

CHAPTER 13:01
AIR SERVICES ACT

Acts 35/1968, 21/1973 (s. 70), 41/1978 (s. 22), 15/198, 4/1998 (s. 10), 22/2001 (s. 4); S.I. 583/1979.

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PART I
PRELIMINARY

1 Short title

This Act may be cited as the Air Services Act [*Chapter 13:01*].

2 Interpretation

In this Act—

“air carrier” means a person who operates an air service to, from or within Rhodesia;

“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—

(i) the letting out on hire of an aircraft with or without pilot or crew; or

(ii) a service for the carriage of passengers or cargo performed by means of a vehicle, other than an aircraft, which—

A. is ancillary to and directly connected with an air service; and

B. is declared by the Minister, by notice published in the *Gazette*, to be an air service for the purposes of this Act or any specified provision thereof; “Air Zimbabwe Corporation”

[Definition repealed by section 10 of Act 4 of 1998]

“application” means an application for—

(a) the issue, renewal, transfer or amendment of a permit; or

(b) the grant of an exemption; as the case may be;

“Board” means the Air Services Board established under section *four*;

“chairman” means the chairman of the Board;

“condition”, in relation to a permit or exemption, includes the period of validity thereof;

“exemption” means an exemption granted under paragraph (c) of subsection (1) of section *fourteen*;

“group charter” means the taking on hire of an aircraft or part of an aircraft by, for or on behalf of a group or groups of seven or more persons for the transportation of those persons, with or without their personal baggage, irrespective of whether such transportation is to, from, within or wholly outside Zimbabwe, but does not include the taking on hire of the entire capacity of an aircraft by, for or on behalf of a group of persons who are all related to one another;

“group charter permit” means a permit referred to in paragraph (b) of subsection (1) of section *three*;

“inquiry” means an inquiry referred to in section *twelve*;

“member” means member of the Board;

“Minister” means the Minister of Transport and Energy or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“objection” means an objection to an application for an ordinary permit;

“ordinary permit” means a permit other than a group charter permit, provisional permit or temporary permit;

“permit” means a permit issued under this Act;

“provisional permit” means a permit issued under paragraph (b) of subsection (1) of section *fourteen*;

“Secretary” means the Secretary of the Ministry for which the Minister is responsible; “temporary permit” means a permit issued under section *fifteen*.

3 No air service or group charter except under permit

(1) Subject to subsection (3), no person shall—

(a) provide an air service to, from or within Zimbabwe, except in accordance with an ordinary, temporary or provisional permit; or

(b) organize, procure or arrange a group charter, except in accordance with a group charter permit.

(2) For the purposes of paragraph (a) of subsection (1), the letting out on hire of an aircraft shall be deemed to be an air service provided to, from or within Zimbabwe, as the case may be, if in pursuance of such hire the aircraft is, or is to be, flown to, from or within Zimbabwe.

(3) Subsection (1) shall not apply in relation to—

(a) such aircraft as may be prescribed; or

(b) any aircraft of a country other than Zimbabwe which, in the exercise of a right conferred by a treaty or agreement to which the State adheres, makes a flight into or in transit non-stop across or a stop in Zimbabwe in accordance with that treaty or agreement; or

- (c) any person in respect of whom an exemption is in force.

PART II

AIR SERVICES BOARD

4 Establishment of Board and appointment of assessors and secretary

(1) On the 18th October, 1968, there shall be established a board to be known as the Air Services Board, which shall consist of a chairman, who shall be the person who is for the time being the Secretary, and, subject to the laws governing the Public Service, four members appointed by the Minister of whom two shall be members of the Public Service.

(2) The Minister may designate one of the members as deputy chairman, who shall exercise the powers and perform the functions of the chairman whenever the chairman is unable to do so by reason of absence, illness, his duties as Secretary or any other like cause.

(3) The Minister may appoint a person with expert knowledge to act as an assessor, in an advisory capacity only, in any inquiry in which it appears that expert knowledge is required for the proper consideration of any matter before the Board.

(4) Assessors shall be paid out of moneys appropriated for the purpose by Act of Parliament such allowances as the Minister may determine.

(5) The Minister shall, subject to the laws governing the Public Service, appoint a secretary and such other officers as he may think necessary to assist the Board in the proper exercise of its functions.

5 Term of office of members who are not civil servants

A member who is not a member of the Public Service shall, subject to this Act, not hold office for a period exceeding three years:

Provided that on the expiration of such period he shall be eligible for reappointment.

6 Disqualification for appointment as member

The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

- (a) has in terms of any law in force in any country—
- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside; or
- (b) has, or is married to a person who has, a financial interest in any business concerned with the manufacture or sale of aircraft or the operation of an air service or is, or is married to a person who is, engaged in any activity connected with such a business or air service which, in the opinion of the Minister, is likely to interfere with the impartial discharge by that person of the duties of the office of member:
- Provided that the President may exempt from disqualification a person who has, or is married to a person who has, a financial interest in any such business or air service if, in the opinion of the President, the nature of such interest is such that it would not be likely to interfere with the impartial discharge by that person of the duties of the office of member; or
- (c) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—
- (i) within Zimbabwe of a criminal offence; or
 - (ii) outside Zimbabwe of an offence, by whatever name called, which if committed within Zimbabwe would have been a criminal offence;

and sentenced by a court to imprisonment for a term of six months or more, without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or (d) is not a citizen of Zimbabwe permanently resident in Zimbabwe.

7 Vacation of office by member

A member shall vacate his office and his office shall become vacant—

- (a) in the case of a member who is not a member of the Public Service, one month, or such shorter period as he and the Minister may agree, after the date he gives written notice to the Minister of his intention to resign his office; or
- (b) thirty days after the date he is sentenced by a court to imprisonment referred to in paragraph (c) of section six after conviction of an offence referred to in that paragraph:

Provided that if, during the said period of thirty days, an application for a free pardon is made or an appeal is filed, the question whether the member is to vacate his office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside, his sentence

is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted; or

(c) if he becomes disqualified in terms of paragraph (a), (b) or (d) of section *six* to hold office as a member.

8 Meetings and proceedings of Board

(1) For the purposes of this section— “meeting” includes an inquiry.

(2) The Board shall, subject to this Act, meet together for the dispatch of business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit.

(3) If at a meeting of the Board the chairman and deputy chairman are absent or unable to act, the members present shall elect one of their number to preside as chairman of the meeting.

(4) At any meeting of the Board, the person presiding together with two members shall constitute a quorum.

(5) All acts, matters or things authorized or required to be done by the Board may be decided by a majority of the votes of the members present and voting at a meeting at which a quorum is present.

(6) At all meetings of the Board each member present shall have one vote on a question before the Board and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

9 Members to declare certain interests

If a member or his spouse has or acquires a financial interest, direct or indirect, in a body corporate or firm which provides an air service or the business of which is directly concerned with— (a) the manufacture, sale or servicing of aircraft; or

(b) the operating of vehicles, other than aircraft, which are used for or in connection with the provision of an air service; or

(c) the carriage of passengers or cargo by air; the member shall forthwith disclose the facts to the Board and the Minister.

10 Validity of Board’s decisions and acts

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that a disqualified person acted as a member at the time the decision was taken or the act was done or authorized, if the decision was taken or the act done or authorized by a majority vote in accordance with subsections (5) and (6) of section *eight* of persons who at the time were entitled to act as members.

11 Advisory functions of Board

The Board shall advise the Minister on any question he Advisory functions of may refer to it relating to air services to, from and within Zimbabwe or to group charters.

12 Inquiries by Board

(1) The Board shall have power to hold inquiries for the purposes of sections *eighteen* and *twenty-one* and for such other purposes as the Minister may approve.

(2) The powers, rights and privileges of the Board in an inquiry shall be the same as those conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*] and sections 10 to 16 of that Act shall apply, *mutatis mutandis*, in relation to any inquiry and to a person summoned to give evidence or giving evidence at the inquiry:

Provided that the Board shall not have the power to detain any person in custody.

(3) No records or proceedings of the Board in any inquiry or report of the Board on the proceedings of any inquiry or advice given or recommendation made by the Board for the purposes of this Act shall be open to inspection by members of the public.

(4) At an inquiry the applicant and any objector or, as the case may be, the holder of the permit or exemption referred to in section *twenty-one*—

(a) may appear in person or be represented and appear by a legal practitioner; and (b) shall have the right to make representations in support of his case.

(5) Notwithstanding subsection (4) of section *seventeen*, if during an inquiry into an application for the issue, renewal, transfer or amendment of an ordinary permit it appears that an objector has failed to give proper notice of objection, or to give such notice in due time, the Board may, in its discretion, and on such conditions as it may think fit, condone the said failure and hear the objection.

PART III

ISSUE, RENEWAL, TRANSFER AND AMENDMENT OF PERMITS AND GRANT OF EXEMPTIONS

13 Interpretation in Part III

In this Part—

“date of publication” means the date of the publication referred to in subsection (1) of section *sixteen*.

14 Powers of Board in relation to permits and exemptions

(1) Upon application therefor made in the manner prescribed, the Board may, in its discretion—

(a) issue, renew, transfer or amend any ordinary or group charter permit;

- (b) issue a provisional permit valid pending the determination of an application for the issue, renewal, transfer or amendment of an ordinary permit;
- (c) grant any person exemption from the operation of section *three*; subject to such conditions as it may think fit, or refuse the application:

Provided that no such permit or exemption shall have a period of validity exceeding five years.

(2) Without derogation from subsection (1), in determining an application for the renewal or amendment of an ordinary permit the Board, if it is satisfied that an air service authorized by such permit is not being operated to a substantial extent by the holder thereof and has not been so operated during a period of at least six months immediately preceding the date of publication of such application, may, in its discretion, amend the permit by deleting such air service therefrom, whether or not such amendment was requested in the application.

15 Temporary permits

Notwithstanding anything to the contrary in this Part, upon application therefor made in the manner prescribed, the chairman or any person authorized generally or specially by the Board may, in his discretion and without reference to the Board, issue a permit for casual or temporary purposes, valid for a period not exceeding twenty-one days, or refuse such application.

16 Publication of applications for ordinary permits

(1) A person applying for the issue, renewal, transfer or amendment of an ordinary permit shall cause to be published in the *Gazette* at his own expense such particulars of his application as the Board may require.

(2) Any such application and any information supplied in connection with the application, other than information of a confidential nature that has been specifically called for by the Board, shall be open to inspection by persons lawfully providing air services to, from or within Zimbabwe, at the offices of the Board during the period of twenty-one days beginning on the date of publication of the application.

17 Applications for ordinary permits: objections

(1) Subject to of this section, a person may object to an application for the issue, renewal, transfer or amendment of an ordinary permit.

(2) A person shall not be qualified to object to an application unless, at the time he gives notice thereof under subsection (3), such person is lawfully providing an air service to, from or within Zimbabwe or is in possession of a valid permit.

(3) An objection shall be made, and notice of the objection given—

- (a) in the manner prescribed; and
- (b) within twenty-eight days after the date of publication of the application.

(4) No objection shall be valid if it—

- (a) does not relate to one or more of the matters specified in paragraphs (a) to (k) of section *nineteen*; or
- (b) is frivolous or vexatious; or
- (c) is not made or notice of the objection given in accordance with subsection (3).

18 Applications for ordinary permits: holding of inquiries

(1) As soon as may be after the expiration of twenty-eight days after the date of publication of an application the Board—

- (a) shall, if an objection has been made to the application; or
- (b) may, if an objection has not been made to the application; hold an inquiry

into the application.

(2) Before holding an inquiry, the Board shall give not less than fourteen days' notice to the applicant and any such objector of the date and place at which the inquiry is to be held.

19 Manner of performance by Board of functions referred to in section 14 (1) (a)

In the exercise of its functions referred to in paragraph (a) of subsection (1) of section *fourteen*, whether or not an inquiry is held, the Board shall have regard to such of the following as are applicable— (a) whether the grant or refusal of the application in question is expedient in the public interest; (b) the need for air services in the area to be served by the proposed air service; (c)

[Paragraph repealed by section 10 of Act 4 of 1998]

- (d) 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;
- (e) any uneconomic duplication or uneconomic overlapping of air services which might result from the grant of the application;
- (f) the financial resources of the applicant;
- (g) if the application is for—
 - (i) the issue of a permit, the likelihood of the applicant 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
 - (ii) the renewal or amendment of a permit—

- A. 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;
- B. whether or not the permit should be amended in terms of subsection (2) of section *fourteen*;
- (h) 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;
- (i) the availability of spare parts and of servicing, maintenance and repair facilities in the area in which the applicant intends to operate the air service or at terminal and intermediate points on the route over which the applicant proposes to provide the service;
- (j) any obligation imposed upon the State by international agreement or treaty;
- (k) any matter which is prescribed;
- (l) any objection to the application;
- (m) any other matter which, in the opinion of the Board, is relevant to the application.

20 Permits open to inspection

Copies of all permits shall be kept at the offices of the Board and shall be open to inspection by any applicant or any person who is lawfully providing an air service to, from or within Zimbabwe or who is in possession of a valid permit.

PART IV

REVOCATION, SUSPENSION AND VARIATION OF PERMITS AND EXEMPTIONS

21 Revocation, suspension and variation of permits and exemptions: inquiries

- (1) If at any time the Board believes that—
 - (a) the holder of a permit or exemption has contravened or failed to comply with a condition thereof; or
 - (b) the holder of a permit or exemption or his servant or agent has been convicted of any offence, wherever committed, which is of such a nature as, in the opinion of the Board, makes him no longer a fit or proper person to carry on the operations or activities to which the permit or exemption relates; or
 - (c) it would be expedient in the public interest to revoke or vary a permit or exemption; the Board shall hold an inquiry into the circumstances.
- (2) If the Board considers it expedient in the public interest, the Board may, notwithstanding subsection (1), suspend a permit or exemption pending inquiry.

22 Notice of inquiry

Where an inquiry is to be held in terms of subsection (1) of section *twenty-one*, the Board shall give not less than twenty-one days' written notice to the holder of the permit or exemption in question stating the date and place at which the inquiry is to be held and the reasons for the inquiry.

23 Board may revoke or vary permit or exemption

Following an inquiry held in terms of section *twenty-two*, the Board may in its discretion revoke or vary the permit or exemption if it is satisfied, having regard to the matters disclosed in the inquiry and such other information and considerations as in its opinion are relevant, that any of the circumstances mentioned in paragraphs (a) to (c) of subsection (1) of section *twenty-one* apply.

24 No refund of fees

The Board shall not be liable to refund to the holder of a permit or exemption which is revoked, suspended or varied in terms of this Part the whole or any part of any fee paid on the issue of the permit or the grant of the exemption.

PART V

MISCELLANEOUS

25 Permits to continue if application made for renewal

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

26 Insurance

Every air carrier in possession of a permit shall insure himself and at all times keep himself insured in such sums or to such extent as may be prescribed in relation to the air service operated by him, against claims of such nature as may be prescribed, which may arise out of the use of aircraft by such air carrier in terms of such permit.

27 Regulations

The Minister may make regulations providing for—

- (a) all matters which by this Act are required or permitted to be prescribed or which, in the opinion of the Minister, are necessary or convenient to provide for carrying out or giving effect to the provisions of this Act;

- (b) the making of solemn declarations in terms of the law for the time being in force relating to oaths and declarations, by such persons and in such circumstances as may be required by any agreement, resolution or arrangement relating to air transport to which the State adheres;

[Paragraph amended by section 10 of Act 16 of 1998]

- (c) the fees to be paid—
 - (i) in respect of any application; and
 - (ii) on the issue, renewal, transfer or amendment of a permit; and the manner of payment thereof.

28 Emergency powers

Notwithstanding anything to the contrary contained in this Act, the Board shall, in accordance with such directions as the Minister may give, at any time while a declaration in terms of subsection (1) of section 31J of the Constitution is in force—

- (a) with or without notice, reject any application whatsoever made in terms of this Act or grant, revoke, suspend, transfer, renew or vary a permit or exemption, whether or not application therefor has been made, subject to such conditions as it thinks necessary or expedient in the circumstances;
- (b) suspend, in relation to the holder of a permit, the application of such provisions of this Act as it may specify.

29 Returns

The Board may by order in writing require any air carrier to render to it in such manner and form and at such times as may be required by the Board such returns as the Board may deem necessary in relation to any air service provided to, from or within Zimbabwe by such air carrier.

30 Presumptions

In any proceedings for a contravention of this Act—

- (a) the conveyance in an aircraft of any person in addition to the normal operating crew or of any goods shall, until the contrary is proved, be presumed to be a conveyance for payment or material advantage;
- (b) a document purporting to be a permit or exemption, or a copy thereof purporting to have been certified as a true copy by the chairman or deputy chairman or by the secretary of the Board or a person acting in the capacity of such secretary, shall on its mere production by any person be *prima facie* evidence of the facts stated therein;
- (c) a certificate purporting to have been signed by the chairman or deputy chairman or by the secretary of the Board or a person acting in the capacity of such secretary, stating that a permit or exemption has not been issued or granted by the Board or the chairman, as the case may be, shall on its mere production by any person be *prima facie* evidence of the facts stated therein.

31 Offences and penalties A

person who—

- (a) procures or attempts to procure for himself or another permit or exemption by means of fraud, a false representation or the concealment of a material fact; or
- (b) makes or causes to be made in connection with an application a false declaration in a document used for the purposes of the applicant, knowing it to be false or not reasonably believing it to be true; or
- (c) makes any false statement, not on oath, in any inquiry, knowing it to be false or not reasonably believing it to be true; or
- (d) forges or utters, knowing the same to be forged, a document purporting to be a permit or exemption; or
- (e) contravenes section *three* or *twenty-six*; or
- (f) renders a return in terms of section *twenty-nine* which is false, knowing it to be false or not reasonably believing it to be true; or
- (g) refuses or wilfully fails to render a return in accordance with section *twenty-nine*; shall be guilty of an offence and liable—
 - (i) in the case of an offence mentioned in paragraph (a), (b), (c), (d), (e) or (f), to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
 - (ii) in the case of an offence mentioned in paragraph (g), to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Paragraphs (i) and (ii) substituted by section 4 of Act 22 of 2001]