



Tonga

CIVIL AVIATION ACT 1990

Act 17 of 1990



CIVIL AVIATION ACT 1990

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CIVIL AVIATION ACT 1990

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AN ACT TO MAKE FURTHER AND FRESH PROVISION FOR CIVIL AVIATION IN TONGA

I assent,
TU'IPELEHAKE
7th November, 1990

[18th October, 1990]

BE IT ENACTED by the King and Legislative assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Citation and Commencement

- (1) This Act may be cited as the Civil Aviation Act 1990.
- (2) This Act shall come into force on a day appointed by His Majesty in Council.

2 Interpretation

In this Act, unless the context otherwise requires —

“**Aviation Security Officer**” means a person appointed to the Aviation Security Service;

“**Aviation Security Service**” means the Aviation Security Service established by section 16 of this Act;

“**Chicago Convention**” means the Convention on International Civil Aviation concluded at Chicago on 7 December 1944 and the international standards and recommended practices and procedures adopted by the International Civil Aviation Organization in pursuance of Article 37 of the Convention; and includes any amendment of the Convention made in accordance with the provisions of the Convention;

“**Contracting State**” means a State which is a party to the Chicago Convention;

“**Designated aerodrome**” means an aerodrome for the time being designated as a security aerodrome pursuant to section 19 of this Act;

“**Designated installation**” means a navigation installation for the time being designated as a security navigation installation pursuant to section 19 of this Act;

“**Navigation installation**” means any building, facility, works, apparatus, equipment, or place, which is not part of an aerodrome, but is used wholly or mainly to assist air traffic control or as an aid to air navigation, and includes any land adjacent to any such building, facility, works, apparatus, equipment, or place and used wholly or mainly in connection therewith;

“**Security area**” means an area that the Minister has, pursuant to section 21 of this Act, declared to be a security area.

PART II - ADMINISTRATION

3 Minister of Civil Aviation

- (1) There shall be a Minister of Civil Aviation whose functions shall be —
 - (a) To exercise a general superintendence and control over all matters relating to Civil Aviation in Tonga;
 - (b) to control the use of the airspace over Tonga and the waters adjacent thereto and to regulate both civil and military operations in such airspace in the interest of the safety and efficiency of both;
 - (c) to administer this Act, the regulations made thereunder and any other enactment the administration of which is assigned to him;
 - (d) to exercise such other functions as may from time to time be lawfully conferred upon him.

- (2) The Minister shall exercise his powers in accordance with this Act and any regulations made thereunder and in the exercise of his powers shall endeavour to ensure the proper implementation of any international convention or agreement to civil aviation to which Tonga is or becomes a party.
- (3) In the exercise of the functions under clause (b) of sub-section (1) the Minister shall, in relation to the airspace above the waters adjacent to Tonga, have regard to the rules of customary international law and any treaty or convention to which Tonga is or becomes a party affecting the use of such airspace.

4 Appointment of officers and employees

There may from time to time be appointed to assist the Minister in the performance of his functions such officer or officers or employee or employees of the Government of Tonga as may be necessary.

5 Delegation by Minister

- (1) The Minister may with the consent of the Cabinet either generally or in relation to a matter or class of matters, delegate to a person or to persons of a specified class or to a person for the time being holding a specified office or class or offices any or all of his powers and functions under this Act except this power of delegation.
- (2) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with terms of the delegation in the absence of proof to the contrary.
- (3) Any delegation made under the provisions of this section shall be notified, together with the date from which the delegation is to take effect, by publication in the Gazette.

6 Annual Report

The Minister shall, as soon as practicable after the end of each year, cause to be prepared a report on the exercise of his functions in relation to civil aviation in Tonga during that year.

PART III - REGULATION OF CIVIL AVIATION

7 Power to carry out Chicago Convention and to regulate civil aviation

- (1) The Minister may with the consent of the Cabinet make regulations:
 - (a) For giving effect to the Chicago Convention;
 - (b) In relation to civil aviation; and
 - (c) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the administration thereof.
- (2) Without limiting the generality of sub-section (1) of this section the regulations under this section may contain provision —
 - (a) as to the registration of aircraft in Tonga;
 - (b) for prohibiting aircraft from flying unless certificates of airworthiness issued or validated under the regulations are in force with respect to them and except upon compliance with such condition as to maintenance or repair as may be specified in the regulations or otherwise;
 - (c) for the licensing, inspection and regulation of aerodromes, for emergency measures at aerodromes, for access to aerodromes and places where aircraft have landed, for access to aircraft factories for the purpose of inspecting work therein carried on in relation to aircraft or parts thereof and for prohibiting or regulating the use of unlicensed aerodromes;
 - (d) for prohibiting persons from engaging in, or being employed in or in connection with civil aviation in such capacities as may be specified in the regulations except in accordance with provisions in that behalf contained in the regulations, and for the licensing of those employed in the inspection or supervision of aircraft;
 - (e) as to the conditions under which, and in particular the aerodromes to or from which, aircraft entering or leaving Tonga may fly and as to the conditions under which aircraft may fly from one part of Tonga to another;
 - (f) as to the conditions under which passengers may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be specified in regulations;
 - (g) for minimizing or preventing interference with the use or effectiveness of apparatus used in connection with civil aviation

- and for prohibiting or regulating the use of such apparatus as aforesaid and the display of signs and lights liable to endanger aircraft;
- (h) generally for securing the safety, efficiency and regularity of civil aviation and the safety of aircraft and of persons and property carried therein and for preventing aircraft endangering other persons and property, and, in particular, for the detention of aircraft for any of the purposes specified in this paragraph;
 - (i) for requiring persons engaged in, or employed in or in connection with, civil aviation to supply meteorological information for the purposes of civil aviation;
 - (j) for regulating the making of signals and other communications by or to aircraft and persons carried therein;
 - (k) for regulating the use of the civil air ensign and any other ensign established by His Majesty in Council for purposes connected with civil aviation;
 - (l) for prohibiting aircraft from flying over such areas in Tonga as may be specified by notification;
 - (m) for applying, adapting or modifying the enactments for the time being in force relating to customs or excise in relation to aerodromes and to aircraft and to persons and property carried therein and for preventing smuggling by air;
 - (n) for the investigation of aircraft accidents;
 - (o) controlling the provision for reward of air transport;
 - (p) requiring any person to whom the regulations apply to supply information relating to civil aviation of such descriptions as may be specified;
 - (q) as to the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, license or other document required by the regulations (including the examinations and tests to be undergone), and as to the form, custody, production, cancellation, suspension, endorsement and surrender of any such document;
 - (r) for regulating the charges that may be made for the use of, and for services provided at, and aerodrome licensed under the regulations;
 - (s) specifying the matters in respect of which fees, dues or charges shall be payable to Tonga or to any other authority or person under this Act or the regulations and specifying the amount of those fees, dues or charges;
 - (t) for exempting from the provisions of the regulations or any of them any aircraft or persons or classes of aircraft or persons;

- (u) for prohibiting aircraft from taking off or landing in Tonga unless there are in force in respect of those aircraft such certificates of compliance with standards as to noise as may be specified in the regulations and except upon compliance with the conditions of those certificates;
- (v) for regulating or prohibiting the flight of aircraft over Tonga at speeds in excess of flight Mach 1;
- (w) for the issue of identification cards for the purposes of Part V of this Act by the Minister to any person or class of person, and prescribing the circumstances within an aerodrome or navigation installation in which a person to whom such a card is issued must produce or display it.

8 Penalties for Regulations

- (1) Any regulation made under this Act, except for any regulation to which the next succeeding sub-section applies, may, for the purpose of securing compliance with the provisions thereof, provide for the imposition of penalties not exceeding a fine of \$500 and imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.
- (2) Any regulation having effect by virtue of paragraph (o) of subsection (2) of section 7 may provide for the imposition of the following penalties, namely: —
 - (a) in the case of first offence against the regulation a fine not exceeding \$1,000 or imprisonment not exceeding 6 months, or to both such fine and imprisonment;
 - (b) in the case of a second or subsequent offence a fine not exceeding \$5,000 or to imprisonment not exceeding 2 years, or to both such fine and imprisonment.

PART IV - AERODROMES AND SERVICES

9 Minister may establish etc. aerodromes and services and facilities for civil aviation

- (1) The Minister may with the consent of His Majesty in Council establish aerodromes.
- (2) The Minister may establish, maintain and operate services and facilities in connection with the operation of any aerodrome or with the operation of aircraft engaged in civil aviation.

- (3) An aerodrome maintained and operated by the Minister prior to the commencement of this Act shall be deemed to be an aerodrome established by the Minister under this section.

10 Powers of Minister in respect of aerodromes

- (1) In the exercise of his powers or functions under this Act and subject to the provisions thereof, the Minister may do all that is necessary or convenient to be done for, or as incidental to the establishment, maintenance, and operation by him of any aerodrome under his complete or partial control or of any services or facilities in connection with the operation of aircraft engaged in civil aviation in all respects as if the operation of the aerodrome or of the services or facilities were a commercial undertaking.
- (2) Any power given to the Minister under this Act in respect of any aerodrome or any facilities in connection with any aerodrome may be exercised by him whether or not the aerodrome or the facilities were established by him under this Act.

11 International Airports

The Minister may by writing under his hand, designate as an international airport an aerodrome at which facilities are available for the formalities incident to customs, immigration, quarantine and other requirements in connection with the arrival in or departure from Tonga of aircraft.

12 Aircraft to land at and take off from designated airports

Subject to such exceptions as are prescribed —

- (a) an aircraft arriving in Tonga from a place outside Tonga shall land at an aerodrome designated as an international airport under the last preceding section; and
- (b) an aircraft departing from Tonga for a place outside of Tonga shall take off from an aerodrome so designated.

13 Removal and marking of obstructions

- (1) Whenever an object or portion of an object —
 - (a) constitutes, in the opinion of the Minister, an obstruction or potential hazard to aircraft; or
 - (b) extends above the approach or transitional surfaces specified in Annex 14 to the Chicago Convention or in Procedures for Air

Navigation Services, Aircraft Operations, made under that Convention;

the Minister may with the consent of the Cabinet authorise a notice to be served upon the owner or occupier of the property in which the object is located directing the owner or occupier within such reasonable time as is specified in the notice to remove the object or such portion of it as is specified in the notice, or to install and operate lights on the object and mark it in such manner as may be specified.

- (2) The owner or occupier shall be reimbursed all reasonable expenses and the amount of any actual loss incurred in complying with a notice under this section, to be fixed by agreement with the Minister with the concurrence of Cabinet.
- (3) If an owner or occupier on whom a notice is served under this section fails to comply with the directions in the notice, the Minister may authorise any person or persons to enter the place where the object is and carry out the directions in the notice. The owner or occupier shall be reimbursed the amount of any actual loss incurred.
- (4) The Minister with the consent of Cabinet may make regulations requiring any person who intends to erect any building or structure in any area specified in the regulations above such height above ground level as may be so specified to furnish details thereof to the Minister.
- (5) Notwithstanding the other provisions of this section no compensation shall be payable for any loss or damage suffered in consequence of direction under this section where the building, structure erection, tree or thing has been erected or planted in contravention of any regulations made under section 14.

14 Power to restrict the use of land

- (1) For the purpose of ensuring the safety of aircraft in flight and of protecting the approach and transitional surfaces of aerodromes as specified in Annex 14 of the Chicago Convention and in Procedures for Air Navigation Services, Aircraft Operations, made under that Convention the Minister may with the consent of Cabinet make regulations restricting the use of land in the vicinity of any aerodrome. Such regulations may provide for the prohibition and restriction of —
 - (a) The erection of buildings, structures or other things in any area specified;
 - (b) The planting of, or the limitation of the height of any trees in any area specified;

- (c) The sowing or growing of any plant or crop in any area specified; and
 - (d) The bringing of vessels or vehicles into any area specified, or the anchoring or mooring of any vessel or the parking of any vehicle therein.
- (2) The owner or occupier of land who suffers loss or damage in consequence of any regulation made under sub-section (1) shall be eligible for compensation if he submits a claim to the Minister within a period of six months after the publication of such regulations in the Gazette.

Provided that —

- (a) Such loss or damage shall be assessed having regard only to circumstances in existence at the time of the publication of such regulations; and
 - (b) The maximum amount of compensation payable under this subsection shall not exceed the amount by which the market value of such land is reduced as a result of making such regulations.
- (3) In the event of disagreement as to the amount of compensation which shall be paid in respect of a claim under the provisions of sub-section (2) the amount shall be fixed by the Supreme Court.

15 Dangerous lights

Any light in the vicinity of an aerodrome which, in the opinion of the Minister, might constitute a danger to aircraft, shall be extinguished or so modified in accordance with the instructions of the Minister as to eliminate the source of danger.

PART V - AVIATION SECURITY

16 Aviation Security Service

There shall be established in the Ministry of Civil Aviation a Service to be known as the Aviation Security Service which shall consist of persons recruited in the same manner as civil servants.

17 Functions of Aviation Security Service

The Aviation Security Service shall —

- (a) have responsibility for preventing the commission of crime against the Aircraft Offences Act, 1977 and for protecting persons and

property from dangers arising from the commission or attempted commission of such crimes;

- (b) subject to section 24 of this Act, carry out passenger and baggage screening, and, where necessary, searches of passengers, baggage, cargo, aircraft, aerodromes, and navigation installations;
- (c) carry out aerodrome security patrols and patrols of navigation installations;
- (d) 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; and
- (e) exercise and perform such other functions and duties as may be conferred on it by any regulations made under this Act or by any other enactment.

18 Powers of the Police

- (1) Nothing in this part shall limit the powers, functions, duties or responsibilities of the Police under this or any other enactment.
- (2) A police Officer shall have and may exercise any of the powers conferred on an aviation security officer by this Part of the Act.

19 Designated aerodromes and navigation Installations

- (1) The Minister may designate any aerodrome or navigation installation as a security aerodrome or security navigation installation.
- (2) The Minister may revoke, in whole or in part, or amend any designation under sub-section (1) of this section.

20 Right of access

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

Provided that unless the aviation security officer is accompanied by a Police Officer, the power of entry conferred by this sub-section shall be limited to peaceful and non-forcible entry.

- (2) Where the Police have taken command of any situation at an aerodrome or navigation installation, the right of aviation security officers to enter any part thereof any aircraft, building, or place shall be subject to such limitation as the senior Police Officer present specifies.
- (3) Sub-section (1) of this section shall not apply to an aircraft or vehicle not being used for commercial purposes unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft any person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

21 Security Areas

- (1) The Minister may for security reasons declare, by a sign or signs affixed at the perimeter thereof, that an area within a designated aerodrome or designated installation is a security area.
- (2) No person other than a Police Officer on official duties or an aviation security officer shall enter or remain in any security area unless authorized by the Minister or the Airport Manager or other person having control thereof.
- (3) Every person in a security area shall, on the request of an aviation security officer, state his name and address (and produce satisfactory evidence of its correctness) and the purpose of his presence in the security area and his authority to enter it.
- (4) An aviation security officer may order to leave a security area any person who has failed or refused to give satisfactory evidence of his name and address when so requested by the aviation security officer, or who has failed to satisfy the aviation security officer that he is authorized to be there.
- (5) An aviation security officer, and any person whom he calls to his assistance, may use such force as may be reasonably necessary, to remove from any security area any person who fails or refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so pursuant to sub-section (4) of this section.
- (6) Every person commits an offence against this Act who, on being found in a security area, —
 - (a) fails or refuses to state his name and address, and his authority to enter the security area after having been requested to do so under sub-section (3) of this section by an aviation security officer; or
 - (b) fails or refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so.

- (7) Every person who commits an offence under sub-section (6) of this section and, after having been warned that he committed that offence, persists in its commission, may be detained by an aviation security officer and in that case he shall as soon as may be practicable be delivered to a Police Officer.
- (8) A passenger embarking or disembarking directly through gateways or thoroughfares in an airport approved for that purpose by the manager of the airport shall be deemed to be authorized by the Minister to pass through any security area forming part of those gateways or thoroughfares.

22 Powers of arrest

- (1) Every aviation security officer is justified in arresting without warrant any person on or in the vicinity of any designated aerodrome or designated installation if he has reasonable grounds to believe that an offence has been or is being committed by that person against sections 4, 5 or 8 of the Aircraft Offences Act 1977.
- (2) Any person called upon to do so by an aviation security officer is justified in assisting him in good faith to arrest any person.
- (3) An aviation security officer shall as soon as may be practicable deliver any person he arrests to a Police Officer.

23 Search of persons and goods

- (1) No person who, before boarding an aircraft, is required by aviation security officer —
 - (a) to submit to a search of his person, or
 - (b) to permit a search to be carried out on the goods that he intends to take or have placed on board the aircraft,shall board the aircraft unless the person submits to the search or permits the search to be carried out, as the case may be.
- (2) Where, after having boarded an aircraft, a person who is required by an aviation security officer —
 - (a) to submit to a search of his person, or
 - (b) to permit a search to be carried out on the goods that he took or had placed on board the aircraft;

refuses to submit to the search or to permit the search to be carried out, as the case may be, the security officer may order that person to leave the aircraft and remove from the aircraft the goods that he took or had placed

on board the aircraft, and the person shall thereupon remove himself from the aircraft and remove or authorize the removal of the goods from the aircraft.

- (3) No person who, having been required by an aviation security officer to permit a search of goods that he intends to have transported on an aircraft; refuses to permit the search to be carried out shall place or attempt to place the goods or cause the goods to be placed on board the aircraft.
- (4) Where goods are received at an aerodrome for transport on an aircraft and are not accompanied by a person who may give the permission referred to in sub-section (3) an aviation security officer may carry out a search of the goods and, in carrying out that search, may use such force as may reasonably be necessary to gain access to the goods.
- (5) An aviation security officer, and any person who he calls upon to assist him, may —
 - (a) use such force as may be reasonably necessary to remove from an aircraft any person who fails or refuses forthwith to leave an aircraft after having been ordered to do so pursuant to subsection (2) of this section, or
 - (b) remove goods from an aircraft where a person fails or refuses to remove, or authorise the removal of the goods after having been ordered to do so pursuant to sub-section (2) of this section or where a person has, or caused the goods to be, placed on board the aircraft having refused to permit a search pursuant to sub-section (3) of this section.
- (6) a person commits an offence against this Act who —
 - (a) boards or attempts to board an aircraft after failing or refusing to submit to a search required under sub-section (1) of this section;
 - (b) fails or refuses forthwith to leave an aircraft after being ordered to do so under sub-section (2) of this section;
 - (c) fails or refuses to remove, or authorise the removal of, goods from an aircraft after being ordered to do so under sub-section (2) of this section;
 - (d) places, or attempts to place, or causes to be placed on board an aircraft goods after having refused to permit a search of the goods under sub-section (3) of this section.
- (7) Any person who commits an offence under sub-section (6) of this section, and, after having been warned that he commits that offence, persists in its commission, may be detained by an aviation security officer and in that case he shall as soon as practicable be delivered to a Police Officer.

- (8) A search of a person in pursuance of this section may only be required at a designated aerodrome.

24 Search of female

A female shall not be searched except by a female unless the search is made by means of any mechanical, or electrical or other similar device.

25 Delivery of persons to Police

- (1) A Police Officer shall accept delivery of a person whom an aviation security officer has detained under this Part and whom the aviation security officer seeks to deliver to him, if the Police Officer has reasonable grounds to suspect that person of having done or omitted to do anything that is an offence against section 21 (6) or section 23 (6) of this Act.
- (2) A Police Officer shall accept delivery of a person whom an aviation security officer has arrested under section 22 of this Act and whom the aviation security officer seeks to deliver to him.
- (3) A Police Officer who accepts delivery of a person pursuant subsection (1) or sub-section (2) of this section shall forthwith arrest the person.
- (4) An aviation security officer who detains any person in accordance with the provisions of section 21 (7) or section 23 (7) of this Act and delivers him to a Police Officer, and any person who at his 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.

26 Impersonation or obstruction of aviation security officer

Every person commits an offence against this Act who —

- (a) not being an aviation security officer, by words, conduct, or demeanour, pretends that he is an aviation security officer, or puts on or assumes the dress, name, designation, or description of an aviation security officer, or
- (b) wilfully obstructs, or incites or encourages any person to obstruct, an aviation security officer in the execution of his duty.

27 Offences and penalties

Every person who commits an offence against sub-section (6) of section 21, sub-section (6) of section 23 or section 26 of this Act shall be liable on summary

conviction to imprisonment for a term not exceeding 6 month or to a fine not exceeding \$500 or to both.

PART VI - LIABILITY FOR DAMAGE, ETC., CAUSED BY AIRCRAFT

28 Trespass and responsibility for damage

- (1) 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, or by reason of the ordinary incidents of such a flight, so long as the provisions of any regulations made under Part III are duly complied with.
- (2) Where material loss or damage is caused to any person or property on land or water by, or by a person in, or by an article, animal or person falling from, an aircraft while in flight, taking off or landing, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage has been caused by the wilful act, neglect, or default of the owner of the aircraft.

Provided that where material loss or damage is caused as aforesaid in circumstances in which —

- (a) damages are recoverable from the owner in respect of the said loss or damage by virtue only of the preceding provisions of this subsection; and
- (b) a legal liability is created in some person other than owner to pay damages in respect of the said loss or damage —

the owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.

- (3) Where the aircraft concerned has been bona fide demised, let or hired out for any period exceeding 14 days to any other person by the owner thereof, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been so demised, let or hired out.

29 Nuisance caused by aircraft on aerodromes

- (1) Any regulations made under section 7 of this act may provide for regulating the conditions under which noise and vibration may be caused by aircraft or aircraft engines on aerodromes and may provide that sub-section (2) of this section shall apply to any aerodrome in respect of which provision as to noise and vibration caused by aircraft is so made.
- (2) No action shall lie in respect of nuisance by reason only of the noise and vibration caused by aircraft or aircraft engines on an aerodrome to which this sub-section applies by virtue of any regulations made under section 7 of this Act so long as the provisions of the regulations are duly complied with.

PART VII - MISCELLANEOUS**30 Facilitation formalities**

The Minister shall, in accordance with Article 22 of the Chicago Convention, adopt all practicable measures to facilitate and expedite navigation by aircraft between Tonga and the territories of other States and to prevent unnecessary delays in the clearance of aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, and customs.

31 Exemption of aircraft thereof from seizure on patent claims

- (1) Any lawful entry into Tonga, any lawful transit across Tonga, with or without landings, of an aircraft to which this section applies shall not entail any seizure or detention of the aircraft or any proceedings being brought against the owner or operator thereof or any other interference therewith by or on behalf of any person in Tonga on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.
- (2) Subject to sub-section (3), the importation into, and storage in, Tonga of spare parts and spare equipment for an aircraft to which this section applies and the use and installation thereof in the repair of such an aircraft shall not entail any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Tonga on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

- (3) Sub-section (2) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Tonga or are exported from Tonga for sale or distribution.
- (4) This section applies —
 - (a) to an aircraft registered in a contracting state other than an aircraft used in military, customs or police services; and
 - (b) to such other aircraft as the Minister may with the consent of Cabinet specify.

32 Right of access over private lands to wrecked or damaged aircraft

- (1) Where an aircraft is wrecked or damaged at any place in Tonga all persons may, for the purpose of rendering assistance to the aircraft or its occupants, or of saving the lives of the occupants of the aircraft, or of saving the aircraft or its contents, unless there is some public road equally convenient, pass and re-pass, either with or without vehicles, over and land without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and also, on the like conditions, deposit on those lands any goods or other article recovered from the aircraft.
- (2) Any owner or occupier who suffers direct injury or loss in consequence of the exercise of the rights given by sub-section (1) of this section shall be entitled to receive compensation therefore, the amount of the compensation to be fixed by agreement with the Minister with the concurrence of the Minister of Lands, or in default of agreement by the Supreme Court.

33 Penalties

Any person who commits an offence against this Act for which no penalty is specifically provided shall be liable on conviction to either a fine not exceeding \$500 or to imprisonment for a term not exceeding one year, or both such fine and imprisonment.

34 Detention of aircraft

Any regulations made under Part III in relation to aircraft may provide for the detention of aircraft to secure compliance with such regulations and may make such further provision as appears to the Minister to be necessary or expedient for securing such detention.

35 Detention and sale of aircraft for unpaid airport charges

- (1) Where default is made in the payment of airport charges incurred in respect of any aircraft at an airport; the Minister may, subject to the provisions of this section —
 - (a) detain pending payment, either —
 - (i) the aircraft in respect of which the charges were incurred (whether or not they were incurred by the person who is the operator of the aircraft at the time when the detention begins); or
 - (ii) any other aircraft of which the person in default is the operator at the time when the detention begins; and
 - (b) if the charges are not paid within 56 days of the date when the detention begins, sell the aircraft in order to satisfy the charges.
- (2) The Minister shall not detain or continue to detain an aircraft under this section by reason of any alleged default in the payment of airport charges if the operator of the aircraft or any other person claiming an interest therein
 - (a) Disputes that the charges, or any of them, are due or, if the aircraft is detained under sub-section (1) (a) (i), that the charges in question were incurred in respect of that aircraft; and
 - (b) gives to the Minister, pending the determination of the dispute, sufficient security for the payment of the charges which are alleged to be due.
- (3) The Minister shall not sell an aircraft under this section without the leave of the Supreme Court and the Supreme Court shall not give leave except on proof —
 - (a) that a sum is due to the Minister for airport charges;
 - (b) that default has been made in the payment thereof; and
 - (c) that the aircraft which the Minister seeks leave to sell is liable to sale under this section by reason of the default.
- (4) For the purpose of bringing the proposed application to the notice of persons whose interests may be affected by the determination of the Supreme Court “thereon and of affording to any such person an opportunity of becoming a party to the proceedings on the application as are applicable to the aircraft, the Minister shall, at least 21 days prior to applying for leave to sell an aircraft under this section —
 - (a) publish such a notice in the Gazette and in any local newspaper as in provided for in sub-section (6), and

- (b) serve, unless in that case it is impracticable to do so, such a notice as aforesaid, in the manner provided in sub-section (7) on each of the following persons;
 - (i) the person in whose name the aircraft is registered;
 - (ii) any person, if any, who appears to the Minister to be the owner of the aircraft;
 - (iii) any person who appears to the Minister to be charterer of the aircraft whether or not by demise;
 - (iv) any person who appears to the Minister to be the operator of the aircraft;
 - (v) any person who appears to the Minister to be mortgagee of the aircraft under the law of Tonga or any other country;
 - (vi) any other person who appears to the Minister to have a proprietary interest in the aircraft.
- (5) If any person who has been served with a notice under sub-section (4) informs the Minister within 14 days of the service of the notice of his desire to become a party to the proceedings the Minister shall make that person a defendant to the application.
- (6) A notice under sub-section (4) shall —
 - (a) state the nationality and registration marks of the aircraft;
 - (b) state the type of aircraft;
 - (c) state that, by reason of default in the payment of a sum due for airport charges, the Minister, on a date which shall be specified in the notice, detained the aircraft under this section, and, unless payment of the sum so due is made within a period of 56 days, from the date when the detention began, or within 21 days of the date of service of the notice, whichever shall be the later, will apply to the Court for leave to sell the aircraft;
 - (d) invite the person to whom the notice is given to inform the Minister in writing within 14 days of the service of the notice if he wishes to become a party to the proceedings on the application.
- (7) A notice under sub-section (4) shall be served by delivering it to the person to whom it is to be sent, or by leaving it at his usual or last place of business or abode, or by sending it by post in a prepaid registered letter addressed to him as aforesaid or, in the case of an incorporated company, by delivering it to the secretary, clerk or other appropriate officer of the company at their registered or principal place of business or by sending it by post by prepaid registered letter addressed to the secretary, clerk or other officer of the company, and if the notice is sent by post to a place outside of Tonga, it shall be sent by air mail or by some other equally expeditious means.

- (8) If leave is given by the Court to the sale of the aircraft the Minister shall secure that the aircraft is sold for the best price that can reasonably be obtained.
- (9) Failure to comply with any requirement of sub-section (4) in respect of any sale, shall not, after a sale has taken place, be a ground for impugning its validity.
- (10) The proceeds of any sale under this section shall be applied as follows, and in the following order, that is to say —
- (a) in payment of any duty (whether of customs or excise) chargeable on imported goods which is due in consequence of the aircraft having been brought into Tonga and of any sales tax due in respect of the sale of the aircraft;
 - (b) in payment of the expenses incurred by the Minister in detaining, keeping and selling the aircraft, including expenses in connection with the application to the Court;
 - (c) in payment of the airport charges which the Court has found to be due; and the surplus, if any, shall be paid to or among the person or persons whose interests in the aircraft have been divested by reason of the sale.
- (11) The power of detention and sale conferred by this section in respect of an aircraft extends to the equipment of the aircraft and any stores for use in connection with its operation (being equipment and stores carried in the aircraft) whether or not the property of the person who is its operator, and references to the aircraft in sub-sections (2) to (9) above include, except where the context otherwise requires, references to any such equipment and stores.
- (12) The power of detention conferred by this section in respect of an aircraft extends to any aircraft documents carried in it and any such documents may, if the aircraft is sold under this section, be transferred by the Minister to the purchaser.
- (13) The power conferred by this section to detain an aircraft in respect of which charges have been incurred may be exercised on the occasion on which the charges have been incurred or on any subsequent occasion when the aircraft is on the airport on which those charges were incurred or on any other airport.
- (14) In this section
- “**airport**” means an aerodrome established by the Minister under section 9 of this Act;
- “**airport charges**” means charges payable to the Minister for the use of, or for services provided at, an airport;

“**aircraft documents**”, in relation to any aircraft, means any certificate of registration, maintenance or airworthiness of that aircraft, any log book relating to the use of that aircraft or its equipment and any similar document;

“**operator**” in relation to an aircraft, means the person who, at the relevant time, has the management of that aircraft.

- (15) For the avoidance of doubts, reference to airport charges in this section include references to charges for the use of, and for services provided at, aerodromes established under section 9 of this Act.
- (16) Nothing in this section shall prejudice any right of the Minister to recover any charges, or any part thereof, by action.

36 Extra-Territorial operation of regulations

- (1) Any provision of the regulations made under section 7 may be expressed to apply to and in relation to aircraft registered in Tonga, persons on board such aircraft, and members of the crews of such aircraft, outside of Tonga.
- (2) For the purpose of subsection (1) of this section, every person employed or engaged in an aircraft in flight on the business of the aircraft shall be deemed to be a member of the crew thereof.
- (3) References in sub-suction (1) of this section to aircraft registered in Tonga shall have effect as if they included references to any aircraft which is not so registered but is for the time being under the management of a person, who, or persons each of whom, is qualified to be the owner of a legal or beneficial interest in an aircraft registered in Tonga.

37 Application to aircraft of the Government of Tonga.

Save for section 35, this Act applies, and regulations made under section 7 may be applied, to any aircraft belonging to or exclusively employed in the services of the Government of Tonga.

38 Repeals

The enactments and regulations specified in the Schedule are repealed.

SCHEDULE

The Aerodromes Act (Chapter 105)

Nuku'alofa Airport (Water) Act (Chapter 106)

The Aerodromes (Amendment) Act, 1973 (No. 7 of 1973)

The Civil Aviation Act, 1973 (No. 26 of 1973)

The Kingdom of Tonga Air Navigation Regulations (so much as remains in force by virtue of section 72 of the Civil Aviation Act, 1973).

Passed in the Legislative Assembly this 18th day of October, 1990.