

AVIATION SECURITY (AMENDMENT) ACT, 2021

No. 16



of 2021

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Aviation Security Act.

Date of Assent: 08.10.2021

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Aviation Security (Amendment) Act, 2021, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Aviation Security Act (hereinafter referred to as “the Act”) is amended in section 2 by —

Amendment of section 2 of Cap. 71:02

(a) substituting for the definition of the term “acts of unlawful interference”, the following new definition —

“acts of unlawful interference” means such acts or attempted acts such as to jeopardise the safety of civil aviation, including but not limited to, the unlawful seizure or aircraft, destruction of aircraft in service, hostage-taking on board aircraft or aerodromes, forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility, introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes, use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment, or the communication of false information such as to jeopardise 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;”;

- (b) substituting for the definition of the term “Committee”, the following new definition —
 “Committee” means the National Aviation Security Committee;”;
- (c) substituting for the definition of the term “restricted area”, the following new definition —
 “security restricted area” means areas of the airside of an airport which are identified as priority risk area where, in addition to access control, other security controls are applied, including all commercial aviation passenger departure areas between the screening checkpoint and the aircraft, the ramp, baggage make-up areas, and those areas where aircraft are being brought into service and screened baggage and cargo are present, cargo sheds, mail centres, airside catering and aircraft cleaning premises;”;
- (d) inserting the following new definitions in their correct alphabetical order —
 ““in-flight security officer” means a person who is authorised by the government of the State of the Operator and the government of the State of Registration to be deployed on an aircraft with the purpose of protecting that aircraft and its occupants against acts of unlawful interference, but does not include persons employed to provide exclusive personal protection for one or more specific people on the aircraft, such as personal bodyguards; and
 “security test” means a covert or overt trial of and aviation security measures which stimulates an attempt to commit an unlawful act.”.

Amendment of section 15 of the Act

3. The Act is amended in section 15 (2) by substituting for paragraph (c), the following new paragraph —

“(c) the screening of passengers and cargo for security purposes, including the use of any device capable of detecting the presence of explosives and explosive devices carried by passengers on their person or in cabin baggage;”.

Insertion of section 43A. in the Act

4. The Act is amended by inserting immediately after section 43, the following new section —

“Special protection of aircraft 43A. (1) An aircraft operator may, subject to the provisions of this Part, request for special protection of an aircraft from an aerodrome operator.

(2) Where special protection is offered to an aircraft operator under subsection (1), the protection shall be on terms and conditions to be determined by the aerodrome operator.”.

Amendment of Part IV of the Act

5. The Act is amended in Part IV by deleting the words “and Facilitation” wherever they appear.

Insertion of Part IVA in the Act

6. The Act is amended by inserting immediately after Part IV, the following new Part —

“PART IVA.

*National Air Transport Facilitation Committee,
Aerodrome Facilitation Committee, National Air Transport
Facilitation Programme and Aerodrome Facilitation
Programme (ss 59A-59F)*

59A. (1) There shall be a National Air Transport Facilitation Committee which shall consist of the Chairperson, the Vice Chairperson and the following other members —

National Air
Transport
Facilitation
Committee

- (a) the Commander of the Botswana Defence Force or a representative of the Commander up to Director level or its equivalent;
- (b) the Commissioner of Police or a representative of the Commissioner up to Director level or its equivalent;
- (c) the Director General of the Directorate of Intelligence and Security or a representative of the Director General up to Director level or its equivalent;
- (d) the General Manager of Air Botswana or a representative of the General Manager up to Director level or its equivalent;
- (e) the Commissioner General of the Botswana Unified Revenue Service or a representative of the Commissioner up to Director level or its equivalent;
- (f) the Permanent Secretary of the Ministry responsible for health and wellness or a representative of the Permanent Secretary up to Director level or its equivalent;
- (g) the Permanent Secretary of the Ministry responsible for international affairs and cooperation or a representative of the Permanent Secretary up to Director level or its equivalent;
- (h) the Permanent Secretary of the Ministry responsible for defence, justice and security or a representative of the Permanent Secretary up to Director level or its equivalent;
- (i) the Permanent Secretary of the Ministry responsible for agricultural development and food security or a representative of the Permanent Secretary from the department responsible for plant health, veterinary services or fisheries up to Director level or its equivalent;
- (j) the Director of Immigration or a representative of the Director up to Director level or its equivalent;
- (k) two representatives of the aviation industry, who shall be appointed by the Minister from persons engaged in the industry in aircraft operations and ground handling up to Director level or its equivalent;
- (l) the Permanent Secretary of the Ministry responsible for environment, natural resource conservation and tourism or a representative of the Permanent Secretary up to Director level or its equivalent; and
- (m) the Chief Executive Officer of the Communications Regulatory Authority or a representative of the Chief Executive Officer up to Director level or its equivalent.

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

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

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

59B. The functions of the National Air Transport Facilitation Committee shall include —

Functions of
National Air
Transport
Facilitation
Committee

- (a) development, maintenance and implementation of the National Air Transport Facilitation Programme;
- (b) facilitation of cooperation between all stakeholders in the aerodrome environment;
- (c) review of policy matters in relation to clearance formalities applied to international air transport services and to ensure that passengers and cargo are cleared through aerodromes in line with the best international regulatory practice;
- (d) consideration of recommendations made by the Aerodrome Facilitation Committee;
- (e) making recommendations to the departments, relevant authorities and other organisations concerned with the National Air Transport Facilitation Programme;
- (f) keeping the departments, relevant authorities and other organisations concerned informed of significant developments in the field of international civil aviation in so far as they affect operations into and out of Botswana;
- (g) making recommendations on the alignment of national legislation and international standards on facilitation;
- (h) advising on the use of new technologies and integrating mechanisms to ensure the smooth passage of aircraft, passengers and cargo into and out of Botswana; and
- (i) coordinating with the Committee on security aspects of facilitation.

59C. (1) The National Air Transport Facilitation Committee shall meet at such times and places as the Chairperson may determine, but at least once in four months.

(2) There shall preside at any meeting of the National Air Transport Facilitation Committee —

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice Chairperson; or
- (c) in the absence of both the Chairperson or Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(3) At any meeting of the National Air Transport Facilitation Committee, the quorum shall be constituted by not less than nine members.

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

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

(6) The National Air Transport Facilitation Committee shall regulate the procedure for its meetings.

59D. (1) Every aerodrome shall establish an Aerodrome Facilitation Committee.

Aerodrome
Facilitation
Committee

(2) The Aerodrome Facilitation Committee shall —

- (a) coordinate and oversee the implementation of the Aerodrome Facilitation Programme established under section 59F;
- (b) examine matters arising in connection with the clearance of aircraft, passengers, baggage, cargo, mail and stores and to effect, if possible, immediate solutions to the matters which may arise at the international aerodrome concerned;
- (c) make recommendations, as appropriate, to the department, Ministry or authority concerned, or to the National Air Transport Facilitation Committee, for the implementation of proposals which cannot be effected by the Aerodrome Facilitation Committee;
- (d) inform the National Air Transport Facilitation Committee of actions taken and recommendations made by forwarding copies of the minutes of all its meetings; and
- (e) do any other thing which the Minister may, by regulations prescribe.

(3) The person in charge of aerodrome management at an aerodrome shall be the Chairperson of the Aerodrome Facilitation Committee.

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

(5) The Aerodrome Facilitation Committee shall consist of members from all agencies engaged in the operation of the aerodrome which contribute to the establishment and implementation of facilitation measures, including —

- (a) persons in charge of aviation security at the aerodrome;
- (b) immigration service;
- (c) local authorities;
- (d) the health sector;
- (e) postal services;
- (f) handling agents;
- (g) in flight caterers;

- (h) representative of the airlines;
- (i) representative of the aerodrome tenants;
- (j) fire and rescue services;
- (k) fuel suppliers;
- (l) air navigation services;
- (m) customs services;
- (n) security and intelligence services;
- (o) police services; and
- (p) armed forces.

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

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

(8) The Aerodrome Facilitation Committee shall regulate the procedure of its meetings.

National Air
Transport
Facilitation
Programme

59E. The National Air Transport Facilitation Committee shall develop, maintain and implement the National Air Transport Facilitation Programme for purposes of –

- (a) enhancing processes and procedures to facilitate the movement of aircraft, crew, passengers, cargo, baggage, mail and stores by removing unnecessary obstacles and delays in, in addition to enhancing efficiency, productivity and service quality of, civilian air transport services;
- (b) supporting the development of innovative strategies to address facilitation issues in the air transport industry and civil aviation environment; and
- (c) implementing international best practices in all areas of facilitation issues in the air transport industry and civil aviation environment.

Aerodrome
Facilitation
Programme

59F. (1) Every aerodrome and operator serving civil aviation in Botswana shall establish and implement a written Aerodrome Facilitation Programme that meets the requirement of the National Air Transport Facilitation Programme and this Act.

(2) A person under subsection (1) shall ensure that an Aerodrome Facilitation Programme is commensurate to the size of their operations and, if that person is not the Authority, the Programme shall be approved by the Authority.

(3) An Aerodrome Facilitation Programme shall be reviewed and updated once in each year.

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

PASSED by the National Assembly this 16th day of August, 2021.

BARBARA. N. DITHAPO,
Clerk of the National Assembly.