

CIVIL AVIATION ACT 2019

I assent,

Beretitenti

AN ACT

Entitled

**AN ACT TO ESTABLISH RULES OF OPERATIONS AND DIVISIONS OF
RESPONSIBILITY WITHIN THE KIRIBATI CIVIL AVIATION SYSTEM AND FOR
CONNECTED PURPOSES**

Commencement

2019

Made by the Maneaba ni Maungatabu and assented to by the Beretitenti

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PART I

1. Short Title and commencement

- (1) This Act may be cited as the Civil Aviation Act 2019.
- (2) This Act shall come into force on such date as the Minister may by notice appoint.

2. Interpretation

- (1) In this Act, unless the context otherwise requires; –

Accident means an occurrence that is associated with the operation of an aircraft and takes place between the time any person boards the aircraft with the intention of flight and such time as all such persons have disembarked and the engine or any propellers or rotors come to rest, being an occurrence in which

- (a) a person is fatally or seriously injured as a result of—
 - (i) being in the aircraft; or
 - (ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
 - (iii) direct exposure to jet blast—

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

- (b) the aircraft sustains damage or structural failure that—
 - (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 engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or

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

Aerodrome—

- (a) means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft; and
- (b) includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

Aerodrome control service means an air traffic control service provided for the control of aerodrome traffic;

Aerodrome flight information service means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome;

Aerodrome traffic means—All traffic in the maneuvering area of an aerodrome and all aircraft flying in the vicinity of an aerodrome;

Aerodrome traffic circuit means the pattern flown by aircraft operating in the vicinity of an aerodrome;

Aeronautical product means anything that comprises or is intended to comprise any part of an aircraft or that is or is intended to be installed in or fitted or supplied to an aircraft; and includes fuel and other similar consumable items necessary for the operation of the aircraft;

Aircraft means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

Aircraft flying in the vicinity of an aerodrome means any aircraft that is in, entering, or leaving an aerodrome traffic circuit;

Air service means an air transport service or an aerial work service, whether regular or casual;

Air traffic means all aircraft in flight or operating on any maneuvering area of an aerodrome;

Air traffic control service means a service provided for the purposes of—

- (a) Preventing collisions—
 - (i) Between aircraft; and
 - (ii) Between aircraft and obstructions on any manoeuvring area; and
- (b) Expediting and maintaining a safe and efficient flow of air traffic;

Air traffic service includes—

- (a) any aerodrome control service;
- (b) any area control service;
- (c) any approach control service;
- (d) any flight information service;
- (e) any aerodrome flight information service;
- (f) any alerting service;
- (g) any other air traffic service considered by the Director to be necessary or desirable for the safe and efficient operation of the civil aviation system;

Alerting service means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

Authority means the Civil Aviation Authority of Kiribati established under section 7;

Aviation document means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

For the purposes of this Act, an aviation identity card issued or approved by the Director under any regulations or rules made under this Act is not an aviation document;

Medical assessor means a health professional; and includes any medical practitioner to whom the Director has issued an aviation document under section 62(2) or section 73(2)(c) to conduct specified examinations under Part VI;

Aviation related service means any equipment, facility, or service (including any air traffic service but excluding any service of the Transport Accident Investigation Commission operated in support of or in conjunction with the civil aviation system; and includes the provision of aeronautical products;

Aviation security officer means a person for the time being employed as such in the Aviation Security Service;

Aviation Security Service means the Aviation Security Service established under section 5(2c);

Chief Investigator means the Chief Investigator appointed by the Commission under section 41(5);

Civil Aviation Registry means the registry established under section 159;

Civil Aviation Development Fund means a fund established under section 90

Commission means a Commission established by the Minister to carry out functions of the Accident Investigation Commission (AIC);

Controlled airspace means airspace of defined dimensions within which an air traffic control service is provided to controlled flights;

Controlled flight means any flight that is provided with or required by rules made under this Act to make use of an air traffic control service;

Convener means a medical practitioner appointed as convener by the Minister under section 66 or the deputy convener acting as convener;

Convention means the Convention on International Civil Aviation done in Chicago on 7 December 1944 and ratified by the Republic of Kiribati through the Kiribati instrument of accession effective 14 May 1981, and includes—

- (a) any amendment to the Convention that has entered into force under Article 94(a) of the Convention and has been ratified by Kiribati; and
- (b) any Annex or amendment to any Annex accepted under Article 90 of the Convention, to the extent adopted by Kiribati; and
- (c) the international procedures, standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organization under Article 37 of the Convention, to the extent adopted by Kiribati;

Deputy convener means a medical practitioner appointed as deputy convener by the Minister under section 66;

Director means the person who is for the time being the Director of Civil Aviation under section 22;

Flight information service means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;

Health professional means a person who is, or is deemed to be, registered with an authority established or continued by Section 3 of the Medical Services Act 1996 as a practitioner of a particular health profession;

Holder, in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document;

ICAO means the International Civil Aviation Organization established under the Convention; and includes any successor to the Organization;

Incident means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation;

International airport means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out;

Judicial officer means judges of the High Court, Magistrates and Court Registrar;

Kiribati Register of Aircraft means the register of that name that is established under section 159;

Kiribati registered aircraft means any aircraft that is for the time being registered by the Director under section 9;

Kiribati temporary stop notice means a notice issued under section 15(2);

Operate, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft; and **operator** has a corresponding meaning **owner**, in relation to any aircraft, includes any person lawfully entitled to the possession of the aircraft for 6 months or longer;

Maneuvering area—

- (a) means that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with takeoff and landing; but
- (b) does not include areas set aside for loading, unloading, or maintenance of aircraft;

Medical examiner means a medical practitioner to whom the Director has issued an aviation document under section 62(2) or section 73(2) to conduct examinations under section 60;

Medical practitioner means—

- (a) a health practitioner who is, or is deemed to be, registered under the *Medical Services Act 1996* as a practitioner of the profession of medicine; or
- (b) a person in a jurisdiction other than Kiribati who is entitled, licensed, or registered to practice medicine in that jurisdiction;

Member means a member of the Authority;

Minister means the Minister who is responsible for the time being for Civil Aviation.

Ministry means the department of the State which is, for the time being, responsible for the administration of this Act;

Navigation installation—means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation; and includes any land adjacent to any such building, facility, work, apparatus, equipment, or place, and used in connection therewith;

Pilot-in-command, in relation to any aircraft, means the pilot responsible for the operation and safety of the aircraft;

Prescribed means prescribed by this Act or by regulations or rules made under this Act;

Rules means ordinary and adopted rules made by the Minister and emergency rules made by the Director under Part VII

Secretary means the Secretary responsible for the administration of this Act;

Security area means an area that the Director has declared to be a security area under section 187;

Security designated aerodrome means an aerodrome for the time being designated as a security aerodrome under section 185;

Security designated navigation installation means a navigation installation for the time being designated as a security navigation installation under section 185;

Security enhanced area means an identified critical part of security restricted areas of an airport where in addition to access control, the screening of persons and any items they may have in their possession are conducted, the security enhanced area is declared by the Director under section 187(2);;

Specified examination means—

- (a) an examination of visual and colour perception; or
- (b) an examination of hearing; or
- (c) a psychological examination; or
- (d) any other class of examination prescribed in the rules;

Sterile area means the area at an aerodrome, between the passenger inspection and screening station and the aircraft, into which access is strictly controlled;

Technical Instructions means the Technical Instructions For The Safe Transport of Dangerous Goods by Air (ICAO Doc 9284);

Unruly passenger offence—

- (a) means an offence against Part X; and
- (b) includes an offence to which section 151 applies

3. Application of Act

- (1) Except as provided in section 123 and 149 and Part X, this Act and all regulations and rules made under this Act shall apply to the following:
 - (a) every person, aircraft, aerodrome, aeronautical product, air service, and aviation related service, in Kiribati;
 - (b) every Kiribati registered aircraft whether within or outside Kiribati;
 - (c) every holder of an aviation document while outside Kiribati and exercising or purporting to exercise privileges accorded by that document;
 - (d) Every foreign registered aircraft operating in Kiribati.

- (2) Notwithstanding subsection (1), the Minister, acting on the recommendation of the Authority or the Director, as the case may require, may, by agreement with the appropriate foreign aeronautical authority, —
 - (a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a Kiribati registered aircraft operated by that foreign operator that the Authority or the Director has under this Act or regulations or rules made under this Act;
 - (b) vest in the Authority or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a Kiribati operator that arises under this Act or regulations or rules made under this Act;
 - (c) Grant exemptions from this Act, and from regulations and rules made under this Act, relevant to any exercise of the Minister’s powers under this subsection.
- (3) Every Kiribati registered aircraft shall, while being operated over the high seas, be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.
- (4) Except where an act or omission is required in order to comply with the laws of any foreign State, every holder of an aviation document who, while outside Kiribati and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in Kiribati, shall be deemed to have committed an offence under this Act and may be proceeded against in Kiribati as if the act or omission had occurred within Kiribati.
- (5) Nothing in this section shall be interpreted as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign State that applies to or in respect of the person or aircraft.
- (6) Nothing in this Act shall be interpreted as limiting the privileges or immunities of—
 - (a) any foreign military aircraft; or
 - (b) the officers and crew of any foreign military aircraft.

4. Civil Aviation Authority of Kiribati

- (1) The Minister, acting in accordance with the advice of the Cabinet, may by order establish the Civil Aviation Authority of Kiribati.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal, with power to purchase, lease, take, hold and dispose of land and other property, to enter into contracts, and to sue and be sued in its own name.
- (3) Except as provided in this Act, the Authority shall have the power to do anything it is authorized to do by or under —
 - (a) this Act;
 - (b) any other enactment; or
 - (c) any rule of law.

- (4) The Authority shall not exercise any of its rights, powers or privileges except for the purpose of performing its functions.

5. Functions and duties of Authority

- (1) The principal function of the Authority shall be to undertake activities which promote safety in civil aviation at a reasonable cost.
- (2) The Authority has the following functions:
- (a) to promote civil aviation safety and security in Kiribati:
 - (b) to promote civil aviation safety and security beyond Kiribati in accordance with Kiribati's international obligations:
 - (c) to establish and continue a service to be called the Aviation Security Service:
 - (d) to investigate and review civil aviation accidents and incidents in its capacity as the responsible safety and security authority.
 - (e) to notify the Accident Investigation Commission in accordance with section 36 of accidents and incidents notified to the Authority:
 - (f) to maintain and preserve records and documents relating to activities within the civil aviation system, and in particular to maintain the Kiribati Register of Aircraft and the Civil Aviation Registry:
 - (g) to ensure the collection, publication, and provision of charts and aeronautical information, and to enter into arrangements with any other person or organization to collect, publish, and distribute such charts and information:
 - (h) to carry out regulatory oversight over air navigation facilities and standard systems in accordance with the convention:
 - (i) to provide to the Minister such information and advice as the Minister may from time to time require:
 - (j) to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the Authority are satisfied that the performance of the functions and duties of the Authority will not be compromised:
 - (k) to provide information and advice with respect to civil aviation, and to foster appropriate information education programs with respect to civil aviation, that promote its objective:
 - (l) to enter into technical or operational arrangements, or both, with civil aviation authorities of other countries.
- (3) For the purposes of subsection (1), a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.
- (4) The Authority must carry out any other civil aviation functions and duties that are conferred on it by this Act or any other Act;
- (5) The Authority may provide such administrative support services for the Aviation Security Service, and on such terms and conditions, as are approved by the Minister.
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- (6) The Authority shall perform its functions in respect of the Aviation Security Service separately from its other functions and shall maintain accounts, records, and reports accordingly.
- (7) The Authority shall promote all aspects of aviation-related environmental issues and its implementation through—
 - (a) ensuring International Aviation environmental standards, procedures and requirements are in accordance with international obligations, national laws and applicable regulations.
 - (b) ensure proper aviation sector environmental practices and standards are applied and maintained.

6. Compliance with Government policy directions

- (1) In the exercise of its functions and powers under this Act, the Authority shall have regard to the policy of the Government in relation to civil aviation and shall comply with any directions relating to that policy given to it in writing signed by the Minister.
- (2) The Minister shall not give any direction under subsection (1) which requires the Authority to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular person or persons.

7. Establishment of the Board of Civil Aviation Authority Kiribati

- (1) A Board to be known as the Board of the Civil Aviation Authority of Kiribati shall be established.
- (2) The Board shall consist of 5 members appointed by the Minister who will represent the public interest in civil aviation in the following areas;
 - (a) Legal
 - (b) Financial
 - (c) Civil Aviation Industry (retired/former employee)
 - (d) Two other members as the Minister may think fits.
- (3) Before appointing members, the Minister shall request, from such organisation or organisations as the Minister considers represent those who have a substantial interest in the civil aviation industry in Kiribati, the names of persons such organisation or organisations consider proper candidates for appointment to the Board.
- (4) A person may hold office as a member concurrently with any other office, except any office or appointment as member of the Commission.
- (5) Neither the Director nor any other employee of the Authority or civil aviation industry may be a member of the Board.

(6) The Director may be appointed as an ex officio member.

(7) The provisions of Schedule 1 shall apply in relation to the Board.

8. Objective of the Board

The objective of the Board is to;

- (a) overlook operational matters in the Civil Aviation Authority;
- (b) make decisions relating to the operations in the Authority
- (c) report directly to the Minister on administrative matters; and
- (d) ensure that the Civil Aviation Authority operates in a manner that is consistent with its principal objectives and functions.

PART II

Entry into the civil aviation system

9. Requirement to register aircraft

- (1) Except as otherwise provided in this Act or rules made under this Act, every person lawfully entitled to the possession of an aircraft for a period of 6 months which flies to, from, within, or over Kiribati territory shall register that aircraft and hold a valid certificate of registration for that aircraft from—
 - (a) the Director; or
 - (b) the appropriate aeronautical authorities of a contracting State of ICAO; or
 - (c) the appropriate aeronautical authorities of another State that is party to an agreement with the Government of the Republic of Kiribati or the Civil Aviation Authority for Kiribati which provides for the acceptance of each other's registrations.
- (2) No aircraft shall be registered in or remain registered in Kiribati if it is registered in any other country.
- (3) The Director may decline to register any aircraft in accordance with the provisions of rules made under this Act.
- (4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 156.

10. Requirement for aviation document

- (1) Rules made under this Act may require that an aviation document shall be required by or in respect of all or any of the following;
 - (a) Kiribati registered aircraft:

- (b) aircraft pilots:
 - (c) flight crew members:
 - (d) air traffic service personnel:
 - (e) aviation security service personnel:
 - (f) aircraft maintenance personnel:
 - (g) air service:
 - (h) air traffic services:
 - (i) aerodromes and aerodrome operators:
 - (j) navigation installation providers:
 - (k) aviation training organisations:
 - (l) aircraft design, manufacture, and maintenance organisations:
 - (m) aeronautical procedures:
 - (n) aviation security services:
 - (o) aviation meteorological services:
 - (p) aviation communication services:
 - (q) any persons, service, or things within any of the classes specified in paragraphs (a) to (p):
 - (r) such other persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be specified in the rules:
 - (s) any person who is an medical assessor or medical examiner.
- (2) The requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued, shall be prescribed by rules made under this Act.
- (3) Subject to any rules made under this Act, an aviation document may be issued by the Director for such specified period and subject to such conditions as the Director considers appropriate in each particular case.
- (4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 156.

11. Application for aviation document

- (1) Every application for the grant, renewal or validation of an aviation document shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may approve.
- (2) Every applicant for an aviation document shall include in the application the applicant's address for service in Kiribati including, where applicable, email address, telephone and facsimile numbers.

- (3) It shall be the duty of every holder of an aviation document to maintain the currency of the information provided under subsection (2) by promptly notifying the Director of any changes to the address, email address, telephone number, or facsimile number.
- (4) The Director shall ensure that a record of all information provided under this section is maintained at the Civil Aviation Registry.
- (5) Service of any notification under this Act on a holder of, or applicant for, an aviation document shall be effective service if served on the address last provided by that holder or applicant under this section.

12. Grant, renewal, validation and conversion of aviation document

- (1) After considering any application for the grant, renewal, validation and conversion of an aviation document, the Director shall, as soon as is practicable, grant the application if he or she is satisfied that—
 - (a) all things in respect of which the document is sought meet the relevant prescribed requirements; and
 - (b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document—
 - (i) either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Director under subsection (2); and
 - (ii) is a fit and proper person to have such control or hold the document; and
 - (iii) meets all other relevant prescribed requirements;
 - (c) if it is not contrary to the interests of aviation safety for the document to be granted, renewed, validated or converted.
- (2) For the purpose of granting, renewing or converting an aviation document, the Director may, subject to any provisions in the rules, accept such foreign qualifications or recognize such foreign certifications as he or she considers appropriate in each case.
- (3) For the purpose of validating licenses, the Director may, subject to any provisions in the rules, accept and recognize such foreign qualifications as he or she considers appropriate in each case.
- (4) It shall be a condition of every current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in subsection 1(b)(ii).
- (5) Where the Director declines to grant an application for the grant, renewal, validation or conversion of an aviation document under this section, the applicant may appeal against that decision to the High Court under section 156.

13. Criteria for fit and proper person

- (1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Director shall, having regard to the degree and nature of the person's proposed involvement in the Kiribati civil aviation system, have regard to, and give such weight as the Director considers appropriate to, the following matters:
 - (a) the person's compliance history with transport safety regulatory requirements:
 - (b) the person's related experience (if any) within the transport industry:
 - (c) the person's knowledge of the applicable civil aviation system regulatory requirements:
 - (d) any history of physical or mental health or serious behavioral problems:
 - (e) any conviction for any transport safety offence, whether or not—
 - (i) the conviction was in a Kiribati court; or
 - (ii) the offence was committed before the commencement of this Act:
 - (f) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this Act:
- (2) The Director shall not be confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.
- (3) The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act,—
 - (a) seek and receive such information (including medical reports) as the Director thinks fit; and
 - (b) consider documented information obtained from any source.
- (4) Subsection (1) applies to a body corporate with the following modifications:
 - (a) paragraphs (a), (b), (c), (e), (f), and (g) of that subsection shall be read as if they refer to the body corporate and its officers:
 - (b) paragraph (d) of that subsection shall be read as if it refers only to the officers of the body corporate.
- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), disclose that information to that person and, in accordance with section 14, give that person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.
- (7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and, —
 - (a) in the case of non-disclosure to an individual of information about the individual, —
 - (i) inform the individual that he or she may, complain to the Board about that non-disclosure.

- (b) in any other case, —
 - (i) inform the person that the person may write to the Board to seek a review of the Director's decision.

14. Rights of persons affected by proposed adverse decisions

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

adverse decision means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act;

affected document holder, in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the aviation document;

person directly affected, in relation to any adverse decision, means the person who would be entitled under section 138 to appeal against that adverse decision;

person on the basis of whose character the adverse decision arises in relation to any adverse decision made or proposed to be made on the grounds referred to in section 13, means the person whom the Director assesses as not being a fit and proper person.

- (2) Where the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, shall—

- (a) notify the person directly affected by the proposed decision of the proposed decision; and
- (b) subject to subsection (4), inform that person of the grounds for the proposed decision; and
- (c) specify a date by which submissions may be made to the Director in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given; and
- (d) where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and
- (e) notify the person of the person's right of appeal under section 156, in the event of the Director proceeding with the proposed decision; and
- (f) specify such other matters as in any particular case may be required by any provision of this or any other Act.

- (3) Where the Director gives a notice under subsection (2), the Director—

- (a) Shall also supply a copy of the notice to—
 - (i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and

- (ii) any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and
 - (b) May supply a copy of the notice to any other affected document holder.
- (4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 13(1), except to the extent that—
- (a) the notice or copy is supplied to the person to whom the information relates; or
 - (b) That person consents to the supply of that information to any other person.
- (5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply:
- (a) it shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under subsection (2)(c), or within such further period as the Director may allow;
 - (b) the Director may consider any information supplied by that person after the expiry of the period referred to in paragraph (a), other than information requested by the Director and supplied by that person within such reasonable time as the Director may specify;
 - (c) the Director shall consider any submissions made in accordance with paragraph (a), other than information requested by the Director and supplied pursuant to a request referred to in paragraph (b).
- (6) After considering the matters referred to in subsection (5), the Director shall—
- (a) finally determine whether or not to make the proposed adverse decision; and
 - (b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3)(a), of—
 - (i) the Director's decision and the grounds for the decision;
 - (ii) the date on which the decision will take effect; and
 - (iii) In the case of an adverse decision, the consequences of that decision and any applicable right of appeal (being a right of appeal specified in section 72 or section 97(3b) or section 156.

15. Kiribati Temporary Stop Notice

The Director may give the holder of a license to operate on Kiribati a written temporary stop notice that requires the holder to cease conducting all or any air operations in Kiribati for the period (which must not be more than 7 days) specified in the notice.

- (1) The Director may issue a Kiribati temporary stop notice only if the Director considers that, as a result of the holder conducting all or any air operations in Kiribati, there is a serious risk to civil aviation safety in Kiribati

- (2) Immediately on receiving a Kiribati temporary stop notice, the holder must cease conducting the air operations specified in the notice in Kiribati for the period specified in the notice.
- (3) The Director may not delegate the power to issue or revoke a Kiribati temporary stop notice.
- (4) The Director may amend or revoke a Kiribati temporary stop notice before the period specified in that notice has expired.
- (5) The Director must revoke a Kiribati temporary stop notice if the Authority receives notification from the operator in response to the Kiribati temporary stop notice.

16. Contents of Kiribati temporary stop notice

- (1) A Kiribati temporary stop notice must specify—
 - (a) the reasons why the Director considers that there is a serious risk to civil aviation safety in Kiribati; and
 - (b) the period for which the operator must cease conducting air operations in Kiribati
- (2) Failure to comply with subsection (1) does not invalidate the Kiribati temporary stop notice.

17. Director to notify aeronautical authorities about Kiribati temporary stop notice

As soon as practicable after giving a Kiribati temporary stop notice to the operator, the Director must give appropriate aeronautical authorities a copy of the notice and any other information that such aeronautical authority may require.

PART III

Functions, powers, and duties of participants in the civil aviation system

18. General requirements for participants in civil aviation system

- (1) Every person who does anything for which an aviation document is required (in the succeeding provisions of this section called a participant) shall ensure that the appropriate aviation documents and all the necessary qualifications and other documents are held by that person.
- (2) Every participant shall comply with this Act, the relevant rules or regulations made under this Act, and the conditions attached to the relevant aviation documents.
- (3) Every participant shall ensure that the activities or functions for which the aviation document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety standards and practices.

- (4) Every participant who holds an aviation document that authorises the provision of a service within the civil aviation system shall—
 - (a) if so required by rules made under this Act, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document;
 - (b) provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and
 - (c) provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

- (5) Every participant operating an aircraft shall ensure that the following documents are carried onboard the aircraft;
 - (a) its certificate of registration;
 - (b) its certificate of airworthiness;
 - (c) the appropriate licenses for each member of the crew;
 - (d) its journey log book;
 - (e) if it is equipped with radio apparatus, the aircraft radio station license;
 - (f) if it carries passengers, a list of their names and places of embarkation and destination;
 - (g) if it carries cargo, a manifest and detailed declarations of the cargo; and
 - (h) other documents as may be prescribed by rules made under this Act.

19. Duties of pilot-in-command

The pilot-in-command of an aircraft shall—

- (a) be responsible for the safe operation of the aircraft in flight, the safety and well-being of all passengers and crew, and the safety of cargo carried;
- (b) have final authority to control the aircraft while in command and for the maintenance of discipline by all persons on board; and
- (c) subject to section 20, be responsible for compliance with all relevant requirements of this Act and regulations and rules made under this Act.

20. Duties of pilot-in-command and operator during emergencies

- (1) Subject to subsections (2) and (6), in an emergency that arises in flight, the pilot-in-command may breach the provisions of this Act or of regulations or rules made under this Act.
- (2) For the purposes of subsection (1), a breach of any prescribed requirement is permitted only if the pilot-in-command is satisfied that—
 - (a) the emergency involves a danger to life or property; and

- (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
 - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.
- (3) Subject to subsections (4) to (6), where an emergency (not being an emergency that arises in flight) necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command of the aircraft or the operator of the aircraft may breach the provisions of this Act or of regulations or rules made under this Act.
- (4) For the purposes of subsection (3), a breach of any prescribed requirement is permitted only if—
- (a) the emergency involves a danger to life or property; and
 - (b) the extent of breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
 - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.
- (5) Nothing in subsection (3) permits—
- (a) the operation of an aircraft that is not registered in Kiribati or elsewhere; or
 - (b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or
 - (c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.
- (6) Where, in any emergency described in this section, a pilot-in-command or an operator breaches this Act or regulations or rules made under this Act in accordance with the provisions of this section, the pilot-in-command or the operator, as the case may be, shall—
- (a) immediately notify the relevant air traffic service of the action; and
 - (b) as soon as practicable, notify the Director of the action and the circumstances that necessitated it, and, if requested by the Director, provide to the Director a written report in respect of the action.

21. Functions of Minister

The functions of the Minister under this Act are—

- (a) to promote safety in civil aviation through provision of air navigation facilities and standard systems in accordance with the Convention and others:

- (b) to administer Kiribati's participation in the Convention and any other international aviation convention, agreement, or understanding to which the Government of Kiribati is a party;
- (c) to ensure that required assistance to an aircraft in distress is provided;
- (d) to make rules under this Act.

22. Director of Civil Aviation

- (1) There shall be a chief executive of the Authority, who shall be known as the Director of Civil Aviation.
- (2) The Director shall be appointed by the Beretitenti, acting in accordance with the advice of the Public Service Commission tendered after consultation with the Authority.
- (3) The Director shall have and may exercise such functions and powers as may be conferred or imposed on the Director by this Act, or by regulations and rules made under this Act, and such functions and powers as may be delegated to the Director by the Authority under section 32.
- (4) Without limiting subsection (3), the Director shall –
 - (a) exercise control over entry into the civil aviation system through the granting of aviation documents under this Act; and
 - (b) take such action as may be appropriate in the public interest to enforce the provisions of this Act and of regulations and rules made under this Act, including the carrying out or requiring of inspections and monitoring.
- (5) In performing or exercising any functions or powers in relation to –
 - (a) the issue, suspension or revocation of aviation documents;
 - (b) the issue, suspension or revocation of medical certificates;
 - (c) the enforcement of the provisions of this Act or any other Act, or of rules or regulations made under any such Act,

in respect of any particular case, the Director shall act independently and shall not be subject to the direction of the Minister or the Board for the performance or exercise of such functions or powers.

- (6) Without limiting subsection (3), where the Director believes on reasonable grounds –
 - (a) that an unsafe condition exists in any aircraft or aeronautical product; and
 - (b) that condition is likely to exist or develop in any other aircraft or aeronautical products of the same design,

the Director may, by notice in writing, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design.

- (7) Notice of an airworthiness directive issued under subsection (6) must be given in the Gazette.

- (8) An airworthiness directive issued under subsection (6) comes into force on the date specified in the directive, which may be a date earlier than the date of notification of the issuing of the directive in the Gazette under subsection (6), if –
- (a) the Director considers that urgent action is required;
 - (b) the Director notifies the affected parties before the directive comes into force; and
 - (c) notification of the issuing of the directive is given in the Gazette not later than 28 days after the directive comes into force.
- (9) In the case of the absence from duty of the Director (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or pertaining to the position may be exercised and performed by –
- (a) any other employee for the time being appointed by the Authority to exercise and perform them; or
 - (b) any other person for the time being appointed by the Authority to exercise and perform them,

whether the direction has been given or the appointment has been made before the absence or vacancy occurs or while the absence or vacancy continues.

- (10) No direction or appointment pursuant to subsection (8), and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion of the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.
- (11) No person employed within the Aviation Security System shall be given any direction or appointment by the Authority under subsection (9) without the prior written approval of the Minister.

23. Power of Director to investigate holder of aviation document

- (1) The Director may, in writing, require any holder of an aviation document to undergo an investigation conducted by the Director if the Director believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security, and if the Director—
- (a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 18; or
 - (b) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
- (2) If the Director requires a holder to undergo an investigation, the Director must—
- (a) conclude the investigation as soon as practicable; and
 - (b) inform the holder, in writing, of—

- (i) the date on which the investigation will begin; and
- (ii) the results of the investigation and any recommendations arising out of the investigation; and the grounds for those recommendations.

24. Director may require or carry out safety and security inspections and monitoring

- (1) The Director may in writing require any person who—
 - (a) holds an aviation document; or
 - (b) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure; or
 - (c) is designated as an medical assessor or medical examiner under Part VI,—to undergo or carry out such inspections and such monitoring as the Director considers necessary in the interests of civil aviation safety and security.
- (2) The Director may, in respect of any person described in paragraph (a) or paragraph (b) of subsection (1), carry out such inspections and monitoring as the Director considers necessary in the interests of civil aviation safety and security.
- (3) For the purposes of any inspection or monitoring carried out in respect of any person under subsection (2), the Director may in writing require from that person such information as the Director considers relevant to the inspection or the monitoring.

25. Power of Director to suspend aviation document or impose conditions

- (1) The Director may suspend any aviation document issued under this Act or rules made under this Act or impose conditions in respect of any such document, if he or she considers such action necessary in the interests of safety, and if he or she—
 - (a) considers such action necessary to ensure compliance with this Act or rules made under this Act; or
 - (b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 18; or
 - (c) is satisfied the holder has contravened or failed to comply with section 112; or
 - (d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
- (2) Without limiting the general provisions of subsection (1), the Director may suspend any aviation document relating to the use of any aircraft, aeronautical product, or the provision of any service, or impose conditions in respect of any such document, if he or she considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the document relates.
- (3) The suspension of any aviation document and any conditions imposed under subsection (1) or subsection (2) remain in force until the Director determines what action, if any, referred

to in subsection (4) is to be taken; but any such suspension or conditions expire 10 working days after the date that the suspension or conditions are imposed unless, before the expiry of that period, the Director extends the suspension or conditions for a further specified period.

- (4) The Director may take one or more of the following actions:
 - (a) impose conditions for a specified period;
 - (b) withdraw any conditions;
 - (c) suspend any aviation document for a specified period;
 - (d) revoke or partially revoke any aviation document under section 26.
 - (e) impose permanent conditions under section 26.
- (5) If notice of a proposed revocation of an aviation document, or notice of the proposed imposition of permanent conditions, is given in accordance with section 14, either at the same time as the suspension of the document under this section is imposed or while the suspension is in force, the document to which the notice relates remains suspended until the Director finally decides whether to revoke the document or to impose permanent conditions on the document under section 26.
- (6) Any person whose aviation document has been suspended or made subject to conditions under subsection (4) shall forthwith produce that document to the Director for appropriate endorsement.
- (7) The whole or any part of an aviation document may be suspended under this section.
- (8) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 156.

26. Power of Director to revoke aviation documents or impose conditions

- (1) The Director may, if he or she considers it necessary in the interests of aviation safety after an inspection, monitoring, or investigation carried out under this Act, revoke an aviation document or impose permanent conditions on an aviation document.
- (2) Without limiting subsection (1), the Director may revoke or impose permanent conditions on an aviation document if the Director considers that the revocation or imposition of permanent conditions is necessary in the interests of aviation safety.
- (3) Revocation under this section may be in respect of the whole or any part of an aviation document.

- (4) If the Director proposes to take action under this section, he or she must give notice in accordance with section 14, which applies as if the proposed action were a proposed adverse decision under this Act.
- (5) A person whose aviation document is revoked or made subject to permanent conditions under this section must,—
 - (a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement;
 - (b) if the whole document is revoked, immediately surrender the document to the Director.
- (6) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 156.

27. Criteria for action taken under section 25 or section 26

- (1) The provisions of this section shall apply for the purpose of determining whether an aviation document should be suspended or made subject to conditions under section 25 or revoked or made subject to conditions under section 26.
 - (2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:
 - (a) the person's compliance history with transport safety regulatory requirements;
 - (b) any conviction for any transport safety offence, whether or not—
 - (i) the conviction was in a Kiribati court; or
 - (ii) the offence was committed before the commencement of this Act;
 - (c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this Act.
 - (3) The Director shall not be confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.
 - (4) The Director may—
 - (a) seek and receive such information as the Director thinks fit; or
 - (b) consider information obtained from any source.
 - (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), as soon as is practicable, but, in the case of the suspension of an aviation document or the imposition of conditions under section 25, no later than 5 working days after suspending the aviation document or imposing conditions, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.
 - (6) Nothing in subsection (5) or subsection (7) requires the Director to disclose—
 - (a) any information, the disclosure of which would endanger the safety of any person; or
-

- (b) any information or the fact of non-disclosure of that information, before suspending an aviation document or imposing conditions in respect of an aviation document under section 25.
- (7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and,—
 - (a) in the case of non-disclosure to an individual of information about the individual,—
 - (i) inform the individual that the individual may complain to the Board about that nondisclosure; and
 - (b) in any other case,—
 - (i) inform the person that the person may seek a review in writing to the Board;

28. Power of Director to amend or revoke aviation document in other cases

- (1) The Director may, if so requested in writing by the holder of any aviation document, amend that document in the manner requested or revoke that document.
- (2) Subject to subsection (3), the Director may do any of the following:
 - (a) amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;
 - (b) revoke any aviation document if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder;
 - (c) amend any aviation document to correct any clerical error or obvious mistake on the face of the document.
- (3) Before taking any action under subsection (2), the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.
- (4) The power to amend an aviation document under this section includes—
 - (a) power to revoke the document and issue a new document in its place; and
 - (b) power to impose reasonable conditions.
- (5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

29. Power of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions

- (1) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger

persons or property, the Director may, if authorized by a warrant given by a judicial officer on written application on oath, do all or any of the following:

- (a) detain the aircraft or any aircraft of that class:
- (b) seize the aeronautical product or any aeronautical products of that class:
- (c) prohibit or impose conditions on the operation of the aircraft or aircraft of that class, or the use of any aeronautical product or any aeronautical products of that class.

(2) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following:

- (a) prohibit or impose conditions on the operation of the aircraft or all aircraft of that class:
- (b) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class:
- (c) detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.

(3) Any detention or seizure under subsection (1) or subsection (2) shall be maintained for only such time as is necessary in the interest of safety; but, if aircraft, aeronautical products, or parts thereof are required for the purpose of evidence in any prosecution under this Act those aircraft, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.

(4) The Director shall, if requested by the owner or the person for the time being in charge of an aircraft detained or an aeronautical product seized under subsection (1) and subsection (2) provide in writing to the owner or that person the reasons for the detention or seizure.

(5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 156.

(6) For the purpose of subsections (1) and (2), the Director shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

30. Power of Director in relation to examinations, etc.

For the purposes of granting or renewing aviation documents under this Act, the Director may set, conduct, and administer examinations and tests, conduct flight testing, and carry out such other functions in relation to such examinations, tests, and flight testing as may be necessary.

31. Delegation of Minister's functions or powers to Authority.

- (1) The Minister may from time to time, either generally or particularly, delegate to the Authority all or any of the Minister's functions and powers under this Act.
- (2) Every delegation under this section shall be in writing.
- (3) No delegation under this section shall include the power to delegate.
- (4) The power of the Minister to delegate under this section—
 - (a) is subject to section 76(9) and to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but
 - (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (5) Subject to any general or special directions given or conditions imposed by the Minister, the Authority may exercise any functions or powers so delegated to the Authority in the same manner and with the same effect as if they had been conferred on the Authority directly by this section and not by delegation.
- (6) Where the Authority purports to act pursuant to any delegation under this section, the Authority, shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (7) No such delegation shall affect or prevent the exercise of any function or power by the Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation

32. Delegation of Authority's functions or powers to employees of Authority.

- (1) The Authority may from time to time, either generally or particularly, delegate to the Director or any other employee of the Authority any of its functions and powers under this Act or any other Act, or under any regulations or rules made under this Act, including functions or powers delegated to the Authority under this Act.
- (2) Every delegation under this section shall be in writing.
- (3) The Authority shall not delegate any functions or powers delegated to the Authority by the Minister without the written consent of the Minister.
- (4) In any case where the Authority has delegated any functions or powers to any employee of the Authority under this section, that employee may, with the prior approval in writing of the Authority, delegate to any other employee of the Authority such of those functions or powers as are so approved.

- (5) No delegation of any functions and powers delegated to the Director by the Authority under this section shall be delegated by the Director under subsection (4) without the written consent of the Authority.
- (6) Subject to any general or special directions given or conditions imposed by the Authority, any employee of the Authority to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that employee directly by this Act and not by delegation.
- (7) Every employee of the Authority purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (8) Any delegation under this section may be made to a specified employee of the Authority or to employees of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices of the Authority.
- (9) No delegation under this section shall have affect or prevent the performance of any function or the exercise of any power by the Authority, nor shall any delegation affect the responsibility of the Authority for the actions of any employee of the Authority acting under the delegation.
- (10) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the employee of the Authority by whom it was made may cease to hold office, and shall continue to have effect as if made by the employee for the time being holding that office.
- (11) Every employee of the Authority purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his authority to so act.
- (12) The Authority may not delegate any function or power that does not relate to the functions and powers of the Aviation Security Service to any person in the Aviation Security Service or outside that Service without the prior written approval of the Minister.

33. Delegation of Director's function or powers to employees of Authority

- (1) The Director may from time to time, either generally or particularly, delegate to any employee of the Authority any of the Director's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act, including functions or powers delegated to the Director under this Act.
 - (2) Every delegation under this section shall be in writing.
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- (3) Notwithstanding subsection (1), the Director shall not delegate the power under section 26 to revoke an aviation document.
- (4) The Director must not delegate any functions or powers delegated to the Director by the Minister without the written consent of the Minister.
- (5) Every delegation under this section, until it is revoked, continues in force according to its tenor, despite the fact that the employee of the Authority by whom it was made may cease to hold office, and continues to have effect as if made by the employee for the time being holding that office.

34. Delegation of Director's function or powers to persons outside Authority

- (1) Subject to this section, the Director may from time to time either generally or particularly delegate to any person who is not an employee of the Authority any of the Director's functions and powers under this Act, or under any regulations or rules made under this Act, other than—
 - (a) the power under section 26 to revoke aviation documents; or
 - (b) the power under section 97 to suspend or revoke aviation documents; or
 - (c) the power under section 130 to issue infringement notices.
 - (2) Every delegation under this section shall be in writing.
 - (3) No delegation shall be made under this section without the written consent of the Minister.
 - (4) In any case where the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.
 - (5) Any delegation under this section may be made to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or specified class of office.
 - (6) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.
 - (7) Every person purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his or her authority to so act.
 - (8) A reasonable fee may be charged on a person upon whom the delegated function or power is being exercised.
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35. General power of entry

- (1) For the purpose of carrying out his or her functions, duties, or powers under this Act or regulations or rules made under this Act, every person duly authorised by the Director shall have right of access at any reasonable time to the following:
 - a) any aircraft, aerodrome, building, or place:
 - b) any document or record concerning any aircraft, aeronautical product, or aviation related service.
- (2) Without limiting the power conferred by subsection (1), every person duly authorised by the Director who has reasonable grounds to believe that—
 - a) any breach of this Act or of regulations or rules made under this Act is being or about to be committed; or
 - b) a situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property—

may at any reasonable time enter any aircraft, aerodrome, building, or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) and (b) exists.

- (3) Every person who is authorised to have access to or to enter any aircraft, aerodrome, building, or place under subsection (1) or subsection (2)—
 - (a) may require any person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under this Act to produce or surrender it; and
 - (b) must, if a document is surrendered under paragraph (a), orally inform the relevant aviation document holders as soon as practicable, and in writing that the document has been surrendered.
- (4) The right of access and the powers conferred by any of subsections (1) to (3) may not be used to gain a right of access to, to inspect, or to require the production or surrender of a record of the Chief Investigator in an accident investigation carried out under this Act.
- (5) Nothing in subsection (1) or subsection (2) shall confer on any person the power to enter any dwelling house, unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.
- (6) Every warrant issued under subsection (4) shall be directed to a named person and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate, and the period of validity shall be shown in the warrant.

- (7) Every person exercising the power of entry conferred by subsection (1) or subsection (2) shall carry a warrant of authority issued by the Director specifying—
 - (a) the name and the office or offices held by the person; and
 - (b) that the person is authorised by the Director to exercise the power conferred by subsections (1) and (2) to enter aircraft, aerodromes, buildings, and places, and to carry out such inspection; and
- (8) Every person exercising the power of entry conferred by subsections (1) and (2) shall produce the warrant of authority and evidence of identity—
 - (a) if practicable on first entering the aircraft, aerodrome, building, or place; and
 - (b) whenever subsequently reasonably required to do so.

Part IV

Accident and Incident Investigation

36. Obligation to notify all accidents and incidents

- (1) The pilot-in-command of any aircraft that is involved in an accident shall notify the accident to the Authority as soon as practicable.
- (2) Every person who—
 - (a) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, or aviation related service; and
 - (b) is involved in an incident, — shall, where required to do so under rules made under this Act, notify the incident to the Authority.
- (3) If, due to injuries or death, the pilot-in-command is unable to give the necessary notice under subsection (1), the operator shall provide the necessary notice.
- (4) The coordinator of any search and rescue operation for any aircraft shall notify the Authority of the operation as soon as practicable.
- (5) The Authority may on being notified under subsection (1) or subsection (2) or subsection (3) or subsection (4) request such additional information, in such form as the Authority considers appropriate in each specific case, and the pilot-in-command or operator or person of whom the request is made shall provide the additional information forthwith

37. Obligation to identify pilot-in-command

- (1) If a pilot-in-command of an aircraft is alleged to have committed an offence under this Act or the rules, the Director or a police officer may—
 - (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and
 - (b) require that person to give all information in that person's possession or reasonably obtainable by that person that may lead to the identification of the pilot.
- (2) A request under subsection (1) may be made orally or in writing, and the operator or holder of the certificate of registration (as the case may be) must comply with the request within 10 working days.
- (3) Subsection (1) does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the suspected offence.

38. Duty to investigate accidents and incidents

- (1) Where an accident or incident notified in accordance to section 36 are accidents and incidents under section 39(1), the Authority shall advise the Minister of the option to establish an investigation commission.
- (2) In cases where accidents and incidents reported do not fall under section 39(1) the Authority shall, as soon as practicable, after any accident or incident is notified to the Authority in accordance with section 36, the Authority shall commence investigation of the accident or incident.

39. Designation of Accident Investigation Commission

- (1) The Minister shall designate an Accident Investigation Commission if the occurrence is;
 - a) an accident involving aircraft or
 - b) a serious incident in accordance with the provisions of the Convention
- (2) The Commission shall exercise its functions independent of any government aviation organizations.
- (3) The Commission shall remain in existence until it has presented its final report and the Minister declares that it has ceased to exist.

40. Composition of the Commission

The composition of the designated Accident Investigation Commission shall be made up of personnel required under international standards for an approved Accident Investigation Commission.

41. Functions of the Commission

- (1) The principal function of the Commission is to determine the circumstances of accidents and incidents to avoid similar occurrences in the future rather than ascribing blame to any person.
- (2) Without limiting the principal function under subsection (1), the Commission shall also have the following functions:
 - (a) to make such inquiries as it considers appropriate to ascertain the cause or causes of accidents and incidents;
 - (b) to co-ordinate and direct all such investigations and to determine which other parties (if any) in respect of any such investigation;
 - (c) to prepare and publish findings and recommendations (if any) in respect of any such investigation;
 - (d) to deliver a written report on each investigation to the Minister, including any recommendations for changes and improvements that it considers will ensure the avoidance of accidents and incidents in the future; and
 - (e) to co-operate and co-ordinate with other accident investigation organizations overseas, including taking evidence on their behalf.
- (3) Except as expressly provided otherwise in this or another Act, the Commission must act independently in performing its functions and duties
- (4) As soon as is practicable, after the expiry of 21 days from the date that the report in subsection 2(d) is delivered to the Minister, the Commission must do the following in respect of that report:
 - (a) publish it; and
 - (b) make it available for inspection by the public, free of charge;
 - (c) issue it to any person who asks for it on payment of a reasonable charge fixed by the Commission.
- (5) The Commission shall appoint a Chief Investigator and delegate its functions and powers to the Chief Investigator.
- (6) Delegations made under subsection (5) shall be made in writing.

42. General powers of the Commission

- (1) For the purposes of carrying out its functions and duties under this Act, the Commission has the powers of inquiry and subject to the provisions of this Act, the law relating to commissions of inquiry shall apply with the necessary modifications.
- (2) The Commission also has and may exercise all such powers as may be –
 - a) conferred on it by this Act; or

b) reasonably necessary or expedient to enable it to carry out its functions.

(3) For the avoidance of doubt, the Commission may investigate an accident or incident that involves any combination of military and non-military persons or things.

43. Powers of entry and investigation

- (1) Without limiting the powers conferred by section 38, for the purposes of carrying out the Commission's functions, duties and powers under this Act, an authorized investigator may –
 - (a) enter any aircraft, aerodrome, building or place, and inspect anything where the authorized investigator believes on reasonable grounds that it is necessary to do so for the purposes of investigating an accident or incident;
 - (b) require the owner, operator or occupier of the aircraft, aerodrome, building or place to state, and produce satisfactory evidence of his name and address;
 - (c) inspect, make copies of or take extract from, or retain any document or record that the authorized investigator believes on reasonable grounds is relevant to the investigation of an accident or incident;
 - (d) where the authorized investigator believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation or destruction of any place or thing involved in any manner in an accident or incident, prohibit or restrict access of persons or classes of persons to the site of any accident or incident or to any thing involved in the accident or incident;
 - (e) where the authorized investigator believes on reasonable grounds that anything is or contains evidence relevant to the investigation of any accident or incident, direct that the thing be taken to a place nominated by the authorized investigator;
 - (f) without limiting paragraphs (a) to (e), seize, detail, remove, preserve, protect or test any place or thing that the authorized investigator believes on reasonable grounds will assist in establishing the cause of an accident or incident.
- (2) Nothing in this section confers on any person the power to enter any dwelling-house unless the entry is authorized by a warrant given by a judicial officer on written application on oath; and such warrant must not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.
- (3) Every warrant issued under subsection (2) must be directed to a named person and is valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity must be shown in the warrant.
- (4) Every person exercising the power of entry conferred by subsection (1) must carry, in the case of –

- (a) the authorized investigator, documentary evidence of his appointment as the authorized investigator;
 - (b) any other person, a warrant of authority issued by the Commission specifying-
 - (i) the name and the office or offices held by the person; and
 - (ii) that the person is authorized by the Chief Investigator to exercise the power conferred by this section to enter aircraft, aerodromes, buildings and places, and to carry out inspections.
- (5) Every person exercising the power of entry conferred by subsection (1) must produce the document required to be carried, and where applicable the warrant issued under subsection (2) –
- (a) if practicable on first entering the aircraft, aerodrome, building or place; and
 - (b) whenever subsequently reasonably required to do so.
- (6) In this section, authorized investigator' means –
- (a) the Chief Investigator;
 - (b) any person appointed by the Chief Investigator in writing.

44. Conduct of investigation

- (1) When an accident or incident is under investigation by the Commission, the Commission, the Commission shall be in charge of that investigation.
- (2) The Commission shall permit the participation or representation of such foreign organizations in any investigation as is provided for by any bilateral treaty and the Convention.
- (3) Except with the consent of the Commission, which consent shall not be unreasonably withheld, no other person (including the Civil Aviation Authority) shall –
 - (a) participate in any investigation being undertaken by the Commission; or
 - (b) undertake any independent investigation at the site of any accident or incident being investigated by the Commission; or
 - (c) examine or cause to be examined any material removed from the site of any accident or incident investigated by the Commission; or
 - (d) examine or cause to be examined any recording of a communication between persons on the flight deck of an aircraft and persons in an air traffic control service relating to an accident or incident being investigated by the Commission; or
 - (e) examine or cause to be examined any record specified in section 47 that relates to an accident or incident being investigated by the Commission.

- (4) Subsection 3 is subject to section 51
- (5) Where the Commission refuses consent under subsection (3), it shall give the applicant a statement in writing of the reasons for its refusal.
- (6) Where any preliminary report issued by the Commission states or infers that the conduct of any specified person has contributed to the cause of an accident or incident being investigated by the Commission, the Commission shall, before issuing a final report on the matter,
 - (a) give that person an opportunity to comment on or refute that statement, either in a statement in writing or at a hearing; and
 - (b) have regard to that person's statement or other evidence.
- (7) Where an incident or accident referred to in section 39(1) is being investigated by the Commission and the Kiribati Police Services, or a visiting investigating body, the Commission and the Police Commissioner shall take all reasonable measures to ensure that the investigation are coordinated.

Part V

Disclosure and Admissibility of accident and incident investigation information

45. Interpretation

For the purposes of this Part, unless the context otherwise requires, -

Disclose, in relation to a record referred to in this Part, includes –

- (a) relating the whole or part of the contents of the record orally; and
- (b) producing the record, or a copy of the record, in whole or in part in any form; and disclosed and disclosure have corresponding meanings

Proceedings means –

- (a) proceedings before a court or tribunal; and
- (b) proceedings before a commission of inquiry under the Commission of Inquiry Ordinance or a body, other than the Commission, having the powers or any of the powers of such a commission of inquiry; and
- (c) an inquiry or investigation by any person, other than the Commission, having authority to conduct an investigation under any Act;

46. Circumstances of disclosure, and admissibility, of certain investigation records

- (1) A record specified in subsection (2) –
 - (a) may only be disclosed –
 - (i) by the Commission, or other person with the written consent of the Commission, for the purposes of an investigation by the Commission into an accident or incident to which the record relates; and
 - (ii) is not admissible in any proceeding.
- (2) A record referred to in subsection (1) is –
 - (a) a statement or submission made to the Commission in the course of an investigation; or
 - (b) a recording of an interview by a person engaged in an investigation by the Commission that is generated in the course of an investigation or a transcript of such a recording; or
 - (c) a note or opinion of a person engaged in an investigation by the Commission that is generated in the course of an investigation; or
 - (d) information relating to an investigation that is provided in confidence by the Commission to any other person (unless that information is a record specified in section 47(2)).
- (3) Despite subsection (1), a person who made a statement or submission referred to in subsection 2(a) or who supplied any statement contained in a record referred to in paragraph (b) or paragraph (c) of subsection (2) may disclose that information contained in the statement or submission to any person.

47. Circumstances of disclosure of cockpit recordings, and certain investigation records supplied to Commission

- (1) A record specified in subsection (2) may only be disclosed –
 - (a) by the Commission, or other person with the written consent of the Commission, for the purposes of an investigation by the Commission into an accident or incident to which the record relates; or
 - (b) by order of the High Court under section 48 or section 49.
- (2) A record referred to in subsection (1) is –
 - (a) a cockpit voice recording from a non-military aircraft or a transcript of a cockpit voice recording from a non-military aircraft; or
 - (b) a cockpit video recording from a non-military aircraft or a transcript of a cockpit video recording from a non-military aircraft; or

- (c) a document or record held by the Commission that contains information about an identifiable natural person that was supplied to the Commission in the course of an investigation not being information included in any statement, submission, recording, transcript, or note referred to in any of paragraphs (a), (b), or (c) of section 46(2).
- (3) Nothing in subsection (1) prevents a person who is recorded on a record referred to in paragraph (a) or paragraph (b) of subsection (2), or who supplied information contained in a record referred to in subsection (2)(c), from making a statement to any person about the accident or incident.

48. Disclosure of record before civil proceedings commenced

- (1) This section applies to civil proceedings if the amount of the damages claimed exceeds \$200,000.
- (2) A person who is or may be intending to commence civil proceedings of the kind specified in subsection (1) may apply to the High Court for the disclosure of a record specified in section 47(2).
- (3) The Court may order the disclosure of a record to a person who applies under subsection (2) if –
 - (a) it appears to the Court that –
 - (i) the person is or may be entitled to claim relief in the proceedings; and
 - (ii) it is impossible or impracticable for the person to formulate the person's claim without reference to the record sought; and
 - (b) the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

49. Disclosure of record in civil proceedings

- (1) This section applies to civil proceedings if the amount of the damages claimed exceeds \$200,000.
- (2) A party to any civil proceedings may apply to the High Court for the disclosure of a record specified in section 47(2).
- (3) The Court may order the disclosure of a record under this section if the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the

investigation to which the record relates or any future investigation into an accident or incident.

50. Provisions relating to application under section 48 or section 49

- (1) Subject to this section, an application under section 48 or section 49 must be dealt with in accordance with the rules of court applicable to interlocutory applications.
- (2) The applicant must notify the following persons of the making of the application –
 - (a) the person who has possession of the record; and
 - (b) any natural person who is the subject of the record or, if that person is deceased, that person's next of kin; and
 - (c) the owner of the record.
- (3) A person who is served with a notice of an application, and any other person who satisfies the Court that he or she has a legitimate interest in the application, may appear before the Court and be heard in respect of the application.
- (4) Only the following persons are permitted to be present at the hearing of an application under this section –
 - (a) the presiding Judge;
 - (b) officers of the Court;
 - (c) the applicant and the applicant's counsel;
 - (d) other parties to the proceedings to which the application relates, or intended parties in the case of an application under section 48, and their counsel;
 - (e) witnesses; and
 - (f) any person referred to in subsection (3).
- (5) The Court may exclude any witness, or any person referred to in subsection (3), from any part of the hearing of the application.
- (6) The Court may adjourn the hearing of an application under section 48 and section 49 at any time if it appears to the Court, on the application of any person or on the Court's own motion, that the making of a disclosure order will prejudice any investigation into an accident or incident that is being undertaken by the Commission.
- (7) For the purpose of subsection (2)(b), a person's next of kin may include that person's civil union partner or de facto partner.

51. Court may order record to be produced

- (1) For the purpose of determining whether a record should be disclosed under section 48 or section 49, the court may order any person who has the possession of the record to produce it to the court.
- (2) Subject to section 53, the court may deal with the record as it thinks fit.

52. Restriction on publication of reports of proceedings

- (1) No person may publish any report of an application under section 48 or section 49 without the leave of the court.
- (2) Despite subsection (1), a person may publish –
 - (a) the names and addresses of the parties:
 - (b) the name of the presiding Judge:
 - (c) the order made by the court.

53. Further provisions relating to disclosure of record

- (1) If the High Court makes a disclosure order under section 48 or section 49, the order relates only to the parts of the record that are relevant to the purpose for which the disclosure was ordered, and any part of the record that is not relevant must not be disclosed.
- (2) The record must only be used for the purpose for which the disclosure was ordered, and no person is permitted to copy the record or make notes from the record without the leave of the court.
- (3) The record must be returned to the person who produced the record to the court when the record is no longer needed for the purpose for which the disclosure was ordered.
- (4) No record that is ordered to be disclosed under section 48 or section 49 may be broadcast or published in the media.

54. Certain actions do not constitute disclosure

The following actions do not constitute disclosure of a record referred to in section 46 and section 47:

- (a) the inclusion of the whole or part of a record in any findings or recommendations published, or report made, by the Commission after an investigation:
- (b) the return of a recording to its owner with the consent of all the individuals recorded on it:
- (c) the broadcast or publication in the media of any information disclosed to any person under section 46(3) or any statement made under section 47(3).

55. Admissibility of accident or incident findings, recommendation or report

- (1) No finding, recommendation or report, whether preliminary or otherwise, made, issued or published by the Chief Investigator following an investigation is admissible as evidence in any proceedings except –
- (a) an inquiry conducted in accordance with the provisions of the Death and Fire Injuries Ordinance; or
 - (b) an application for judicial review of a decision of the Chief Investigator.

56. Investigators not compellable to give opinion evidence in certain proceedings

No person engaged in an investigation by the Chief Investigator is compellable to give evidence in any proceedings to which the Chief Investigator is not a party as to;

- (a) that person's opinion concerning any aspect of an investigation; or
- (b) any matter included in any analysis, findings or recommendations made in the course of or following an investigation.

Part VI

Medical Certification

57. Interpretation

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

accredited medical conclusion means the conclusion reached by one or more medical experts acceptable to the Director for the purposes of the case concerned, in consultation with flight operations or any other experts that may be necessary

applicant means a person who has applied for a medical certificate; and includes a licence holder who has reapplied for a medical certificate

licence holder means a person who—

- (a) holds an aviation document or is a pilot; and
- (b) holds, or is required under the rules to hold, a medical certificate

medical certificate means a medical certificate—

- (a) issued by the Director under this Part to an applicant or licence holder; or
- (b) recognised by the Director under the rules

operator includes an air traffic service provider.

- (2) A medical certificate is not an aviation document.
- (3) In this Part, the phrase **privileges to which a medical certificate relates**, and its variations, means those privileges under this Act that may be exercised by a person who—
 - (a) holds a current aviation document; or
 - (b) is permitted under the rules to operate an aircraft solo as a pilot.

58. Power of Director to issue medical certificate

- (1) After considering an application for a medical certificate, the Director must, as soon as practicable but no later than 30 working days after the date of receiving the report of the medical examiner, issue the medical certificate if he or she is satisfied that the applicant meets the medical standards prescribed in the rules, unless the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.
- (2) Despite subsection (1), the Director may, relying on flexibility, issue a medical certificate to the applicant.
- (3) In subsection (2), **flexibility** means the use of medical judgment to issue a medical certificate if the following conditions are fulfilled:
 - (a) an accredited medical conclusion indicates that in special circumstances the applicant's failure to meet any medical standard prescribed in the rules is such that the exercise of the privileges to which a medical certificate relates is not likely to jeopardise aviation safety; and
 - (b) the relevant ability, skill, and experiences of the applicant and operational conditions have been given due consideration; and
 - (c) the medical certificate is endorsed with any conditions, restrictions, or endorsements when the safe performance of the applicant's duties is dependent on compliance with those conditions, restrictions, or endorsements.
- (4) The Director may impose any conditions, restrictions, or endorsements on a medical certificate issued under this section.
- (5) Before issuing a medical certificate, the Director—
 - (a) must have regard to the report of the medical examiner and any other information that may be relevant; and
 - (b) may require the applicant, at the applicant's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the Director reasonably considers necessary to assess the applicant.
- (6) If the Director requires an applicant to undertake any other test, examination, or re-examination, or to provide any medical information, the period in which the Director must

make a decision in relation to the medical certificate under this section does not include the number of days that are required to conduct and deliver the results of the test, examination, or re-examination, or to provide the medical information, to the Director.

- (7) The Director must maintain a register of current medical certificates issued under this section.
- (8) Any decision made under this section by the Director in relation to a medical certificate other than a decision under sub-section (5)(b) is subject to section 68 (review of decisions regarding medical certificates or applications).

59. Change in medical condition of licence holder

- (1) Subject to any directions that the Director may issue under section 63(1)(b), if a licence holder is aware of, or has reasonable grounds to suspect, any change in his or her medical condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which his or her medical certificate relates, the licence holder—
 - (a) must advise the Director of the change as soon as practicable; and
 - (b) may not exercise the privileges to which the licence holder's medical certificate relates.
- (2) Subject to any directions that the Director may issue under section 63(1)(b), if an medical assessor or medical examiner or operator is aware of, or has reasonable grounds to suspect, any change in the medical condition of a licence holder or the existence of any previously undetected medical condition in the licence holder that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the medical assessor or medical examiner or operator must advise both the licence holder and the Director of the change as soon as practicable.
- (3) Subject to any directions that the Director may issue under section 63(1)(b), if a medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the medical practitioner must, as soon as practicable,—
 - (a) inform the licence holder that the Director will be advised of the condition; and
 - (b) advise the Director of the condition.
- (4) An medical assessor or medical examiner or a medical practitioner is not subject to any civil or criminal liability for—
 - (a) doing an indemnified act in good faith in the course of carrying out his or her functions under this Part; or
 - (b) doing an indemnified act in good faith in the course of answering any questions put to him or her by the Director that—
 - (i) concern a licence holder; and

- (ii) are relevant to any action the Director may take under this Part.
- (5) In this section, **indemnified act** means any of the following acts:
- (a) advising the Director, whether in writing or otherwise, that a licence holder—
 - (i) may not meet the medical standards prescribed in the rules; or
 - (ii) may be unable to exercise safely the privileges to which the licence holder’s medical certificate relates:
 - (b) expressing to the Director, whether in writing or otherwise, an opinion that the licence holder who the medical assessor or medical examiner or medical practitioner has examined or treated may be unable to exercise safely the privileges to which the licence holder’s medical certificate relates because of—
 - (i) illness or any bodily or mental infirmity, defect, incapacity, or risk of incapacity suffered by the licence holder; or
 - (ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity:
 - (c) stating to the Director, whether in writing or otherwise,—
 - (i) the nature of a licence holder’s illness, infirmity, defect, incapacity, or risk of incapacity; or
 - (ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity.

60. Medical examination, report, and disclosure

- (1) Before the Director issues a medical certificate, an applicant must have a medical examination by a medical examiner who must forward his or her report to the Director.
- (2) The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to his or her medical condition or history for the purpose of determining whether or not the applicant is eligible for a medical certificate under section 58.

61. Expiry of medical certificate

The Director may, on receiving an application for a medical certificate from a licence holder before the expiry of his or her existing medical certificate, grant an extension of no more than 60 days from the expiry date of the licence holder’s existing medical certificate with any additional conditions, restrictions, or endorsements as the Director considers necessary.

62. Designation of medical examiners and medical assessors

- (1) The Director must designate, by issuing an aviation document under section 12, one or more medical examiners to conduct examinations under section 60.

- (2) The Director may designate, by issuing an aviation document under section 12, one or more medical examiners to conduct specified examinations that the Director may require under this Part.

63. General direction and emergency directives

- (1) The Director may, by notice in the *Gazette*, issue general directions in relation to—
- (a) conducting examinations of applicants and licence holders, and reporting the results of those examinations to the Director; and
 - (b) providing exceptions for temporary medical conditions to the reporting requirements set out in section 59; and
 - (c) specifying the requirements of examinations or other clinical matters, which must be reasonable, including, but not limited to,—
 - (i) the medical content of examinations;
 - (ii) the interpretation and analysis of results of examinations;
 - (iii) the significance of results of examinations for the purpose of determining whether or not an applicant is eligible for a medical certificate under section 58.
- (2) Before issuing general directions under subsection (1), the Director must consult with those persons, health professionals with aviation medical experience, representative groups within the aviation industry or elsewhere, government departments, and agencies that he or she considers appropriate.
- (3) General directions issued in relation to the matters specified in subsection (1)(a) or (c) must be—
- (a) notified in writing to medical assessors or medical examiners; and
 - (b) incorporated in a medical manual issued by the Director.
- (4) The Director may issue directives in emergency situations without consultation or prior notice in the *Gazette*, but those directives—
- (a) must be published in the *Gazette* as soon as practicable after they are issued; and
 - (b) expire on the day that is 90 days after the date on which they were issued.
- (5) The Director may reissue, under subsection (1), directives issued under subsection (4) before or after they expire.

64. Investigation of medical condition of licence holder

- (1) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his or her medical certificate, if the Director has reasonable grounds to believe that the licence holder—

- (a) may be unable to exercise safely the privileges to which the medical certificate relates;
or
 - (b) has obtained his or her medical certificate fraudulently.
- (2) If the Director has delegated under section 71 the authority to issue medical certificates to any medical examiner, the Director may, by written notice to the relevant licence holder, withdraw any medical certificate that the medical examiner has issued under that authority within 60 days after the date it was issued if the Director requires the licence holder to supply additional medical information, in which case the Director must decide whether to reissue the medical certificate in accordance with section 58.
- (3) The Director may, by written notice, require any licence holder, at the Authority's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his or her medical certificate if—
- (a) the Director—
 - (i) is monitoring licence holders on the basis of random selection from the register of current medical certificates that is required to be maintained under section 58(7); or
 - (ii) has reasonable grounds to believe that the licence holder's medical certificate was issued in error; or
 - (iii) is monitoring medical assessors or medical examiners for compliance with the requirements of this Act or the rules; and
 - (b) the Director has reasonable grounds to believe that any of those tests, examinations, re-examinations, or medical information are necessary to investigate the matters specified in paragraph (a).
- (4) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant information for the purpose of determining whether or not the licence holder—
- (a) meets the medical standards prescribed in the rules; or
 - (b) is able to exercise safely the privileges to which the medical certificate relates.

65. Revocation, suspension, amendment, and surrender of medical certificate

- (1) If the Director has reasonable grounds to believe that a licence holder may be unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director may, by written notice to the licence holder,—
- (a) suspend any medical certificate issued to the licence holder; or
 - (b) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.

- (2) If the Director has reasonable grounds to believe that a licence holder is unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director must, by written notice to the licence holder,—
- (a) suspend any medical certificate issued to the licence holder; or
 - (b) revoke any medical certificate issued to the licence holder; or
 - (c) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- (3) If the Director has reasonable grounds to believe that a person who has been delegated authority under section 71 to issue a medical certificate has issued a medical certificate other than in accordance with this Part or the terms of the delegated authority, the Director—
- (a) may, by written notice to the licence holder,—
 - (i) suspend any medical certificate issued to the licence holder; or
 - (ii) revoke any medical certificate issued to the licence holder; or
 - (iii) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder; and
 - (b) may, by written notice to the person with delegated authority, revoke that person's delegated authority.
- (4) Any notice issued under this section must state the grounds for the Director's decision.
- (5) A notice of suspension issued under subsection (1)(a) or subsection (2)(a) or subsection (3)(a)(i) remains in force until the Director determines what action, if any, referred to in subsection (7) is to be taken, but any such suspension expires 10 working days after the date that the suspension is imposed unless, before the expiry of that 10-working-day period, the Director extends the suspension for a further specified period not exceeding 10 working days (the aggregate suspension period may not exceed 20 working days after the date on which the suspension is imposed).
- (6) Any conditions, restrictions, or endorsements that are imposed or made under subsection (1)(b) or subsection (2)(c) or subsection (3)(a)(iii) remain in force until the Director determines what action, if any, referred to in subsection (7) is to be taken, but any of those conditions, restrictions, or endorsements expire 10 working days after the date that they are imposed unless, before the expiry of that 10-working-day period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 10 working days (the aggregate period may not exceed 20 working days after the date on which the conditions, restrictions, or endorsements are imposed).
- (7) If a notice is issued under subsection (1) or subsection (2) or subsection (3), the Director may, by written notice, take one or more of the following actions:
- (a) impose or amend conditions, restrictions, or endorsements for a specified period;
 - (b) withdraw any conditions, restrictions, or endorsements:

- (c) disqualify the licence holder from holding the medical certificate for a specified period;
 - (d) revoke the medical certificate;
 - (e) cancel the suspension.
- (8) If the Director revokes a medical certificate under subsection (2)(b) or subsection (3)(a)(ii) or subsection (7)(d) or subsection (11) or imposes any conditions, restrictions, or endorsements on a medical certificate under subsection (7)(a) or disqualifies a licence holder under subsection (7)(c), the licence holder has 20 working days from the date of the decision to ask the convener to review the decision under section 68, after which time the decision may not be referred to the convener.
- (9) A person who has had his or her medical certificate revoked, withdrawn, or suspended or who is disqualified from holding the medical certificate for a specified period must surrender the medical certificate to the Director or a person authorised by the Director.
- (10) If the Director issues a notice under this section, the Director—
- (a) must also, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director reasonably considers it necessary for reasons of aviation safety; and
 - (b) may notify any other affected aviation document holder.
- (11) The Director may, by written notice, revoke a medical certificate if a licence holder fails, without reasonable excuse, to comply with a demand under section 64(1) or section 64(3) or section 64(4) within a reasonable period of time.
- (12) Any licence holder may return his or her medical certificate to the Director and ask the Director, in writing, to cancel the medical certificate.
- (13) If a licence holder asks the Director to cancel his or her medical certificate, the Director must—
- (a) cancel the medical certificate; and
 - (b) update the register of current medical certificates.

66. Appointment of convener and deputy convener

- (1) The Minister must—
- (a) appoint a convener and a deputy convener for a period of no longer than 3 years; and
 - (b) consult with the Director, and other parties as the Minister thinks fit, before making either appointment; and
 - (c) take into account any representations made under paragraph (b).
- (2) The Minister may renew an appointment as convener or deputy convener for one or more periods, each of which may not exceed 3 years.

- (3) If the Minister renews an appointment, he or she must—
 - (a) consult with the Director, and other parties as the Minister thinks fit, before making the renewal; and
 - (b) take into account any representations made under paragraph (a).
- (4) The convener and the deputy convener must—
 - (a) be medical practitioners who are suitably qualified, and experienced or knowledgeable in civil aviation; and
 - (b) be able to represent the public interest in aviation safety.
- (5) If the convener is unavailable for any reason, the deputy convener must discharge the duties of the convener under this section until—
 - (a) the convener is available; or
 - (b) the Minister has appointed a new convener.

67. Cancellation of appointment as convener or deputy convener

- (1) The Minister may cancel a person's appointment under section 66(1) if the person fails to discharge satisfactorily his or her duties as convener or deputy convener, as the case may be.
- (2) Before cancelling an appointment, the Minister must—
 - (a) give the person written notice of the matters that constitute grounds for cancellation; and
 - (b) give the person a reasonable opportunity to make representations that explain why his or her appointment should not be cancelled; and
 - (c) take into account any representations made under paragraph (b).
- (3) If the Minister cancels an appointment, the Minister must give the person written notice of the cancellation that sets out the grounds for the cancellation.

68. Review of decisions regarding medical certificate or applications

- (1) A licence holder or an applicant may, within 20 working days of a decision being made, ask the convener in writing to review the following decisions made by the Director about that person's medical certificate or application:
 - (a) any decision made under section 58, other than a decision made under section 58(5)(b):
 - (b) any decision made under section 65, other than a decision made under—
 - (i) section 65(1); or
 - (ii) section 65(2)(a); or
 - (iii) section 65(2)(c); or
 - (iv) section 65(3)(a)(i); or
 - (v) section 65(3)(a)(iii).

- (2) If such a request is made, the convener must, as soon as practicable, review the decision.
- (3) The convener—
 - (a) must draw on the advice and expertise of at least one person who the convener is satisfied is suitably qualified and experienced to assist the convener in his or her assessment of the decision that is under review; and
 - (b) must have regard to the purpose and scheme of the Act and the Director's duties under the Act when carrying out his or her review of the decision; and
 - (c) may require the person who asked for the review, at that person's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the convener considers reasonably necessary to carry out his or her review of the decision; and
 - (d) must receive and consider the relevant evidence provided under subsection (6).
- (4) The convener must, as soon as practicable, report the results of his or her review to the Director in writing.
- (5) The Director must, within 10 working days of receiving the convener's report, implement the results of the decision contained within the convener's report or, if the Director does not implement the convener's report, notify the licence holder or applicant, in writing, of the Director's reasons for not doing so.
- (6) The licence holder or applicant or Director may, either directly or through his or her medical experts, participate in the review process by providing relevant evidence to the convener regarding any medical matter at issue with respect to the decision that is under review.
- (7) The convener may not review a decision made by the Director if the convener—
 - (a) acted as an medical assessor or medical examiner of the person requesting the review with respect to that person's application for a medical certificate; or
 - (b) has any other conflict of interest with respect to the person's medical certificate.
- (8) Any decision by the Director under review by the convener remains in force until the Director makes a final decision under subsection (5).

69. Referral to convener by agreement

- (1) An application for a medical certificate may, by agreement in writing between the Director and the applicant, be referred to the convener for advice before the Director makes a decision on the application.
- (2) If an application is referred to the convener under subsection (1),—
 - (a) the deadline imposed on the Director under section 58(1) does not apply; and
 - (b) the convener must,—

- (i) as soon as practicable, assess the application; and
 - (ii) draw on the advice and expertise of at least 1 person who the convener is satisfied is suitably qualified and experienced to assist the convener in his or her assessment of the application; and
 - (iii) require the applicant, at the applicant's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, that the convener considers reasonably necessary to carry out his or her assessment of the application; and
 - (iv) have regard to the purpose and scheme of the Act and the Director's duties under the Act when making his or her assessment of the application; and
 - (v) as soon as practicable, report the results of his or her assessment to the Director in writing; and
 - (vi) receive and consider the relevant evidence provided under subsection (5).
- (3) The Director must, within 10 working days of receiving the convener's report,—
- (a) consider the convener's report; and
 - (b) make his or her decision in writing; and
 - (c) provide to the applicant—
 - (i) a copy of the convener's report; and
 - (ii) a copy of the Director's decision.
- (4) If an application is referred to the convener under this section, the applicant may not ask the convener to review the Director's eventual decision.
- (5) The applicant or Director may, either directly or through his or her medical experts, participate in the convener's assessment of the application by providing relevant evidence to the convener regarding any medical matter at issue with respect to that application.
- (6) The convener may not assess the application if the convener—
- (a) acted as an medical assessor or medical examiner of the applicant with respect to that person's application for a medical certificate; or
 - (b) has any other conflict of interest with respect to the person's medical certificate.

70. Delegation of Director's powers under this Part to medical practitioners who are employees of Authority

- (1) The Director may, either generally or particularly, delegate to any suitably qualified medical practitioner who is an employee of the Authority any of the Director's functions and powers under this Part or under the rules relating to medical certification.
- (2) Every delegation under this section must be in writing.
- (a) Section 33 applies to a delegation under this section.

- (b) Any delegation under this section may be made to a suitably qualified medical practitioner who is the holder of a specified office of the Authority.

71. Delegation of Director's powers under this Part to medical examiners who are not employees of Authority

- (1) The Director may, either generally or particularly, delegate to any suitably qualified medical examiner who is not an employee of the Authority any of the Director's functions and powers under this Part or under the rules relating to medical certification other than the power under this Part to revoke medical certificates.
- (2) Despite subsection (1), the Director must delegate to suitably qualified medical examiners who are not employees of the Authority the power to issue medical certificates to any person who qualifies for a medical certificate under section 58(1) or who otherwise meets the criteria for a standard medical assessment as prescribed in the rules or by the Minister under section 73(3).
- (3) Every delegation under this section must be in writing.
- (4) Subject to any general or special directions given or conditions imposed by the Director, any medical examiner to whom any functions or powers are delegated under this section may exercise those functions and powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.
- (5) Any delegation under this section may be made to a specified medical examiner or a specified class of medical examiners.
- (6) Every delegation under this section must be given for a specified period but in any event must be revocable at will.
- (7) No delegation under this section may—
(a) affect or prevent the exercise of any function or power by the Director; or
(b) affect the responsibility of the Director for the actions of any person acting under the delegation.
- (8) Every delegation under this section continues in force until it is revoked or it expires, whether or not the person who made the delegation ceases to hold office.
- (9) Every person purporting to act under any delegation under this section may, when reasonably requested to do so, produce evidence of his or her authority to so act.
- (10) The Director may not delegate under this section any of his or her functions or powers under section 68 or section 69.
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72. Right of appeal to High Court

Any person affected by a decision of the Director under section 58 (other than a decision made under section 58(5)(b)), section 65(7), section 65(11), section 68, or section 69 has a right of appeal to the High Court under section 156.

73. Transitional provisions

- (1) Part 67 of the rules (as it read immediately before the commencement of this Part) continues to apply to—
 - (a) any application for a medical certificate lodged before the commencement of this Part;
 - (b) any action begun with respect to a medical certificate before the commencement of this Part.

- (2) In the absence of rules providing for the issue of aviation documents to medical examiners or medical assessors,—
 - (a) the Minister must establish the selection criteria for the issue of aviation documents to medical assessors or medical examiners or classes of medical assessors or medical examiners that the Director must use to issue those aviation documents, including any reasonable requirements—
 - (i) for examinations, training, and experience; and
 - (ii) for ongoing training and development; and
 - (iii) relating to the classification of medical assessors and medical examiners and any related standards and restrictions on the exercise of their functions and powers; and
 - (b) the Director must designate, by issuing an aviation document under section 12, one or more medical examiners to conduct examinations under section 60; and
 - (c) the Director may designate, by issuing an aviation document under section 12, one or more medical assessors to conduct specified examinations that the Director may require under this Part.

- (3) In the absence of rules under section 82(b)(x) or section 82(b)(xi), the Minister must establish the criteria for the grant of delegations, including—
 - (a) any requirements for the grant of delegations by the Director under section 71(2); and
 - (b) any requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under section 71(2).

74. Savings

Any medical certificate issued under the rules before the commencement of this Part is deemed to be a medical certificate issued under this Part.

PART VII

Rules

75. Interpretation

In relation to any of the Minister's powers to make ordinary rules in this Part 'make' shall be deemed to include the power of the Minister to adopt by reference any civil aviation rule part or rule parts of a foreign jurisdiction pursuant to section 77 and 'making' and 'made' shall, in the context of ordinary rules, have a corresponding meaning throughout this Act.

76. Power of Minister to make ordinary rules

- (1) The Minister may from time to time make rules (in this Act called ordinary rules) for all or any of the following purposes:
 - (a) the implementation of Kiribati's obligations under the Convention:
 - (b) the provision of aviation meteorological services, search and rescue services and civil aviation security programmes and services:
 - (c) assisting aviation safety and security, including (but not limited to) personal security:
 - (d) assisting economic development:
 - (e) improving access and mobility:
 - (f) protecting and promoting public health:
 - (g) ensuring environmental sustainability:
 - (h) any matter related or reasonably incidental to any of the following:
 - (i) the Minister's functions under section 21:
 - (ii) the Authority's functions and duties under section 5:
 - (iii) the Director's functions and powers under section 22:
 - (iv) any other matter contemplated by any provision of this Act.
 - (2) Any ordinary rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of aircraft, aerodrome, aeronautical product, aeronautical procedure, or aviation related service in different circumstances.
 - (3) Any ordinary rule may apply generally throughout Kiribati or within any specified part or parts of Kiribati.
 - (4) The commencement of any ordinary rule may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.
 - (5) An ordinary rule may, on any terms and conditions that are specified in the rule,—
 - (a) require or provide for a matter to be determined, undertaken, or approved by the Authority, the Director, or any other person; or
 - (b) empower the Authority, the Director, or any other person to impose requirements or conditions as to the performance of any activity, including (but not limited to) any procedures to be followed.
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- (6) To avoid doubt, the terms and conditions specified in an ordinary rule may provide for—
 - (a) consultation to be undertaken before the exercise of any of the powers given to the Authority, the Director, or any other person by the rule; or
 - (b) public notice to be given of the exercise of any powers; or
 - (c) any other matter.
- (7) No breach of any ordinary rule shall constitute an offence against this Act unless that offence is prescribed in regulations made under this Act.
- (8) So far as the bylaws of any local authority are inconsistent with or repugnant to any ordinary rule made under this Act in force in the same locality, the bylaws shall be construed subject to the rules.
- (9) For the purpose of repealing a rule, in part or wholly, the Minister shall, after consultations with the Director and the Authority, issue a notice in the Gazette to repeal the rule Part, in accordance with Form 2 of Schedule 2.
- (10) The Minister shall not delegate his or her power to make ordinary rules under this Act.

77. Making of ordinary rules by adoption

- (1) Despite any other procedure by which the Minister may make ordinary rules in accordance with the provisions of this Act the Minister may when he deems it appropriate make an ordinary rule or rules by adopting, with or without modification, a civil aviation rule part or parts of a foreign jurisdiction pursuant to the provisions of this section.
- (2) Any such adopted rule part or parts shall be incorporated by reference as an ordinary rule part or parts of Kiribati and shall have full force and effect in Kiribati notwithstanding that the foreign rule part from which Kiribati rule part is derived may at any time have ceased to be in force within the jurisdiction of its origin.
- (3) For the purposes of this section ‘a civil aviation rule part of a foreign jurisdiction’ shall mean any ordinary civil aviation rule part which has been duly promulgated and published by any contracting State of ICAO other than Kiribati and which may be readily accessed by the public in Kiribati in electronic form or otherwise.
- (4) Any ordinary rule made by adoption under this section need not be reproduced in either electronic or printed Form in Kiribati but after determining to make any rule pursuant to this section the Minister must publish in the Gazette a notice of making of a rule by adoption, in accordance with Form 1 of Schedule 2.
 - a) a Rule Adoption Statement identifying by country of origin and Part number in the country of origin the rule Part which has been adopted by reference and the Part number

by which it will be known in the civil aviation system of Kiribati and specifying the date on which it shall become effective as a rule in Kiribati;

b) a Rule Interpretation Statement containing any modifications, directions and information as the Minister may deem appropriate for the application of the adopted rule in the context of the Kiribati civil aviation system, including but not limited to –

- (i) any words (including place names) and numbers (including section numbers) of Kiribati Acts to be substituted;
- (ii) any Part or parts of the adopted rule which shall not apply in Kiribati;
- (iii) any general exemptions which will apply in Kiribati;
- (iv) any forms to be used in Kiribati;
- (v) any equivalent documents to be substituted for documents referred to in the adopted rule part;
- (vi) any direction as to the application or non-application to Kiribati of any amendment or repeal of an adopted rule Part in its country of origin;
- (vii) any standards, requirements, recommended practices, rules or other written material or document incorporated by reference under section 77;
- (viii) any other matter to assist in the practical, clear and unambiguous interpretation of the adopted rule in Kiribati.

- (5) Any Rule Adoption Statement or Rule Interpretation Statement made under this section may, after consultation with the Director and Authority, be amended by the Minister after the rule has been brought into force as if the amendment were an ordinary rule made under this section.
- (6) Where a rule is adopted under this section, all departments of government, judicial officers of the courts of Kiribati, officials, participants in the Kiribati civil aviation system, government officials or any other person before whom such rule come for consideration shall, in their interpretation of such rule or decision or action to be taken under it, give effect to the adopted rule according to its purpose and intent to the fullest extent practicable.
- (7) No adopted rule, or Part thereof, shall be rendered invalid, inoperative or unenforceable only because it contains a reference to any law, agency, authority, document, procedure, person or thing that is not in existence in, or is not applicable to the laws of, Kiribati, and any such reference -
 - (a) shall be deemed to be a reference to the corresponding law, agency, authority, document, procedure, person or thing within Kiribati or under the laws of Kiribati; and
 - (b) where there is no corresponding law, agency, authority, document, procedure, person or thing within Kiribati or under the laws of Kiribati, shall be deemed to refer to the closest equivalent law, agency, authority, document, procedure, person or things within Kiribati or under the laws of Kiribati and in any such case regard shall be had to any Explanatory Memorandum issued by the Minister under subsection (7).
- (8) For the purpose of the clarification and effective implementation of any adopted rule the Minister may from time to time issue an Explanatory Memorandum and shall forthwith

publish, distribute or otherwise make the Memorandum available to participants within the Kiribati civil aviation system.

- (9) Where any of the persons referred to in subsection (5), whether individual or an incorporated body, identifies any matter within an adopted rule upon which uncertainty has arisen or might reasonably arise with regard to its meaning, interpretation or application, and in respect of which no Explanatory Memorandum has been issued, shall forthwith make written notification to the Director who shall consider the same within 30 days of his receipt of notification make a recommendation to the Minister with regard to the issue of an Explanatory Memorandum under subsection (6) or other appropriate action.

78. Amendments to adopted rules

- (1) Where an adopted rule is amended in its country of origin the amendment shall not apply in Kiribati unless the Minister determines otherwise.
- (2) Where the Minister determines that the amendment shall apply only in part or with modification or shall come into force in its entirety or in part on a date other than that applicable in the country of origin, the Minister shall issue and notify a revised Rule Adoption Statement and Rule Interpretation Statement and that determination shall take effect accordingly.

79. Rules relating to safety

Without limiting the power conferred by section 76, in the interests of safety or security within the civil aviation system the Minister may make all or any of the following ordinary rules:

- (a) rules providing for the use of aerodromes and other aviation related facilities, including but not limited to the following:
- (i) the provision of identification procedures for persons, aircraft, and any other aviation related things:
 - (ii) the prevention of interference with aerodromes and other aviation related facilities:
- (b) general operating rules, air traffic rules, and flight rules, including but not limited to the following:
- (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft:
 - (ii) the prevention of aircraft endangering persons or property:
- (c) rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following:
- (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air:
 - (ii) the construction, use, or operation of anything likely to be hazardous to aviation safety.

80. Rules relating to airspace

Without limiting the power conferred by section 76,—

- (a) in the interests of safety or security within the civil aviation system; or
- (b) in the interests of national security; or
- (c) for any other reason in the public interest,—

the Minister may make ordinary rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including airspace used by aircraft used by the Kiribati Police service or a visiting Defence Force.

81. Rules for noise abatement purposes

Without limiting the power conferred by section 76, the Minister may make ordinary rules prescribing flight rules, flight paths, altitude restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes.

82. Rules relating to general matters

Without limiting the power conferred by section 76, the Minister may make ordinary rules for all or any of the following purposes:

- (a) the designation, classification, and certification of all or any of the following:
 - (i) aircraft:
 - (ii) aircraft pilots:
 - (iii) flight crew members:
 - (iv) air traffic service personnel:
 - (v) aviation security service personnel:
 - (vi) aircraft maintenance personnel:
 - (vii) medical assessors or medical examiners:
 - (viii) air services:
 - (ix) air traffic services:
 - (x) aerodromes and aerodrome operators:
 - (xi) navigation installation providers:
 - (xii) aviation training organisations:
 - (xiii) aircraft design, manufacture, and maintenance organisations:
 - (xiv) aeronautical procedures:
 - (xv) aviation security services:
 - (xvi) aviation meteorological services:
 - (xvii) aviation communications services:
 - (xviii) any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system:

- (b) the setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including but not limited to the following:
 - (i) the specification of the privileges, limitations, and ratings associated with licences or other forms of approval:
 - (ii) the setting of standards for training systems and techniques, including recurrent training requirements:
 - (iii) the setting of medical standards for personnel:
 - (iv) the requirement for proof of access to appropriate weather services:
 - (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products:
 - (vi) the requirements for notification of insurance coverage for air services:
 - (vii) the format of aviation documents, forms, and applications, including the specification of information required on all application forms for aviation documents:
 - (viii) the provision of information to the Authority or the Director by applicants for or holders of aviation documents:
 - (ix) the requirements relating to the classification of medical assessors and medical examiners and any related standards and restrictions on the exercise of their functions and powers:
 - (x) the requirements for the grant of delegations by the Director under section 71 (2):
 - (xi) the requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under section 71 (2):
 - (xii) the requirements and criteria for determining medical experts acceptable to the Director for the purposes of reaching an accredited medical conclusion:
- (c) the conditions of operation of foreign aircraft and international flights to, from, or within Kiribati:
- (d) the definitions, abbreviations, and units of measurement to apply within the civil aviation system.

83. Powers of Director to make emergency rules

- (1) Subject to subsection (2), the Director may from time to time, in accordance with section 87, make such emergency rules as may be necessary to alleviate or minimize any risk of the death of or a serious injury to any person, or of damage to any property.
- (2) The Director shall not make emergency rules unless it is impracticable in the circumstances of the particular case for the Minister to make ordinary rules to effectively alleviate or minimize the risk concerned.

- (3) The Minister may revoke any emergency rule made under subsection (1), and the revocation shall be notified as if it were an emergency rule.

84. Procedures relating to rules

- (1) Every ordinary rule shall—
- (a) be signed by the Minister; and
 - (b) contain a statement specifying the objective of the rule and the extent of any consultation under section 86; and
 - (c) set out fully the requirements of the rule, except where certain information is, under section 88, incorporated in the rule by reference.
- (2) Every emergency rule shall—
- (a) be signed by the Director; and
 - (b) contain a statement specifying the objective of the rule and the extent of the consultation under section 87 that took place before the making of the rule; and
 - (c) set out fully the requirements of the rule, except where certain information is, under section 88, incorporated in the rule by reference.

85. Matters to be taken into account in making rules

- (1) The ordinary rules made by the Minister and the emergency rules made by the Director should not be inconsistent with the following:
- (a) the procedures and standards of ICAO relating to aviation safety and security, to the extent adopted by Kiribati;
 - (b) Kiribati's international obligations relating to aviation safety and security.
- (2) In making, or recommending the making of, a rule the Minister or the Director, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following:
- (a) the recommended practices of ICAO relating to aviation safety and security, to the extent adopted by Kiribati;
 - (b) the level of risk existing to aviation safety in each proposed activity or service;
 - (c) the nature of the particular activity or service for which the rule is being established;
 - (d) the level of risk existing to aviation safety and security in Kiribati in general;
 - (e) the need to maintain and improve aviation safety and security, including (but not limited to) personal security;
 - (f) whether the proposed rule—
 - (i) assists economic development;
 - (ii) improves access and mobility;
 - (iii) protects and promotes public health;
 - (iv) ensures environmental sustainability;
 - (g) the costs of implementing measures for which the rule is being proposed;
 - (h) the international circumstances in respect of aviation safety and security; and

- (i) such other matters as the Minister or the Director considers appropriate in the circumstances.

86. Procedure for making ordinary rules

- (1) Before making any ordinary rule, the Minister must, as the Minister in each case considers appropriate,—
 - (a) publish a notice of his or her intention to make the rule; and
 - (b) consult—
 - (i) the persons, representative groups within the aviation industry or elsewhere, government departments, and State Owned Enterprises; and
 - (ii) the Ministry responsible for the protection of the Environment about the contents of any rules that relate to the transportation of hazardous substances as may be provided for in the Environment Act 1999.
- (2) Subject to subsection (3), every ordinary rule shall be notified in the *Gazette* and be made available by the Authority for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.
- (3) Where for reasons of security it is inappropriate to notify a rule under subsection (2), the Minister shall notify such persons as he or she considers appropriate or necessary in the circumstances and service of notification may be effected in such other manner as the Minister considers appropriate or necessary in the circumstances, and the rule shall apply only to each person so notified (with effect from service of the rule on the person).

87. Procedure for making emergency rules

- (1) Before making an emergency rule, the Director shall consult with such persons, representative groups within the aviation industry or elsewhere, government departments, and State Enterprises as the Director in each case considers appropriate.
- (2) Subject to subsection (4), every emergency rule shall be notified in the *Gazette* and be made available by the Director for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.
- (3) Every emergency rule shall come into force immediately upon its being notified in the *Gazette*, or, where notified by service on any person under subsection (4), immediately upon service of notification upon that person and in respect of that person only.
- (4) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule under subsection (2), the Director shall notify such persons as he or she considers appropriate or necessary in the circumstances and service of such notification

may be effected by facsimile, telephone, or such other manner as the Director considers appropriate or necessary in the circumstances.

- (5) An emergency rule may be in force for a period not exceeding 90 days, and may be renewed by the Director once only for a further period not exceeding 30 days.
- (6) The Minister may, at any time while an emergency rule is in force in accordance with subsection (5), by notice in the *Gazette*, renew the rule in accordance with subsection (7) for a further period not exceeding 180 days from the date of the notification.
- (7) Before renewing an emergency rule under subsection (6), the Minister shall consult with such persons, representative groups within the aviation industry or elsewhere, government departments, and government agencies as the Minister thinks appropriate.
- (8) So far as any emergency rule is inconsistent or repugnant to any ordinary rule made under this Act, the emergency rule shall prevail.

88. Incorporation by reference

- (1) The following, whether in written or electronic form, may be incorporated by reference in a rule made by the Minister, or the Director:
 - (a) any standards, requirements, or recommended practices of international aviation organisations:
 - (b) any standards, requirements, or rules –
 - (i) prescribed under law by any other contracting State of ICAO:
 - (ii) standards, requirements or rules of any aviation sport or aviation recreational organization:
 - (c) any other material or document that, in the opinion of the Minister or the Director, is too large or impractical to be printed as part of the rule.
- (2) Material may be incorporated by reference in a rule—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the rule.
- (3) A copy of any material incorporated by reference in rules, including any amendment to, or replacement of, the material, must be—
 - (a) certified as a correct copy of the material by the Minister or the Director (as the case may be); and
 - (b) retained by the Director.
- (4) Any material incorporated in a rule by reference under subsection (1) is to be treated for all purposes as forming part of the rule; and, unless otherwise provided in the rules, every amendment to any material incorporated by reference under subsection (1) that is made by

the person or organisation originating the material is, subject to subsections (5) and (6), to be treated as being a part of the rule.

- (5) The Director must give notice in the *Gazette* stating—
- (a) that the material is incorporated in the rule and the date on which the rule was made; and
 - (b) that the material is available for inspection during working hours, free of charge; and
 - (c) the place where the material can be inspected; and
 - (d) that copies of the material can be purchased; and
 - (e) the place where the material can be purchased; and
 - (f) if copies of the material are available in other ways, the details of where or how the material can be accessed or obtained.
- (6) All material incorporated by reference under subsection (1) or (2) must be made available at the Civil Aviation Registry for inspection by the public free of charge.

89. Exemption power of Director

- (1) The Director may, if he or she considers it appropriate and upon such conditions as he or she considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any rule made under section 76, 80, 81, or 82.
- (2) Before granting an exemption under subsection (1), the Director shall be satisfied in the circumstances of each case that—
- (a) the requirement has been substantially complied with and that further compliance is unnecessary; or
 - (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
 - (c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
 - (d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,—
- and that the risk to safety will not be significantly increased by the granting of the exemption.
- (3) The number and nature of exemptions granted under subsection (1) shall be notified as soon as practicable in the *Gazette*.
- (4) Nothing in this section shall apply in any case where any rule specifically provides that no exemptions are to be granted.

PART VIII

Civil Aviation Development Fund

90. Establishment of the Civil Aviation Development Fund

- (1) There is hereby established a Fund which shall be referred to as the Civil Aviation Development Fund to support the functions and operations of the Civil Aviation Authority.
- (2) There shall be paid into this Fund:
 - (a) any money appropriated by the Government of Kiribati for the purposes of this Act;
 - (b) 30 percent of funds annually accrued by the Airport Authority
 - (c) any money received pursuant to any levies, or any other fee authorized by this Act or regulations promulgated hereunder; and
 - (d) infringement fees received in respect of an infringement notice under section 151, whether immediately after service or later.
- (3) The monies comprising the fund of the Civil Aviation Authority shall in each year be applied by it in defraying the following expenses, that is;
 - (a) the working and establishment expenses and expenditure on, or provision for, the maintenance and renewal of any of the undertakings of the Civil Aviation Authority;
 - (b) the interest on any load raised by the Civil Aviation Authority;
 - (c) the sums required to be transferred to a sinking fund or otherwise set aside to making provision for the payment of any other borrowed money;
 - (d) the remuneration, fees and allowances of the members of the Board and for reimbursing members of the Board or of any committees set up by the Board and for such expenses as may be authorized by the Board in accordance with such rates as may, from time to time, be approved by the Government;
 - (e) the salaries, fees, remuneration, pensions, superannuation allowances and gratuities of the employees, agents and other persons acting under or for the Civil Aviation Authority; and
 - (f) any other expenses connected with the discharge of the functions of the Civil Aviation Authority under this Act or any other enactment.
- (4) The Civil Aviation Authority shall submit annually to the Minister estimates of its revenue and expenditure in respect of the next following year.

91. General duty to be financially prudent

- (1) It shall be the duty of the Civil Aviation Authority so to conduct its affairs as to ensure that its revenue (including any grant made to it by the Government) is not less than sufficient to meet charges properly chargeable to revenue account, taking one year with another.
- (2) It shall generally be the Civil Aviation Authority's financial objective to recover the whole of its costs and to achieve a reasonable return on capital.

92. Borrowing powers

- (1) Subject to the other provisions of this section, the Civil Aviation Authority may, from time to time, borrow by overdraft or otherwise however, such sums as it may require in the exercise of its functions under this Act.
- (2) The Civil Aviation Authority shall not, without prior approval of the Minister, borrow any sum of money whereby the amount in aggregate outstanding on any loan or loans at any time exceeds such amount as is for the time being specified by the Government.

93. Accounts and Audit

- (1) The Civil Aviation Authority shall keep proper accounts and proper records in relation thereto and shall prepare in respect of each financial year a statement of accounts in such form as the Minister may direct, in a form which shall conform to the best performance standards.
- (2) The Civil Aviation Authority shall within six months after the end of each year to which the accounts relate caused its accounts to be audited by auditors appointed from the list of auditors and in accordance with guidelines outlined in the Kiribati Audit Act of 2017.
- (3) The auditors shall, on the completion of the audit of the accounts of the Civil Aviation Authority for each year, prepare and submit to the Board reports setting out –
 - (a) general observation and recommendations of the auditors on the financial affairs of the Civil Aviation Authority for the year and on any important matters which the auditors desire to bring to the notice of the Authority; and
 - (b) detailed observations and recommendations of the auditors on all aspects of the operations of the Civil Aviation Authority for that year.
- (4) A person who hinders or obstructs the auditor in the carrying out of his duties under this Act, commits an offence and is liable upon conviction to a fine not exceeding \$100 or to imprisonment of 3 months, or both.

94. Exemption from income tax, customs duty and import levy

Notwithstanding the provisions of any other Act, the income of the Authority shall be exempt from payment of income tax, and the Authority shall not be liable for the payment of customs duty and import levy, or any other tax having a similar effect.

95. Regulations

- (1) The Minister may, from time to time, make regulations for all or any of the following purposes –
 - (a) prescribing, or providing for the fixing of fees and charges payable under this Act;
 - (b) prescribing those breaches of rules under this Act that constitute offences against this Act;

- (c) prescribing those breaches of rules made under this Act that constitute infringement offences against this Act;
 - (d) prescribing the penalty for each offence prescribed under paragraph (b), which
 - (i) in the case of an individual, shall be a fine of \$5,000; or
 - (ii) in the case of a body corporate, shall be a fine of \$50,000;
 - (e) prescribing the infringement fee for each offence prescribed under paragraph (c), which
 - (i) in the case of an individual, shall not exceed \$2,000; or
 - (ii) in the case of a body corporate, shall not exceed \$20,000;
 - (f) prescribing the matters in respect of which fees and charges are payable under Part XII, in whole or in part, in any specified case or class of cases;
 - (g) providing for the refund or waiver of any fee or charge payable under Part XII, in whole or in part, in any specified cases or class of cases;
 - (h) prescribing the information and documents that may be required to be supplied by applicants for scheduled international air service licenses under Part XII, and the time within which such information or documents must be supplied;
 - (i) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Any regulations made under this section may be so made that different regulations shall apply with respect to different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services or aeronautical procedures, or with respect to the same class of person, aerodrome, aircraft, aeronautical product, aviation related service or aeronautical procedures in difference circumstances.

96. Payment of fees and charges

- (1) Except as otherwise provided in regulations made under this Act, every application under this Act shall be accompanied by payment of all relevant prescribed fees and charges.
- (2) Any regulations made under this Act may—
 - (a) prescribe a date by which any such fee or charge is payable or authorise the Authority to fix the date by which the fee or charge is payable;
 - (b) Provide for a discount for early payment of any such fee or charge or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee or charge.

97. Suspension or revocation of aviation document where prescribed fees or charges unpaid

- (1) Where any fee or charge payable under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the aviation document to which the unpaid fee or charge relates.
- (2) Where any fee or charge payable under this Act is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the aviation document to which the fee or charge relates.

- (3) Before suspending an aviation document under subsection (1), or revoking an aviation document under subsection (2), the Director shall notify the holder of that document of—
 - (a) the Director’s intention to suspend or revoke the document; and
 - (b) The right of appeal available to the holder of that document in the event of the document being suspended or revoked.
- (4) Where a fee or a charge is payable in respect of an application under this Act or the provision of a service under this Act, the Authority or the Director or other person asked to process the application or provide the service, as the case may be, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, as the case may be, for payment of the fee or charge have been made.
- (5) The holder of an aviation document that is suspended under subsection (1) or revoked under subsection (2) may appeal against that decision to the High Court under section 156.

98. Recovery of fees and charges for aviation related services

- (1) Subject to subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by the Authority or the Director in respect of any aircraft, the person whose name appears on the Kiribati Register of Aircraft in respect of that aircraft shall be deemed to be liable to pay that fee or charge.
- (2) Any person who would otherwise be liable to pay a fee or charge in relation to any aircraft in terms of subsection (1) shall not be so liable if that person—
 - (a) proves that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
 - (b) has taken all reasonable steps to supply the Authority with such information as would identify the actual user.

99. The Minister may impose levies

- (1) Subject to subsection (3), for the purpose of enabling the Authority to carry out its functions under this Act and any other Act, the Minister may from time to time, on the recommendation of the Authority, impose on all or any of the persons referred to in subsection (2) a levy payable to the Authority, and may in the same manner vary any such order.
- (2) A levy may be imposed under subsection (1) on—
 - (a) the holders of aviation documents of any class or classes specified in the order:

(b) persons who, but for an exemption granted under this Act, would be required by this Act to hold an aviation document of the class or classes specified in the order.

(3) The Minister shall not impose levies under subsection (1) unless—

- (a) the recommendation has been made at the request and with the concurrence of the Authority; and
- (b) he or she is satisfied that the Authority's income from other sources is not or will not be sufficient to enable it to perform its functions under this Act without the imposition of a levy at the rate recommended; and
- (c) he or she is satisfied that the Authority has consulted with such persons, representative groups within the aviation industry or elsewhere, government departments, and other stake holders as he or she considers appropriate.

100. Basis on which levies may be imposed

(1) Different rates of levies may be imposed or varied under section 99 in respect of different classes of persons, aerodromes, aircraft, aeronautical products, or aviation related services, or on the basis of different times of use or on any other differential basis.

(2) The rate of any levy imposed or varied under section 99 may be calculated according to any one of, or any combination of 1 or more of, the following factors:

- (a) the quantity of aviation fuel purchased by any person:
- (b) the number of passengers able to be carried on any aircraft:
- (c) the number of passengers actually carried on any aircraft:
- (d) the amount of freight able to be carried on any aircraft:
- (e) the amount of freight actually carried on any aircraft:
- (f) the distance flown by any aircraft:
- (g) aircraft size or capacity:
- (h) the purpose for which any aircraft or aeronautical product is used or for which an aviation related service is supplied:
- (i) any other basis whatever that relates to the use, capacity, or size of—
 - (i) any aircraft; or
 - (ii) any aeronautical product; or
 - (iii) any aviation related service; or
 - (iv) any privileges exercisable under any aviation document

PART IX

Offences and penalties

Safety offences

101. Endangerment caused by holder of aviation document

- (1) Every holder of an aviation document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, if the act or omission causes unnecessary danger to any other person or to any property.
- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) The provisions of this section shall be in addition to and not in derogation of any regulations or rules made under this Act

102. Operating aircraft in careless manner

- (1) Every person commits an offence who operates any aircraft in a careless manner.
- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to a fine not exceeding \$7,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$35,000.
- (3) The provisions of this section shall be in addition to and not in derogation of any regulations or rules made under this Act.

103. Dangerous activity involving aircraft, aeronautical product, or aviation related service

- (1) Every person commits an offence who—
 - (a) operates, maintains, or services; or
 - (b) does any other act in respect of—

any aircraft, aeronautical product, or aviation related service, in a manner which causes unnecessary danger to any other person or to any property.
 - (2) Every person commits an offence who—
 - (a) causes or permits any aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or
 - (b) causes or permits any other act to be done in respect of any aircraft, aeronautical product, or aviation related service, —

in a manner which causes unnecessary danger to any other person or to any property.
-

- (3) Every person who commits an offence against subsection (1) or subsection (2) is liable on conviction, —
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

The provisions of this section shall be in addition to and not in derogation of any regulations or rules made under this Act.

104. Failure to comply with inspection or monitoring request

- (1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under subsection (1) or subsection (3) of section 24.
- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
- (a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence is continued.

105. Court may disqualify holder of aviation document or impose conditions on holding of document

- (1) In addition to any penalty the court may impose under section 101 or section 102 or section 103 or section 104, the court may, on convicting any person of an offence against either of those sections, —
- (a) disqualify the person convicted from holding or obtaining an aviation document or a particular aviation document; or
 - (b) impose on any aviation document held by or issued to the person convicted such restrictions or conditions or both as the court, having regard to the circumstances of the offence, thinks fit—

for such period not exceeding 12 months as the court thinks fit.

- (2) Nothing in subsection (1) shall affect or prevent the exercise by the Director of his or her powers under section 12.

106. Acting without necessary aviation document

- (1) Every person commits an offence who—
- (a) operates, maintains, or services; or
 - (b) does any other act in respect of—
- any aircraft, aeronautical product, or aviation related service, either without holding the appropriate current aviation document or knowing that a current aviation document is

required to be held in respect of that aircraft, product, or service before that act may lawfully be done and knowing that the appropriate aviation document is not held.

- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

107. Acting without required medical certificate

- (1) Every person who exercises the privileges of any aviation document or operates an aircraft solo commits an offence if that person—
- (a) does not hold an appropriate current medical certificate issued under Part VI or a medical certificate recognised by the Director under the rules; or
 - (b) knows or has reasonable grounds to suspect that he or she can no longer exercise safely the privileges to which his or her medical certificate relates; or
 - (c) fails to comply with any conditions, restrictions, or endorsements specified by the Director under section 58(4).

- (2) Every person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000.

108. Fraudulent, misleading, or intentionally false statements to obtain medical certificate

- (1) Every person commits an offence who makes or causes to be made—
- (a) any fraudulent, misleading, or intentionally false statement for the purpose of obtaining a medical certificate under Part VI; or
 - (b) any fraudulent, misleading, or intentionally false entry in any logbook, record, form, or report that is required to be kept, made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical certificate under Part VI; or
 - (c) any reproduction or alteration for fraudulent purposes of any medical certificate issued under Part VI; or
 - (d) any fraudulent, misleading, or intentionally false statement during an investigation under section 64 or a review under section 68 or an assessment under section 69.

- (2) Every person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000

109. Failure to disclose information required by Director

- (1) Every person commits an offence who fails to disclose, without reasonable excuse, information required by the Director under section 59(1) or section 64.

- (2) Every person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000.

110. Additional penalty for offences involving commercial gain

- (1) In addition to any penalty the court may impose under section 101 or section 103 or section 104 or section 64, the court may, on convicting any person of an offence specified in any of those sections, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.
- (2) For the purpose of subsection (1), the value of any gain shall be assessed by the court, and shall be recoverable in the same manner as a fine.

General offences

111. Applying for aviation document while disqualified

- (1) Every person commits an offence who applies for or obtains an aviation document while disqualified by an order of the court from obtaining such a document and any such document so obtained shall be of no effect.
- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$20,000, —and the court may order the person to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the court thinks fit.

112. Communicating false information or failing to disclose information relevant to granting or holding of aviation document

- (1) Every person commits an offence who, —
 - (a) by any means, provides to the Authority or the Director information relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act, knowing the information to be false; or
 - (b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act; or
 - (c) being the holder of an aviation document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the condition specified in section 12(3).
- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000

113. Carrying on scheduled international air service without licence or contrary to licence

- (1) Every person commits an offence who—
 - (a) carries on a scheduled international air service in Kiribati without a licence granted under Part XIV; or
 - (b) being the holder of a licence granted under Part XIV, carries on a scheduled international air service in Kiribati in a manner contrary to the terms and conditions of the licence.

- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

114. Operating unauthorized non-scheduled international flight or carrying on non-scheduled international flight contrary to licence

- (1) Every person commits an offence who—
 - (a) operates a non-scheduled international flight to which section 220 applies contrary to the provisions of that section; or
 - (b) being the holder of an open aviation market licence, carries on a nonscheduled international flight in a manner contrary to the terms and conditions of the licence.

- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to a fine not exceeding \$6,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$30,000

115. Obstruction of persons duly authorized by Director

- (1) Every person commits an offence who obstructs or impedes any person who is duly authorized by the Director and acting in the performance or exercise of any functions, duties, or powers conferred on him or her by this Act, or by any rules made under this Act, and is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

- (2) Subsection (1) shall apply only where the person obstructed or impeded is in uniform or produces evidence of his or her authority.

116. Failure or refusal to produce or surrender documents

- (1) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a requirement made in accordance with section 35(3).

- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$1,000

117. Trespass

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain by a person duly authorized by the Director in writing for that purpose, a police officer, or an aviation security officer, or by notice posted by one of those persons.

118. Failure to maintain accurate records

- (1) Every person commits an offence who contravenes any provision of this Act or any rule made under this Act that requires that person—
 - (a) to make accurate entries in a record; or
 - (b) to maintain an accurate record; or
 - (c) to produce to the Authority or the Director an accurate record.

- (2) Every person who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to a fine not exceeding \$5,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$30,000

119. Failure to notify emergency breach of Act or regulations or rules

Every pilot-in-command commits an offence and is liable on conviction to a fine not exceeding \$5,000 who, without reasonable excuse, fails to comply with section 20(6) (which relates to the notification of breaches of this Act or regulations or rules made under this Act that are committed during an emergency).

120. Failure to notify accident or incident

- (1) Every pilot-in-command or operator commits an offence who, without reasonable excuse, fails to comply with subsection (1) or subsection (2) or subsection (3) of section 36 (which subsections relate to the notification of an accident or incident).

- (2) Every pilot-in-command or operator who commits an offence against subsection (1) is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.

121. Failure to provide identifying information

- (1) Every operator of an aircraft or holder of a certificate of registration commits an offence who, without reasonable excuse, fails to comply with section 37(1) (which relates to the identification of the pilot-in-command of an aircraft).
- (2) Every operator or holder of a certificate of registration who commits an offence against subsection (1) is liable on conviction, —
 - (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000

122. Contravention of emergency rule, prohibition, or condition

Every person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency rule made under section 83 or any prohibition or condition notified under section 29 commits an offence and is liable on conviction, —

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000

123. Flight over foreign country without authority or for improper purpose

- (1) This section applies to—
 - (a) any aircraft that is registered or required to be registered in Kiribati under this Act;
 - (b) any other aircraft operated by a person who is a citizen of Kiribati or a permanent resident in Kiribati or whose principal place of business is in Kiribati.
 - (2) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory.
 - (3) In any prosecution for an offence against subsection (2), where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, the foreign country or territory, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the aircraft was being so used.
 - (4) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where—
 - (a) the flight is not duly authorised; or
 - (b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of,
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- public order or public health of, or the safety of air navigation in relation to, that country or territory, —
- unless the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.
- (5) In any prosecution for an offence against subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the direction had been given.
- (6) The requirement in subsection (4) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.
- (7) For the purposes of this section, **appropriate aeronautical authority** includes any person, whether a member of the military authorities or the civil authorities of the foreign country or territory, who is authorized under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.
- (8) Every person who commits an offence against subsection (2) or subsection (4) is liable on conviction, —
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000

Security offences

124. Crimes relating to International Airports

- (1) A person commits a crime who, whether in or outside Kiribati, using any device, substance or weapon, intentionally does any of the following acts that endangers or is likely to endanger the safety of an international airport —
- (a) at the international airport, commits an act of violence that causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of the international airport; or
- (c) destroys or seriously damages an aircraft that is not in service and is located at the international airport; or
- (d) disrupts the services of the international airport.
- (2) Subject to subsection (3), every person who commit an offence against this section is liable to imprisonment for 14 years.
- (3) Every person who commits an offence against subsection (1)(a) —

- (a) In circumstances where the conduct concerned is the same as the conduct described as murder under the *Penal Code*, shall be sentenced to imprisonment for life; and
- (b) in circumstances where the conduct concerned is the same as the conduct described as manslaughter under the *Penal Code*, is liable to imprisonment for life.

125. Security area and security enhanced area offences

- (1) Every person commits an offence who, on being found in a security area or security enhanced area,—
 - (a) refuses to state his or her name, address, and authority to enter the security area or security enhanced area after—
 - (i) having been informed that he or she is in a security area or security enhanced area; and
 - (ii) having been requested by an aviation security officer to state those particulars; or
 - (b) refuses forthwith to leave the security area or security enhanced area after having been ordered by an aviation security officer to do so.
- (2) Every person who commits an offence under subsection (1) in relation to a—
 - (a) security area is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000;
 - (b) security enhanced area is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000.

126. Personation or obstruction of aviation security officer

- (1) Every person commits an offence who, not being an aviation security officer, —
 - (a) by words, conduct, demeanor, or the assumption of the dress, name, designation, or description of an aviation security officer, holds himself or herself out as being an aviation security officer; or
 - (b) willfully obstructs, or incites or encourages any person to obstruct an aviation security officer in the execution of his or her duty.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000

127. Communicating false information affecting safety

- (1) Every person commits an offence who by any means provides to another person information relating to the safety of an aircraft, aerodrome, aeronautical product, aviation related service, or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false.
- (2) Every person who commits an offence against subsection (1) is liable on conviction, —

- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) Where the commission of an offence against subsection (1) causes financial loss to any person and where the court imposes a fine under subsection (2) in respect of that offence, the court may order that such part of the fine as it thinks fit, but in any event not more than one-half of the fine, be awarded to that person.

128. Security check offences

- (1) Every person commits an offence who, in relation to a security check of that person, —
- (a) provides information that the person knows is false or misleading in a material particular; or
 - (b) fails to disclose, without reasonable excuse, information that the person knows to be materially relevant.
- (2) Every person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000

Infringement offences

129. Infringement offences

- (1) In this Act **infringement offence** means an offence specified as such in regulations made under this Act or an offence against a provision specified in section 152(2).
- (2) Subject to section 133, if any person is alleged to have committed an infringement offence that person may either—
- (a) be proceeded against by filing a complaint or charge against them under section 172 of the Criminal Procedure Code or
 - (b) be served with an infringement notice as provided in section 130.

130. Infringement notices

- (1) Where the Director or any person duly authorized by the Director observes a person committing an infringement offence or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be issued to that person by the Director or the authorized person.
- (2) An infringement notice may be served—
- (a) by delivering it personally to the person who appears to have committed the infringement offence; or

- (b) by sending it by post addressed to him or her at his or her last known place of residence or business; or
 - (c) where the person is a holder of an aviation document, by serving it by post on that person at his or her last address for service provided under section 11.
- (3) An infringement notice sent to a person by post under paragraph (b) or paragraph (c) of subsection (2) shall be deemed to have been served on the person when it would have been delivered in the ordinary course of post.
- (4) Every infringement notice shall be in the prescribed form and shall contain the following particulars:
- (a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence:
 - (b) the amount of the infringement fee for that offence:
 - (c) the address at which the infringement fee may be paid:
 - (d) the time within which the infringement fee shall be paid:
 - (e) a statement of the right of the person served with the notice to request a hearing:
 - (f) a statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing:
 - (g) such other particulars as are prescribed in regulations made under this Act.
- (5) Different forms of infringement notices may be prescribed in regulations made under this Act in respect of different kinds of infringement offences.

Disqualification

131. Effect of disqualification

- (1) Where the holder of an aviation document is disqualified by an order of a court from holding or obtaining an aviation document, the document shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.
- (2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document, the document shall, on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes and passes such tests and fulfils such requirements as the Director may from time to time specify.

132. Commencement of period of disqualification

Where an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification shall commence on the date of the making of the order unless the court making the order directs that the period of disqualification shall commence on a later date.

133. Retention and custody of document

- (1) Where by an order of a court the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall forthwith, and whether or not demand is made, surrender the document to—
 - (a) the court where the order was made; or
 - (b) to the Authority.
- (2) Where an aviation document is so surrendered, it shall forthwith be forwarded to the Director who shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.
- (3) If the person entitled to the document is a person to whom section 131(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

134. Removal of disqualification

- (1) Subject to this section, any person who by order of a court is disqualified for a period exceeding 6 months from holding or obtaining an aviation document may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the court by which that order was made to remove the disqualification.
- (2) On an application under this section the court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.
- (3) Where the disqualification was ordered by the Court, every application under this section shall be made to a Court Judge exercising jurisdiction in the court by which the order was made.
- (4) Notice of every application under this section shall be served on the Director who shall have a right to appear and be heard in respect of the matter.

135. Particulars of disqualification orders, etc, to be sent to Director

Where a court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions (or both) on any aviation document held by or

issued to any person or makes an order under section 134 removing any disqualification, particulars of the order shall be sent by the Registrar of the court to the Director.

136. Appeals against disqualification

- (1) An order of a Court by which any person is disqualified from holding or obtaining an aviation document shall be deemed to be a sentence or part of a sentence for the purpose of any appeal, as the case may be. If a notice of appeal against any such order is filed, the court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.
- (2) Any person who is disqualified by an order of the Court from holding or obtaining an aviation document, and who applies for a removal of that disqualification and whose application is refused, may appeal against the refusal as if that refusal was an order of disqualification.
- (3) Where application is made to the Court of Appeal for leave to appeal to that Court against a sentence of the High Court that is or includes an order of disqualification, the High Court may, if it thinks fit, defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.
- (4) Where an appeal to the High Court or Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the High Court shall send notice thereof to the Director who shall have a right to appear and be heard in respect of the matter.
- (5) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section shall be disregarded.

PART X

Unruly passenger offences

Preliminary provisions

137. Application of this Part

- (1) This Part applies to any unruly passenger offence committed—
 - (a) on an aircraft at any airport in Kiribati, regardless of the nationality of the aircraft:
 - (b) outside Kiribati on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is Kiribati.
- (2) For the purposes of this Part, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.

- (3) Despite subsection (2), in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.
- (4) A person authorized by the Director to exercise a power or function under this Part must carry a warrant of authority issued by the Director that specifies—
- (a) the name of, and the office or offices held by, that person; and
 - (b) the powers and functions that the person is authorized to exercise under this Part.
- (5) For the purposes of this Part, **person authorized by the Director** includes (but is not limited to) an aviation security officer authorized by the Director.

138. Liability for offences against this Part despite extraterritoriality

Any person who commits an act or omission on an aircraft in flight outside Kiribati that would be an offence against this Part if it occurred within Kiribati is, subject to this Act, liable as if the act or omission had occurred in Kiribati.

139. Liability for offences despite extraterritoriality

- (1) Any person who commits an act or omission on an aircraft in flight outside Kiribati that would, if it occurred in Kiribati, be an offence of disorderly behavior or fighting in a public place or common assault or willful damage or indecent exposure under the *Penal Code* or any other enactment is liable under that Act as if the act or omission had occurred in Kiribati.
- (2) For the purposes of any of the provisions referred to in subsection (1), any reference to any public place includes an aircraft.

140. Sanction of the Attorney General

- (1) An infringement notice may be issued, or proceedings commenced, for an unruly passenger offence committed on a foreign aircraft outside Kiribati if—
- (a) the pilot-in-command—
 - (i) makes a request in the prescribed form to the Director or a person authorised by the Director to issue an infringement notice or to commence proceedings; and
 - (ii) provides an undertaking in the prescribed form that he or she (or the operator of the aircraft) has not made or will not make a similar request to the authorities of any other State; and
 - (b) in the case of proceedings, the Attorney-General consents.

- (2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Attorney General decides whether or not to consent to proceedings.
- (3) Despite subsection (1)(b), proceedings for an unruly passenger offence committed on a foreign aircraft outside of Kiribati may be commenced without the Attorney-General's consent if—
- (a) a copy of the infringement notice is filed or particulars of the infringement notice are provided under section 154(1); or
 - (b) the defendant requests a hearing in respect of the infringement offence to which the infringement notice relates.
- (4) In any proceedings for an offence under this Part, the pilot-in-command's request and undertaking, if made in the prescribed form or forms, are—
- (a) admissible in evidence; and
 - (b) in the absence of proof to the contrary, sufficient evidence of the matters stated in the form or forms.

Unruly passenger offences

141. Strict liability for acts endangering safety

- (1) A person commits an offence who acts in a manner that endangers an aircraft or any person in an aircraft.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000

142. Disruptive conduct towards crew member

- (1) Every person commits an offence who, while in an aircraft, —
- (a) uses any threatening, offensive, or insulting words towards a crew member; or
 - (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member; or
 - (c) behaves in a manner that interferes with the performance by a crew member of his or her duties; or
 - (d) intentionally interferes with the performance by a crew member of his or her duties.
- (2) Every person who commits an offence against subsection (1)(a) or (b) or (c) is liable on conviction to a fine not exceeding \$5,000.
- (3) Every person who commits an offence against subsection (1)(d) is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

- (4) It is a defence in a prosecution under subsection (1)(a) for using offensive or insulting words if the defendant proves that he or she had reasonable grounds to believe that his or her words would not be overheard by a crew member.

143. Interference with aircraft

- (1) Every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000

144. Intoxicated persons on aircraft

- (1) Every person (except a person under medical care) commits an offence who—
- (a) is intoxicated and boards an aircraft; or
 - (b) becomes intoxicated on an aircraft.
- (2) In proceedings for an offence against subsection (1),—
- (a) the prosecutor need not assert, in the charging document, that the defendant was not a person under medical care; and
 - (b) the burden of proving that the defendant was under medical care lies on the defendant.
- (3) Every person who commits an offence against—
- (a) subsection (1)(a) is liable on conviction to a fine not exceeding \$5,000;
 - (b) subsection (1)(b) is liable on conviction to a fine not exceeding \$3,000.
- (4) For the purposes of this section, a person is **intoxicated** if the pilot-in-command (or senior flight attendant authorised by the pilot-in-command for this purpose) has reasonable grounds to believe that the person is under the influence of alcohol or an intoxicating substance to such an extent as to—
- (a) be incapable of properly looking after himself or herself; or
 - (b) actively present a hazard to the aircraft or to persons on the aircraft; or
 - (c) offend against the good order and discipline required on an aircraft.
- (5) For the purposes of this section, **person under medical care** means a person who—
- (a) is under the supervision of an attendant; and
 - (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorization.

145. Non-compliance with commands given by pilot-in-command

- (1) Every person commits an offence who fails to comply with any commands given to the person directly by the pilot-in-command, or indirectly by the pilot-in-command through a crew member, in accordance with his or her duties under section 19 or the rules.
- (2) Despite section 77(7), every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$5,000

146. Offensive behavior or words

- (1) Every person commits an offence who, on any aircraft,—
 - (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
 - (b) uses threatening, offensive, or insulting words.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$2,500.
- (3) It is a defence in a prosecution under subsection (1)(b) for using offensive or insulting words if the defendant proves that he or she had reasonable grounds to believe that his or her words would not be overheard.

147. Portable electronic devices not to be operated

- (1) Every person commits an offence who operates a portable electronic device on board an aircraft in breach of the rules.
- (2) Despite section 58(7), every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$2,500

148. Noncompliance with seating and seatbelt instructions

- (1) Every person commits an offence who fails to comply with an instruction given by a crew member, passenger information signs, or placards to—
 - (a) occupy a seat or berth; and
 - (b) fasten and keep fastened about the person any installed safety belt or safety harness.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$2,500

149. No smoking

- (1) Every person commits an offence who smokes—
 - (a) when instructed not to smoke by a crew member, passenger information signs, or placards; or

- (b) while on any aircraft that is carrying passengers for hire or reward on any internal flight;
or
- (c) in contravention of section 245(4).

(2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$2,500.

(3) In subsection (1), **to smoke** has the meaning set out in section 245(1).

150. Dangerous goods

(1) Every person commits an offence who, in breach of the rules, carries or causes to be carried on an aircraft any dangerous goods.

(2) Despite section 76(7), every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$2,500

151. Procedure for certain unruly passenger offences

(1) If any offence specified in section 152(2) is alleged to have been committed by any person (in this section, the defendant), the pilot-in-command of the aircraft at the time of the alleged offence may, by any available means, notify, or cause to be notified,—

- (a) the Director; or
- (b) a person authorised by the Director.

(2) If the Director or a person authorised by the Director has reason to believe that a defendant has committed any offence specified in section 152(2),—

- (a) the defendant may be proceeded against by filing a complaint or a charge under section 76 of the Criminal Procedure Code.
- (b) the Director or the person authorised by the Director may issue an infringement notice in respect of the alleged offence.

(3) If the Director or a person authorised by the Director has reasonable cause to suspect that a person has committed any offence specified in section 142(1)(a) to (c) or section 143 or section 145 or section 146 or section 152(2), he or she may require the person to give his or her full name, address, and date of birth.

(4) If the Director or the person authorised by the Director has reasonable grounds to suppose that any details provided under subsection (3) are false or misleading, he or she may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.

(5) If the person, without reasonable excuse, refuses or fails to comply with a request under subsection (3) or subsection (4), and persists in that refusal or failure after being warned

by the Director or a person authorised by the Director that he or she may be arrested for committing an offence by that refusal or failure, a police officer may arrest that person without warrant.

- (6) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—
- (a) refuses or fails to comply with a request under subsection (3) or subsection (4); or
 - (b) gives details that are false or misleading in a material respect to the Director or a person authorised by the Director in response to such a request.
- (7) Evidence produced by the defendant to the Director or the person authorised by the Director under subsection (4) must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.
- (8) The Director or a person authorised by the Director—
- (a) may deliver an infringement notice (or a copy of it) to the defendant personally; or
 - (b) may send it (or a copy of it) to the defendant by post addressed to the defendant's last known place of residence or business.

152. Forms of infringement notice

- (1) An infringement notice under section 151 must be in the prescribed form, and must specify—
- (a) enough details to inform the defendant fairly of the time, place, and nature of the offence alleged; and
 - (b) the amount of the infringement fee specified in respect of that offence in subsection (2); and
 - (c) where the fee may be paid; and
 - (d) the time within which the fee may be paid; and
 - (e) how and where payment may be made under section 153; and
 - (f) that the defendant has a right to request a hearing; and
 - (g) a statement of the consequences if the defendant neither pays the fee nor requests a hearing; and
 - (h) any other particulars as are prescribed by regulations made under this Act.
- (2) The infringement fee is,—
- (a) in the case of an offence against section 144(1)(a), \$1,000;
 - (b) in the case of an offence against section 144(1)(b), \$600;
 - (c) in the case of an offence against section 147, \$500;
 - (d) in the case of an offence against section 148, \$500;
 - (e) in the case of an offence against section 149, \$500;
 - (f) in the case of an offence against section 150, \$500

153. Payment of fees

If an infringement notice under section 151 (or a copy of it) is served by delivering it to the defendant on arrival at an international airport for an offence on an international flight, the defendant may choose to pay immediately the infringement fee in the manner specified in the notice.

154. Filing of notice

- (1) The Director, or a person authorised by the Director, may provide particulars of an infringement notice issued under section 151, after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if—
 - (a) the infringement fee for the offence has not by then been paid to the Director as specified in the notice; and
 - (b) the Director has not by then received at the address specified in the notice a notice requesting a hearing in respect of that offence.
- (2) An infringement notice under section 1 may be issued and served on a Sunday.
- (3) For the purpose of subsection (1), an infringement notice sent by post is deemed to have been served on the defendant when it was posted.

155. Savings

- (1) Nothing in this Part applies to any—
 - (a) proceedings commenced before the commencement of this Act; or
 - (b) cause of action that arose before the commencement of this Act; or
 - (c) act or omission that occurred before the commencement of this Act.
- (2) All proceedings commenced under any other enactment for an offence committed before the commencement of this Part may be continued and completed under that other enactment as if this Part had not come into force.

PART XI

Rights of appeal

156. Appeal to High Court

- (1) A person may appeal to a Court against a specified decision made under this Act by the Director if another section of this Act gives that person a right of appeal under this section, and—
 - (a) the person—
 - (i) is a person in respect of whom the decision was made; and
 - (ii) is dissatisfied with the decision; or

- (b) the person is the owner, operator, or person for the time being in charge of the aircraft or aeronautical product that is the subject of the decision.
- (2) The court may confirm, reverse, or modify the decision appealed against.
- (3) Every decision of the Director appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.
- (4) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to the like right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with, in accordance with the provisions of this Act, any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or re-stored in compliance with the decision of the Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.
- (5) In this section, a **specified decision** is a decision—
 - (a) concerning the grant, issue, revocation, or suspension of an aviation document:
 - (b) to impose conditions on an aviation document:
 - (c) to exercise powers under section 29:
 - (d) to decline to register an aircraft under section 9:
 - (e) concerning the issue of a medical certificate under section 58 (other than a decision under subsection (5)(b) of that section):
 - (f) to impose or amend conditions, restrictions, or endorsements on a medical certificate under section 65(7)(a):
 - (g) to disqualify a licence holder under section 65(7)(c):
 - (h) to revoke a medical certificate under section 65(7)(d) and (11):
 - (i) concerning the implementation of the results of a report by the convener under section 68 or section 69.

157. Appeal to Court of Appeal on question of law

- (1) Every party to an appeal under section 156 may, with the leave of the High Court or (if that leave is declined) with special leave of the Court of Appeal, appeal to the Court of Appeal on a question of law.
- (2) On any appeal under subsection (1), the Court of Appeal may make such order or determination as it thinks fit.
- (3) The decision of the Court of Appeal on an appeal under this section, or on any application for leave to appeal to the Court, shall be final.

- (4) Subject to this section, the procedure in respect of any appeal under this section shall be in accordance with the rules of Court.

PART XII

Registries and information services

158. Kiribati Register of Aircraft

- (1) The Authority shall establish a register to be called the Kiribati Register of Aircraft.
- (2) The Authority shall enter in the Register such particulars as may be prescribed of every aircraft registered under section 9(1)(a)

159. Civil Aviation Registry

- (1) The Authority shall establish a Civil Aviation Registry.
- (2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry:
- (a) every current aviation document:
 - (b) the Kiribati Register of Aircraft:
 - (c) every regulation made under this Act, and every rule notified in the *Gazette* and for the time being in force:
 - (d) any material incorporated into a rule by reference under section 88:
 - (e) every accident and incident notification given under section 36:
 - (f) every airworthiness directive issued by the Director under section 22(4)(a):
 - (g) every delegation, authorization, and exemption granted in writing under this Act:
 - (h) the address for service of every current applicant for an aviation document and of every current aviation document holder:
 - (i) all information published under section 160:
- (3) Documents kept at the Registry shall be made available by the Authority for inspection by the public free of charge.

160. Information services

- (1) The Authority shall ensure that an information service is provided which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity, and efficiency of air navigation.
- (2) The Authority shall ensure that such information and instructions are readily available to any person upon payment of a reasonable charge fixed by the Authority.

PART XIII

Aviation Security

161. Aviation Security

The prevention of the commission of crimes against the *Aircraft Security Act 1990* or section 190 at any security designated aerodrome or security designated navigation installation, and the protection of persons and property from dangers arising from the commission or attempted commission of such crimes, shall be the joint responsibility of the Kiribati Police Service and any authorized provider of aviation security services at that aerodrome or installation.

162. Responsibility of Minister

The Minister shall ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations.

163. Power and duties of Minister to require screening, searching, and seizing

- (1) The Minister may, if the Minister considers it necessary to improve or enhance aviation security to enable Kiribati to be part of a concerted international response to a threat to aviation security, or if the Minister considers it is in the public interest or national interest to do so, direct an aviation security service provider, by notice in the *Gazette*,—
- (a) to screen—
 - (i) any person boarding an aircraft:
 - (ii) anything to be carried on an aircraft:
 - (iii) any person, item, or substance—
 - (A) before the person, item, or substance enters a sterile area:
 - (B) present in a sterile area:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a security enhanced area:
 - (B) present in a security enhanced area:
 - (v) any unattended item, substance, or vehicle in a security enhanced area:
 - (b) if necessary, to undertake reasonable searches of—
 - (i) any person boarding an aircraft:
 - (ii) anything to be carried on an aircraft:
 - (iii) any (as specified in the *Gazette* notice)—
 - (A) aircraft or class of aircraft:
 - (B) aerodrome or class of aerodrome:
 - (C) navigation installation or class of navigation installation:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a sterile area:
 - (B) present in a sterile area:
 - (v) any person, item, substance, or vehicle—

- (A) before the person, item, substance, or vehicle enters a security enhanced area:
- (B) present in a security enhanced area:
 - (vi) any unattended item, substance, or vehicle in a security enhanced area:
 - (c) to seize any item or substance specified in the *Gazette* notice if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.
- (2) An aviation security service provider directed under subsection (1) must screen search for any item or substance specified in the *Gazette* notice.
- (3) Before directing an aviation security provider under subsection (1), the Minister must consult—
 - (a) the Director; and
 - (b) as the Minister in each case considers appropriate and practical, other ministers, representative groups in the aviation industry, government departments, and government agencies.
- (4) A direction made under subsection (1) takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the Minister—
 - (a) considers on reasonable grounds that urgent action is required; and
 - (b) has consulted the Director before that date; and
 - (c) has notified all affected parties (other than persons boarding an aircraft) before that date.
- (5) If a direction takes effect on a date before the notice is published in the *Gazette*,—
 - (a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
 - (b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period, the Minister, after complying with subsection (4)(b) and (c), extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days).
- (6) The Minister may rescind a direction made under subsection (1).
- (7) Subject to subsection (5), a direction remains in effect until it is rescinded.
- (8) Nothing in this section empowers the Minister to exercise the Director's powers under section 164.

164. Power and duties of Director to require screening, searching, and seizing

- (1) The Director may, if he or she believes on reasonable grounds that a security risk exists, direct an aviation security service provider, by notice in the *Gazette*,—
- (a) to screen—
 - (i) any person boarding an aircraft:
 - (ii) anything to be carried on an aircraft:
 - (iii) any person, item, or substance—
 - (A) before the person, item, or substance enters a sterile area:
 - (B) present in a sterile area:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a security enhanced area:
 - (B) present in a security enhanced area:
 - (v) any unattended item, substance or vehicle in a security enhanced area:
 - (b) if necessary, to undertake reasonable searches of—
 - (i) any person boarding an aircraft:
 - (ii) anything to be carried on an aircraft:
 - (iii) any (as specified in the *Gazette* notice)—
 - (A) aircraft or class of aircraft:
 - (B) aerodrome or class of aerodrome:
 - (C) navigation installation or class of navigation installation:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a sterile area:
 - (B) present in a sterile area:
 - (v) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a security enhanced area:
 - (B) present in a security enhanced area:
 - (vi) any unattended item, substance, or vehicle in a security enhanced area:
 - (c) seize any item or substance specified in the *Gazette* notice if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.
- (2) An aviation security service provider directed under subsection (1) must screen and search for any item or substance specified in the *Gazette* notice.
- (3) Before directing an aviation security provider under subsection (1), the Director must, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate and practical, representative groups in the aviation industry, government departments, and government agencies.

- (4) A direction made under subsection (1) takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette*, if the Director—
- (a) considers on reasonable grounds that urgent action is required; and
 - (b) has notified all affected parties (other than persons boarding an aircraft) before that date.
- (5) If a direction takes effect on a date before the notice is published in the *Gazette*,—
- (a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
 - (b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period, the Director, after complying with subsection (4)(b), extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days).
- (6) The Director may rescind a direction made under subsection (1).
- (7) Subject to subsection (5), a direction remains in effect until it is rescinded.

165. Certain *Gazette* notices may not include security sensitive information

- (1) A notice to be published in the *Gazette* under section 163(1) or 164(1) in relation to security enhanced areas may not include security sensitive information.
- (2) For the purposes of this section, **security sensitive information** means information that would prejudice the national security interests of Kiribati if disclosed.

166. Requirement for screening of domestic aircraft passenger

- (1) The Director may require the screening of domestic aircraft passengers if he or she deems it necessary for safety reasons.
- (2) A person carrying out the screening of domestic aircraft passenger services under a direction to do so (or a search in accordance with such a direction) is entitled to continue to carry out that screening (or search) until that direction is rescinded.

167. Power and duties of Director relating to security checks

- (1) The Director may carry out a security check of a person who falls within a category of persons specified in the rules as requiring a security check if—
- (a) the security check is for the purpose of determining whether the person poses a threat to aviation security; and
 - (b) the person consents.

- (2) If a person refuses consent to a security check under subsection (1), the person may not be granted any authorisation under the rules if the rules require a favourable security check determination.
- (3) The Director may grant a favourable security check determination if the Director decides that the person has undergone an alternative security check that is acceptable to the Director.
- (4) For the purpose of determining whether a person poses a threat to aviation security, the Director may—
 - (a) seek and receive any information that the Director considers relevant, including (but not limited to) a recommendation made by the Kiribati Police Service; and
 - (b) give weight to any component of the information as the Director considers appropriate in the circumstances.
- (5) If the Director determines that a person does not pose a threat to aviation security, the Director must advise the person of the favourable security check determination.
- (6) The Director may reconsider any previous security check determination that the Director has made if—
 - (a) new information is made available; or
 - (b) the Director has reason to believe that the person may pose a threat to aviation security.
- (7) If the Director proposes to reconsider any previous security check determination, the Director must—
 - (a) advise the person to whom the security check determination relates that the Director is reconsidering that determination; and
 - (b) complete the reconsideration of that determination within 20 working days of advising the person under paragraph (a); and
 - (c) if the reconsideration results in an adverse security check determination or a proposed adverse security check determination, initiate the review process set out in section 168; and
 - (d) if a favourable security check determination is required for any previous authorisation granted to the person under the rules, withdraw that authorisation for—
 - (i) the period of the reconsideration; and
 - (ii) any subsequent review period under section 168; and
 - (e) if a favourable security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for—
 - (i) the period of the reconsideration; and
 - (ii) any subsequent review period under section 168.

- (8) Nothing in this section limits the power of the Director to grant an exemption under section 89.

168. Review procedures for security check determinations

- (1) If the Director makes an adverse security check determination with respect to a Kiribati person based on a recommendation made by a police officer, the Director must advise the person that the person may lodge a complaint regarding the recommendation with the Commissioner of Police.
- (2) If the Director proposes to make an adverse security check determination with respect to a person based on information other than a recommendation made by a police officer, the Director must—
- (a) advise the person of the proposed determination and the reasons for the proposed determination; and
 - (b) give the person written notice that, within 20 working days of the date of the notice, the person may—
 - (i) seek legal advice or assistance with respect to the proposed determination;
 - (ii) respond to, comment on, or make submissions on the proposed determination;
 - (iii) provide new information relevant to the proposed determination; and
 - (c) give the person notice of the date on which the proposed determination will, unless the Director decides otherwise, be made (which must be a date that is as soon as practicable after the expiry of the 20-working-day period referred to in paragraph (b)); and
 - (d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and
 - (e) make a final determination and inform the person and any other affected party of, -
 - (i) in the case of the person, the final determination and the reasons for the final determination; and
 - (ii) in the case of any other affected party, the final determination but not the reasons for the final determination.
- (3) If the Director proposes to make an adverse security check determination based on a recommendation made by a police officer and on information other than that recommendation, the Director must—
- (a) follow the procedure set out in subsection (2) with respect to the information other than the recommendation and advise the person that the proposed determination is based on—
 - (i) a recommendation made by a police officer; and
 - (ii) information other than the recommendation; and
 - (b) then follow the procedure set out in subsection (1) with respect to the recommendation if—
-

- (i) the Director is satisfied that the information other than the recommendation is no longer sufficient to support an adverse security check determination; and
 - (ii) the person is a Kiribati person.
- (4) If the Director makes a final adverse security check determination, the Director must—
- (a) revoke any authorisation granted to the person by the Director under the rules, if a favourable security check determination is required under the rules for the authorisation; and
 - (b) require any other entity to revoke any authorisation granted to the person, if a favourable security check determination is required under the rules for the authorization.

169. Offence to carry out activity while authorization withdrawn or after authorization revoked

- (1) Every person commits an offence who carries out an activity that requires an authorisation—
- (a) during a period when that authorisation has been withdrawn under section 167(7)(d) or (e); or
 - (b) if that authorisation has been revoked under section 168(4).
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$5,000

170. Offence to fail to comply with Director's requirement to withdraw or revoke authorisation

- (1) Every person person commits an offence who fails, without reasonable excuse, to comply with the Director's requirement to—
- (a) withdraw an authorisation under section 167(7)(e); or
 - (b) revoke an authorisation under section 168(4)(b).
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000.

171. Aviation Security Service

- (1) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed by rules made under this Act.
- (2) Such aviation security service providers shall designate employees to be aviation security officers; and every such officer shall have and may exercise, in relation to the aerodrome or navigation installation at which he or she is employed, all the powers of an aviation security officer under this Part, except the powers to arrest and detain any person.

172. Authorised aviation security services providers

- (1) Subject to subsection (2), aviation security services at any security designated aerodrome or security designated navigation installation may be provided by—
 - (a) the Aviation Security Service; or
 - (b) the operator of that aerodrome or navigation installation.
- (2) No operator of an aerodrome or navigation installation, and no person employed by any such operator to provide aviation security services, shall provide aviation security services at that aerodrome or installation, except pursuant to a current aviation document issued by the Director under section 10.
- (3) The holder of every such document shall comply with the relevant prescribed requirements and standards.

173. Further provision relating to Aviation Security Service

- (1) Notwithstanding sections 12 and 172, but subject to subsection (2), the Minister may from time to time by notice in the *Gazette* specify that only the Aviation Security Service may be granted an aviation document to provide aviation security services at any security designated aerodrome or security designated navigation installation. Any such notice may be amended or revoked by the Minister by notice in the *Gazette*.
- (2) Where any person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome or security designated navigation installation, the Minister shall not give a notice under subsection (1) in respect of that aerodrome or navigation installation without the consent of that person.
- (3) Notwithstanding anything in section 172, the Minister may at any time, in the event of an emergency or other crisis, appoint the Aviation Security Service to provide aviation security services at any designated aerodrome or security designated navigation installation, notwithstanding that the operator of that aerodrome or navigation installation is providing aviation security services.
- (4) Any appointment made by the Minister under subsection (3) shall have effect for a period specified by the Minister, being not more than 10 days.

174. Powers, Function, and duties of Aviation Security Service

Without limiting the powers, functions, duties, or responsibilities of the Police under this Act or any other enactment, and without limiting the generality of section 162, the Aviation Security Service shall have the following powers, functions, and duties:

- (a) to carry out—
 - (i) crew, passenger, and baggage screening of all international aircraft passenger services; and

- (ii) the screening, reasonable searches, or seizures specified in section 163(1) or section 164(1):
 - (b) to undertake, if necessary, reasonable searches of crew, passengers, baggage, cargo, aircraft, aerodromes, and navigation installations:
 - (c) to carry out aerodrome security patrols and patrols of navigation installations:
 - (d) to review, inquire into, and keep itself informed on security techniques, systems, devices, practices, and procedures related to the protection of civil aviation and persons employed in or using it:
 - (e) to undertake, or encourage or supervise, such experimental or research work in respect of any aspect of aviation security as the Director may specify:
 - (f) for the purpose of better carrying out any of its functions under this Act, to co-operate with the Police, government departments, airport authorities, operators, and authorities administering the airport security services of other countries, and with any appropriate international organisation:
 - (g) to provide security support services to the Police when requested by the Commissioner of Police, but only subject to the following conditions:
 - (h) the Commissioner of Police is satisfied that the provision of those services to the Kiribati Police is necessary to enable the Kiribati Police to carry out its security duties; and
 - (i) the Aviation Security Service is satisfied that the provision of those services to the Kiribati Police will not compromise aviation security:
 - (j) to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the Aviation Security Service are satisfied that the performance of the functions and duties of the Aviation Security Service will not be compromised:
 - (k) to exercise and perform such other functions and duties as may be conferred on it by any enactment.

175. Powers and duties of aviation security officer relating to dangerous goods

- (1) Without limiting section 174(a) and (b), an aviation security officer may screen any person boarding an aircraft or anything to be carried by an aircraft for the purpose of detecting dangerous goods.
- (2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that they may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not they may be lawfully carried on an aircraft.
- (3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation security officer must notify the relevant operator or delivery service as soon as practicable and—
 - (a) may detain the dangerous goods until they are dealt with in accordance with paragraph (b) or paragraph (c); or

- (b) may deliver the dangerous goods to the operator or delivery service; or
 - (c) may, if the Director agrees, destroy or otherwise dispose of the dangerous goods.
- (4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer must, as far as practicable, return the dangerous goods to the owner of the dangerous goods.
- (5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods.
- (6) The aviation security officer must report the detection of dangerous goods in accordance with the rules or, in the absence of rules, as the Director may direct.

176. Power of aviation security officers to search for and seize certain items or substances to be carried on aircraft or into sterile areas

- (1) Without limiting section 174 of this Act or any related Act, an aviation security officer may, for the purpose of detecting any item or substance specified in a direction given under section 163(1) or 164(1), screen or search any person, item, substance, or vehicle—
- (a) before the person, item, substance, or vehicle enters a sterile area:
 - (b) present in a sterile area.
- (2) If an item or substance specified in the Technical Instructions or a direction under section 163(1) or 164(1) is detected in a search undertaken under subsection (1) or section 174 of this Act and an aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.
- (3) If the aviation security officer determines that the item or substance may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer must,—
- (a) if practicable, return the item or substance to the person from whom it was seized; or
 - (b) if impracticable to return the item or substance to the person from whom it was seized, deliver the item or substance to the carrier of the aircraft that the person boarded or intended to board when the item or substance was seized.
- (4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may—
- (a) detain the item or substance until it is dealt with in accordance with paragraph (b) or (c); or
 - (b) dispose of or destroy the item or substance; or

(c) deliver the item or substance to a police officer.

(5) If an aviation security officer delivers an item or substance to a police officer under subsection (4)(c), the aviation security officer must record the delivery and the relevant details of the seizure.

(6) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that an item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

177. Power and duties of aviation security officers relating to security enhanced areas

- (1) Without limiting section 174, an aviation security officer may, for the purpose of detecting any item or substance specified in the Technical Instructions or a direction given under section 163(1) or 164(1), screen or search any person, item, substance, or vehicle—
- (a) before the person, item, substance, or vehicle enters a security enhanced area:
 - (b) present in a security enhanced area.
- (2) If an item or substance specified in the Technical Instructions or a direction under section 163(1) or 164(1) is detected in a search undertaken under subsection (1) or section 174 of the Act and the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area.
- (3) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer—
- (a) must—
 - (i) detain the item or substance until it is delivered to a police officer or, if the Director agrees, destroyed or otherwise disposed of; or
 - (ii) deny entry into the security enhanced area to any person in possession of the item or substance; or
 - (iii) direct the person in possession of the item to leave the security enhanced area, with or without—
 - (A) the item or substance:
 - (B) any vehicle used to transport the item or substance; and
 - (b) must make a record of the item or substance and the person from whom the item or substance was seized (if any).
- (4) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security enhanced area, the aviation security officer must, if

practicable, return the item or substance to the person from whom the item or substance was seized.

- (5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

178. Consent to be screened or search

- (1) The powers specified in section 177(1) may only be exercised with respect to—
- a) a person to be screened or searched with the consent of the person:
 - b) an item, substance, or vehicle to be screened or searched with the consent of the person in possession of the item, substance, or vehicle.
- (2) To avoid doubt, an item, substance, or vehicle may be screened or searched without consent if it is unattended.

179. Persons who refused to consent to be screened or searched

- (1) If a person refuses to consent to the screening or searching under section 177(1), an aviation security officer may—
- (a) deny that person entry into the security enhanced area:
 - (b) require that person to—
 - (i) leave the security enhanced area:
 - (ii) remove any item, substance, or vehicle in that person's possession from the security enhanced area.
- (2) An aviation security officer may—
- (a) prevent a person from entering a security enhanced area if the person is denied entry:
 - (b) remove a person from a security enhanced area if the person is required to leave.
- (3) An aviation security officer may detain a person who—
- (a) refuses to leave when required to leave (or attempts to enter when denied entry) and persists in his or her refusal (or attempt) after being warned that he or she commits an offence by not complying:
 - (b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that—
 - (i) an offence has been, is being, or is likely to be committed, whether by that person or by any other person; or
 - (ii) a search of the person refusing to consent is likely to disclose evidence that an offence has been, is being, or is likely to be, committed, whether by that person or any other person.

- (4) A person detained under subsection (3) must be delivered to a police officer as soon as practicable.
- (5) An aviation security officer, or any person assisting an aviation security officer, may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to—
 - (a) prevent a person from entering a security enhanced area under subsection (2)(a):
 - (b) remove a person from a security enhanced area under subsection (2)(b):
 - (c) detain a person under subsection (3).

180. Searches of persons refusing consent to be searched

- (1) If a person refuses to consent to the screening or searching under section 177(1), a police may, without a warrant, search the person and any item, substance, or vehicle in the person's possession, and may detain the person for the purposes of the search, and may take possession of any item or substance found in the course of the search that is specified in the Technical Instructions if the police officer has reasonable grounds to suspect that—
 - (a) an offence has been, is being, or is likely to be committed, whether by that person or by any other person; and
 - (b) a search of the person refusing to consent, or any item, substance, or vehicle in the person's possession, is likely to disclose evidence that an offence has been, is being, or is likely to be, committed, whether by that person or any other person.
- (2) The refusal of a person to consent to the searching of his or her person, or any item, substance, or vehicle in the person's possession, does not of itself constitute reasonable grounds for suspecting that an offence has been, is being, or is likely to be, committed.
- (3) A police officer exercising the power of search under subsection (1) must, before the search is conducted, and on any subsequent request,—
 - (a) provide evidence of his or her identity to the person to be searched; and
 - (b) inform the person to be searched that the search is authorised under this section; and
 - (c) if not in uniform, provide evidence, if asked, that he or she is a police officer to the person to be searched.
- (4) If a police officer exercises the power of search under subsection (1), he or she must, within 3 days after the day on which he or she exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

181. Searches of persons

- (1) With respect to a search made under section 177(1),—
 - (a) a person must, if directed to do so by an aviation security officer,—

- (i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing:
 - (ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewelry, or other accessories:
 - (iii) allow an aviation security officer to carry out a pat down search:
- (b) a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.

(2) For the purposes of this section, **pat down search**—

- (a) means a search of a clothed person in which the person conducting the search may do all or any of the following:
- (i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person:
 - (ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
 - (iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely:
 - (A) open his or her mouth:
 - (B) display the palms of his or her hands:
 - (C) display the soles of his or her feet:
 - (D) lift or rub his or her hair; and
- (b) includes the authority to search—
- (i) any item or substance carried by, or in the possession of, the person; and
 - (ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
 - (iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

182. Power to require drivers to stop vehicles in security enhanced areas for screening or searching

- (1) An aviation security officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle in a security enhanced area to stop the vehicle as soon as is practicable for the purpose of screening or searching the vehicle, and any item, substance, or person in the vehicle.
- (2) The driver of a vehicle that is stopped by an aviation security officer must remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any item, substance, or person in the vehicle.

- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000, who, without lawful authority or reasonable excuse, fails to—
 - (a) stop a vehicle in a security enhanced area as soon as is practicable when required to do so by an aviation security officer; or
 - (b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any item, substance, or person in the vehicle.
- (4) In proceedings for an offence against subsection (3),—
 - (a) the prosecutor need not assert absence of lawful authority or reasonable excuse in the charging document; and
 - (b) the burden of proving that the defendant had lawful authority or a reasonable excuse lies on the defendant.

183. Protection of aviation security officers

Nothing done by an aviation security officer under sections 176(2) to (6) and 177(2) to (5) may subject the aviation security officer to personal liability if done in—

- (a) good faith; and
- (b) the exercise of powers or the performance of duties under this Act.

184. Functions and duties of other aviation security service providers

- (1) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed by rules made under this Act.
- (2) Such aviation security service providers shall designate employees to be aviation security officers; and every such officer shall have and may exercise, in relation to the aerodrome or navigation installation at which he or she is employed, all the powers of an aviation security officer under this Part, except the powers to arrest and detain any person.

185. Security designated aerodromes and navigation installations

- (1) The Minister may, by notice in the *Gazette*, designate any aerodrome or navigation installation as a security designated aerodrome or security designated navigation installation.
- (2) Any designation under subsection (1) may at any time be revoked, in whole or in part, or amended by the Minister by notice in the *Gazette*.

186. Right of access

- (1) Subject to subsection (2) and (3), an aviation security officer while on duty may at any time enter any security designated aerodrome or a security designated navigation installation, or any aircraft, building, or place in any part of a security designated aerodrome or security designated navigation installation, for the purpose of exercising and carrying out his or her powers, functions, and duties under this Act.

- (2) Unless the aviation security officer is accompanied by a police officer, the power of entry conferred by subsection (1) shall be limited to peaceful and non-forceable entry.
- (3) Where the Police have taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any part thereof or any aircraft, building, or place shall be subject to such limitations as the senior police officer present at the aerodrome or navigation installation specifies.
- (4) Where an aircraft or vehicle is not being used for commercial purposes, subsection (2) shall not apply unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

187. Security areas and security enhanced areas

- (1) The Director may declare, by a sign or signs affixed at the perimeter of the area, that an area within any security designated aerodrome or security designated navigation installation is a security area.
 - (2) The Director may declare, by appropriate notification, that an area within a security area is a security enhanced area.
 - (3) No person other than a uniformed police officer on official duties or an aviation security officer on official duties may enter or remain in any security area or security enhanced area unless the person is—
 - (a) wearing an airport identity card issued under the rules (or other identity document approved by the Director under the rules) and worn in accordance with the rules; and
 - (b) authorized by the Director or the airport manager or other person having control of the area.
 - (4) Every person in a security area or security enhanced area shall, on the request of an aviation security officer, state his or her name, address, the purpose of his or her presence in the security area or security enhanced area, and his or her authority to enter it, and shall produce satisfactory evidence of the correctness of his or her stated name and address.
 - (5) Where a person who fails or refuses to provide an aviation security officer with satisfactory evidence of his or her name and address when requested by the aviation security officer, or where a person fails to satisfy the aviation security officer that he or she is authorised to be there, the aviation security officer may order that person to leave the security area or security enhanced area.
 - (6) An aviation security officer, and any person whom he or she calls to his or her assistance, may use such force as may be reasonably necessary to remove from any security area or security enhanced area any person who fails or refuses forthwith to leave the security area
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or security enhanced area after having been ordered by an aviation security officer to do so under subsection (5).

- (7) Any person who refuses to comply with subsection (4) or subsection (5) and, after having been warned that he or she commits an offence, persists in its commission, may be detained by an aviation security officer and in that case he or she shall as soon as may be practicable be delivered to a police officer.
- (8) Despite subsection (3), a passenger embarking or disembarking directly through a gateway or thoroughfare in an airport approved for that purpose by the airport manager may pass through a security area or security enhanced area forming part of the gateway or thoroughfare without an airport identity card.
- (9) Despite subsection (3), a person allowed under the rules may pass through a security area or security enhanced area without an airport identity card.
- (10) Except with the approval of the Director, every person being granted authorized access into designated security areas and enhanced security areas under subsection (1) shall be subject to screening and security controls.

188. Powers of arrest and seizure of items or substances

- (1) Every aviation security officer is justified in arresting without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if he or she has reasonable grounds to believe that an offence has been or is being committed by that person against any of the following enactments:
 - (a) Section 125;
 - (b) Section 3, 4, 5 and 6 of the Aircraft Security Act 1990;
 - (c) Section 4 of the Arms and Ammunition Ordinance and section 3 of the Explosives Ordinance (which relates to unlawful carriage of firearms, ammunition or explosives).
 - (2) An aviation security officer may—
 - (a) search a person arrested under subsection (1);
 - (b) seize any item or substance that may be evidence of an offence against an enactment specified in subsection (1), if the officer has reasonable grounds to believe that—
 - (i) the person has an item or substance hidden or in clear view on or about his or her person that is evidence of an offence against an enactment specified in subsection (1); and
 - (ii) the item or substance poses a threat to the safety of the officer or any other person; and
 - (iii) immediate action is necessary to address the threat.
 - (3) An aviation security officer may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to—
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- (a) arrest a person under subsection (1):
 - (b) search a person under subsection (2):
 - (c) seize an item or substance under subsection (2).
- (4) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security officer has previously searched the person under another section of this Act.
- (5) An aviation security officer who undertakes a search under this section must, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by subsection (2)(b).
- (6) Any person called upon to do so by an aviation security officer is justified in assisting him or her in good faith to arrest any person.
- (7) An aviation security officer shall as soon as may be practicable deliver any person he or she arrests, and any item or substance he or she seizes, to a police officer.
- (8) An aviation security officer may seize an item or substance in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item or substance is evidence of an offence against an enactment specified in subsection (1).

189. Arrest of persons delivered to Police

- (1) A Police Officer shall accept delivery of a person whom an aviation security officer seeks to deliver to him or her under this Part if he or she has reasonable grounds to suspect that person of having done or omitted to do anything if that act or omission is an offence against section 125 or any enactment specified in section 188(1).
- (2) A police officer who accepts delivery of a person under subsection (1) shall forthwith arrest that person.
- (3) An aviation security officer who detains any person in accordance with the provisions of section 187(7) and delivers him or her to a police officer, and any person who at his or her request and in good faith assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using such force as may be reasonably necessary in doing so.

PART XIV

International air services licensing

190. Interpretation

In this Part,—

capacity, in relation to a scheduled international air service, means—

- (a) with respect to the transport of passengers, the number of seats provided per week on each route followed (expressed either as a number of seats or in terms of aircraft equivalents); and
- (b) with respect to the transport of cargo, the amount of cargo space provided per week on each route followed (expressed in terms of cargo aircraft equivalents)

foreign international airline means an air transport enterprise of a country or territory other than Kiribati that is offering or operating a scheduled international air service or intends to offer or operate such a service

licensee means the holder for the time being of a licence issued under this Part

Kiribati international airline means a Kiribati air transport enterprise that is offering or operating a scheduled international air service or intends to offer or operate such a service

scheduled international air service means a series of flights performed by aircraft for the transport of passengers, cargo, or mail between Kiribati and one or more points in any other country or territory, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public; and, in relation to a Kiribati international airline, includes a seventh freedom service

seventh freedom service means a series of flights between one or more points in one country or territory other than Kiribati and one or more points in another country or territory other than Kiribati, if—

- (a) the airline is designated by Kiribati under the air services agreement (or similar arrangement) between Kiribati and each country or territory in which the service is being performed; and
- (b) the service is performed according to the traffic rights allocated to the airline under those agreements (or arrangements); and (c) the service is a scheduled service.

191. Scheduled international air service not to be carried on except pursuant to licence

No person shall carry on in Kiribati any scheduled international air service otherwise than pursuant to and in conformity with the terms of a scheduled international air service licence or, as the case may be, an open aviation market licence.

192. Application for licence

- (1) Every application for a licence under this Part shall be lodged with the Minister.
- (2) Every applicant for a licence shall, when making the application,—
 - (a) supply such information and documents as may be required by regulations made under this Act or as may be specified by the Minister; and
 - (b) pay the prescribed fees and charges (if any).

193. Minister to be licensing authority for Kiribati international airlines

The Minister shall be the licensing authority to grant scheduled international air service licences to Kiribati international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

194. Notice of application

- (1) Where an application for a scheduled international air service licence is lodged by a Kiribati international airline in accordance with section 192, the Minister shall give notice in the *Gazette* that the application has been received.
- (2) Every notice under this section shall specify a time, being not less than 21 clear days from the date of the notice, within which the Ministry will receive written representations from any person relating to the application.

195. Consideration of application for scheduled international air service licence by Kiribati international airline

- (1) In consideration any application for a scheduled international air service licence made by a Kiribati international airline the Minister shall take into account the following matters:
 - (a) any relevant international agreement, convention, or arrangement to which Kiribati is a party;
 - (b) the safety and security requirements of the Director;
 - (c) the financial ability of the applicant to carry on the proposed service;
 - (d) the likelihood of the applicant carrying on the proposed service satisfactorily;
 - (e) any written representations received by the Minister in relation to the application;
 - (f) such other matters as the Minister thinks fit.
- (2) If the granting of the licence would be contrary to any agreement, convention, or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

196. Scheduled international air service license may be granted subject to conditions

- (1) The Minister, after giving consideration to the application in accordance with section 195, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.

- (2) The scheduled international air service licence shall be in such form as the Minister thinks fit.
- (3) Without prejudice to the generality of subsection (1), the Minister, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service,—
 - (a) the countries or territories, or points within those countries or territories, that may be served and the route or routes that may be followed;
 - (b) the maximum capacity that may be provided;
 - (c) a date not later than which the service shall be commenced.

197. Duration of scheduled international air service licence

- (1) Every scheduled international air service licence granted under section 196 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case.
- (2) Where an application is made under section 198 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

198. Renewal of scheduled international air service licence

- (1) The Minister may, from time to time, renew a scheduled international air service licence granted under section 196.
- (2) Every application for the renewal of a scheduled international air service licence granted under section 196 shall be lodged with the Secretary not less than 3 months before the date on which the licence expires.
- (3) Section 192(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.
- (4) The Secretary shall give notice in the *Gazette* of the Minister's intention to consider exercising the power conferred on the Minister by subsection (1).
- (5) The notice given under subsection (4) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.
- (6) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Minister shall take into

account all the matters referred to in section 195 as if the application were an application for a new licence.

- (7) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted, and may be for such term as the Minister considers appropriate in the particular case.

199. Variation of terms and conditions of scheduled international air service licence

- (1) The Minister, while a scheduled international air service licence granted under section 196 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

- (2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.

- (3) Where any proposed variation involves—

- (a) a change or addition to the route or routes to be operated; or
(b) an increase in the capacity of the service to be provided—

pursuant to the licence, the Secretary shall, by notice in the *Gazette*, give not less than 21 clear days' notice of the Minister's intention to consider exercising the power conferred on the Minister by this section.

- (4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations regarding the proposed variation.

- (5) In considering any application referred to in subsection (3), the Minister shall take into account all the matters referred to in section 195 as if the application were an application for a new licence.

- (6) Where the Minister has varied the terms or conditions of any scheduled international air service licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

200. Transfer of scheduled international air service licence

- (1) Any scheduled international air service licence granted under section 196 may, subject to the provisions of this section, be transferred to any person.

- (2) Every application for the transfer of a scheduled international air service licence shall be lodged with the Secretary not less than 3 months before the date of the proposed transfer.
- (3) The Secretary shall give notice in the *Gazette* of the Minister's intention to consider the application for the transfer of the licence.
- (4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.
- (5) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in section 195 as if the application were an application for a new licence.

Scheduled international air service licences for foreign international airlines

201. Minister to be licensing authority for foreign international airlines

- (1) Subject to subsection (2), the Minister shall be the licensing authority to grant scheduled international air service licences to foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.
- (2) Where the applicant for a scheduled international air service licence is a foreign international airline of a country or territory with which Kiribati does not have an air service agreement or similar arrangement, the application shall be referred to the Minister for determination in accordance with sections 202 to 204.

202. Consideration of application for scheduled international air service licence by foreign international airlines

- (1) In considering any application for a scheduled international air service licence made by a foreign international airline the Minister shall take into account the following matters:
 - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which Kiribati is a party:
 - (b) the safety and security requirements of the Director:
 - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the licence would be contrary to any agreement, arrangement, or convention referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

203. Scheduled international air service licence may be granted subject to conditions

- (1) The Minister, after giving consideration to the application in accordance with section 202, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.
- (2) The scheduled international air service licence shall be in such form as the Minister thinks fit.
- (3) Without prejudice to the generality of subsection (1), the Minister, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service,—
 - (a) the countries or territories, or points within those countries or territories that may be served and the route or routes that may be followed;
 - (b) the maximum capacity that may be provided;
 - (c) the date not later than which the service shall be commenced.
- (4) Where the Minister grants a licence in accordance with this section, the Minister shall give notice in the *Gazette* that the licence has been granted.

204. Duration of schedule international air service licence

- (1) Every scheduled international air service licence granted under section 203 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.
- (2) Where an application is made under section 205 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Ministry otherwise directs.

205. Renewal of scheduled international air service licence

- (1) The Minister may, from time to time, renew a scheduled international air service licence granted under section 203.
- (2) Every application for the renewal of a scheduled international air service licence granted under section 203 shall be lodged with the Minister not less than 1 month before the date on which the licence expires.
- (3) Section 192(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.

- (4) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 202 as if the application were an application for a new licence.
- (5) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted and may be for such term as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.

206. Variation of terms and conditions of scheduled international air service licence

- (1) The Minister, while a scheduled international air service licence granted under section 203 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.
- (2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.
- (3) Where any application under subsection (1) seeks approval for— (a) a change or addition to the route or routes to be operated; or (b) an increase in the capacity of the service to be provided— pursuant to the licence, the Minister shall take into account all the matters referred to in section 202 as if the application were an application for a new licence.
- (4) Where the Minister has varied the terms or conditions of any licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

Open aviation market licences

207. Minister may designate countries or territories for open aviation market licences

The Minister may from time to time, by notice in the *Gazette*, designate any one or more countries or territories in respect of which—

- (a) scheduled international air services; and
- (b) non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire—

may be carried on pursuant to and in conformity with an open aviation market licence.

208. Minister to be licensing authority for open aviation market licences

The Minister shall be the licensing authority to grant open aviation market licences to Kiribati international airlines and foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

209. Consideration of application for open aviation market licence

- (1) In considering an application for an open aviation market licence made by a Kiribati international airline or a foreign international airline the Minister shall take into account the following matters:
 - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which Kiribati is a party:
 - (b) the safety and security requirements of the Director:
 - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the open aviation market licence would be contrary to any agreement, convention, or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

210. Open aviation market licence may be granted subject to conditions

- (1) The Minister, after giving consideration to the application in accordance with section 209, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.
- (2) Without prejudice to the generality of subsection (1), the Minister, in granting any open aviation market licence, shall prescribe, in respect of any scheduled international air service and non-scheduled international flight carried on pursuant to the licence, the countries or territories that may be served.
- (3) The open aviation market licence shall be in such form as the Minister thinks fit.
- (4) Where the Minister grants an open aviation market licence under this section, the Minister shall give notice in the *Gazette* that the licence has been granted.

211. Duration of open aviation market licence

- (1) Every open aviation market licence granted under section 210 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.

- (2) Where an application is made under section 212 for the renewal of an open aviation market licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

212. Renewal of open aviation market licence

- (1) The Minister may, from time to time, renew an open aviation market licence granted under section 210.
- (2) Every application for the renewal of an open aviation market licence granted under section 210 shall be lodged with the Minister not less than 3 months before the date on which the licence expires.
- (3) Section 192(2) shall apply to every application for the renewal of an open aviation market licence as if it were an application for a new licence.
- (4) No person shall be entitled as of right to a renewal of an open aviation market licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 209 as if the application were an application for a new licence.
- (5) The renewal of the open aviation market licence shall take effect from the date of expiry of the licence for which the renewal is granted and may be for such term as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.

213. Variation of terms and conditions of open aviation market licence

- (1) The Minister, while an open aviation market licence granted under section 210 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.
- (2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.
- (3) Where any application under subsection (1) seeks approval for a change or addition to the country or countries, or territory or territories, to be served pursuant to the open market aviation licence, the Minister shall take into account all the matters referred to in section 209 as if the application were an application for a new licence.

- (4) Where the Minister has varied the terms or conditions of an open aviation market licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

214. Transfer of open aviation market licence

- (1) Any open aviation market licence granted to a Kiribati international airline under section 210 may, subject to the provisions of this section, be transferred to any other Kiribati international airline.
- (2) Every application for the transfer of an open aviation market licence shall be lodged with the Minister not less than three months before the date of the proposed transfer.
- (3) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in section 209 as if the application were an application for a new licence.
- (4) Where the Minister transfers any open aviation market licence under this section, the Minister shall give notice in the *Gazette* that the licence has been transferred.

215. Holder of open aviation market licence may operate non-scheduled international flights without authorization under section 220.

The holder of an open aviation market licence under this Part shall be entitled to carry on, to or from the countries or territories that may be served pursuant to the licence as prescribed under section 210(2), non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire without authorisation under section 220.

Requirement on licencees

216. Insurance cover against liability

The Minister may, before granting or renewing any licence, or at any other time while the licence is in force, call upon the applicant or the licensee, as the case may be, to furnish to the satisfaction of the Minister, proof that the liability of the applicant or the licensee which may arise out of or in connection with the operation of the service in respect of the death of or bodily injury to any person and in respect of loss of or damage to any property is covered by insurance.

217. Returns to be furnished

Every person carrying on a scheduled international air service or non-scheduled international flight pursuant to a licence shall furnish to the Minister such financial and statistical returns and statements as the Minister may from time to time require by notice in writing addressed to that person.

Suspension and revocation of licences

218. Suspension of licences

Where the Minister is satisfied that a licensee has willfully committed a breach of any of the conditions of a licence granted under this Part, the Minister may suspend the licence for such period as the Minister thinks fit.

219. Revocation of licences

The Minister may revoke a licence granted under this Part if—

- (a) the service authorised by the licence is not commenced on the date specified in the licence; or
- (b) the Minister is satisfied that the service authorised by the licence is not being carried on in conformity with the terms and conditions of the licence; or
- (c) the service authorised by the licence has been terminated; or
- (d) the licence has been granted under or in accordance with any convention, agreement, or arrangement between the Government of Kiribati and the Government of any other country (whether or not any other Government is also a party thereof) and that convention, agreement, or arrangement has been terminated or has ceased to bind the Government of Kiribati or the Government of that other country; or
- (e) the licence has been granted under or in accordance with any such convention, agreement, or arrangement referred to in paragraph (d) and circumstances have occurred or any condition has been fulfilled whereby the Minister, or the Government of Kiribati, has become entitled under or in accordance with the convention, agreement, or arrangement, to revoke the licence.

Non-scheduled international flights

220. Commercial non-scheduled international flights not to be operated except as authorized by Minister.

- (1) Subject to section 215, no person shall operate a non-scheduled international flight engaged in the carriage of passengers, cargo, or mail for remuneration or hire between Kiribati and one or more points in any other country or territory, except as authorised by the Minister and in accordance with such conditions as the Minister may impose in accordance with guidelines specified by the Minister in accordance with subsection (2).
- (2) For the purposes of this section, the Minister may issue guidelines for the regulation of flights described in subsection (1).

- (3) The Minister may from time to time review and amend the guidelines referred to in subsection (2).
- (4) The Minister shall, when requested by any person, make a copy of the guidelines issued in accordance with subsection (2) available to that person.

Miscellaneous provisions

221. Provisions of this Part in addition to requirements of regulations and rules.

No aircraft being used in connection with a scheduled international air service pursuant to a licence granted under this Part or a non-scheduled international flight shall, by virtue of its being used in connection with that service or flight, be exempt from the operation of any regulation or rules made under this Act.

PART XV

International air carriage competition

222. Authorization of contracts, arrangements and understandings relating to international carriage by air.

- (1) In this section and in sections 223 and 224, unless the context otherwise requires, —
- capacity** means a statement, expressed to apply to one or more specified airlines, or to all airlines other than one or more specified airlines, or to all airlines, specifying the number of flights to be undertaken between specified points in a period or successive period by the airline or airlines, whether or not by reference to specified classes of aircraft or the number of seats or volume of cargo space to be provided
- commission regime** means a statement, expressed to apply to any specified international carriage by air, specifying the rates and bases of calculation of agency commissions (including any benefit, whether in monetary form or otherwise, supplied to an agent) to be allowed, charged, disbursed, given, offered, paid, provided, or retained, in relation to the international carriage by air to which it is expressed to apply, and the circumstances and conditions under and subject to which any such commission is to be allowed, charged, disbursed, given, offered, paid, provided, or retained; and different rates, bases, circumstances, and conditions may be specified in respect of all or any of the following:
- (a) international carriage by air provided by different airlines:
 - (b) international carriage by air arranged by persons of different classes:
 - (c) international carriage by air provided for persons of different classes
- international carriage by air** means the carriage by air of persons, baggage, or cargo—
- (a) between Kiribati and any place outside Kiribati; or
 - (b) where that carriage is purchased, sold, or arranged in Kiribati, between places outside Kiribati

tariff means a statement, expressed to apply to one or more specified airlines, or to all airlines other than one or more specified airlines, or to all airlines, specifying—

- (a) the fares, rates, and charges applicable to international carriage by air between specified points (whether direct or indirect, and whether or not including any stopovers) that may at any time be provided by the airlines to which it is expressed to apply; and
 - (b) any conditions subject to which any such fares, rates, and charges, or any of them, are to apply to international carriage by air between those points; and
 - (c) any conditions subject to which international carriage by air between those points is to be provided on such fares, rates, and charges.
- (2) The Minister may from time to time specifically authorise all or any provisions of a contract, arrangement, or understanding made between two or more persons in respect of international carriage by air and related to such carriage so far as the provisions relate, whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof.
- (3) In considering whether to grant authorisation under subsection (2), the Minister shall ensure that the granting of such authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Kiribati is a party.
- (4) Subject to subsection (5), authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that—
- (a) provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding; or
 - (b) has the purpose or effect of breaching the terms of a commission regime issued under section 223; or
 - (c) unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs; or
 - (d) so far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates; or
 - (e) has the purpose or effect of preventing any party from seeking approval, in terms of section 224, for the purpose of selling international carriage by air at any other tariff so approved; or
 - (f) prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.
- (5) Notwithstanding the provisions of subsection (4), the Minister may authorise any provision of any contract, arrangement, or understanding under this section if the Minister believes that to decline authorisation would have an undesirable effect on international comity between Kiribati and any other State.

- (6) If the Minister declines to authorise any provision of any contract, arrangement, or understanding under this section, the Minister shall give notice in the *Gazette* that authorisation has been declined.

223. Minister may issue commission regimes

The Minister may from time to time, by notice in the *Gazette*,—

- (a) issue commission regimes; and
- (b) amend or revoke any commission regime so issued.

224. Authorization of tariffs by Minister

- (1) The Minister may from time to time specially authorise any tariff in respect of international carriage by air where the relevant places of departure and destination are within the territories of 2 countries, one of which is Kiribati, whether or not there is to be a break in the carriage or a transshipment.
- (2) In giving authorisation under this section the Minister shall have regard to—
- (a) whether the proposed tariff is excessive in terms of a reasonable return on investment by the supplier of the carriage; and
 - (b) whether it is likely that supply of the relevant carriage can be carried on for a reasonable period at the level of tariff proposed; and
 - (c) whether there is likely to be a substantial degree of benefit accruing to consumers generally, or to a significant group of consumers, as a result of the application of the proposed tariff, —

and shall ensure that the granting of such authorisation will not prejudice compliance with any international convention, agreement, or arrangement to which the Government of Kiribati is a party.

PART XVI

Domestic carriage by air

225. Interpretation

- (1) In this Part, unless the context otherwise requires,—
- actual carrier** means a person, other than the contracting carrier, who—
- (a) performs the whole or part of the carriage contracted for by the contracting carrier with the authority of the contracting carrier; but
 - (b) is not, in relation to that carriage, a successive carrier

aeroplane means a power-driven heavier-than-air aircraft deriving its lift in flight chiefly from aerodynamic reactions on surfaces that remain fixed under given conditions of flight

carrier includes a contracting carrier and an actual carrier

contract includes an arrangement made without consideration

contracting carrier—

- (a) means a person who, as a principal, makes a contract for carriage with a passenger, or with a person acting on behalf of the passenger; and
- (c) includes a successive carrier

domestic carriage, in relation to carriage by air, means carriage in which the place of departure and the place of destination, whether or not there is a break in the carriage or a transshipment, are within the domestic boundaries of Kiribati.

international carriage, in relation to carriage by air, means carriage in which, according to the contract between the parties, the place of departure and the place of destination, whether or not there is a break in the carriage or a transshipment, are—

- (a) within the territories of 2 countries; or
- (b) within the territory of a single country if there is an agreed stopping place within the territory of another country

passenger means a person carried under a contract for carriage other than a person—

- (a) assigned by the carrier for duty as a member of the crew of the aeroplane; or
- (b) carried for the sole purpose of receiving or giving instruction in the control or navigation of an aeroplane in flight

successive carrier means a person who performs part of the carriage if the carriage—

- (a) is performed by 2 or more persons in successive stages; and
- (b) has been regarded by the parties as a single operation, whether it has been agreed on by a single contract or by 2 or more contracts.

- (2) If any question arises as to whether or not an actual carrier has authority from a contracting carrier to perform any carriage, that authority is, in the absence of proof to the contrary, to be presumed.

226. Application of this Part

- (1) This Part applies to any carriage by air (other than international carriage) in which, according to the contract between the parties,—
 - (a) the place of departure and the place of destination are both in Kiribati; and
 - (b) there is no agreed stopping place outside Kiribati.
- (2) Subsection (1) applies even if—
 - (a) the aeroplane in which the carriage takes place is at the same time engaged in international carriage; or
 - (b) the contract for the carriage of any passenger is made without consideration.
- (3) This section applies subject to section 227.

227. Exclusion

- (1) This Part does not apply to any carriage by air by an aeroplane while it is being used solely for military purposes by the Armed Forces.
- (2) This Part does not apply to any carriage by air on a single flight in respect of which, according to the contract between the parties, the place of departure and the intended place of destination are the same.

228. Provision if carriage performed by actual carrier

- (1) If the whole or any part of any carriage to which this Part applies is performed by an actual carrier,—
 - (a) both the contracting carrier and the actual carrier are subject to any liability imposed by this Part as follows:
 - (i) the contracting carrier is liable in respect of the whole of the carriage contemplated in the contract between the contracting carrier and the passenger; and
 - (ii) the actual carrier is liable solely in respect of the carriage that the actual carrier performs:
 - (b) the acts and omissions of the actual carrier, and of the actual carrier's agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the contracting carrier:
 - (c) the acts and omissions of the contracting carrier, and of the contracting carrier's agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the actual carrier:
 - (d) any special agreement under which the contracting carrier assumes obligations not imposed by this Part, or any waiver of rights conferred by this Part, does not affect the actual carrier unless agreed to by the actual carrier.
- (2) An act or omission specified in subsection (1)(c) does not subject the actual carrier to liability exceeding the limits specified in section 233.

229. Provision if carriage performed by successive carriers

If carriage is performed or is to be performed by successive carriers, the contracting carrier who is liable is the successive carrier who performed or was to perform the carriage where the delay occurred.

230. Liability of carrier in respect of delay

- (1) A carrier is liable for damage caused by delay in the carriage of passengers.

- (2) Despite subsection (1), a carrier is not liable for damage caused by delay if the carrier proves that the delay—
- (a) arose by reason of—
 - (i) meteorological conditions; or
 - (ii) compliance with instructions, advice, or information given by an air traffic control service; or
 - (iii) obedience to orders or directions given by a lawful authority; or
 - (b) was made necessary by *force majeure*; or
 - (c) was necessary for the purpose of saving or attempting to save life.

231. Avoidance of liability

The carrier is not liable under this Part if the carrier proves that—

- (a) the carrier, or the carrier's agents, had taken all necessary measures to avoid the damage; or
- (b) it was not possible for the carrier, or the carrier's agents, to have taken those measures.

232. Contributory negligence

If the carrier proves that the damage was caused, or contributed to, by the negligence of the passenger, the court may exonerate the carrier wholly or partly from liability.

233. Limitation of liability

- (1) The liability of the carrier in respect of damage caused by delay is limited to the lesser of—
- (a) the amount of damage proved to have been sustained as a result of the delay; or
 - (b) an amount representing 10 times the sum paid for the carriage.
- (2) Despite subsection (1), the carrier may, by special contract, increase the amount of the carrier's liability under that subsection.
- (3) This Part does not affect any rule of law relating to remoteness of damage.

234. Contracting out

- (1) A provision in a contract of carriage or in any bylaws made by a carrier purporting to relieve the carrier of liability, or to fix a lower limit than the appropriate limit of liability referred to in section 233, has no effect.
- (2) The invalidity under subsection (1) of a provision in a contract of carriage or in any bylaws does not, by itself, make any other provision of that contract or those bylaws invalid.

235. Willful or reckless misconduct

- (1) The limits of liability referred to in section 233 do not apply if it is proved that the damage resulted from an act or omission of the carrier done—
 - (a) with intent to cause damage; or
 - (b) recklessly and with knowledge that damage would probably result.

- (2) The limits of liability referred to in section 233 do not apply if it is proved that the damage resulted from an act or omission of the carrier's agents done—
 - (a) with intent to cause damage; or
 - (b) recklessly and with knowledge that damage would probably result; and
 - (c) while the agent was acting within the scope of that agent's employment.

236. Agents of carrier

- (1) If an action in respect of any damage is brought against an agent of a carrier, and the agent proves that the agent acted within the scope of the agent's employment or authority, the agent is entitled to rely on the limits of liability, if any, that the carrier would be entitled to invoke under section 233 in an action against the carrier in respect of that damage.

- (2) Subsection (1) does not apply if it is proved that the damage resulted from an act or omission of the agent done—
 - (a) with intent to cause damage or recklessly; and
 - (b) with knowledge that damage would probably result.

237. Aggregation of damages

The aggregate of the amounts recoverable from the carriers, and from their agents acting within the scope of their employment who are jointly and severally subject to liability under this Part, must not exceed the limits referred to in section 233.

238. Aggregation liability

The limitations referred to in section 233 apply to the aggregate liability of a carrier, or an agent of a carrier acting within the scope of the agent's employment, in all proceedings that are brought against the carrier or agent under the law of Kiribati, together with any proceedings brought against the carrier or agent outside Kiribati.

239. Just and equitable orders and awards

- (1) A court before which proceedings are brought to enforce a liability that is limited by this Part may, at any stage of the proceedings, make any order that appears to the court to be just and equitable in view of—
 - (a) the provisions of this Part; and

(b) any other proceedings that have been, or are likely to be, commenced in Kiribati or elsewhere to enforce the liability in whole or in part.

(2) Without limiting subsection (1), a court before which proceedings are brought to enforce a liability that is limited by this Part may, if the liability is, or may be, enforceable in other proceedings in Kiribati or elsewhere,—

(a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or

(b) make any part of its award conditional on the result of any other proceedings.

240. Tortfeasors

(1) The limitations on liability referred to in section 233 apply if—

(a) proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor; and

(b) the tortfeasor from whom contribution is sought is the carrier or agent of the carrier.

(2) Proceedings to which subsection (1) applies may not be brought by a tortfeasor to obtain a contribution from another tortfeasor after 2 years from the time when judgment is obtained against the tortfeasor seeking to obtain the contribution.

(3) This Part does not affect proceedings brought against any tortfeasor (other than the carrier or agent).

241. Relationship between carriers

This Part does not—

(a) prevent a carrier from entering into special contractual arrangements with another carrier; or

(b) affect the rights and obligations of the carriers between themselves.

242. Limitation of actions

(1) An action may not be brought under this Part against a carrier, or an agent of a carrier acting within the scope of his or her employment, after 2 years from the later of the following dates:

(a) the date of the arrival of the aeroplane at the destination; or

(b) if the aeroplane did not arrive at the destination, —

(i) the date on which the aeroplane ought to have arrived at the destination; or

(ii) the date on which the carriage stopped.

(2) Despite subsection (1), application may be made to the court, after giving notice to the intended defendant, for leave to bring an action at any time within 6 years after the date on which the cause of action accrued as provided in subsection (1).

- (3) On application under subsection (2), the court may grant leave accordingly if it considers that it is just to do so and if it considers that—
- (a) the delay in bringing the action was caused by—
 - (i) mistake of fact; or
 - (ii) mistake of any matter of law other than the provisions of this subsection; or
 - (iii) any other reasonable cause; or
 - (b) the intended defendant was not materially prejudiced in the defendant's defence or otherwise by the delay.
- (4) If the court grants leave under subsection (3), that leave may be subject to such conditions (if any) that the court thinks just to impose.
- (5) This section applies subject to the special provisions relating to tortfeasors in section 240.

243. Combined carriage

If a contract of carriage made with an air carrier provides for the carriage to be performed partly by air and partly by a mode of carriage other than by air, this Part applies only to the carriage by air.

PART XVII

Miscellaneous provisions

244. Sale of alcohol at international airports

- (1) Alcohol may be sold at any international airport to any passenger on an aircraft departing from or arriving in Kiribati if—
- (a) in the case of alcohol bought for consumption off the airport premises, the passenger is of or over the age stated in section 68 of the *Liquor Ordinance (Cap 50)*; and
 - (b) in the case of alcohol bought for consumption on the airport premises, the passenger is of or over the age stated in section 68 of the *Liquor Ordinance (Cap 50)*.
- (2) The Minister may, from time to time, make regulations for either or both of the following purposes:
- (a) prescribing the circumstances and conditions relating to the control of the sale of alcohol at international airports to passengers on aircraft departing from or arriving in Kiribati who are of or over the age referred to in subsection (1)(a) or (b) (as the case requires);
 - (b) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$1,000, that may, on conviction, be imposed in respect of any such offence.

- (3) A person commits an offence who—
sells alcohol at any international airport to any passenger on an aircraft departing from or arriving in Kiribati who is under the age referred to in subsection (1)(a) or (b) (as the case requires)
- (4) A person who commits an offence against subsection (3) is liable on conviction to a fine not exceeding \$1,000.

245. Prohibition of smoking on international air routes

- (1) For the purpose of this section and section 246,—
Kiribati international airline means a Kiribati air transport enterprise that is offering or operating a scheduled international air service or a nonscheduled international flight

to smoke means to smoke, hold, or otherwise have control over an ignited product, weed, or plant, electronic cigarette or vaping device; and **smoked** and **smoking** have corresponding meanings.
- (2) A Kiribati international airline that is operating an aircraft carrying passengers on any route shall ensure that—
 - (a) there are prominent notices displayed in the aircraft indicating that smoking is not permitted; and
 - (b) an announcement is made to passengers on the aircraft at the commencement of each journey on the route advising that smoking is not permitted.
- (3) No Kiribati international airline that is operating an aircraft carrying passengers shall permit any person to smoke on that aircraft.
- (4) No person shall smoke while on any aircraft operated by a Kiribati international airline carrying passengers on any route.

246. Offences in respect of smoking on international flights

- (1) Every person commits an offence who, being a Kiribati international airline, without reasonable excuse, fails to comply with the requirements of section 245(4).
- (2) Every person commits an offence who, being a Kiribati international airline, without reasonable excuse permits any person to smoke in contravention of section 245.
- (3) Every person who commits an offence against subsection (1) or subsection (2) is liable on conviction to a fine not exceeding \$4,000.

247. Nuisance, trespass, and responsibility for damage

- (1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any rules made under section 76 or section 79 or section 82, so long as the provisions of the rules are duly complied with.
- (2) No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, so long as the provisions of this Act and of any rules made under this Act are duly complied with.
- (3) Where material damage or loss is caused to property on land or water by an aircraft in flight, taking off, landing, or alighting, or by any person or article in or falling from any such aircraft, damages shall be recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his or her fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.
- (4) Where damage or loss is caused in the manner described in subsection (3) and in circumstances in which—
 - (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of subsection (3); and
 - (b) some person other than the owner is liable to pay damages in respect of the damage or loss,—the owner shall be entitled to be indemnified by that other person against any claim in respect of the damage or loss.
- (5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered, the law relating to apportionment in respect of contributory negligence shall apply.
- (6) Damages shall not be recoverable under subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute. Damages shall be recoverable from the person descending and the provisions of subsection (4) shall, with the necessary modifications, apply as if the person descending were the owner of the aircraft. This subsection shall not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death.
- (7) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew

of the aircraft is in the employment of the owner, this section shall apply as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.

- (8) For the purposes of this section, the term **fault** means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from any statutory provision in respect to contributory negligence, give rise to the defence of contributory negligence.

248. Regulations relating to information disclosure

Without limiting section 95, the Minister may from time to time, make regulations for all or any of the following purposes:

- (a) requiring every holder of an aviation document relating to an air traffic service to publish in the prescribed manner information in relation to the provision of that service by that holder; and prescribing the information, including prices, terms, and conditions, that the holder shall make available, which information shall include—
 - (i) prices, terms, and conditions:
 - (ii) pricing policies and methodologies:
 - (iii) costs:
 - (iv) cost allocation policies and methodologies:
- (b) requiring every holder of an aviation document relating to an air traffic service to make publicly available prescribed financial statements that follow generally accepted accounting principles (including statements of financial performance and statements of financial position and statements of accounting principles) in respect of that holder, or any of that holder's subsidiaries, or any part or division of the person as if the holder or the subsidiary or a part or division of the holder, as the case may be, were independent and unrelated companies:
- (c) prescribing the form and manner in which the financial statements required by any regulations made under paragraph (b) shall be made available:
- (d) prescribing the form of statutory declaration and by whom it shall be made for the purpose of section 249:
- (e) prescribing the time limits within which the information disclosure required by any regulations made under this section shall be made to the public.

249. Information to be supplied to Secretary

- (1) Every person who is required by regulations made under section 248 to make available statements and information shall supply to the Secretary—
- (a) a copy of all statements and information, made available to the public pursuant to regulations made under that section:
 - (b) any further statements, reports, agreements, particulars, and other information requested in writing by the Secretary for the purpose of monitoring the person's compliance with those regulations within 30 days of receipt of such request.

- (2) All statements, reports, agreements, particulars, and information supplied to the Secretary under paragraph (a) or paragraph (b) of subsection (1) shall be verified by statutory declaration in the form and by the persons prescribed by regulations made under section 248(d).

250. Offences

- (1) Every person commits an offence against this section who—
- (a) fails, without reasonable excuse, to comply with any information disclosure requirements prescribed in regulations made under section 248; or
 - (b) fails, without reasonable excuse, to comply with the requirements of paragraph (a) or paragraph (b) of section 249(1).
- (2) Every person commits an offence against this section who makes a false declaration when supplying any statement, report, agreement, particulars, or information pursuant to section 249.
- (3) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- (4) Every person who commits an offence against subsection (2) is liable on conviction to a fine not exceeding \$20,000.

251. Repeals, revocation, amendments, and savings

The Civil Aviation Act 2004 is hereby repealed.

252. Transitional provisions

- (1) Every reference to the Minister of Civil Aviation in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement of this Act, shall, unless the context otherwise requires, be read as a reference to the Minister who hold responsibility of Transport.
- (2) Every licence, rating, certificate, permit, authorisation, approval, or other document issued under the Civil Aviation Act 2004 that is in force immediately before the commencement of this Act, shall be deemed to be an aviation document issued under this Act, and shall have effect and be subject to the provisions of this Act accordingly.
- (3) Every authorisation given under the Civil Aviation Act 2004 and every commission regime issued under that Act, that is in force immediately before the commencement of this Act, shall be deemed to have been given or issued, as the case may be, under Part XIII, and shall have effect and be subject to the provisions of that Part accordingly.

SCHEDULES

Schedule 1

(Section 7(6))

1. Chairman and Deputy of the Board

- (1) The Minister shall appoint 1 of the members to be the Chairman and 1 of the members to be the Deputy Chairman of the Authority.
- (2) The Chairman shall keep the Minister fully informed concerning the activities and operations of the Authority and shall furnish the Minister with such information as the Minister may request with respect to any particular matter relating to the activities or operations of the Authority.
- (3) In the absence or inability to act of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.
- (4) In the absence or inability to act of the Chairman and the Deputy Chairman, the Minister may appoint 1 of the remaining members to perform the functions of the Chairman.
- (5) In the absence or inability to act at any meeting of both the Chairman and the Deputy Chairman the remaining members shall elect 1 of their number to act as Chairman at that meeting.

2. Tenure of Office

- (1) A member shall, subject to the provisions of this schedule, hold office for such period being not less than 2 nor more than 4 years as may be specified in the notice appointing him, but shall be eligible for re-appointment.
- (2) The Minister, may at any time revoke the appointment of any member if he thinks it expedient so to do, and if the appointment of the Chairman or the Deputy Chairman is so revoked he shall cease to be Chairman or Deputy Chairman as the case may be.

3. Resignation

- (1) Any member, other than the Chairman, may at any time resign his office by notice in writing addressed to the Minister and transmitted, through the Chairman, and such resignation shall take effect as from the date of the receipt of such notice by the Minister.
- (2) The Chairman may at any time resign his office by notice in writing addressed to the Minister, and such resignation shall take effect as from the date of the receipt of such notice by the Minister.

4. Authentication of seal and documents

All documents, other than those required by the law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the Chairman or any member authorized to act in that behalf.

5. Procedure and meetings

- (1) The Authority shall meet at any such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Authority shall determine.
- (2) The Chairman may at any time call a special meeting of the Authority and shall call a special meeting to be held within 7 days of a written request to that effect addressed to him by any 2 members.
- (3) The quorum of the Authority shall be 3, including the Chairman or the Deputy Chairman or the member elected to act as the Chairman as aforesaid.
- (4) Minutes in proper form for each meeting shall be kept and shall be confirmed, whenever practical, at the next meeting. Certified copies of such minutes when so confirmed shall be forwarded to the Minister.
- (5) The Authority may co-opt any 1 or more persons to attend any particular meeting of the Authority for the purposes of assisting or advising the Authority, but no such co-opted person shall have any right to vote.
- (6) Subject to the provisions of this Schedule, the Authority may regulate its own proceedings.

6. Allowances to member of Authority

- (1) Member of the Authority may be paid, out of the funds of the Authority, such travelling and other expenses as may be incurred by them in respect of their duties as members of the Authority, and, subject to subparagraph (2), an attendance allowance at such rate as may be determined from time to time by the Minister.
- (2) A member of the Authority who is an officer in the public service shall not be entitled to be paid an attendance allowance referred to in subparagraph (1) unless the meeting of the Authority in respect of which the allowance is to be paid is held after working hours, on a Saturday, Sunday or public holiday.

7. Protection of members of Authority

No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Authority in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act or any rule or regulation made under this Act.

8. Declaration of interest of member

If a member of the Authority has any pecuniary interest, direct or indirect, in any contract, or proposed contract or other matter, and is present at a meeting of the Authority at which the contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclosed to the Authority the fact and nature of his interest, and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

Schedule 2

(Section 5(5))

1. Appointment of Staff of the Authority

- (1) The Authority shall from time to time establish such posts as it considers necessary and proper for the due and efficient administration, management and performance, by the Authority of its duties under this Act and shall appoint staff to fill those posts.
- (2) The termination of appointment, dismissal and disciplinary control of the staff of the Authority shall be vested in the Authority.
- (3) Following a request from the Authority, the Public Service Commission may second to any office in the service of the Authority any officer from the public service, and the Public Service Commission may approve the transfer of an officer from the service of the Authority to the service or from the public service to the service of the Authority.

2. Responsibility of certain officers

- (1) Subject to this Act, the Director shall direct the entire staff and all other administrative and operational functions of the Authority.
- (2) All officers charged with the receipt, accounting for, or disbursements of moneys or with the custody or delivery of stores or other property, belonging to the Authority shall be individually responsible for the due and efficient discharge of their respective duties, and for the exercise of proper supervision of the accounts kept or controlled by them and of all the property entrusted to their care, and for the due observance of all rules and regulations and of all orders and instructions prescribed for their guidance.

FORM 1

(Section 77)

NOTICE OF MAKING A RULE BY ADOPTION

(Section 77, Civil Aviation Act 2019)

In exercise of the powers conferred upon me by section 77 of the Civil Aviation Act 2019, I hereby give notice of the making of a Civil Aviation Rule by adoption, as follows;

(part number)

Kiribati Civil Aviation Rule Part

Rule Adoption Statement: (part number, country of origin part number)

This rule part, which shall be cited as Kiribati Civil Aviation Rule Part (part number), adopts by reference the Civil Aviation Rule Part (part number), which is hereby modified by and shall be read subject to the Rule Interpretation Statement set out below.

Effective date:

Rule Interpretation Statement:

{Here include the matters set out in section 77(4)(b)}

Dated this day of , 20 .

{Name of Minister}

{Title of Minister}

FORM 2

(Section 77)

NOTICE OF REPEALING RULE
(Section 77, Civil Aviation Act 2019)

In exercise of the powers conferred upon me by section 77 of the Civil Aviation Act 2019, I hereby give notice of the repealing of a Civil Aviation Rule, as follows;

(part number)

Kiribati Civil Aviation Rule Part

Rule Part to be Repealed: (part number, country of origin part number)

Effective date:

{Name of Minister}

{Title of Minister}