

Zambia

Safety of Civil Aviation Act, 1989 Chapter 445

Legislation as at 31 December 1996

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PDF created on 18 December 2024 at 11:46.

Collection last checked for updates: 31 December 1996.

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FRBR URI: /akn/zm/act/1989/18/eng@1996-12-31

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Safety of Civil Aviation Act, 1989 (Chapter 445)

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Safety of Civil Aviation Act, 1989

Chapter 445

Published

Commenced on 18 August 1989

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

[This legislation has been revised and consolidated by the Ministry of Legal Affairs of the Government of the Republic of Zambia. This version is up-to-date as at 31st December 1996.]

[Act No. 18 of 1989; 13 of 1994]

An Act to make provision for offences in relation to the hijacking of aircraft and for offences which endanger the safety of aircraft in flight and to provide for matters connected with or incidental to the foregoing.

1. Short title

This Act may be cited as the Safety of Civil Aviation Act.

2. Interpretation

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

"**aircraft**" means any aircraft, whether or not a Zambian controlled aircraft, other than an aircraft used in military, customs or police services;

"**commander**" in relation to an aircraft means the member of the crew designated as commander of the aircraft by the operator of it, or failing that person, the person who for the time being is the pilot in command of the aircraft;

"**Contracting State**" means a State that is a member of the International Civil Aviation Organisation under the 1944 Chicago Convention;

"**Convention country**" means a country in which the Hague Convention or the Montreal Convention or both is for the time being in force;

"**Hague Convention**" means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on the 16th December, 1970.

"**Intelligence**" means information, and the results of analysis, integration or interpretation of information, relating to—

- (a) civil aviation security;
- (b) the prevention of security violations from occurring; and
- (c) any security violation that is in progress:

"**Montreal Convention**" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on the 23rd September, 1971;

"**military aircraft**" includes any naval, military or air force aircraft and any aircraft commanded by a person in naval, military or air force service, detailed to command such aircraft;

"**operator**" in relation to any aircraft means the person who at that time has the management of the aircraft;

"pilot in command", in relation to an aircraft, means the person who for the time being, is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"sabotage" means an act, or a deliberate omission intended to cause malicious or wanton destruction of property, which may endanger or result in unlawful interference with international civil aviation and its facilities;

"Zambian-controlled aircraft" means an aircraft—

- (a) which is for the time being registered in Zambia; or
- (b) which is not for the time being registered in any country but either the operator of the aircraft; or each person entitled as owner to any legal or beneficial interest in it, satisfies the following requirements:
 - (i) that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Zambia; and
 - (ii) that he resides or has his principal place of business in Zambia; or
- (c) which, although registered in some other country, is for the time being chartered, leased or otherwise demised to a person or persons each of whom satisfies the requirements referred to in paragraph (b).

3. Aircraft in flight

For the purpose of this Act the period during which an aircraft is in flight shall be deemed to include—

- (a) any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run at the termination of the flight ends; and
- (b) any further period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight; and
- (c) if the aircraft makes a forced landing, any period thereafter until the time the competent authorities of the country, in which the forced landing takes place, take over the responsibility for the aircraft and for the persons and property on board the aircraft.

4. Aircraft in service

An aircraft shall be deemed to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel and by the crew for a specific flight until twenty-four hours after any flight.

5. Territorial limits

In this Act, except where the context otherwise requires any reference to a country or the territorial limits of that country shall be construed as including the territorial waters, if any, of the country and any part of a flight which is on or over the surface of the sea or land but not within the territorial limits of any country.

6. Country of registration

Where an airline, or air transport organisation, operator or other agency operates an aircraft between two or more countries it shall—

- (a) designate for each aircraft, the country among them which shall exercise the jurisdiction and have the attributes of the country of registration for that aircraft; and

- (b) give notice of the designation to the International Civil Aviation Organisation, which shall communicate the notice to all countries which are parties to the Hague Convention, or the Montreal Convention.

7. Offences in flight

Any person who, on board an aircraft in flight—

- (a) unlawfully, by force or threat or by any other form of intimidation, seizes or exercises control of that aircraft or attempts to perform any such act; or
- (b) is an accomplice of a person who performs or attempts to perform any such act;
- (c) performs an act of violence against any person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft:

shall be guilty of an offence.

8. Offences in service and endangering safety

Any person who—

- (a) causes damage to an aircraft in service or which is likely to endanger its safety in flight;
- (b) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to damage or destroy that aircraft, or endanger its safety in flight;
- (c) does any act to an aircraft which is likely to endanger its safety in flight;
- (d) destroys or damages air navigation facilities or interferes with their operation, if that act is likely to endanger the safety of an aircraft in flight;
- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight; or
- (f) aids, abets or is an accomplice of a person who performs or attempts to perform any of the foregoing acts;

shall be guilty of an offence;

9. Penalty

Any person convicted of an offence under sections seven or eight shall be liable to imprisonment for a minimum term of not less than fifteen years and up to a maximum term of life imprisonment.

10. Provisions as to Extradition Act

- (1) For the purpose of the application of the Extradition Act to a crime committed on board an aircraft in flight, any aircraft registered in a convention country shall at any time while that aircraft is in flight be deemed to be within the jurisdiction of that country whether or not it is for the time being also within the jurisdiction of any other country.
- (2) The Extradition Act shall apply, in so far as it can be made applicable, to any offence committed under this Act.

[Cap. 94]

11. Duties of Commander

The Commander of an aircraft shall take all measures he considers reasonable—

- (a) to protect the safety of the aircraft and of persons and property on board the aircraft; and

- (b) to maintain good order and discipline on board the aircraft.

12. Powers of Commander of aircraft

If the Commander of an aircraft in flight is of the opinion that any person on board the aircraft—

- (a) has done or is about to do any act on the aircraft while it is in flight which appears likely to jeopardise—
 - (i) the safety of the aircraft or of persons or property on board the aircraft; or
 - (ii) good order and discipline on board the aircraft; or
- (b) has done any Act on the aircraft while in flight which, in the opinion of the commander, is a serious offence under any law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious description; the commander may take with respect to that person such measures, including restraint of his person as the Commander considers to be reasonable.

13. Assistance with restraint

Any member of the crew of an aircraft who is authorised or requested by the commander of the aircraft, to do so shall render assistance in restraining any person whom the Commander considers should be restrained.

14. Emergency measures

At any time when the aircraft is in flight any member of the crew or any other person, if he has reasonable grounds to believe that measures are emergently and immediately necessary for protection of the safety of the aircraft or of any person or property on board the aircraft, may take any necessary measures including restraint of any person prior to obtaining the authority of the Commander.

15. Disembarking person

The commander of an aircraft may disembark any person on board that aircraft in any country in which that aircraft may be, if he believes it is necessary to do so in order to—

- (a) protect the safety of the aircraft or of persons or property on board the aircraft; or
- (b) maintain good order and discipline on board the aircraft.

16. Report to authorities

- (1) Before the commander of an aircraft disembarks any person under section fifteen, he shall report his intention and his reasons for doing so to a police officer or any immigration officer in the country of disembarkation.
- (2) After compliance with subsection (1), the commander of the aircraft may deliver that person into the custody of a police officer or an immigration officer.

17. Termination of restraint

Any restraint imposed on any person on board and aircraft under sections twelve, thirteen or fourteen shall not be continued after the time when the aircraft first ceases to be in flight unless, before or as soon as is reasonably practicable after that time, the Commander of the aircraft has reported his intention to disembark that person under to section sixteen.

18. Continuation of restraint

Any restraint imposed on any person under this Act may be continued after the Commander has reported his intention pursuant to section sixteen—

- (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able, with any requisite consent of police or immigration authorities, to disembark or deliver the person under restraint; or
- (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.

19. Duty of authority taking custody

Any police officer or immigration officer who takes custody of any person disembarked by the commander of an aircraft shall—

- (a) notify the appropriate diplomatic or consular officers of the country of nationality of the person so disembarked as soon as is reasonably possible; and
- (b) keep the person so disembarked in custody until criminal or extradition proceedings have been instituted.

20. Jurisdiction of High Court

- (1) The High Court shall have jurisdiction over any offence committed on board an aircraft in the following circumstances:
 - (a) where the offence is committed on board an aircraft that is registered in Zambia;
 - (b) where the aircraft on board which the offence is committed lands in Zambia with the alleged offender on board the aircraft; or
 - (c) where the offence is committed on board an aircraft that has been leased without crew to a lessee who has his principal place of business in Zambia or, if the lessee has no such place of business is permanently resident in Zambia.
- (2) Nothing in this section shall exclude the exercise by the High Court of any criminal jurisdiction in accordance with any other law.

21. Deemed registration

Any Zambian controlled aircraft shall be deemed to be registered in Zambia whether or not it is, in fact, so registered and whether or not it is, in fact registered in some other country.

22. Application of criminal law to aircraft

- (1) Any Act or omission taking place on board a Zambian controlled aircraft while in flight elsewhere than in or over Zambia which, if taking place in Zambia, would constitute an offence under the law in force in Zambia, shall constitute that offence.
- (2) Subsection (1) shall apply to any act or omission which is expressly or impliedly authorised by or under that law if it takes place outside Zambia.

23. Consent of Director of Public Prosecutions

- (1) No proceedings for any offence under the law in force in Zambia which was committed on board an aircraft while in flight elsewhere than in or over Zambia, other than an offence under the Aviation Act, shall be instituted in Zambia except by or with the consent of the Director of Public Prosecutions.

- (2) Subsection (1) shall not prevent the arrest, or the issue of a warrant of arrest, of any person in respect of any offence or the remand in custody or the release on bail of any person charged with any offence.

[Cap. 444]

24. Jurisdiction

For the purpose of conferring jurisdiction and notwithstanding anything contained to the contrary in any other written law, any offence under the law in force in Zambia committed on board an aircraft in flight shall be deemed to have been committed in any place in Zambia where the offender may be for the time being.

25. Certification convention country

The Minister may, by statutory instrument, certify that any country specified in that instrument is a convention country, and that statutory instrument shall be conclusive evidence that the country in question is a convention country.

26. Evidence of offence on aircraft

- (1) Where in any proceedings before a court in Zambia for an offence committed on board an aircraft, the testimony of any person is required and the court is satisfied that the person in question cannot be found in Zambia, there shall be admissible in evidence, before that court, any deposition relating to the subject-matter of those proceedings previously made on oath by that person outside Zambia which was so made—
- (a) in the presence of the person charged with the offence; and
 - (b) before a judge or magistrate of the country before whom the deposition was made, or before a consular officer of the Republic of Zambia.
- (2) Any deposition made under subsection (1) shall be authenticated by the signature of the judge, magistrate or consular officer before whom it was made, who shall certify that the person charged with the offence was present at the taking of the deposition.
- (3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing to have authenticated any deposition or to have given any certificate, and, unless the contrary is proved, the certificate shall be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the deposition.

27. Offence

Any commander of an aircraft who, without reasonable cause, fails to comply with section sixteen and, any police officer or immigration officer who without reasonable cause, fails to comply with section nineteen shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred penalty units or to imprisonment for a term not exceeding six months or to both.

[As amended by Act No. 13 of 1994]

28. Reporting offences

The Director of Public Prosecutions shall report to the Council of the International Civil Aviation Organisation, as soon as is reasonably possible, any relevant information that Zambia may have concerning—

- (a) the circumstances of any alleged offence under this Act; and

- (b) any measures taken in relation to an offender or alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.