

Presidential Powers (Temporary Measures) (Amendment of the Civil Aviation Act) Regulations, 2023

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HIS Excellency the President, in terms of section 2 of the Presidential Powers (Temporary Measures) Act [*Chapter 10:20*], hereby makes the following regulations:—

1. These regulations may be cited as the Presidential Powers (Temporary Measures) (Amendment of the Civil Aviation Act) Regulations, 2023.



# BILL

To amend the Civil Aviation Act [*Chapter 13:16*]; and to provide for matters connected with or incidental the foregoing.

ENACTED by the the Parliament and the President of Zimbabwe.

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Civil Aviation (Amendment) Act, 2023.

#### 2 Amendment of section 2 of Cap 13:16

Section 2 (“Interpretation”) of the Civil Aviation Act [*Chapter 13:16*] (hereinafter called the “principal Act”) is amended—

- (a) by the deletion of the definition of “aircraft” and the substitution of the following—

““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”;
- (b) by the deletion of the definition of “authorised person” and the substitution of the following—

““authorised person” means a person designated in terms of section 26(3)(b) with delegated authority to perform aviation safety and security supervision tasks, including evaluations, inspections and investigations, on behalf of the State”;
- (c) by the insertion of the following definitions—

““acts of unlawful interference” means acts, or attempted acts, such as to jeopardise the safety of civil aviation, including but not limited to the—

  - (a) unlawful seizure of aircraft;
  - (b) destruction of an aircraft in service;
  - (c) hostage-taking on board aircraft or on aerodromes;
  - (d) forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility;
  - (e) introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;
  - (f) use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; and
  - (g) 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;

“aviation security” means safeguarding civil aviation against acts of unlawful interference through a combination of measures and human and material resources;

“cargo” means any property carried on an aircraft other than mail, stores and accompanied or mishandled baggage;

“passenger” means any person being conveyed by an aircraft and who is not a member of the crew”.

#### 3 Amendment of section 6 of Cap 13:16

Section 6 (“Functions of Authority”) of the principal Act is amended in subsection (1)—

- (a) by the deletion of paragraph (g) and the substitution of the following—

“(g) to investigate incidents other than occurrences involving aircraft and to take such measures as are necessary to prevent their recurrence.”;
- (b) by the deletion of paragraph (h);

- (c) by the insertion in paragraph (i) of the following subparagraphs after subparagraph (vii)—
- “(viii) air navigation services;
  - (ix) operations of aircraft.”.

#### **4 Amendment of section 10 of Cap 13:16**

Section 10 (“Board of Authority”) of the Principal Act is amended—

- (a) by the deletion of subsection (2) and the substitution of the following—

“(2) In appointing members of the Board, the Minister shall ensure that members are appointed for their knowledge of or experience in—

- (a) aviation;
- (b) aviation law;
- (c) administration, management or any other field which is relevant to the operation.”

- (b) by the repeal of subsection (3).

#### **5 Amendment of section 12 of Cap 13:16**

Section 12 (“Terms and Conditions of office of members”) of the Principal Act is amended by the deletion of subsection (2) and the substitution of the following—

“(2) Subject to this Part, a member shall hold office for such a period, not exceeding four years as the Minister may fix on his or her appointment, and upon the expiry of his or her term of office, he or she may be eligible for re-appointment as a member for only one such further term.”.

#### **6 Amendment of section 18 of Cap 13:16**

Section 18 (“Meetings and procedure of Board”) of the Principal Act is amended in subsection (1) by the deletion of “six times” and the substitution of “once every quarter”.

#### **7 Amendment of section 24B of Cap 13:16**

Section 24B (“Powers of Director-General”) of the Principal Act is amended by the insertion of the following subsection after subsection (3)—

“(4) The Director General shall establish a system which shall provide safety and security oversight for the implementation of the aviation safety and security policies, regulations and procedures which shall be implemented in accordance with the—

- (a) provisions of this Act and Regulations made thereunder;
- (b) technical guidance of qualified technical personnel and tools;
- (c) licensing, certification, authorisation or approval obligations;
- (d) surveillance or quality control obligations;
- (e) requirements for timely resolution of safety and security concerns.”.

#### **8 Amendment of section 32 of Cap 13:16**

Section 32 (“Funds of Authority”) of the Principal Act is amended by the insertion after subsection (3) of the following subsection—

“(4) All fines paid to the Authority in respect of any offence provided for in any legislation administered by the Authority shall be utilised by the Authority.”.

#### **9 Amendment of section 44 of Cap 13:16**

Section 44 (“Safety standards”) of the Principal Act is repealed and substituted of the following—

“44 Safety and security standards

The Authority shall be responsible for—

- (a) setting and maintaining safety and security standards related to personnel, aircraft and aerodromes; and
- (b) ensuring the safety of passengers, personnel and the general public in all matters related to safeguarding against acts of unlawful interference with civil aviation; and
- (c) establishing and implementing a process for management of conflict between safety and environmental conditions and in the event of such conflict, aviation safety shall not be compromised and will take precedence.”.

**10 New section inserted after section 44B of Cap 13:16**

The principal Act is amended by the insertion of the following section after section 44B—

“44C Establishment and Constitution of the National Air Transport Facilitation Committee

(1) The Minister shall establish a National Air Transport Facilitation Committee which shall have the following mandate—

- (a) to develop and implement a National Air Transport Facilitation Programme to ensure coordination between relevant ministries, agencies and industry to remove unnecessary obstacles and delays and improve efficiency and service levels of civilian air transport services;
- (b) to advise the Authority on matters relating to facilitation of civil air transport and to recommend and review the effectiveness of facilitation measures and procedures;
- (c) to encourage the development of best practices in all areas of facilitation of civil air transport including immigration, customs and handling of persons with disabilities;
- (d) to inform departments, competent agencies and other organisations concerned of significant relevant facilitation developments in the field of civil aviation and seek their consideration of, and make recommendations to them regarding issues related to the National Air Transport Facilitation Programme;
- (e) to consider recommendations to enhance facilitation of civil air transport made by relevant entities or the public;
- (f) propose changes to regulations concerning facilitation of air transport; and
- (g) to coordinate with the National Civil Aviation Security Committee on security related elements of facilitation matters.

(2) The composition of National Air Transport Facilitation Committee shall be as prescribed by the Minister.

(3) The Director-General or his or her designate shall be the Chairperson of the committee and the secretary shall be appointed from the Authority.”.

**11 New section inserted after section 57 of Cap 13:16**

The principal Act is amended by the insertion of the following section after section 57—

“57A Non disclosure of records and recordings

An investigator shall ensure that information collected in the course of an investigation, including information collected from Cockpit Voice Recorders (CVR), airborne image recordings shall not be disclosed or made available to any other person other than in connection with an investigation carried out under this Act.”.

**12 Amendment of section 63 of Cap 13:16**

Section 63 (“Controls over use of land and water in vicinity of aerodromes”) of the Principal Act is amended in subsection (2) by—

- (a) the deletion of paragraph (e) and the substitution of the following—
  - “(e) restricting the installation of telecommunication towers, powerlines, wind turbines, cables, wires or other apparatus across, over or under any land;”;
- (b) the insertion of a new paragraph after paragraph (f) as follows—
  - “(g) prohibit the erection of buildings, objects or the placement of any obstacles in areas surrounding aerodromes, which may constitute an obstruction to safe flight operations.”.

**13 Amendment of section 69A (“Powers of entry, inspection, etc. by safety and security oversight inspectors**

Section 69A (“Powers of entry, inspection, etc. by safety and security oversight inspectors”) is amended —

- (a) by the deletion of subsection (1) and the substitution of the following—
  - “(1) A safety or security oversight inspector designated in terms of section 26(3) shall have unlimited and unrestricted access to enter and inspect any aircraft or aerodrome, or any

land or premises without warrant or the consent of the owner or occupier thereof (but subject to the production on demand of an identity document issued by the Authority), if he or she has reasonable grounds for believing that—

- (a) the inspection, entry or search is necessary in the interests of aviation safety; or
  - (b) the inspection, search or entry is necessary for the prevention, investigation or detection of an offence under this Act, or for the seizure of property which is the subject matter of such an offence or evidence relating to such an offence.”;
- (b) by the insertion in subsection (2) (c) (i) of the words “or any other aviation facility” after the word “situated”.

#### **14 Amendment of section 79 of Cap 13:16**

Section 79 (“Regulations”) of the principal Act is amended—

- (a) by the insertion in subsection (1) of paragraph (bb) as follows—
  - “(bb) air navigation services including the provision of such measures of assistance to aircraft in distress in Zimbabwean territory and allowing owners of the aircraft or authorities of the state in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances;
  - (cc) the establishment of a Regulations Development Committee.”;
- (b) by the insertion of new subsections after subsection (6) as follows—
  - “(7) Notwithstanding subsection (1), the Director General may publish rules, orders, directives or circulars in the sphere of aviation safety and security for the purposes of—
    - (a) implementation of immediate safety and security measures by entities in the aviation industry; and
    - (b) compelling compliance with national aviation safety and security policies and requirements if any deficiencies are identified through surveillance or quality control activities.
  - (8) Any rules issued in terms of subsection (6) must not be inconsistent with the provisions of the Constitution or any other law administered by the Authority.
  - (9) The Minister may with immediate effect publish an amendment of any rules published in terms of subsection (7).
  - (10) The Director General shall notify the Minister prior to publication any rules in terms of subsection (7).”.

#### **15 New sections inserted after section 80 of Cap 13:16**

The principal Act is amended by the insertion of the following sections after section 80—

##### **“80A Limitation of liability**

(1) No member of the Board, employee or agent of the Authority shall be liable in respect of an action or thing done or omitted in good faith in the exercise of a power or the performance of a duty action or thing in terms of this Act, or in respect of anything that may result therefrom.

(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 or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act.

##### **80B Compliance with Marshalling Signals, Interception Manoeuvres and Order**

(1) All Zimbabwean aircrafts must comply with any marshalling signal, interception order or manoeuvre issued by any State.

(2) Any aircraft, when in Zimbabwean airspace, must comply with any marshalling signal, interception order or manoeuvres issued by any Zimbabwean aircraft.”.

#### **16 Amendment of section 87 of Cap 13:16**

Section 87 (“Sharing of certain revenues between Airports Company and Authority”) of the Principal Act is amended by the deletion of subsection (1) and substitution of the following—

### **Sharing of certain revenues between Airports Company and Authority**

“(1) Seventy *per centum* of—

- (a) the Airport Departure Fee (commonly known as the passenger service charge) levied in terms of the Civil Aviation (Airport Departure Fee) Regulations, 2003, published in Statutory Instrument 165 of 2003, shall be retained by the Airports Company and the remaining thirty *per centum* shall be paid by airlines directly to the Authority;
- (b) landing and parking fees charged to air operators shall be retained by the Airports Company and the remaining thirty *per centum* shall be remitted by the Company to the Authority in the currency in which it was received;
- (c) the fuel levy charged to fuel service providers at the airports and aerodromes of the Airports Company shall be retained by the Airports Company and the remaining thirty *per centum* shall be remitted by the Company to the Authority in the currency in which it was received.

(2) The fees referred to in subsection (1) (b) and (c) shall be remitted into the banking accounts of the Authority at the end of every month or such other shorter period as the Authority and the Airports Company of Zimbabwe (Private) Limited may agree.

(3) The rental to be charged by the Authority in consideration for the use by the Airports Company of its land long leased to it in terms of Statutory Instrument 193 of 2003, and of any of the Authority’s buildings thereon, shall be as agreed between the Minister, Authority and Airports Company.

### **Consequential Amendments of the Criminal Law (Codification and Reform) Act Cap 9:23**

#### **17 Amendment of section 148 of Cap. 9:23**

Section 148 (“Damaging, destroying or prejudicing the safe operation of an aircraft”) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (hereinafter called the “principal Act”) is amended by the insertion of the following paragraphs after paragraph (b)—

- “(c) intentionally causes destruction, or serious damage to—
- (i) the facilities of an airport serving international civil aviation; or
  - (ii) aircraft not in service located at the airport; or
- (d) intentionally causes disruption of the services of the airport; or
- (e) does or omit to do anything with the intention or realising that there is a real risk or possibility of prejudicing the safe operation of civil aviation.”.

#### **18 New Section inserted after section 149 of Cap. 9:23.**

The principal Act is amended by the insertion after section 149 of the following section—

##### **“149A Perpetrating an act of violence against aviation**

Any person who perpetrates an act of violence using any device, substance or weapon against any person at an airport serving international civil aviation, which causes or is likely to cause serious injury or death, if such an act endangers or is likely to endanger safety at that airport shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding fifteen years or to both such fine and such imprisonment.”.

