

Zambia

## Air Services Act, 1964

### Chapter 446

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1964/8/eng@1996-12-31

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PDF created on 17 May 2024 at 04:30.

*Collection last checked for updates: 31 December 1996.*

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## Zambia

# Air Services Act, 1964

## Chapter 446

Commenced on 1 January 1964

*[This is the version of this document at 31 December 1996.]*

*[8 of 1964; Government Notices 301 of 1964; 497 of 1964; Statutory Instruments 153 of 1965; 301 of 1967; 26 of 1979; 13 of 1994]*

**An Act to provide for the regulation of services performed in Zambia by means of aircraft; and to provide for matters incidental thereto.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Air Services Act.

#### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

**"air service"**—

- (a) means a service performed by means of an aircraft for payment or material advantage on one or more occasions; and
- (b) includes a service for the carriage of passengers or cargo performed by means of a vehicle, other than an aircraft, which—
  - (i) is ancillary to and directly connected with a service referred to in paragraph (a); and
  - (ii) is declared by the Minister, by statutory notice, to be an air service for the purpose of any or all of the provisions of this Act;

**"application"** means an application for the issue, renewal, transfer or amendment of a permit, as the case may be;

**"aviation law"** means the Aviation Act or any enactment substituted therefor;

**"contracting State"**—

- (a) in relation to the International Agreement, means a State which is a contracting party to the International Agreement; and
- (b) in relation to the International Convention, means a State which is a contracting party to the International Convention;

**"Corporation"** means the Central African Airways Corporation constituted by the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963;

**"International Agreement"** means the International Air Services Transit Agreement signed at Chicago in the United States of America on the 7th December, 1944, or any other international agreement amending that Agreement or substituted for that Agreement to which the Government may be a party;

**"International Convention"** means the Convention on International Aviation signed at Chicago in the United States of America on the 7th December, 1944, or any other international convention amending that Convention or substituted for that Convention to which the Government may be a party;

**"objection"** means an objection to an application;

**"permit"** means a permit authorising the holder to provide an air service to, from or within Zambia;

**"tribunal"** means a tribunal as described in section nine.

- (2) A person who lets out on hire, with or without pilot or crew, an aircraft which is registered in Zambia in terms of the aviation law shall, for the purposes of this Act, be deemed to be providing an air service to, from or within Zambia.

*[As amended by S.I. No. 301 of 1967]*

*[Cap. 444; App. 1]*

### 3. Application

The provisions of this Act shall not apply in relation to—

- (a) an aircraft of a contracting State which, in the exercise of the privileges conferred by section 1 of the International Agreement—
  - (i) flies across Zambia without landing; or
  - (ii) lands in Zambia for non-traffic purposes; in accordance with the provisions of the International Agreement;
- (b) an aircraft of a contracting State which, in the exercise of the right conferred by Article 5 of the International Convention, makes a flight into or in transit non-stop across or a stop in Zambia in accordance with the provisions of the International Convention;
- (c) an aircraft of any country which, in the exercise of a right conferred by treaty or agreement to which the Government is a party, makes a flight into or in transit non-stop across or a stop in Zambia in accordance with the provisions of that treaty or agreement; or
- (d) an aircraft used for the provision of an air service to, from or within Zambia by such persons for such purposes and in accordance with such conditions as the Minister may determine.

*[As amended by S.I. No. 153 of 1965 and S.I. No. 301 of 1967]*

### 4. Air services to be provided in accordance with permits

No person shall provide an air service to, from or within Zambia—

- (a) otherwise than in accordance with the conditions of a permit issued by the Minister; or
- (b) whilst the permit authorising the provision of the air service is suspended.

*[As amended by S.I. No. 301 of 1967]*

## Part II – Issue, renewal, transfer and amendment of permits

### 5. Applications

- (1) An application shall be made to the Minister in such manner as the Minister may direct.

- (2) An applicant for the issue of a permit shall—
  - (a) state in his application—
    - (i) the particulars of the air service to be provided;
    - (ii) the proposed areas and routes of operation;
    - (iii) the numbers and types of aircraft to be used; and
    - (iv) the tariffs to be charged; and
  - (b) supply thereafter such other information in connection with his application as the Minister may require.
- (3) An applicant for the renewal, transfer or amendment of a permit shall—
  - (a) state in his application—
    - (i) the particulars of the permit to be renewed, transferred or amended; and
    - (ii) the period of renewal or, as the case may be, the nature of the transfer or amendment; and
  - (b) supply thereafter such further information in connection with his application as the Minister may require.

*[As amended by S.I. No. 301 of 1967]*

## **6. Applications to be published and open to inspection**

- (1) An applicant shall, unless he applies for the issue of a temporary or provisional permit in terms of section fifteen, publish at his own expense particulars of his application in accordance with the directions of the Minister.
- (2) An application, other than an application for the issue of a temporary or provisional permit in terms of section fifteen, and any information supplied in connection with the application, other than information of a confidential nature that has been specifically called for by the Minister, shall be open to inspection by persons providing air services to, from or within Zambia at the offices of the Ministry of Transport and Communications during the period of twenty-one days beginning on the date of the publication referred to in subsection (1).
- (3) During such period the Minister shall, in respect of any application to provide an air service to, from or within Zambia, consult with the Director of Civil Aviation appointed in terms of the aviation law, in respect of all matters relevant to the application which lie within his responsibility.

*[As amended by S.I. No. 301 of 1967]*

## **7. Objections**

- (1) A person shall not be qualified to object to an application unless he is a person providing an air service to, from or within Zambia.
- (2) An objection to the issue, renewal, transfer or amendment of a permit shall be made and notice of the objection given to the Minister in such manner as the Minister may direct, within twenty-eight days after the publication of the particulars of the application.
- (3) No objection to an application shall be valid if—
  - (a) the objection does not relate to one or more of the matters specified in section eleven;
  - (b) the objection is frivolous or vexatious; or

- (c) the objection is not made or notice of the objection is not given in accordance with the provisions of subsection (2).

*[As amended by S.I. No. 153 of 1965 and S.I. No. 301 of 1967]*

## **8. Reference of applications to tribunal**

As soon as may be after the expiration of the period of twenty-eight days referred to in subsection (2) of section seven, the Minister—

- (a) shall, if an objection has been made; or
- (b) may, if an objection has not been made;

refer the matter to be dealt with by a tribunal.

*[As amended by S.I. No. 301 of 1967]*

## **9. Tribunals**

- (1) A tribunal shall consist of an officer in the public service nominated by the Minister and such assessors, if any, as may be appointed by the Minister.
- (2) Any such tribunal may be appointed generally for any period or periods, or specially for the purpose of dealing with a particular application.
- (3) The powers, rights and privileges of a tribunal in an inquiry shall be the same as those conferred upon commissioners by the Inquiries Act, and the provisions of sections seven, thirteen, fourteen and seventeen of that Act shall, *mutatis mutandis*, apply in respect of a tribunal.

*[Cap. 42]*

- (4) Assessors shall be entitled to such allowances as the Minister, with the approval of the Minister responsible for finance, may determine.

*[As amended by S.I. No. 153 of 1965 and S.I. No. 301 of 1967]*

## **10. Inquiries**

- (1) The Minister shall give to the applicant and any objector not less than fourteen days' notice of the date and place at which any inquiry is to be held.
- (2) At any inquiry the applicant and any objector may appear in person or be represented and appear by a legal practitioner.
- (3) The applicant or an objector shall have the right at any inquiry to make representations in support of the application or the objection, as the case may be.

*[As amended by S.I. No. 301 of 1967]*

## **11. Matters tribunal must consider**

In any inquiry a tribunal shall have regard to—

- (a) whether the grant or refusal of an application is expedient in the public interest;
- (b) the need for air services in the area to be served by the proposed air service;
- (c) the existence and efficiency of air services serving the routes or the areas in or through which the proposed air service is to be provided;
- (d) any uneconomic duplication or uneconomic overlapping of air services which the proposed air service might cause;

- (e) the financial resources of the applicant and—
  - ii(i) if the application is for the issue of a permit, the likelihood of his being able to provide an air service which is satisfactory from the point of view of safety, regularity, frequency of operation, reasonableness of charges and general efficiency; or
  - i(ii) if the application is for the renewal or amendment of a permit, whether or not the applicant's existing air service is satisfactory from the point of view of safety, regularity, frequency of operation, reasonableness of charges and general efficiency;
- (f) whether or not the aircraft proposed to be used and the air service proposed to be provided are suited to the airports and the airport facilities to be used in conjunction with the proposed air service;
- (g) any objection to the application;
- (h) any other matter which, in the opinion of the tribunal, is relevant to the application; and
- (i) any views on the application expressed by the Director of Civil Aviation appointed in terms of the aviation law;
- (j) any obligation imposed upon the Government by international agreement or treaty.

*[As amended by S.I. No. 301 of 1967]*

## 12. Procedure after inquiry

- (1) As soon as may be after the conclusion of an inquiry the tribunal shall submit a report thereon, together with its recommendations, to the Minister.
- (2) The Minister may, without reference to the applicant or any objector—
  - (a) grant the application, subject to such conditions, if any, to be inserted in the permit, and for such period, as the Minister may think fit;
  - (b) reject the application; or
  - (c) refer the application back to the tribunal with such instructions, with which the tribunal shall comply, as to the reopening of the inquiry and the further proceedings to be had in connection with the application, as the Minister may think fit.
- (3) In coming to a decision in terms of subsection (2), the Minister—
  - (a) shall have regard to the report on the proceedings of the inquiry and to the advice and recommendations of the tribunal; and
  - (b) may have regard to such other information and considerations as the Minister considers relevant.
- (4) No report or recommendations submitted by a tribunal in terms of subsection (1) shall be open to inspection by the applicant or any objector.

*[As amended by S.I. No. 301 of 1967]*

## 13. Applications with no objections

As soon as may be after the expiration of the period of twenty-eight days referred to in subsection (2) of section seven, the Minister shall, in the case of an application to which no objection has been made and which has not been referred to a tribunal in terms of section eight, grant the application subject to such conditions, if any, to be inserted in the permit, and for such period as the Minister may direct.

*[As amended by S.I. No. 301 of 1967]*

#### **14. Copies of permits open to inspection**

Copies of all permits shall be kept at the offices of the Ministry of Transport and Communication, and shall be open to inspection by any applicant or person providing an air service to, from or within Zambia.

*[As amended by S.I. No. 301 of 1967]*

#### **15. Temporary and provisional permits**

Notwithstanding anything to the contrary in this Act, an applicant may apply for and the Minister may issue—

- (a) a temporary permit valid for a period not exceeding twenty-one days; or
- (b) a provisional permit valid pending the publication and determination of an application;

subject to such conditions to be inserted in the permit as the Minister may consider expedient in the public interest.

*[As amended by S.I. No. 301 of 1967]*

### **Part III – Revocation, suspension and variation of permits**

#### **16. Revocation, suspension and variation of permits: inquiries**

- (1) If at any time the Minister believes that—
  - (a) the holder of a permit has failed to comply with a condition of the permit; or
  - (b) the holder of a permit, his servant or agent, has been convicted of an offence against the aviation law or any enactment relating to aviation, air navigation or air services or any other offence, wherever committed, of such a nature as, in the opinion of the Minister, makes him no longer a fit or proper person to provide or assist in providing, as the case may be, the air service to which the permit relates; or
  - (c) it would be expedient in the public interest to revoke, suspend or vary a permit;the Minister shall—
  - (i) refer the matter to a tribunal for inquiry into and advice upon the circumstances; and
  - (ii) give to the holder of the permit written notice of such reference and the reasons therefor.
- (2) If the Minister considers it expedient in the public interest, he may, notwithstanding the provisions of sub-section (1), suspend a permit pending inquiry and report by a tribunal.

*[As amended by S.I. No. 301 of 1967]*

#### **17. Inquiries for purposes of section 16**

- (1) The Minister shall give not less than twenty-one days' notice to the holder of a permit referred to in section sixteen of the date and place at which the inquiry is to be held.
- (2) At the inquiry the holder of the permit may appear in person or be represented and appear by a legal practitioner and shall have the right to make representations.

*[As amended by S.I. No. 301 of 1967]*



## 18. Procedure after inquiry

- (1) As soon as may be after the conclusion of an inquiry the tribunal shall submit a report thereon, together with its recommendations, to the Minister who may, without reference to the holder of the permit—
  - (a) revoke the permit;
  - (b) suspend the permit for such period as the Minister thinks fit;
  - (c) vary the permit in such manner as the Minister thinks fit; or
  - (d) refer the matter back to the tribunal with such instructions, with which the tribunal shall comply, as to the reopening of the inquiry and the further proceedings to be had in connection with the matter, as the Minister may think fit.
- (2) In deciding whether a permit should be revoked, suspended or varied the Minister—
  - (a) shall have regard to the report on the proceedings of the inquiry and to the recommendations of the tribunal; and
  - (b) may have regard to such other information and considerations as in his opinion are relevant.
- (3) No report or recommendations of the tribunal submitted to the Minister in terms of subsection (1) shall be open to inspection by the holder of the permit.
- (4) The Minister shall not be liable to refund to the holder of a permit which is revoked, suspended or varied in terms of this Act the fee, or any portion of the fee, paid on the issue of the permit.

*[As amended by S.I. No. 301 of 1967]*

## Part IV – Miscellaneous

### 19. Permits to continue in force if application made for renewal

If a holder of a permit applies for the renewal of the permit before the lapse of the period of validity of the permit, the permit shall be treated as being of force until the holder is notified in writing by the Minister that his application has been refused or the permit has been renewed.

*[As amended by S.I. No. 301 of 1967]*

### 20. Prescribed fees

The Minister may, by statutory notice, fix fees which shall be payable by applicants and fees which shall be payable on the issue, renewal, transfer or amendment of a permit.

*[As amended by S.I. No. 301 of 1967]*

### 20A. Regulations

- (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the objects and purposes of this Act, and, without prejudice to the generality of the foregoing, such regulations may make provision for—
  - (a) any measures aimed at enhancing the safety and security, both on the ground and in the air, of passengers, aircraft and any personnel connected therewith;
  - (b) any measures aimed at enhancing the smooth operation, both on the ground and in the air, of air services;

- (c) the terms and conditions on which passengers, baggage or cargo may be carried by any person operating an air service in, from or into Zambia.
- (2) Different regulations may be made for different classes of aircraft, persons or property, and for different parts of Zambia.
- (3) Regulations made under this section may prescribe penalties for the contravention thereof but no such penalty shall exceed a fine of twenty-five thousand penalty units, or a term of imprisonment not exceeding six years, or both.

*[As amended by Act [No. 26 of 1979](#) and Act No. 13 of 1994]*

## **21. Offences and penalties**

A person who—

- (a) procures or attempts to procure for himself or another a permit by means of fraud, a false representation or the concealment of a material fact;
- (b) makes or causes to be made in connection with an application a false declaration in a document used for the purposes of the application;
- (c) forges or utters, knowing the same to be forged, a document purporting to be a permit; or
- (d) contravenes the provisions of section four;

shall be guilty of an offence and liable—

- (i) on first conviction, to a fine not exceeding six thousand penalty units or to imprisonment for a period not exceeding two years, or to both; and
- (ii) on a second or subsequent conviction, to a fine not exceeding sixty thousand penalty units or to imprisonment for a period not exceeding ten years, or to both.

*[As amended by Act No. 13 of 1994]*