

CHAPTER 71:02
AVIATION SECURITY
ARRANGEMENT OF SECTIONS

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Act 20, 1993,
Act 14, 2005.

An Act to provide for the protection of aircraft, aerodromes, air navigation installations and of persons or property on board aircraft, and for matters connected with aviation security.

[Date of Commencement: 7th April, 1995]

PART I

Preliminary (ss 1-3)

1. Short title and commencement

This Act may be cited as the Aviation Security Act.

2. Interpretation

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

"act of violence" means any act which, if committed in Botswana, would constitute the offence of assault, murder, attempted murder or manslaughter, or any other act of which violence or the threat thereof is an essential ingredient;

"aerodrome" means any area of land or water, including any buildings, installations or equipment, designed, set apart or commonly used for affording facilities for the landing, departure and surface movement of aircraft;

"aerodrome security force" means any person or body hired for security purposes at any aerodrome;

"aircraft registered or operating in Botswana" means-

- (a) any aircraft which is registered in Botswana; or
- (b) any aircraft not so registered, which has been allocated for use on flights which include landing at, or taking off from, an aerodrome in Botswana;

"airside" means the movement area of an aerodrome, adjacent terrain and buildings, or parts thereof, access to which is controlled;

"air navigation installation" means any building, works, apparatus or equipment used wholly or mainly for the purpose of controlling air traffic, or as an aid to air navigation, together with any land contiguous or adjacent to any such building, works, apparatus or equipment used wholly or mainly for any purpose connected therewith;

"article" means any substance, whether in the form of a solid, liquid, gas or vapour;

"authorised person" means any person authorised by the Director to perform any act, function or duty under section 12;

"commander" in relation to an aircraft, means the member of the flight crew designated as the commander of that aircraft by the operator thereof or by the person who is the pilot - in - command of the aircraft;

"Convention country" means a country in which the Tokyo, Montreal and Hague Conventions are in force;

"Director" means the Director of Civil Aviation;

"explosive" means any article which has been manufactured for the purpose of causing an explosion, or which is capable of, or can be used to cause, an explosion;

"firearm" includes an airgun and an air pistol;

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

"manager" in relation to an aerodrome means the person, whether the Department of Civil Aviation, a local authority or other person by whom an aerodrome is managed;

"military aircraft" means an aircraft of the naval, military or air force of any country, or any other aircraft which is treated as military aircraft under any enactment in force in Botswana relating to civil aviation;

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

"operator" means any person, organization or enterprise engaged in the operation of any aircraft;

"pilot-in-command" means the person in charge of piloting an aircraft and is not under the direction of another pilot on that aircraft;

"property" means any land, building, works, aircraft, vehicle, baggage, cargo or other article;

"restricted area" means any area in any aerodrome to which access has been restricted by the manager under section 33;

"Tokyo Convention" means the Convention on Offences and Certain Other Acts Committed on Board Aircraft signed in Tokyo on the 14th of September, 1963.

(2) For the purposes of this Act-

- (a) the period during which an aircraft is in flight shall be deemed to include the period from the moment all its external doors are closed following embarkation, to the moment any such doors are opened for disembarkation, and, in the case of a forced landing, any period from such landing until the appropriate authority takes over responsibility for the aircraft and for the persons and property on board; and
- (b) an aircraft shall be deemed to be in service during the whole of the period beginning with the pre-flight preparation of the aircraft and ending 24 hours after the aircraft lands, having completed that flight, and also at any time while the aircraft is in flight.

(3) For the purposes of this Act, the authority responsible for an air navigation installation shall, in the case of an air navigation installation provided by or used wholly or mainly by the Department of Civil Aviation, be deemed to be that Department, and, in the case of any other air navigation installation, be deemed to be the manager of the aerodrome by whom it is provided or by whom it is wholly or mainly used.

3. Application

The Minister may, by order published in the *Gazette*, provide that any of the provisions of this Act shall apply, with or without modification, to aircraft registered or operating in Botswana.

PART II

Offences against the Safety of Aircraft, etc (ss 4-11)

4. Hijacking

(1) For the purposes of this Act, and subject to subsections (2) and (3), a person on an aircraft who unlawfully seizes or takes control of that aircraft by the use of force or threats commits the offence of hijacking, whatever his nationality, and whatever the State in which the aircraft is registered.

(2) Where the person who hijacks an aircraft does so outside Botswana, jurisdiction may be exercised in Botswana if-

- (a) the aircraft is registered in Botswana; or
- (b) the person committing the offence is a national of Botswana.

(3) Where the aircraft is used in the military, customs or police service of any country or both the place of take-off and the place of landing are in the territory of the State in which the aircraft is registered, subsection (1) shall not apply unless-

- (i) the person who hijacks the aircraft is a national of Botswana;
- (ii) the act is committed in Botswana; or
- (iii) the aircraft is registered in Botswana or is used in the military, customs or police service of Botswana.

(4) Any person who commits the offence of hijacking shall be liable, on conviction, to imprisonment for life.

(5) Any person who attempts to commit the offence of hijacking or aids, abets, counsels or procures any such person, or is an accomplice to a person who commits or attempts to commit any such offence commits an offence and shall be liable, on conviction, to imprisonment for life.

(6) The Minister may, by order published in the *Gazette*, declare-

- (a) that any two or more States specified in the order have established an organization or agency which operates aircraft; and
- (b) that one of those States has been designated as exercising for aircraft so operated, the powers of the State of registration.

(7) Where the Minister makes the declaration referred to in subsection (6), the State declared under paragraph (b) shall be deemed, for the purposes of this section, to be the State in which any aircraft so operated is registered; but in relation to such an aircraft, subsection (3)(b) shall have effect as if it referred to the territory of any one of the States specified in the order.

5. Destroying, damaging or endangering safety of aircraft

(1) Subject to subsection (3), any person who, with intent-

- (a) destroys an aircraft in service or causes damage to such aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (b) commits or threatens to commit an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft;
- (c) places or causes to be placed on an aircraft in service, a device or article which is likely to destroy the aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight;
- (d) communicates information relating to the safety of any aircraft which he knows to be false in a material particular, thereby endangering the safety of an aircraft in flight,

commits an offence.

(2) Where a person commits any act referred to in subsection (1) jurisdiction may be exercised in Botswana if-

- (a) the aircraft aboard which the act is committed is an aircraft registered in Botswana; or
- (b) the person committing the act is a national of Botswana.

(3) Subsection (1) shall not apply to any act committed in relation to an aircraft used in the military, customs or police service unless the act is committed in Botswana or, where the act is committed outside Botswana, the aircraft is registered in Botswana or the person committing it is a national of Botswana.

(4) Any person who commits any offence mentioned in this section shall be liable, on conviction, to imprisonment for life.

(5) Any person who attempts to commit any of the offences mentioned in this section, or aids, abets, counsels or procures any person to commit any such offence, or is an accomplice to a person who commits or attempts to commit any such offence commits an offence and shall be liable, on conviction, to imprisonment for life.

6. Other acts endangering or likely to endanger safety of aircraft

(1) Any person who with intent-

- (a) destroys or damages any air navigation installation or facility or interferes with its operation, if any such act is likely to endanger the safety of any aircraft in flight; or
- (b) communicates information relating to the safety of an aircraft which he knows to be false or misleading in any material particular, thereby endangering the safety of any aircraft in flight,

commits an offence and shall be liable, on conviction, to imprisonment for life.

(2) Subsection (1) shall not apply to the commission of any act unless that act is

committed in Botswana or, where it is committed outside Botswana-

- (a) jurisdiction may be exercised in Botswana if the person committing it is a national of Botswana;
- (b) the commission of the act endangers or is likely to endanger the safety, in flight, of a civil aircraft registered in Botswana or chartered to a lessee whose principal place of business or place of permanent residence is in Botswana;
- (c) it is committed on board a civil aircraft registered in Botswana or chartered to a lessee whose principal place of business or place of permanent residence is in Botswana;
- (d) it is committed on board a civil aircraft which lands in Botswana with the person who committed the act still on board; or
- (e) it is committed in relation to property which is situated outside Botswana and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a national of Botswana.

(4) In this section, "civil aircraft" means any aircraft other than an aircraft used in the military, customs or police service.

7. Possession of arms on aircraft

(1) No person shall, without lawful authority or reasonable excuse, the proof of which shall lie on him, have in his possession in any aircraft registered in Botswana, on any aircraft in, or in flight over, Botswana, or in any aerodrome or part of an aerodrome in Botswana, or in any air navigation installation in Botswana which does not form part of an aerodrome, any of the following articles-

- (a) any firearm;
- (b) any explosive or article manufactured, having the appearance of an explosive or adapted so as to have such appearance, or any article marked or labelled so as to indicate that it contains an explosive, whether it is capable of exploding or not; or
- (c) any article not falling within paragraph (a) or (b) which is made or has been adapted for use to cause injury to or incapacitate a person or destroy or damage property, or is intended, by the person in whose possession it is found for any such use, whether by him or by another person.

(2) For the purposes of this section, a person shall be deemed to be in possession of any firearm, explosive or article mentioned in subsection (1) if-

- (a) where he is in an aircraft the article or object in which that firearm, explosive or article is contained has been caused, whether by him or by another person, to be placed in that aircraft as being, or as forming part of, his baggage or other property to be carried on that aircraft;
- (b) where he is in an aerodrome or part of an aerodrome, the article or object in which the firearm, explosive or article is contained has been caused, whether by him or by another person, to be brought into the aerodrome or part thereof as being or forming part of his baggage on a flight from that aerodrome or part thereof, or as forming part of any other property to be carried on a flight on which he is a passenger; or
- (c) he is found in actual physical possession of any such firearm, explosive or article.

(3) Nothing in subsection (2) shall be construed as limiting the circumstances under which a person would, apart from that subsection, be regarded as being in possession of any firearm, explosive or article specified in that subsection.

(4) Any person who is guilty of an offence under this section shall be liable, on conviction, to a fine not exceeding P50 000,00, or to imprisonment for a term not exceeding five years, or to both.

8. Other offences committed aboard aircraft

(1) Jurisdiction may be exercised in Botswana where any person who, being a national of Botswana, and while outside Botswana, commits any act which would, if committed in Botswana, constitute an offence under the Penal Code.

(2) Any person who commits any act referred to in subsection (1) shall be liable, on conviction, to the penalty prescribed for that offence under the Penal Code.

9. Powers of police, etc to prevent the commission of offences under Part III

(1) Where a police officer or other authorised person has reasonable cause to suspect that a person about to embark on an aircraft in Botswana, or a person on board such an aircraft intends to commit, in relation to that aircraft, any offence specified in sections 4, 5 and 6, that police officer or other authorised person shall prevent him from travelling on board that aircraft and may, for that purpose-

- (a) prevent him from embarking on the aircraft;
- (b) remove him from the aircraft if he has already embarked; or
- (c) arrest him without warrant and detain him for as long as may be necessary to prevent him from travelling on board that aircraft.

(2) Any person who wilfully obstructs or impedes a police officer or other authorised person acting in pursuance of subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years or to both.

10. Powers of aircraft commanders

(1) If the commander of an aircraft in flight in Botswana has reasonable cause to believe that any person on board that aircraft has done or is about to do any act on the aircraft while it is in flight which-

- (a) jeopardizes or may jeopardize the safety of the aircraft or of persons or property on board that aircraft, or jeopardizes or may jeopardize good order and discipline on board that aircraft; or
- (b) constitutes an offence under any law in force in the country in which the aircraft is registered, the commander may, subject to subsection (7)-
 - (i) restrain that person;
 - (ii) cause that person to disembark; or
 - (iii) deliver him, where the aircraft is in Botswana, to a police officer or immigration officer or, where it is in any Convention country or other country, to an officer whose functions correspond to those of a police officer or immigration officer in Botswana; or
 - (iv) take such other reasonable steps as may be necessary to protect the safety of the aircraft or of persons or property on board that aircraft, or to maintain good order or discipline on board the aircraft.

(2) Where the commander causes any person to disembark from an aircraft in terms of subsection (1), he shall report, in writing, the fact of, and the reasons for, the disembarkation of that person to-

- (a) the police and immigration officers of the country of disembarkation; and
- (b) the appropriate diplomatic or consular office of the country of which that person is a national.

(3) Where the commander decides to deliver any person in terms of subsection (1)(b) he shall, before or as soon as reasonably practicable after the aircraft has landed, give notice, in writing, of his decision, and the reasons therefor-

- (a) to a police officer or an immigration officer where the person is to be delivered in Botswana; or
- (b) where the person is to be delivered in a Convention or other country, to a person whose functions correspond to those of a police officer or immigration officer in Botswana.

(4) Any commander who, without reasonable cause fails to comply with the provisions of this section, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000, or to imprisonment for a term not exceeding two years, or to both.

(5) Any member of the crew and any other person on board the aircraft shall, at the request of, or with the authority of, the commander, render assistance in restraining any person whom the commander may restrain in terms of subsection (1), and such member of the crew or other person may, without the authority of the commander, take any of the other measures specified in that subsection which he reasonably believes are necessary to protect the safety of the aircraft or of persons or property on board that aircraft.

(6) Any restraint imposed on any person in terms of this section shall cease as soon as the aircraft lands unless the commander, before the aircraft lands or as soon as possible thereafter, notifies the appropriate authority of the country in which the aircraft lands, or causes him to be notified of the fact that a person on board the aircraft is under restraint, and of the reasons therefor.

(7) Notwithstanding the provisions of this section, the commander may continue to restrain a person-

- (a) after the aircraft lands, until such time as the appropriate authority in the country in which the aircraft lands authorizes the commander to cause that person to disembark from the aircraft; or
- (b) after the aircraft lands, until such time as the commander can deliver that person or cause him to be delivered to a police officer or immigration officer if the aircraft lands in Botswana, or, if the aircraft lands in another Convention country or other country, to a person whose functions correspond to those of a police officer or immigration officer in Botswana.

11. Prosecution of offences (1) No prosecution for an offence under this Act shall be instituted without the written consent of the Director of Public Prosecutions.

(2) Notwithstanding the provisions of subsection (1), a person may be arrested for, and charged with, an offence under this Act, or may be charged with an offence and remanded in custody therefor pending the decision of the Director of Public Prosecutions.

PART III

Protection of Aircraft, Aerodromes and Air Navigation Installations against Acts of Violence (ss 12-28)

Powers of Director (ss 12-25)

12. Authorised Persons

The Director may, by order published in the *Gazette*, authorise, by designation or by name as may be appropriate, any person to perform any function, duty or act which is required to be performed for the purposes of this Act.

13. Power of Director to require information

(1) The Director may, by notice in writing, require the operator of any aircraft registered or operating in Botswana, or the manager of any aerodrome in Botswana, to inform him of the measures being taken by such operator or manager in respect of the aircraft or aerodrome, as the case may be, to protect the aircraft, persons or property in that aircraft or aerodrome, against any act of violence.

(2) A notice served under subsection (1) shall specify the date, not being earlier than four weeks from the date on which the notice is served, by which the information required by the Director must be furnished.

(3) If, at any time, the measures referred to in subsection (1) are modified, discontinued, amended or revoked or any further measures are taken, the operator or manager referred to in subsection (1) as the case may be, shall forthwith inform the Director of the modification, discontinuance, amendment, revocation or further measures taken.

(4) Any person who-

- (a) refuses or fails, without reasonable excuse, to comply with the provisions of this section; or
- (b) in furnishing any information in accordance with this section makes any statement

which he knows to be false in a material particular shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years, or to both.

14. Power to impose restrictions in relation to aircraft

(1) The Director may, in writing, direct the operator of any aircraft or class of aircraft registered or operating in Botswana, or the manager of an aerodrome in Botswana-

- (a) not to cause or permit any person or class of persons, or any property to go or to be taken on board an aircraft to which the notice relates, or to come or be brought into proximity of that aircraft unless such person, class of persons or property has been searched by a police officer or such other person as may be specified in such direction; or
- (b) not to cause or permit any aircraft to take off unless that aircraft has been searched by a police officer or such other person as may be specified in the direction.

(2) Subject to subsection (3), the Director may, in writing, direct the operator of any aircraft registered in Botswana not to cause or permit that aircraft to take off unless such modification or alteration of the aircraft or of apparatus or equipment installed in the aircraft as may be specified in the direction have been first carried out, or such additional apparatus or equipment as may be specified in the direction has been first installed in the aircraft.

(3) The Director shall, when he gives a direction to an operator under subsection (2), specify, in the direction, such period as appears to him to be reasonable, within which the measures he has directed to be taken must be effected.

(4) Subject to the provisions of this Part, any direction given by the Director under this section to any person not to cause or permit anything to be done shall be construed as requiring him to take all such steps as, in the particular circumstances, are practicable and necessary to prevent that thing from being done.

(5) Any person who fails to comply with a direction given to him by the Director under subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years or to both.

15. Searches at aerodromes

(1) Without prejudice to section 9, where the Director has given a direction to the manager of an aerodrome under section 14, a police officer or other person as may be specified in the direction may, if he has reasonable cause to believe that any device or article which is likely to or could destroy an aircraft or is likely or could damage that aircraft so as to render it incapable of flight or endanger its safety in flight is in, or may be brought into any part of the aerodrome, search, without warrant, any part of that aerodrome, or any aircraft, vehicle or property which, or person who, is in any part of the aerodrome.

(2) Notwithstanding the provisions of subsection (1), a police officer or such other person as may be authorized by the Director shall have the power to search, without warrant, any person who, or any property which, is in any part of an aerodrome.

(3) For the purposes of conducting a search in terms of subsection (1), a female person shall be searched only by a female police officer or other authorized person who is female, and a male person shall be searched only by a male police officer or other authorized person who is male.

(2) For the purposes of conducting a search in terms of subsection (1), a police officer or any other person specified in the direction may-

- (a) enter any land, building or works in the aerodrome; and
- (b) stop any aircraft, vehicle or person from entering or leaving the aerodrome and detain such aircraft, vehicle, person or property for as long as may be necessary to conduct the search.

(3) Any person who-

- (a) fails to comply with a direction given under this section to him by the Director; or

- (b) wilfully obstructs or impedes any person acting in the exercise of any authority conferred on him under subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years, or to both.

16. Additional measures of protection against acts of violence

(1) The Director may, in writing, direct the operator of an aircraft registered or operating in Botswana, or the manager of an aerodrome in Botswana, to take, in respect of such aircraft, any other measures which the Director thinks necessary to protect the safety of aircraft, property, persons or apparatus or equipment installed in such aircraft or aerodrome, which measures may include the guarding of the aircraft, aerodrome, any persons or property in any part of the aerodrome, against acts of violence.

(2) A direction given under this section may be of a general or specific nature, and may require any measures specified in the direction to be taken at such time or within such period as may be so specified.

(3) A direction given to an operator under subsection (1) may be given so as to relate to either all aircraft registered or operating in Botswana of which at the time the direction is given or at any subsequent time he is the operator, or to only one or more such aircraft, or to a class of such aircraft, as specified in the direction.

(4) Any person who-

- (a) fails, without reasonable excuse, to comply with a direction given to him by the Director under subsection (1); or
- (b) wilfully interferes with any building constructed or works executed on any land, or with anything installed on, over or across any land in compliance with a direction given under this section, shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years or to both.

(5) The ownership of any property placed on, under or affixed to any land in compliance with any direction under this section shall not be affected by reason that it is so placed, or affixed.

17. Matters which may be included in directions

(1) A direction given by the Director under section 14 (1) or section 16 may specify the minimum number of persons by whom a search to which the direction relates is to be carried out, the qualifications which any person carrying out a search must possess, the manner in which the search is to be carried out, and any apparatus, equipment or additional equipment or apparatus which may be used by the person carrying out such search.

(2) A direction given by the Director under section 14 (2) may specify the qualifications which any person carrying out any modification, alteration or installation to which the direction relates, must possess.

(3) A direction given by the Director under section 16 may specify-

- (a) the minimum number of persons who may be employed for the purposes of any measures specified to be taken by an operator or manager under the direction and the qualifications which those persons must possess; and
- (b) any apparatus, equipment or other aids which such persons may use for the said purposes.

(4) Nothing contained in subsections (1) to (3) shall be construed as limiting the generality of any provision of this Part.

18. Limitations on scope of directions under this Part

(1) A direction given by the Director under this Part shall not have effect in relation to any aircraft used in the military, customs or police service of Botswana.

(2) A direction given by the Director under this Part shall not have effect in relation to any aircraft of which the operator is the Government of a country outside Botswana, or is a

department or agency of such a Government, except when any such aircraft is being used for the carriage of passengers or cargo for reward, or has been or is allocated by that Government, department or agency thereof for such use.

(3) A direction, except in so far as it requires any building or other works to be constructed, executed, altered, demolished or removed, shall not be construed as requiring or authorising the operator of any aircraft, or the manager of any aerodrome, or any person acting as the servant or agent of such an operator or manager, to do anything which, apart from the direction, would constitute an act of violence, but nothing in this subsection shall restrict the use of such force as may be reasonable in the circumstances by such operator, manager, police officer or any other authorised person.

(4) A direction given by the Director under this Part requiring anything to be done or not done in a country outside Botswana shall not have effect except in relation to aircraft registered in Botswana, neither shall its effect be to contravene any law in force in that country.

(5) Where a direction given to the manager of an aerodrome requires any building or other works to be constructed, executed, altered, demolished or removed, or requires any other measures to be taken on such land, the direction shall not confer, on the manager, any rights as against a person having-

- (a) an interest in that land;
- (b) a right to occupy that land;
- (c) a right restrictive of its use,

and the direction shall not be construed as requiring the manager to do anything which would be actionable at the suit or instance of such a person in his capacity as a person having that interest or right.

19. Authorisation of persons under sections 14 and 16

A direction given to any person under section 14 or 16 authorising him to do anything may be addressed to that person by name or by designation, or may be framed in general terms applicable to all persons to whom such a direction may be given, or to any class of such persons to whom that particular person belongs.

20. Delegation of powers by authorised person

A person to whom a direction is given by the Director may delegate the authority granted him under that direction-

- (a) where that person is a body corporate, to the manager, secretary, or similar officer of that body;
- (b) in any other case, to any person holding a comparable office or position.

21. Exceptions to directions of Director

(1) If it appears to the Director that any direction given by him under section 14 or 16 should not apply for a certain period or on any particular occasion in relation to any aircraft or to a class thereof, or in relation to any person or property described in the direction, he may authorise the person at whom the direction is addressed to disregard the requirements of the direction on such occasion, or for such period as he may specify; and the direction shall, in relation to that aircraft or class thereof, or in relation to such person or property, have effect in that case subject to the exception so specified.

(2) A notification given under subsection (1) shall be deemed to have been given to the person to whom it is addressed if it is given-

- (a) to any person authorised by that person to receive any such direction or notification;
- (b) where that person is a body corporate, to the manager, secretary or similar officer of the body corporate; and
- (c) in any other case, to anyone holding a comparable office or position in that person's employ.

22. Operation of directions under Part II in relation to rights and duties under other laws

(1) A direction given under this Part shall, in so far as it requires anything to be done or not done in Botswana, have effect notwithstanding anything contained in any contract whether it is a Botswana contract or not, or contained in, or having effect by virtue of, any other enactment or any rule of law; and accordingly, no criminal or civil proceedings shall lie against any person in a court in Botswana by reason of anything done or not done by him or on his behalf in compliance with such direction.

(2) The direction shall, in so far as it requires anything to be done or not done outside Botswana, have effect, notwithstanding anything contained in any contract, whether or not it is a Botswana contract; and, accordingly, where that direction is inconsistent with anything in that contract, it shall, without prejudice to any proceedings in a court other than a court in Botswana, be construed as requiring compliance with the direction notwithstanding that compliance would be in breach of that contract.

(3) No proceedings for breach of contract shall lie against any person in a court in Botswana by reason of anything done or not done by him or on his behalf at a place outside Botswana in compliance with that direction if the contract in question is a Botswana contract.

(4) Nothing in this section shall preclude civil or criminal liability in respect of any person where a direction is necessitated by the negligence or unlawful act or omission on the part of that person.

(5) In this section, "Botswana contract" means a contract which is either expressed to have effect in accordance with the law of Botswana, or, not being so expressed, is one of which the proper law is the law of Botswana.

23. Objections to directions under section 16

(1) Where the person to whom any direction is given by the Director under section 16 objects to that direction, he shall, within fourteen days of receiving that direction, serve a notice in writing on the National Aviation Security and Facilitation Committee, setting out the grounds of his objection, and shall copy such notice to the Director.

(2) The Committee shall, within twenty one days of receiving a notice of objection from any person, consider the grounds of the objection and shall, after such consideration, serve, on the objector, a notice in writing either-

- (a) confirming the direction of the Director as originally given;
- (b) confirming the direction subject to one or more modifications; or
- (c) ordering the withdrawal, by the Director, of the direction.

(3) The Committee shall give the appellant the opportunity, if he requests it, to appear before it.

24. Appeals to the Minister

(1) Any person aggrieved by a decision of the Committee under section 23 may appeal to the Minister by serving, on him, a notice, in writing, which notice he shall copy to the Committee and to the Director.

(2) The Minister shall, within thirty days of receiving a notice of appeal from any person, consider the grounds of that appeal and, after considering such grounds, serve, on the appellant, notice in writing either-

- (a) confirming the decision of the Committee confirming the direction of the Director;
- (b) confirming the decision of the Committee confirming the direction of the Director with modifications; or
- (c) giving such other decision as he considers appropriate.

(3) The Minister shall also serve, on the Director, a copy of his decision.

25. Inspection of aircraft and aerodromes

(1) For the purpose of enabling the Director to determine whether to give a direction to any person under this Part, or of ascertaining whether any direction given under this Part is being or has been complied with, the Director may authorise a police officer or any other person in writing to inspect any aircraft registered or operating in Botswana at a time when it is in

Botswana, or any aerodrome in Botswana and may, for the purpose of carrying out that inspection, and on production of his credentials if required-

- (a) enter that aircraft and detain it for as long as may be necessary to carry out that inspection; or
- (b) enter any building or works in the aerodrome or enter upon any land in the aerodrome.

(2) An authorised officer carrying out an inspection under subsection (1) may-

- (a) require the operator of an aircraft or the manager of an aerodrome to furnish him with such information as he may consider necessary for the purpose for which the inspection is being carried out;
- (b) subject any property found by him on that aircraft to such tests as he may consider necessary for the purpose for which the inspection is being carried out; or
- (c) subject that aerodrome or any property found in it to such tests as he may consider necessary for the purpose for which the inspection is being carried out.

(3) An authorised person may use such force as may be necessary for the purpose of entering any aircraft, building or works, or upon any land.

(4) Any person who-

- (a) wilfully obstructs or impedes a person acting in the exercise of a power conferred on him by this section;
- (b) fails, without reasonable excuse, to comply with the requirement imposed on him by subsection 2 (a); or
- (c) being required to furnish any information required of him under this Part, makes any statement which he knows or has reason to believe to be false in a material particular,

shall be guilty of an offence and shall be liable on conviction to fine not exceeding P10 000,00, or to imprisonment for a term not exceeding five years or to both.

Air Navigation Installations (s 26)

26. Application of provisions of Part II to air navigation installations

(1) Sections 13, 15, 16, 17, 18 and 25 shall have effect in relation to air navigation installations in Botswana in accordance with this section.

(2) Subject to subsection (6), sections 13, 15, 16, 17, 18 and 25 shall have effect in relation to any air navigation installation in Botswana which does not form part of an aerodrome, as if any reference in them to an aerodrome were a reference to such an air navigation installation, and any reference to the manager of an aerodrome were a reference to the authority responsible for such an air navigation installation.

(3) Where an air navigation installation forms part of an aerodrome in Botswana, those sections shall have effect, subject to subsection (6), as if any reference in them to an aerodrome were a reference either-

- (a) to an aerodrome;
- (b) to an air navigation installation which forms part of an aerodrome; or
- (c) to so much of an aerodrome as does not consist of an air navigation installation.

(4) A notice served under section 13 or a direction given under section 14 or 16 may be served or given in respect of the whole of the aerodrome, in respect of the air navigation installation or in respect of so much of the aerodrome as does not consist of an air navigation installation.

(5) For the purposes-

- (a) of the service of a notice or the giving of a direction under section 13, 14 or 16 as modified by subsection (3) where the notice is to be served or the direction given in respect of an air navigation installation; and
- (b) of the operation of section 18 (5) in relation to a direction so given, any reference in any of those sections to the manager of the aerodrome shall be construed as being a reference to any person who is either the manager of the aerodrome or the authority responsible for the air navigation installation.

(6) Subsections (2) and (3) shall not apply to section 15(1); but where a direction given under section 16 as applied or modified by this section, is in force-

- (a) if it is a direction given in respect of an air navigation installation, whether that installation forms part of an aerodrome or not, section 15(1) shall have effect in relation to that direction as if the air navigation installation were an aerodrome, and, where the direction was given to the authority responsible for the air navigation installation, as if it had been given to the manager of that aerodrome;
- (b) if it is a direction given in respect of so much of an aerodrome as does not consist of an air navigation installation, section 15(1) shall have effect in relation to that direction as if any air navigation installation comprised in the aerodrome did not form part of the aerodrome.

(7) A direction under section 16, as applied or modified by this section may be given to the authority responsible for an air navigation installation so as to relate either-

- (a) to all air navigation installations in Botswana for which it is responsible at the time the direction is given; or
- (b) to such air navigation installation or to a class thereof as may be specified in the direction.

(8) Any reference in section 16, 21 (1) or 23 to a direction given under a provision mentioned therein shall be construed as including a reference to a direction given under that provision as applied or modified by this section.

(9) Notwithstanding anything in section 25(2)(b) a person inspecting an air navigation installation under that section or under that section as applied or modified by this section shall not be empowered thereby to test any apparatus or equipment which constitutes or forms part of the air navigation installation.

Miscellaneous (ss 27-28)

27. Compensation for measures taken under Part II

(1) A person having any interest in any land within or outside an aerodrome shall be entitled to compensation equal to the amount of the depreciation or loss of that interest caused by the compliance, by the manager of an aerodrome or the authority responsible for an air navigation installation, with a direction under section 16 to construct, alter, demolish or remove any building, or to execute any other works or land within or outside the aerodrome or air navigation installation.

(2) If any land other than that on which the measures referred to in subsection (1) are taken is injuriously affected by the taking of those measures, any person having an interest in that other land who suffers loss in consequence of its being injuriously affected shall be entitled to compensation equal to the amount of that loss.

(3) Any compensation to which a person is entitled under this section shall be payable to him by the person by whom the measures in question were taken.

28. Service of documents

Any document required or authorised to be served on or given to any person by any provision of this Act may be so served or given-

- (a) by delivering it to him personally, or to his duly authorised agent;
- (b) by sending it to him by registered post at his usual or last known residence or place of business; or
- (c) in the case of a body corporate, by delivering it to the secretary, clerk or similar officer of the body corporate at its registered or principal office in Botswana or, if it has no office in Botswana by sending it by registered post to the secretary, clerk or similar officer of that body corporate.

PART IV

Security at Designated Aerodromes (ss 29-34)

29. Designated aerodromes

(1) The Minister may, for the purposes of this Part, by order published in the *Gazette*, designate any aerodrome used for the purposes of civil aviation as a special aerodrome (hereinafter referred to as "a designated aerodrome") if he considers that the policing of that aerodrome should, in the interests of the preservation of the peace and the prevention of crime, be undertaken by the police.

(2) Before making an Order under subsection (1) the Minister shall consult the manager of that aerodrome and the Commissioner of Police.

30. Exercise of police powers at designated aerodromes

(1) A police officer shall, at a designated aerodrome, in the execution of his duties, and, in particular, for the purposes of exercising the powers conferred on him by this Part, be entitled to enter any part of that aerodrome.

(2) No member of an aerodrome security force employed or maintained by the manager at any aerodrome, and not being a police officer, shall exercise the functions or powers conferred by this Act or any other law on a police officer.

31. Prevention of theft at designated aerodromes

(1) A police officer may, at a designated aerodrome-

- (a) stop, and without warrant, search and arrest any person whom he has reasonable cause to suspect of having, in his possession, any thing which has been stolen or unlawfully obtained from the aerodrome;
- (b) if he has reasonable cause to suspect that any thing which has been stolen or unlawfully obtained from the aerodrome may be found in or on any vehicle carrying any person, or in or on any aircraft, stop and without warrant, detain and search that vehicle or aircraft;
- (c) stop any person, vehicle or aircraft leaving a cargo area and inspect any goods carried by that person, vehicle or aircraft and detain any goods for which no document signed by the manager or other authorised person authorising their removal from that area can be produced by that person, the person driving that vehicle or a member of the crew of that aircraft.

(2) In this section, "cargo area" means any area which the Minister has prescribed as an area which is used wholly or mainly for the storage or handling of cargo in an aerodrome.

(3) The powers conferred on the police by this section shall be without prejudice to any powers exercisable by them apart from this section.

32. Control of traffic at designated aerodromes

All movement of traffic within a designated aerodrome shall be controlled by the police.

33. Restricted areas

(1) The manager may, within a designated aerodrome, designate, for purposes of safety or security, any area as an area to which access shall be restricted, and shall clearly mark such area to indicate that it is an area to which access is restricted, or shall ensure that it is so marked.

(2) No person shall enter or remain in a restricted area unless that person has, in his possession, an identity card which permits him to be in that area and which complies with all conditions laid down by the authority which issued the identity card as may be prescribed by regulations.

(3) Any person who contravenes the provisions of subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding P5 000,00, or to imprisonment for a term not exceeding three months or to both.

34. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act, and, without prejudice to the generality of this section, may make regulations for the following purposes-

- (a) the appointment of security police and guards at aerodromes, and their duties;

- (b) the spelling out of procedures for entry of persons, vehicles and animals into various parts of aerodromes;
- (c) the issuance of identity cards for entry into various parts of aerodromes; and
- (d) any other matter affecting aviation security.

PART IV

National Aviation Security and Facilitation Committee (ss 35-38)

35. Establishment of National Aviation Security and Facilitation Committee

(1) There is hereby established a committee to be known as the National Aviation Security and Facilitation Committee (hereinafter referred to as "the Committee").

(2) The Committee shall consist of a Chairman, a Vice-Chairman and six other members as follows, who shall be appointed by the Minister for such period as shall be specified-

- (a) the Chairman shall be the Permanent Secretary, Ministry of Works, Transport and Communications;
- (b) the Vice-Chairman shall be the Director of Civil Aviation;
- (c) the other members shall be-
 - (i) the Commander of the Botswana Defence Force or his representative;
 - (ii) the Commissioner of Police or his representative
 - (iii) the Director of Customs and Excise or his representative
 - (iv) the Chief Immigration Officer or his representative
 - (v) two representatives from the aviation industry.
- (d) The Minister may also co-opt two other members who, in his opinion, have knowledge and experience likely to contribute to the carrying out of the Committee's functions.

36. Functions of Committee

The functions of the Committee shall be to-

- (a) advise the Minister and the civil aviation industry on aviation security measures;
- (b) recommend, to the Minister, the appropriate security measures to be taken by those concerned with aviation security;
- (c) review the implementation of aviation security measures;
- (d) co-ordinate and implement, as appropriate, aviation security measures, procedures and programmes; and
- (e) liaise with various Government Departments, operators and agencies concerned with aviation security.

37. Meetings

(1) The Committee shall meet at such times and places as the Chairman, or, if he is absent, the Vice-Chairman, may determine, but not less than three times a year.

(2) The Chairman, or if he is absent, the Vice-Chairman, shall preside at all meetings of the Committee, and if both the Chairman and the Vice-Chairman are absent from a meeting, the members present shall elect a person from among themselves to preside at such meeting.

(3) The decision of a majority of the members of the Committee present at a meeting of the Committee shall constitute a decision of the Committee and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(4) Five members of the Committee shall form a quorum.

38. Aerodrome Security Committees

The Minister may, in consultation with the Director, establish Aerodrome Security Committees whose functions shall be to-

- (a) monitor security at aerodromes and advise the National Aviation Security and Facilitation Committee on the security situations prevailing at aerodromes in the country;
- (b) implement the policy decisions of the National Aviation Security and Facilitation Committee on security at aerodromes in the country; and

(c) do any other thing which the Minister may, by regulations, prescribe.