Local Government authority or holds a position in a political party.

(4) A person to be appointed as Director General shall not have a monetary interest in or own any stocks or shares in any aeronautical enterprise nor shall he engage in any other business, vocation or employment directly or indirectly which is likely to create a conflict of interest with the position of Director General.

Tenure of
office

19.—(1) The Director General shall be appointed for a term of five years, and may be re-appointed for one further term.

(2) The Director General may, at any time, resign by giving three months' written notice to the chairperson of the Authority.

Removal from
office

20.—(1) The Director General may be removed from office on grounds that he—

(a) is an undischarged bankrupt;

(b) is incompetent;

(c) has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(d) is incapacitated by physical or mental illness that renders him incapable of carrying out the functions of his office; and

(e) neglects his lawful duties; or

(f) is involved in a corrupt transaction or commits any other act of misconduct or malfeasance.

(2) The Director General shall not be removed from office unless, where applicable, he has been given an opportunity to be heard.

Duties of the
Director
General

21.—(1) The Director General shall be in charge of the day to day administration of the Authority and shall, subject to the direction of the Authority, have functions and powers to—

(a) inspect, board, or detain an aircraft if serious safety and security concerns are identified;

(b) recall an aircraft in flight and cause a search of the aircraft during routine inspections or where he has reasonable grounds to suspect that the aircraft is being used in contravention of this Act or that it contains any matter which may be used as evidence in respect of an offence under this Act;

(c) facilitate the development of economic policies, strategies and regulation with respect to air transport, in coordination with other Government entities and submit them to the Authority for approval;

(d) prepare and submit programmes and detailed annual budgets to the Authority for approval and ensure their implementation;

(e) follow-up, and study operational activities relating to civil aviation and submit reports and proposals, for the approval of the Authority;

(f) within the limits of funds available and with the approval of the Authority,—

(i) acquire, establish and improve air navigation facilities and services wherever necessary; and

(ii) operate and maintain such air navigation facilities and services;

(g) conduct hearings and investigations necessary for the implementation of this Act;

(h) collect information and statistics relating to civil aviation;

(i) prepare and submit to the Authority, the proposed fees and charges to be collected by the Authority and implement the collection upon approval of the Minister through publication in the appropriate aeronautical information publication;

(j) co-ordinate policy and legal issues relating to civil aviation; and

(k) perform such other functions as may be assigned to him by the Authority.

22. The Authority may appoint other employees, subordinate to the Director General, as the Authority considers necessary, for the discharge of its functions under this Act:

Appointment
of other staff
of Authority

Provided that the Authority may delegate to the Director General, power to appoint other staff below the rank of director.

23.—(1) The Director General may, in writing, either generally or particularly, delegate any of his duties to—

Delegation of
duties of
Director
General

(a) authorized personnel of the Authority as he may consider appropriate in a particular circumstance; or

(b) any qualified private person, subject to regulation, supervision and review as may be prescribed:

Provided that the person who acts on behalf of the Director General in his absence shall be subject to prior approval by the Authority and work on prescribed conditions.

(2) Subject to any general or special direction given or condition attached by the Director General, a person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any such power by the Director General.

(4) Where functions or powers are delegated to a private person, the Director General shall ensure that functions are not delegated in a way that air operators, aerial work or general aviation operators and maintenance facilities providers, in effect, regulate themselves or have any conflict of interest in the functions they perform.

(5) A delegation under this section shall, until revoked, continue in force according to its tenure, notwithstanding the fact that the person by whom it was made may cease to hold office and shall continue to have effect as if made by the person for the time being holding that office.

(6) A person purporting to act under any delegation under this section shall produce evidence of his authority to do so.

Protection from
liability

24.—(1) An action or thing done by a member of the Authority or by any officer, employee or agent of the Authority shall not, if the action or thing is done in good faith in executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their direction personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the failure in whole or in part, to exercise any power conferred on the Authority by this Act or any other written law.

PART III—FINANCIAL PROVISIONS

Funds of
Authority

25 The funds of the Authority shall consist of—

(a) monies as may be appropriated by Parliament to the Authority;

(b) monies that may accrue to the Authority in the discharge of its functions;

(c) fees, rents, dues, levies and charges by the Authority for services rendered or facilities provided or proceeds obtained from grants and loans that may accrue to the Authority; and

(e) penalties imposed by the Authority.

26.—(1) The Authority shall prepare a five-year business plan which shall be reviewed annually. Business plan

(2) The business plan shall contain financial targets and performance indicators for the Authority.

(3) When preparing the business plan, the Authority shall consider—

(a) standards of aviation safety;

(b) the objectives and policies of the Government;

(c) funds of the Authority;

(d) assets and liabilities of the Authority; and

(e) any other consideration the Authority deems appropriate.

(4) The business plan and the revisions thereof shall be prepared by the Authority at least six months prior to the commencement of the Authority's financial year.

27. The financial year of the Authority shall be the financial year of the Government. Financial year

28.—(1) The Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for each financial year. Annual estimates and budget

(2) The annual estimates shall provide for—

(a) the payment of employment related expenditures in respect of the staff and the members of the Authority;

(b) the proper maintenance of movable and immovable property of the Authority;

(c) the proper conduct of and logistics related to inspections, surveillance, certifications and licensing activities;

(d) the creation of reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of other matters pertaining to the Authority as the Authority may decide;

(e) the provisions of air navigation services;

(f) the provision of training for technical and non-technical staff of the Authority.

(3) The Director General shall prepare the budget of the Authority for each financial year for approval by the Authority.

(4) The budget shall be submitted to the Minister and Secretary to the Treasury, for approval three months before the commencement of the financial year.

(5) An expenditure shall not be incurred for purposes of the Authority except in accordance with the annual budget approved under subsection (3) or in pursuance of an authorization of the Minister.

Borrowing
powers

29.—(1) The Authority shall have power to borrow sums of money as it may require for the performance of its functions under this Act.

(2) The Authority may borrow funds on such terms and conditions as may be approved by the Minister responsible for finance.

Bank accounts

30.—(1) The funds received by the Authority shall be deposited into bank accounts, which shall be opened for that purpose in the name of the Authority and shall be expended in accordance with the approved annual plan and work programme and budget of the Authority.

(2) The accounts may be in both domestic and foreign currencies in banks approved by the Authority.

(3) Any surplus money at the end of each fiscal year shall be transferred to a special reserve fund to be established and administered by the Authority.

Records, audits
and accounts of
Authority

Cap 37:02

31.—(1) The Authority shall cause to be kept proper accounts and other records relating thereto in respect of its funds and shall, in every respect, comply with the provisions of the Public Finance Management Act.

(2) The Authority shall cause to be prepared within four months of the end of each financial year, its annual audited accounts for the approval of the Authority.

(3) The accounts of the Authority shall be audited by the Auditor General or by an auditor appointed by the Authority with the written approval of the Auditor General in accordance with the Public Audit Act.

Cap 37:01

(4) When the accounts have been audited, the Authority shall submit the reports made by the auditors on the accounts to the Minister.

(5) The Minister shall lay the financial report of the Authority before Parliament.

PART IV—USE OF AIR SPACE, SAFETY AND SECURITY IN CIVIL
AVIATION

32.—(1) The Authority shall ensure that—

Safety in civil
aviation

(a) there is compliance with minimum standards governing safety practices and procedures in civil aviation;

(b) personnel and organizations performing an aviation activity meet the established requirements before they are allowed to exercise the privileges of a licence, certificate, authorization or approval to conduct the relevant aviation activity;

(c) processes are implemented to proactively ensure that an aviation licence, certificate, authorization or approval holders continue to meet the established requirements and function at the level of competency and safety required to undertake an aviation-related activity for which they have been licenced, authorized or approved; and

(d) processes and procedures are implemented to resolve identified deficiencies impacting aviation safety.

33.—(1) The Authority shall be responsible for the implementation of policies with respect to the use of the airspace, air navigation facilities and services.

Use of air
space, air
navigation
facilities and
services
management

(2) The Authority may assign, by rules, orders, directives, circulars or notices for the use of the airspace, air navigation facilities and services under such terms, conditions and limitations as the Authority may deem necessary to ensure the safety of aircraft and the efficient utilization of such airspace.

(3) The Authority shall have the power to prescribe minimum safety standards for the operation of air navigation facilities and services for—

(a) prevention of interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft; and

(b) securing the safety, security and efficiency of air navigation and the safety of aircraft and of persons and property carried in aircraft; and

(c) for preventing aircraft from endangering other persons and property.

Air traffic rules 34. The Authority shall, in the interests of civil aviation safety, make air traffic rules for—

- (a) governing the flight of aircraft;
- (b) air navigation, protection and identification of aircraft;
- (c) protection of persons and property on the ground; and
- (d) efficient utilization of airspace.

Dissemination of meteorological data 35. The Authority shall, in collaboration with the authority responsible for meteorological services, disseminate meteorological information and data as may be necessary to ensure the safety of civil aviation operations to, from or within Malawi, and satisfy the needs of international air navigation.

Safety and security of persons 36.—(1) The Authority, in consultation with relevant security institutions, shall make rules on—

- (a) implementation of aviation security provisions stipulated in the national programmes;
- (b) procedures, methods, practices or facilities employed or operated by the Authority necessary for the protection of persons and property within the premises of the airport or aboard aircraft against acts of criminal violence and aircraft piracy; and
- (c) procedures for the inspection, detention, and search of persons and property within the premises of an airport or in an aircraft to ensure safety of persons.

(2) The rules made pursuant to subsection (1) shall be in compliance with international standards.

Transport of dangerous goods by air 37.—(1) A person shall not—

- (a) deliver or transport, or cause to be delivered or transported for commercial transport; or
- (b) offer or accept shipment for civil air transport, whether originating or arriving in international flights to or from Malawi, or for flights within Malawi, cargo, baggage or other property to an air operator for commercial air transport in contravention of the provisions of Annex 18 to the Convention on International Civil Aviation.

(2) The Authority shall monitor and enforce compliance with the provisions of Annex 18 to the Convention on International Civil Aviation and the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air, and may submit variations to the

Technical Instructions on behalf of Malawi, where necessary.

38.—(1) The Authority shall have the power to conduct inspections of aircraft used, and aircraft operations conducted, by any air operator of civil aircraft, approved training organizations, approved maintenance organizations and authorized aviation service providers as may be necessary to determine compliance with safety, quality and security standards.

Inspection of
aircraft and
aerodromes

(2) The Authority may notify air operators, approved training organizations, approved maintenance organizations and authorized aviation service providers of the intended inspection.

(3) An air operator of a civil aircraft, approved training organization, approved maintenance organization and authorized service providers shall not conduct operations in areas of non-compliance, established by the Authority during inspections, unless the Authority is satisfied that corrective action has been effected to achieve compliance in such areas.

(4) The Authority shall have the power and duty to conduct inspection of any aerodrome used for civil aviation operations, premises of any regulated agent or premises of the holder of an air service licence, certificate, authorization or other approval document issued by the Authority to ensure compliance with this Act.

39. The Authority shall, for purposes of carrying out inspections, have unrestricted access to—

Right of
access for
inspection

(a) civil aircraft registered in Malawi, without restrictions from an air operator, wherever the aircraft are operated for the purpose of ensuring that the aircraft is airworthy and is being operated and maintained in accordance with this Act;

(b) premises and documents of air operators, aircraft maintenance organizations and aviation training organizations, at any place and at any time, subject to the laws of the place, in order to determine that the operations are conducted in accordance with this Act; and

(c) any foreign registered aircraft whenever it is operated in Malawi for the purpose of ensuring that the aircraft is airworthy and is being operated and maintained in accordance with standards and recommended practices of ICAO.

40.—(1) The Authority shall constitute a Safety and Security Standards Inspectorate as a department of the Authority which shall be responsible for oversight over—

Safety and
Security
Standards
Inspectorate

- (a) airworthiness of aircraft;
- (b) flight operations;
- (c) licensing of personnel;
- (d) aviation medicine;
- (e) security;
- (f) aerodrome and ground aids;
- (g) air navigation services;
- (h) airports; and
- (g) air traffic services.

(2) In carrying out its functions, the Inspectorate may conduct—

(a) surveys and inspections of security measures relating to passengers and their cabin baggage, checked baggage, cargo and other goods, access controls and airport design; and

(b) exercises to check the professional efficiency of the personnel responsible for implementing civil aviation security procedures and test the adequacy of security measures at any airport in Malawi.

(3) The Inspectorate shall ensure that any building or structure in the vicinity of an airport has markings or lighting to serve as a warning of the presence of that building or structure in order to avoid danger to aircraft flying in the vicinity of the airport in darkness or conditions of poor visibility.

Power to obtain
information,
documents and
evidence

41.—(1) Where the Authority has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, the Authority may require the person to—

(a) furnish the information in writing signed by the person served and in the case of a body corporate, signed by a competent officer of the body corporate;

(b) produce the document to the Authority; and

(c) appear before the Authority to give evidence.

(2) A summon under this section shall specify the required time and manner of compliance.

(3) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty:

Provided that the information, documents or evidence shall not be put to inappropriate use.

(4) Where the Authority has reason to believe that a person is in possession or control of any information or document which may assist in the performance of its functions and that the person has refused or failed to supply the information or document, the Authority may apply to court for issuance of a warrant authorizing a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

42. The Authority shall not put any aviation safety and security information obtained, gathered voluntarily or otherwise given to the Authority under this Act to any inappropriate use:

Use of
aviation
information

Provided that the Authority shall not be precluded from sharing aviation safety and security information with other civil aviation authorities in other Contracting States subject to appropriate safeguards.

PART V—CERTIFICATES, LICENCES AND AUTHORIZATIONS

43.—(1) A person shall not—

(a) operate a civil aircraft in the territory of Malawi unless the aircraft is registered in Malawi or under the laws of another State; or

Issuance of
certificate,
licence and
authorization

(b) carry out activities in civil aviation which requires the person to have a certificate, licence or other authorization unless the person has been issued with a certificate, licence or other authorization under this Act.

(2) A person shall not operate an aircraft in the territory of Malawi for any other purpose save for military, police, customs or immigration operations, except under the authority of, and in accordance with, a certificate, licence or other authorization issued by the Authority.

(3) A person shall apply for a certificate, licence or authorization in the prescribed manner to the Authority.

(4) An application for a certificate, licence or authorization shall have the following information and shall be accompanied by a prescribed fee—

(a) minimum safety and security standards and all other relevant requirements for the issuance, renewal, variation, suspension and revocation of such certificates, licences or any other authorizations; and

(b) conditions for the renewal, variation, suspension, revocation or any other limitation of the certificate, licence or any other authorization.

(5) The Authority may, upon satisfaction with prescribed requirements, validate a certificate, licence or any other authorization issued to any person by the authority of another State.

(6) The Authority shall, upon issuance or renewal of a licence or any other authorization to the applicant, give notice of the issuance or renewal in an appropriate publication.

(7) The Authority may refuse to issue or renew a certificate, licence, or any other authorization, if the Authority is satisfied that any of the requirements for the issuance or renewal is not complied with or on the basis of public interest.

(8) The Authority shall have the power to issue, renew, vary, suspend and revoke a certificate, licence or any other authorizations to any person, organization, aircraft, airport, facility or a service provider on account of safety or security in civil aviation.

Variation,
suspension
and revocation
of certificates
or licences

44.—(1) The Authority may, from time to time, for any reason, re-inspect aircraft used, and aircraft operations conducted by any air operator of civil aircraft, approved training organizations and approved maintenance organizations.

(2) The Authority may, if as a result of any re-inspection or any other investigation, determine that safety, security or public interest in civil aviation requires variation or suspension in whole or in part, or revocation of, any certificate or licence issued or renewed under this Act, vary or suspend, in whole or in part, or revoke, any certificate or licence.

(3) The Authority shall, prior to varying or suspending, in whole or in part, or refusing to renew, or revoking any certificate or licence—

(a) advise the holder thereof as to non-compliance with respect to safety, security or public interest in civil aviation which warrants the variation or suspension as the case may be; and

(b) provide the holder of the certificate or licence an opportunity to provide reasons as to why the certificate or licence should not be varied or suspended.

(4) Any person whose certificate or licence is varied or suspended—

(a) shall take all necessary steps to comply with the decision made by the Authority under this section; or

(b) may, within seven days after being notified of the decision and upon payment of prescribed fees, lodge an appeal to the Tribunal.

(5) The Tribunal may order a stay of the decision of the Authority in whole or in part pending the hearing of an appeal made pursuant to this section:

Provided that where the Authority shows that an emergency exists pertaining to safety or security in civil aviation which requires immediate variation or suspension, in whole or in part, or refusal to renew, or revocation of the certificate or licence, the Tribunal may order that the Authority's decision remains effective pending final decision on the appeal.

PART VI—AERODROMES

45. The Authority may, out of moneys appropriated by Parliament, for the purpose of establishing regulatory safety oversight, finance—

Powers
related to
aerodromes

(a) provision and maintenance of aerodromes, roads and approaches, and apparatus and equipment thereof, including radio and electronic apparatus and equipment;

(b) construction and maintenance of drainage works for the control and disposal of water at aerodromes; and

(c) acquisition of land and interests in and rights over land for any purpose contemplated in this section.

46.—(1) The Authority may, out of its funds, acquire land and interests in and rights to, and over land—

Acquisition
of land

(a) adjoining or adjacent to any aerodrome in respect of which a licence has been or is to be issued for the purpose of ensuring implementation of this Act;

for the purpose of the erection and maintenance of warning lights and other aids to safety in air navigation, including pipe lines or power lines or the like, whether underground or overhead, required in connection with the lights or other aids, which are deemed necessary in connection with any aerodrome in respect of which a licence has been issued.

(2) Where land is required by the Authority for its use for the purpose of ensuring that proper effect may be given to this Act or any regulation made under this Act, the Authority may—

(a) if the land is not public land, acquire the land through negotiation and agreement with the registered owner thereof; or

(b) if the land is public land or if the Authority is unable to acquire it by agreement in accordance with subsection (2)(a),

notify the Minister and the Minister responsible for lands that the land specified in the notice is required for the purposes of the Authority.

Access to land 47.—(1) A person, authorized in writing by the Authority, may enter any land or structure, after notice to the occupier of that land or structure for the purpose of carrying out any such examination or survey as may be necessary to determine the suitability of the land or structure for any purposes under this Act.

(2) Any person who hinders or obstructs any person in the exercise of his powers or the performance of his duties under subsection (1) commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and imprisonment for five years.

PART VII—AIR ACCIDENT AND INCIDENT INVESTIGATION

Accident investigation procedures 48.—(1) The Minister shall have the power to cause investigations of air accidents or incidents—

(a) involving civil aircraft registered by the Authority and occurring within the territory of Malawi or in any territory of a foreign State, for the purpose of determining the facts, conditions and circumstances relating to each accident or incident and the probable cause thereof; or

(b) occurring in Malawi involving civil foreign registered aircraft.

(2) The Minister shall appoint an Air Accidents Investigations Board in the prescribed manner.

(3) Where the whole or any part of the investigation is carried out in Malawi, the members of the Board and the investigator-in-charge shall have—

(a) free and unhindered access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;

(b) powers to secure and preserve the scene of the accident; and

(c) free access to any relevant information or records held by an owner, operator, operator's maintenance contractors and sub-contractors, the hirer, designer or manufacturer of an aircraft and the authorities for civil aviation or airport operation or air traffic services.

(4) Upon completion of the accident or incident investigation, the person in charge of the investigation shall submit a final report of the findings to the Minister for publication in the *Gazette*.

(5) The person in charge of the investigation may, at any stage of the investigation,—

(a) recommend to appropriate authorities, including those in other States, any preventive action that he considers necessary to be taken promptly to enhance aviation safety; and

(b) communicate to the relevant persons or authorities in Malawi, the recommendations referred to above or those received from another contracting State.

(6) Any person or authority in Malawi to whom a recommendation has been communicated under subsection (5), shall implement the recommendation or provide reasons for not implementing the recommendation.

(7) Information gathered in the course of an investigation of an accident or incident and through the incident reporting system shall not be used for other purposes other than for purposes of investigations.

(8) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty:

Provided that the information, documents or evidence shall not be admissible against that person other than for proceedings under this Act.

(9) A person who, without lawful excuse, refuses or fails to comply with a summons under this section commits an offence and shall, on conviction, be liable to a fine of K1,000,000 or to imprisonment for one year.

(10) Where the investigator-in-charge has reason to believe that a person is in possession or control of any information or document which may assist in the performance of an investigation and that person has refused or failed to supply such information or document, the investigator-in-charge may apply to the Tribunal for issuance of a warrant authorizing a police officer to enter into any premises believed to contain or into which the document is kept or hidden and conduct search and make copies or take extracts of documents therein.

(11) Any person, who knowingly gives false or misleading information or evidence in purported compliance with a summons under this section, commits an offence and shall, on conviction, be liable to a fine of K2,000,000 or to imprisonment for two years.

(12) The investigator-in-charge may—

(a) in liaison, with the Minister, invite the State of Registry, the State of the Operator, the State of Design and the State of Manufacture as appropriate to participate in the investigation; or

(b) delegate the whole or any part of the conducting of such investigation to another State or a regional accident investigation organization by mutual arrangement and consent.

(13) For purposes of this section,—

“State of Design” means the State having jurisdiction over the organization responsible for the type design of an aircraft;

“State of Manufacture” means the State having jurisdiction over the organization responsible for the final assembly of the aircraft;

“State of Operator” means the State in which the operator’s principal place of business is located or if there is no such place of business, the operator’s permanent residence; and

“State of Registry” means the State on whose register the aircraft is entered.

Investigation
and
enforcement
proceedings

49.—(1) A complaint may be—

(a) filed with the Authority by any person, in writing; or

(b) initiated by the Authority on any matter, with respect to an action committed or omitted by any person in contravention of any provision of this Act or its regulations, for investigation and appropriate action.

(2) The Authority may, on receipt of a complaint made pursuant to subsection (1), carry out an investigation to ascertain the allegation.

(3) The Authority shall, after conducting an investigation which establishes that there has been violation of the provisions of this Act, require a person in default to take corrective action.

(4) If the Authority finds, after having required the person in default to take corrective action that the person has failed to take the corrective action, the Authority shall refer the matter to the Tribunal.

PART VIII—THE CIVIL AVIATION TRIBUNAL

Establishment
of Civil
Aviation
Tribunal

50. There is hereby established a tribunal to be known as the Civil Aviation Tribunal (in this Act, referred to as “the Tribunal”) which shall operate on an *ad hoc* basis.

Jurisdiction of
the tribunal

51. The Tribunal shall have jurisdiction to hear and determine complaints or appeals arising from—

(a) any refusal to grant a certificate, licence or any other authorization by the Authority or transfer of a licence under this Act;

(b) the imposition of any condition, limitation or restriction on a licence under this Act or regulations made thereunder;

(c) any revocation, suspension or variation of a licence under this Act or regulations made thereunder;

(d) any amount of money which is required to be paid as a fee or charge under this Act;

(e) the imposition of any order or direction by the Authority under this Act;

(f) consumer protection compliance and enforcement activities related to areas including unfair and deceptive practices and unfair competition by air carriers and travel agents, deceptive airline advertising including fare, on-time performance, scheduling, code sharing, and violations of rules concerning denied boarding compensation, ticket refunds, baggage liability requirements, flight delays and charter flights; and

(g) any other matter that may be referred to the Tribunal by the Authority.

52.—(1) On hearing of a complaint or an appeal, the Tribunal shall have powers to—

Powers of the
Tribunal

(a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or

(b) summon expert evidence as may be necessary.

53.—(1) The Tribunal shall consist of the following persons appointed by the Minister—

Composition
of the
Tribunal

(a) a chairperson nominated by the Judicial service Commission, who shall be a retired Judge;

(b) a legal practitioner licenced or eligible to practice the profession of law in Malawi with sufficient knowledge and experience in aviation law nominated by the Malawi Law Society; and

(c) one person to be recruited from the aviation industry who shall have sufficient knowledge and experience in aviation matters.

(2) The Minister shall cause to be published the names, as first constituted and any changes thereafter, of the members of the Tribunal by a notice published in the *Gazette*.

Tenure and
vacation of
office

54.—(1) A member of the Tribunal shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(2) The office of a member of the Tribunal shall become vacant, if a member—

(a) accepts any office the holding of which, if he were not a member of the Tribunal, would give rise to the existence of a conflict of interest with his membership to the Tribunal;

(b) fails to discharge the functions of his office due to infirmity of body or mind or from any other lawful cause or for misconduct;

(c) resigns from office;

(d) dies;

(e) is adjudged bankrupt; or

(f) is convicted of an offence and sentenced.

Allowances

55. Members of the Tribunal shall be paid allowances approved by the Minister, in consultation with the Minister responsible for finance.

Proceedings
before the
Tribunal

56.—(1) The Tribunal shall regulate its proceedings.

(2) The Tribunal shall, within thirty days of the lodging of an appeal, inquire into the matter and make an award, give directions or make an order that the Tribunal considers appropriate.

(3) Every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned as the case may be.

(4) The Tribunal shall sit at times and in places as it considers appropriate.

(5) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good and justifiable reasons, otherwise directs.

(6) A person who is party to the proceedings before the Tribunal may appear in person or have legal representation.

Awards by the
Tribunal

57.—(1) The Tribunal may—

(a) award damages;

(b) confirm, set aside or vary an order or decision in question;
or

(c) make an order for the maintenance of the *status quo* of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have power to award the costs of any proceedings before it and direct that the costs be taxed in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.

(3) Where the Tribunal awards costs in a matter, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.

(4) Every certificate issued under subsection (3) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

(5) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto.

58. The chairperson of the Tribunal, in consultation with the other members of the Tribunal, may appoint, in writing, any person with special skills or knowledge on aviation matters which are the subject matter of any proceedings or inquiry before the Tribunal, to act as an assessor in an advisory capacity in any case where it appears to the Tribunal that the special skills or knowledge are required for proper determination of the matter.

Appointment
of assessors

59.—(1) Any person who—

Contempt

(a) fails to attend the Tribunal after being summoned by the Tribunal to do so;

(b) refuses to take oath or affirmation before the Tribunal;

(c) being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;

(d) knowingly gives false evidence or information which he knows to be misleading before the Tribunal; or

(e) at any sitting of the Tribunal—

(i) willfully insults any member or officer of the Tribunal; or

(ii) willfully interrupts the proceedings or commits any contempt of the Tribunal;

(e) fails or neglects to comply with a decision, order or direction or notice confirmed by the Tribunal,

commits contempt of court.

Disclosure of
interest

60. A member of the Tribunal who has a direct interest in any matter that is the subject of proceedings before the Tribunal shall disclose in writing the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

Appeals

61.—(1) Any person aggrieved by a decision or order of the Tribunal may, within sixty days of the decision or order, appeal against the decision or order to the High Court.

(2) A decision or order of the Tribunal shall be enforced forthwith except where an appeal has been lodged or commenced:

Provided that the lodging or commencing of an appeal shall not on its own, operate as a stay of proceedings.

(3) Upon the hearing of an appeal under this section, the High Court may—

(a) confirm, set aside or vary the decision or order in question;

(b) remit the proceedings to the Tribunal with specific instructions for further consideration, report, proceedings or evidence as the High Court may consider appropriate in the circumstances;

(c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

(d) make any other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

Reference of
matters to the
Tribunal

62.—(1) When any matter to be determined by the Authority under this Act involves a point of law, the Authority may, after giving notice to the concerned parties, refer the matter to the Tribunal for direction.

(2) Where any matter has been referred to the Tribunal under subsection (1), the Authority and the parties to the proceedings may appear in person or be represented by a legal practitioner as the case may be.

PART IX—OFFENCES AND PENALTIES

Place of
commission of
offence

63.—(1) An offence under this Act committed on board an aircraft registered in Malawi shall, for the purposes of jurisdiction, be deemed to have been committed in Malawi, regardless of where the act occurred.

(2) Where in a prosecution for an offence it is alleged that the offence took place within the demarcated boundaries of an aerodrome, it shall be presumed, unless the contrary is proved, that the act or omission in question took place within the defined area constituting the aerodrome.

64.—(1) A person who operates an aircraft or offers civil aviation services in the territory of Malawi without a certificate, licence or authorization, commits an offence.

Operating
aircraft
without
certificate,
licence or
authorization

(2) A person applying for issuance or renewal of a certificate, licence or other authorization who intentionally furnishes or attempts to furnish to the Authority any information which is false commits an offence.

(3) A person who forges a counterfeit or attempts to forge a counterfeit, alter, or falsely make a certificate, licence or any other authorization issued under this Act, or knowingly uses or attempts to use any fraudulent certificate, licence or any other authorization commits an offence.

(4) A person who contravenes the provisions of this section shall on conviction, be liable to a fine of K7,000,000 or to imprisonment for seven years.

65. A person who displays or causes to be displayed on any aircraft, any marks that are false or misleading as to the nationality or registration of the aircraft commits an offence and, shall on conviction be liable to a fine of K10,000,000 or to imprisonment for ten years.

False or
misleading
aircraft
markings

66. A person who intentionally and willfully—

Interference
with air
navigation

(a) interferes or attempts to interfere with air navigation within the territory of Malawi;

(b) exhibits or attempts to exhibit, within the territory of Malawi—

(i) any light, signal, or communication at a place or in a manner that is likely to be mistaken for a true light or signal established pursuant to this Act;

(ii) a false light or signal in connection with an airport or other air navigation facility; or

(iii) a light, signal, or communication referred to under paragraphs (i) and (ii) after due warning by the Authority and continues to maintain the misleading light, signal or communication;

- (c) removes, extinguishes, or interferes or attempts to remove, extinguish or interfere with the operation of any true light, signal or communication,
commits an offence and shall on conviction be liable to a fine of K10,000,000 or to a term of imprisonment of ten years.
- Interference with crew members** 67. A person who intentionally and willfully, while on board an aircraft—
(a) interferes or attempts to interfere with the performance of the duties of a crew member; or
(b) lessens or attempts to lessen the ability of the crew member to perform his duties,
commits an offence and, upon conviction, shall be liable to a fine of K5,000,000 or to a term of imprisonment of five years.
- Interference with aircraft operations** 68. A person who intentionally and willfully interferes or attempts to interfere with operation of an aircraft commits an offence and shall on conviction, be liable to a fine of K10,000,000 or to imprisonment for ten years.
- Removal of parts of aircraft involved in accident** 69. Any person who intentionally or willfully, and without authority removes, conceals or withholds, or attempts to remove, conceal or withhold any part of a civil aircraft involved in an accident, or any property which was on board the aircraft at the time of the accident, commits an offence and shall on conviction be liable to a fine of K5,000,000 or to imprisonment for five years.
- Aircraft piracy** 70. A person who commits or attempts to commit—
(a) aircraft piracy, while the aircraft is in flight or not in flight;
(b) unlawful seizure of aircraft;
(c) an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft;
(d) an act of violence using any device, substance or weapon against a person at an airport serving international civil aviation, which causes or is likely to cause serious injury or death, if the act endangers or is likely to endanger safety at that airport;
(e) destruction of, or serious damage to the facilities of an airport serving international civil aviation or aircraft not in service located thereon, or disruption of the services of the airport, if the act endangers or is likely to endanger safety at that airport;
(f) placing or causing to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to

destroy that aircraft, or to cause damage to it that renders it incapable of flight or that is likely to endanger its safety in flight;

(g) destruction or damage to air navigation facilities or interference with their operation, if the act is likely to endanger the safety of aircraft in flight; and

(i) communication of information which a person knows to be false, thereby endangering the safety of an aircraft in flight, commits an offence and shall on conviction be liable to life imprisonment.

71. A person who intentionally and willfully—

Transportation of dangerous goods

(a) delivers or transports, attempts to deliver or transport, or causes to be delivered or transported, cargo, baggage, or other property to an air operator for commercial air transport;

(b) offers or accepts, or attempts to offer or accept shipment of cargo, baggage or other property for civil air transport, whether originating or arriving in international flights to or from Malawi, or for flights within Malawi, in contravention of the provisions of Annex 18 of the Chicago Convention commits an offence and shall, on conviction, be liable to a fine of K5,000,000 or to imprisonment for five years.

72. A person who refuses, for purposes of inspection or investigation under this Act, to —

Refusal to testify or produce documents

(a) attend and testify at an inquiry; or

(b) produce documents or materials,

commits an offence and shall, on conviction, be liable to a fine of K2,000,000 or to imprisonment for two years.

73. A person who intentionally and willfully imparts or conveys or causes to be imparted or conveyed, false information, knowing the information to be false, in contravention of the provisions of this Act, commits an offence and shall on conviction, be liable to a fine of K5,000,000 or to imprisonment for five years.

Giving of false information

74. Any air operator, approved training organization, approved maintenance organization, authorized aviation service providers or any other person or organization involved in civil aviation activities who or which intentionally and willfully fails or refuses to—

Reporting and record keeping violations

(a) submit a report to the Authority as required; or

(b) maintain accounts, records, files or any other document pertaining to the activities of its respective civil aviation activities,

commits an offence and shall be liable to a fine of K2,000,000 or to imprisonment for two years.

Failure to
comply with
interception
order

75. Any person who fails to comply with an interception order commits an offence and on conviction shall be liable to a fine of K10,000,000 or to imprisonment for ten years.

Dangerous
flying of
aircraft

76.—(1) Where an aircraft is flown in a manner as to cause unnecessary danger to any person or property on land or water, the pilot or the person in charge of the aircraft and the owner thereof, unless the owner proves that the aircraft was so flown without his knowledge or consent, commits an offence and shall on conviction be liable to a fine of K10,000,000 or to imprisonment for ten years.

(2) In addition to the penalty under subsection (1), the Authority may suspend the privileges of the person or withdraw or cancel the licence or impose any other sanction considered appropriate.

Failure to
comply with
summons or
giving of
misleading
information

77. A person who, without lawful excuse, refuses or fails to comply with a summons or voluntarily gives false or misleading information or evidence in any proceedings before the Authority, commits an offence and shall on conviction be liable to a fine of K5,000,000 and to imprisonment for five years.

General penalty

78.—(1) Any person who contravenes any provision of this Act for which no penalty has been provided, commits an offence and shall on conviction be liable to a fine of K7,000,000 or to imprisonment for seven years.

(2) Where an offence under this Act is committed by a body corporate or any other association of individuals, every person who at the time of the commission of the offence was a director, partner or any other similar officer of the body corporate, or acting or purporting to act in management of its affairs, commits an offence unless that person proves that—

(a) the act or omission constituting the offence took place without his or her knowledge, consent or connivance; or

(b) he exercised all diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

PART X—MISCELLANEOUS

Exemptions

79.—(1) The Authority may, on an application by an operator, a licensee or a certificate holder, or a holder of any authorization, as the case may be, grant exemptions on terms and conditions as may be deemed necessary, with respect to the application of this Act:

Provided that the exemptions granted shall not compromise aviation safety and security standards.

(2) Exemptions granted pursuant to subsection (1) shall be in writing and shall specify the time when the aviation service provider is expected by the Authority to fully comply with the requirements of this Act and the period within which the exemption shall cease to be effective:

Provided that the duration of the exemption shall not exceed six months.

(3) The Minister may, on recommendation of the Authority, by notice published in the *Gazette*, exempt any person, aircraft, aerodrome facility or aviation service provider from any provision of this Act or regulations made hereunder, where the Minister is satisfied that the exemption is in the public interest and is not likely to affect aviation safety and security.

80.—(1) An action shall not lie in respect of trespass or in respect of nuisance, by reason of the flight of an aircraft over any property at a height, which having regard to wind, weather and the circumstances of the case, is reasonable, or the ordinary course of the flight:

Trespass,
nuisance and
responsibility
for damages

Provided that the provisions of this Act and the Chicago Convention and of the Transit Agreement are duly complied with.

(2) Where material damage or loss is caused by an aircraft in flight, during take-off or landing, or by a person in the aircraft, to another person or property, damages may be recovered from the owner of the aircraft in respect of the damage or loss, without proof of negligence or intention or other cause of action as though the damage or loss is caused by his willful act, neglect or default.

(3) Subsection (2) shall not apply where the damage or loss is caused by or contributed to, by the negligence or willful act of the person by whom it is suffered.

(4) Where any damages recovered from or paid by the owner of an aircraft under this section arose from the damage or loss caused solely by the wrongful or negligent act or omission of any person other than the owner or a person in his employment, the owner shall be entitled to recover from the person the amount of the damage.

81.—(1) The Minister may make regulations relating to noise and vibration caused by aircraft.

Noise and
vibration

(2) An action shall not lie in respect of nuisance by reason only of the noise and vibration caused by aircraft on an aerodrome to which this subsection applies.

War and
emergencies

82.—(1) The Minister may, if it appears to him necessary in the interests of defence, public safety, public health or public order, by notice published in the *Gazette*,—

(a) declare Malawi or any portion of it to be a restricted area for the purposes of this section; and

(b) issue orders and instructions in respect of any restricted area or part—

(i) regulating, restricting or prohibiting the navigation of any aircraft;

(ii) regulating, restricting or prohibiting the use, erection, building, maintenance or establishment of any aerodrome, flying school or landing ground; or

(iii) appointing a person to carry out and effect any of the orders and instructions.

(2) The person appointed under subsection (1)(b)(iii) shall take steps which may be reasonably required to secure compliance with such orders and instructions.

(3) A claim for damages or compensation shall not lie against the Government or the person appointed in terms of subsection (1)(b)(iii) arising out of any steps taken in good faith by him under subsection (2).

(4) A person who fails to comply with an order or instruction made or issued under or pursuant to this section, or who obstructs a person charged with the duty of carrying out and giving effect to the order or instruction, commits an offence and shall, on conviction be liable to a fine of K7,000,000 or imprisonment for seven years.

Infringement of
patents

83.—(1) Where it is alleged by an interested person that a foreign aircraft, other than an aircraft to which section 84 applies, making a passage through or over Malawi, infringes in itself or in any part of it, any invention, design or model which is entitled to protection in Malawi, the High Court may, pending action to be brought, order the detention of the aircraft until the owner deposits or secures, in respect of the alleged infringement, a sum determined in accordance with the provisions of subsection (3).

(2) Upon the sum being deposited or secured the aircraft shall not, during the continuance or in the course of the passage, be subject to further detention in respect of the same cause of action.

(3) The deposited sum shall be a sum as may be agreed between the interested parties, or shall, in default of agreement, be fixed by the court, and payment shall be made or secured in any manner as may be agreed upon between them, or shall in default of agreement, be directed by the court in giving judgment in the action so to be brought, the court shall grant an order as to the disposal of the deposited sum.

(4) For the purposes of this section,—

“owner” means actual owner of an aircraft, and includes any person claiming through or under him; and

“passage” includes all landings and stoppages in the course, or for the purposes of a flight.

84.—(1) A lawful entry into, or a lawful transit across Malawi, with or without landings, shall not entail any seizure or detention of the aircraft, or proceedings being brought against the owner or operator, or other interference therewith, by or on behalf of a person in Malawi, on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.

Exemption of
certain
aircraft and
parts from
seizure on
patent claims

(2) The importation into, and storage in Malawi of spare parts and spare equipment for an aircraft to which this section applies in terms of subsection (3), and the use and installation in the repair of the aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment, or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment, or any other interference with the aircraft by or on behalf of any person in Malawi on the ground that the spare parts or spare equipment are or their installation is, an infringement of any patent, design or model.

(3) Subsection (2) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Malawi or are exported from it for sale or distribution.

(4) This section applies to an aircraft, other than an aircraft used in military, customs or police services, registered in any country or territory in respect of which there is in force, a declaration made by the Minister by notice published in the *Gazette*, with a view to the fulfillment of the provisions of the Chicago Convention and of the Transit Agreement, that the benefits of those provisions apply to that country or territory or to other aircraft as the Minister may specify in the notice.

85.—(1) If an owner, pilot-in-command or person in charge of an aircraft commits an offence under this Act from or in respect of that

Detention of
aircraft

aircraft or if reasonable suspicion exists that an offence has been committed or attempted or is about to be committed or attempted from or in respect of an aircraft by the owner, pilot-in-command or person in charge, any member of the Malawi Police Service or airport security officer may, pending the trial of the charge, detain the aircraft in question.

(2) If recognizances are entered into or security deposited to the satisfaction of the Authority having power to demand and receive the recognizances or security, the Authority may, if satisfied that the ends of justice will not thereby be prejudiced, order the release of the aircraft from further detention.

(3) A person who, knowing that the aircraft is being detained in terms of subsection (1), removes or causes it to be removed without authority commits an offence.

(4) A customs officer authorized to grant clearance to an aircraft shall not grant clearance to an aircraft while it is detained in terms of this section.

Requisition of
search and
rescue

86.—(1) The Authority may, at any time, requisition any civil aircraft and call out any holder of a flight crew licence pursuant to this Act, for air search and rescue operations, subject to the payment of compensation at a rate as may be prescribed.

(2) If the air search and rescue operations are undertaken by the Authority in connection with an occurrence caused by the negligent or other unlawful act or omission of any person, the Authority may recover from the person, the whole or any portion of the expenses incurred by the Authority in connection with the operations as it may determine.

(3) A person who, without lawful reason, refuses or fails to comply with any order or instruction made or given by virtue of the provisions of subsection (1), commits an offence and shall, on conviction, be liable to a fine of K5,000,000 or imprisonment for five years.

Indemnification
of the
Government
and certain
officers

87. Notwithstanding any legal provision to the contrary, Government and its officers and employees acting in the performance of their duty shall not be liable for—

(a) loss or damage caused by the death of or injury to any person while conveyed in an aircraft owned, operated or chartered by the Government, while entering or mounting or being in the aircraft for the purpose of being conveyed in or alighting from the aircraft after having been conveyed in the aircraft, if that person was so conveyed otherwise than in the

performance of his duty as an officer or employee of the Government; or

(b) loss of, or damage to goods conveyed in the aircraft otherwise than in the interests of the Government.

88.—(1) The Authority may establish training facilities for the purpose of training employees of the Authority in courses necessary for the performance of the functions of the Authority.

Capacity
building

(2) The Authority may authorize attendance at courses given in the training facilities by personnel from other organizations at a fee.

89.—(1) The Authority may make rules, orders, directives, circulars, notices regarding any matter which the Authority may consider necessary or for the implementation of this Act.

Rules, orders,
directives,
circulars and
notices

(2) If the Authority is of the opinion that an emergency requiring immediate action exists with respect to safety or security in civil aviation or public health, the Authority shall have the power to make orders, directives, circulars or notices as may be necessary to address the emergency.

(3) The Authority shall publish orders, directives, reports, decisions, rules or procedures issued under this Act for public information.

90.—(1) The Authority shall establish and maintain a system for recording—

Record
keeping

(a) civil aircraft registered in Malawi;

(b) documents which establish title to or any interest in any civil aircraft registered in Malawi;

(c) any aircraft engine, propeller, appliance, or spare part intended for use on any aircraft registered in Malawi; and

(d) certificates, licences and any other authorizations issued by the Authority.

(2) Any person who holds title to, or interest in a registered aircraft, aircraft engine, propeller, appliance or spare part shall submit the documents establishing title to the Authority to be recorded in the recording system in a prescribed manner.

(3) The Director General shall maintain, at a secure place, accounts records, files and memoranda pertaining to the activities of the Authority.

(4) The Director General shall cause to be kept at a secure place, accounts, records, files and memoranda pertaining to the activities

of the air operators, and approved training and maintenance organizations and any other relevant person or organization involved in civil aviation activities.

Publications

91. The Authority shall publish—

(a) reports, orders, decisions, rules and regulations issued under this Act in a form and manner as may be best adapted for public information and use;

(b) aeronautical information of a lasting nature, which shall be binding on any person engaged in civil aviation activities within the airspace or at aerodromes in Malawi; and

(c) technical guidance documents, rules, standards, procedures, instructions and aeronautical information and other incidental matters.

Regulations

92.—(1) The Minister may, on recommendation from the Authority, make regulations to give effect to the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the regulations may provide for—

(a) tariff rates, fees and any other charges levied for the services and facilities provided by the Authority;

(b) airspace for the minimum altitudes of flight including airspace needed to insure safety in the take-off and landing of aircraft;

(c) notification and reporting of accidents and incidents involving aircraft;

(d) conducting of surveys and inspections of security measures relating to passengers and their cabin baggage, checked baggage, cargo and other goods, access controls and airport design;

(e) conducting of exercises to check the professional efficiency of the personnel responsible for implementing civil aviation security procedures and test the adequacy of security measures at any airport in Malawi;

(f) conditions under which passengers and cargo may be carried by air;

(g) fees to be paid in respect of the issuance, renewal and validation of any certificate, licence or other authorization pursuant to this Act;

(h) the types of certificates, licences or any other authorizations which may be issued or renewed and the terms and conditions upon which they may be issued or renewed;

(i) the minimum safety and security standards and all other relevant requirements for the issuance, renewal, variation, suspension and revocation of such certificates, licences or other authorizations;

(j) operations specifications that define the approved terms, conditions and limitations of the operations;

(k) conditions for the renewal, variation, suspension, revocation or any other limitation of the certificates, licences or any other authorizations;

(l) conditions for charges for services and facilities provided by the Authority under this Act;

(m) requirements for the recording system of the Authority;

(n) safety measures and standards in civil aviation;

(o) fees for lodging appeals pursuant to the provisions of this Act;

(p) inspection of airports, heliports, airstrips, seaplane bases, aircraft; and any person or organization certified or licenced under this Act;

(q) prevention of interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;

(r) classification and use of airspace, control and use of air routes, prescription of rules of the air, and securing the safety, efficiency and regularity of air navigation and the safety of aircraft, persons and property in the air or on the surface;

(s) prescription of a levy on passenger service charge or cargo sales charge to passengers departing from any airport on international or domestic flights;

(t) the granting of exemptions under this Act;

(u) the utilization of land surrounding aerodromes; and

(v) any other matter relevant for the implementation of this Act.

(3) Notwithstanding section 21 of the General Interpretation Act, the regulations made pursuant to this Act may prescribe offences in respect of any contravention of the regulations, and provide for a fine of up to K5,000,000 and to imprisonment for five years.

International
obligations

93. The Minister shall be responsible for—

(a) submission of variations to the Chicago Convention, any Annex to the Convention relating to international standards and recommended practices and any amendment thereto, or other international conventions and protocols, relating to civil aviation that Malawi is a signatory party; and

(b) establishment and review of air services agreements in an open and transparent manner.

Assessment and
audits

94. The Minister shall assess and audit the performance standards of the functions of the Authority to ensure that they meet prescribed international standards at time intervals as he may consider appropriate.

PART XI—TRANSITIONAL PROVISIONS

Vesting of
assets

95. The assets of the Department of Civil Aviation shall be transferred to the Authority or other service providers at the commencement of this Act, including Government owned aeronautical aviation equipment in Malawi and other assets no longer needed by the Department of Civil Aviation as agreed between the Government and the Authority.

Repeal and
savings
Cap. 70:01

96.—(1) The Aviation Act is hereby repealed.

(2) Notwithstanding subsection (1)—

(a) any investigation or inquiry instituted in terms of the repealed Act which was pending before the commencement of this Act shall be continued or disposed of as if instituted under this Act;

(b) any appeal process, which immediately before the commencement of this Act was pending, shall proceed as if instituted under this Act.

(3) Regulations or rules made under the repealed Act and in force immediately before the commencement of this Act shall continue in force until replaced or otherwise dealt with under this Act.

(4) A licence, permit, lease granted or issued under the repealed Act and subsisting immediately before the commencement of this Act shall continue to have effect unless otherwise dealt with in accordance with this Act.

(5) The Authority may, by agreement with any appropriate foreign aeronautical authority,—

(a) transfer to the foreign aeronautical authority in the country of a foreign operator, in whole or part, the responsibility for a Malawi registered aircraft operated by that foreign operator that the Authority has under this Act;

(b) accept on behalf of the Authority in whole or part, the responsibility for a Malawian operator that arises under this Act;

(c) transfer to the foreign aeronautical authority in whole or part, the powers and functions of the Authority in respect of accident investigation;

(d) transfer to the foreign aeronautical authority in whole or part the powers and functions of the Authority in respect of the air traffic services; or

(e) transfer to the foreign aeronautical authority in whole or part the powers and functions of the Authority in respect of search and rescue.

Passed in Parliament this thirteenth day of June, two thousand and seventeen.

FIONA KALEMBA
Clerk of Parliament

MALAWI PARLIAMENT
LIBRARY