OFFICE OF THE PRESIDENT

No. 1544.
6 October 1995

NO. 83 OF 1995: AIR SERVICES LICENSING AMENDMENT ACT, 1995

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

** ** Words between asterisks indicate omissions from existing enactments.

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Air Services Licensing Act, 1990, so as to amend a definition and to define certain expressions; to delete the provision in terms of which the Air Service Licensing Council may hold a meeting in camera; to further regulate the operation of an air service; to extend the conditions under which a licensee has to apply for the amendment of a licence; to further regulate the processing of a licence; to further regulate the adjudication of an application for a licence or amendment thereof; to extend the conditions upon which a licence is issued; to provide for the approval of an operations manual; to further regulate the duties of the licensee; to provide for the manner in which a person may appeal against a decision by the Air Service Licensing Council or the Commissioner for Aviation; to further regulate certain offences and penalties; and to extend and to further regulate the power of the Minister to make regulations; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 28 September 1995.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 115 of 1990, as amended by section 1 of Act 15 of 1992

1. Section 1 of the Air Services Licensing Act, 1990 (hereinafter refer-red to as the principal Act), is hereby amended-

(a) by the substitution for the definition of "air service" of the following definition:

" 'air service' means any service operated by means of an aircraft for reward, <<but shall not include-

(a) the hiring out of an aircraft together with the crew to a licensee;

(b) a service operated solely for the benefit of a company or a group of companies, or any subsidiary thereof, in its commercial activities by a person who is a member or in the employ of such company or group of companies or subsidiary, and which is not offered for reward to the public in general;

(c) the conducting of flight testing or assessment of skills in respect of flying an aircraft;

(d) the prescribed type of training or instruction in respect of flying an aircraft conducted in the prescribed manner and on the prescribed conditions;

(e) the participation in an air race of an aircraft which is sponsored on condition that the trade name of the sponsor is affixed to the aircraft for the duration of the air race>>;";

(b) by the insertion after the definition of "air service" of the following definitions:

" <<'authorized officer' means an authorized officer as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962);

'close corporation' means a close corporation as defined in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984)>>;";

(c) by the insertion after the definition of "Commissioner for Civil Aviation" of the following definition:

" <<'company' means a company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973)>>;"; and

(d) by the insertion after the definition of "domestic air service" of the following definition:

" '<<inspector' means an inspector as defined in section 1 of the Aviation Act, 1962 (Act No. 74 of 1962)>>;".

Amendment of section 8 of Act 115 of 1990

2. Section 8 of the principal Act is hereby amended by the deletion of the proviso to subsection (11).

Substitution of section 12 of Act 115 of 1990

3. The following section is hereby substituted for section 12 of the principal Act:

"Operating of air service

12. <<(1)>> Subject to the provisions of this Act, no person shall operate <<or attempt to operate>> an air service, unless it is <<or is to be>> operated under and in accordance with the terms and subject to the conditions of an air service licence issued to that person in terms of this Act or deemed to have been so issued.

<<(2) The council may upon application, exempt any applicant from the provisions of subsection (1) or from any other provision of this Act if, in the opinion of the council, the applicant is operating or proposes to operate an air service on a non-profit basis for purposes incidental to social welfare or charity, or for purposes of salvage on humanitarian grounds, or where the granting of the exemption will assist in saving life.

(3) Any exemption granted under subsection (2) shall be limited so as to apply only in respect of one or more aircraft, or one or more particular routes, journeys or transactions, and shall be limited as to time, area or distance, or otherwise as the council may deem fit.

(4) The council shall publish the prescribed particulars in respect of each exemption referred to in subsection (2) which was granted for a period of 90 days or more by notice in the Gazette>>.".

Amendment of section 14 of Act 115 of 1990

4. Section 14 of the principal Act is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) If a licensee desires to-

<<(a)>> amend the type of air service or the category of aircraft specified on his, <<her or its>> licence;

<<(b) in the case of a partnership, amend the particulars of any partner associated in the partnership;

(c) in the case of a close corporation-

(i) amend the particulars of any member associated in the close corporation; or

(ii) amend its legal status by means of a conversion into a company in terms of section 29C of the Companies Act, 1973 (Act No. 61 of 1973);

(d) in the case of a company-

(i) amend the controlling shareholding of the company; or

(ii) amend its legal status by means of a conversion into a close corporation in terms of section 27 of the Close Corporations Act, 1984 (Act No. 69 of 1984);

(e) amend the particulars of the prescribed personnel appointed by the licensee to be responsible and accountable for the safety and reliability of the air service,>>

he, <<she or it>> shall apply to the council on the prescribed form for such amendment."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) An application **referred to in subsection (1) or (2) shall be accompanied by the prescribed fee in respect of such application** <<for exemption from the provisions of section 16(4)(e) shall be made to the council on the prescribed form>>.".

Amendment of section 15 of Act 115 of 1990, as amended by section 3 of Act 15 of 1992

5. Section 15 of the principal Act is hereby amended-

(a) by the substitution in subsection (2) for the words preceding the proviso of the following words:

"Any person may, after the publication of the notice referred to in subsection (1), **and on payment of the prescribed fee** obtain a copy of such application from the council"; and

(b) by the substitution in subsection (3) for the words preceding the proviso of the following words:

"Any person may address in writing, within 21 days after the publication of the notice referred to in subsection (1), representations <<in the prescribed manner>> to the council against or in favour of such application".

Amendment of section 16 of Act 115 of 1990, as amended by section 3 of Act 15 of 1992

6. Section 16 of the principal Act is hereby amended-

(a) by the insertion in subsection (3) after paragraph (a) of the following paragraph:

"<<(aA) (i) At such meeting the council may serve on the applicant a written request for further particulars to be supplied within 90 days.

(ii) The particulars so supplied shall be open for inspection by the persons referred to in paragraph (a) until the subsequent meeting date contemplated in subparagraph (iii).

(iii) If the council requests such further particulars the meeting shall be adjourned to any subsequent date in order to hear further arguments against or in favour of such application, taking into account the further particulars referred to in subparagraph (i)>>.";

(b) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

"(c) A meeting referred to in paragraph (a) shall **unless the council otherwise determines** be held in public and the parties concerned may appear in person at that meeting or may at their own expense be represented by counsel, an attorney or other fully authorized representative.";

(c) by the deletion of paragraph (b) of subsection (4);

(d) by the substitution for paragraph (d) of subsection (4) of the following paragraph:

"(d) that the person referred to in paragraph (c) will be actively <<and effectively>> in control of the air service; and";

(e) by the substitution for subsection (6) of the following subsection:

" (6) The council may, in its discretion, exempt an applicant from the provisions of subsection (4)(e) and issue <<or amend>> such license subject to the conditions the council deems fit regarding the operation and maintenance of the aircraft concerned.";

(f) by the substitution in subsection (7) for the words preceding the proviso of the following words:

"The parties referred to in subsection (3)(a) may **on payment of the prescribed fee** request the council to furnish reasons for the approval or refusal of the application for a licence"; and

(g) by the addition of the following subsections:

"<<(8) The council shall publish the prescribed particulars in respect of each licence issued or amended in terms of subsection (4) by notice in the Gazette.

(9)(a) If an applicant ignores an order contemplated in subsection (3)(a) to appear before the council at a meeting or fails to appear on two successive occasions without furnishing reasons to the satisfaction of the council, or if an applicant fails to respond to a request contemplated in subsection (3)(aA)(i), and thereby delays the final adjudication of such application, the

council may in its discretion order that the application be struck off the roll whereupon the applicant shall forfeit the application fee paid.

(b) If an application is struck off the roll in terms of paragraph (a) the applicant shall not be allowed to proceed on the same papers, but shall lodge a new application if he, she or it wishes to proceed therewith>>.".

Amendment of section 18 of Act 115 of 1990

7. Section 18 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Information from such register shall be furnished by the council **on payment of the prescribed fee** to any person who, in the opinion of the council, on reasonable grounds requires such information.".

Amendment of section 19 of Act 115 of 1990

8. Section 19 of the principal Act is hereby amended by the deletion of the word "and" at the end of paragraph (c) and the addition of the following paragraph:

"<<(e) on condition that the licensee is insured as prescribed in relation to the class and type of air service, and the category of aircraft mentioned on his, her or its licence, and in respect of the prescribed nature, class or, kind of insurance>>.".

Amendment of section 22 of Act 115 of 1990, as amended by sections 2 and 3 of Act 15 of 1992

9. Section 22 of the principal Act is hereby amended-

(a) by the insertion after subsection (1) of the following subsection:

"<<(1A) A licensee shall apply to the Commissioner for Civil Aviation in the prescribed manner for the approval of an operations manual.>>"; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) An application in terms of subsection (1) shall be accompanied by **the prescribed fee and** the prescribed particulars and documents.".

Amendment of section 23 of Act 115 of 1990, as amended by section 3 of Act 15 of 1992

10. Section 23 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Information from such register shall be furnished by the Commissioner for Civil Aviation **on payment of the prescribed fee** to any person who, in the opinion of the Commissioner for Civil Aviation, on reasonable grounds requires such information.".

Substitution of section 24 of Act 115 of 1990, as amended by section 3 of Act 15 of 1992

11. The following section is hereby substituted for section 24 of the principal Act:

"Duties of licensee

24. <<(1)>> The licensee shall-

(a) notify the Commissioner for Civil Aviation, in the prescribed manner, before any change is effected to the particulars on his, <<her or its>> operating certificate;

(b) furnish the council within the prescribed period with the prescribed statistical information;

(c) keep his, <<her or its>> licence and operating certificate in a safe place <<and produce such licence and operating certificate to an authorized officer or inspector for inspection if so requested by such officer or inspector>>; and

(d) notify the council in **the prescribed manner-

(i)** <<writing>> of any <<prescribed>> change **regarding the particulars referred to in section 14(4); or

(ii) of any curtailment, abandonment or extension** <<in respect of the operation>> of the air service concerned or any part thereof, <<and such notice shall reach the council>> at least 14 days before such change **curtailment, abandonment or extension** is effected.

<<(2) The council shall not disclose the statistical information referred to in subsection (1)(b) in such a manner that the activities of the licensee are identified thereby, unless the written permission of the licensee has been obtained>>. ".

Amendment of section 25 of Act 115 of 1990, as amended by section 3 of Act 15 of 1992

12. Section 25 of the principal Act is hereby amended by the substitution in subsection (1) for the words following upon paragraph (c) of the following words:

"may <<in the prescribed manner>> appeal against such refusal or decision to the provincial or local division or the Supreme Court of South Africa having jurisdiction in the area within which such person is resident, within 30 days after he, <<she or it>> became aware of such refusal or decision, or within such further period, not exceeding two months, as the said court may allow on good cause shown.".

Amendment of section 26 of Act 115 of 1990

13. Section 26 of the principal Act is hereby amended-

(a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

uses **or permits to be used** a licence, operating certificate or other document issued under this Act of which he, <<she or it>> is not the holder;";

(b) by the insertion in subsection (1) after paragraph (f) of the following paragraph:

"<<(fA) permits a licence, operating certificate or other document issued under this Act of which he, she or it is the holder, to be used by any other person;>>";

(c) by the addition to subsection (1) of the following paragraph:

"<<(h) uses an aircraft which is being used in operating an air service

in contravention of the terms of an exemption granted to him, her or it under section 12(2),>>"; and

(d) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs, respectively:

"(a) in the case of an offence referred to in subsection (1)(a), (c) or (d), be liable to a fine **not exceeding R4 000** or to imprisonment for a period not exceeding one year **or to both such fine and such imprisonment** ; or

(b) in the case of an offence referred to in subsection (1)(b), (e), (f), **or** <<(fA),>> (g) <<or (h)>>, be liable to a fine **not exceeding R20 000** or to imprisonment for a period not exceeding five years **or to both such fine and such imprisonment**.".

Amendment of section 29 of Act 115 of 1990, as amended by section 16 of Act 204 of 1993

14. Section 29 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, after consultation with the council, make regulations regarding-

(a) any matter which in terms of this Act is required or permitted to be prescribed;

(aA) the information to be furnished by an applicant for the purposes of section 16(4)(a), and the standards and requirements to be complied with by an applicant for the purposes of that section in relation to the class of licence, type of air service and category of aircraft mentioned in his, <<her or its>> application; **and**

(b) <<the issuing and safe-keeping of passenger air transport tickets and the particulars and endorsements to be contained in such tickets;

(c) the issuing and safe-keeping of air waybills and the particulars to be contained in such waybills;

(d) the compilation and safe-keeping of passenger lists and the particulars to be contained in such lists;

(e) the carrying out of in-flight inspections;

(f) the payment of fees in respect of any application made in terms of this Act;

(g) the payment of fees in respect of the reasons for the approval or refusal of an application for a licence;

(h) the payment of fees in respect of the issuance of a licence, or the amendment thereof, including the period within which such fees shall be paid;

(i) the payment of fees in respect of the issuance of an operating certificate, including the period within which such fees shall be paid;

(j) the payment of fees in respect of the providing of information from any register which is kept in terms of this Act; and

(k)>> any other matter the regulation of which, in the opinion of the Minister, may be necessary or desirable in order to achieve or promote the objects of this Act."; and

(b) by the addition of the following subsections:

"<<(3) Before the Minister makes any regulation under this section, he or she shall publish the regulations he or she intends to make by notice in the Gazette.

(4) After publication of the notice referred to in subsection (3), any interested person may, within a period stated in the notice, but not less than four weeks as from the date of publication of the notice, address representations in writing to the Director-General for submission to the Minister regarding the regulations concerned.

(5) After considering the representations referred to in subsection (4), the Minister may, whether or not he or she has adjusted the regulations concerned, publish those regulations in their final form by notice in the Gazette.

(6) Regulations referred to in subsection (1) shall, within 14 days after they have been published under subsection (5), be tabled in Parliament, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 14 days after the commencement of the first ensuing ordinary session of Parliament>>.".

Short title and commencement of certain provisions

15. This Act shall be called the Air Services Licensing Amendment Act, 1995, and sections 5(b), 9(a), 12 and 14(a) shall be deemed to have come into operation on 30 August 1991.