



ANALYSIS

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1986-87, No. 24

An Act to constitute the Department of Civil Aviation

(3 March 1987)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of same, as follows:

1. Short Title - This Act may be cited as the Department of Civil Aviation Act 1986-87.

2. Interpretation - In this Act unless the context otherwise requires:- "Department" means the Department of Civil Aviation constituted under this Act: "Secretary" means the Secretary of Civil Aviation: "Minister" means the Minister of Civil Aviation.

3. Department of Civil Aviation - There shall be a Department of State to be known as the Department of Civil Aviation which under the control of the Minister shall be charged with the administration of the enactments specified in the Schedule hereto and with such other functions as may be lawfully conferred on it.

4. Principal functions of the Department - (1) The principal functions of the Department shall be:-
 (a) To promote and encourage the orderly, and economic development of civil aviation:

- (b) To exercise such functions as may be necessary to ensure the safe operation of aircraft:
 - (c) To initiate and carry out surveys into any aspect of civil aviation:
 - (d) To provide for the investigation of accidents in which aircraft are involved:
 - (e) To advise the Minister and Government Departments on all matters affecting civil aviation:
 - (f) To administer the enactments and regulations specified in the Schedule hereto.
 - (g) To carry out such functions and duties as may be conferred on it by this or any other enactment or as the Minister may subject to the provisions of this Act from time to time direct.
- (2) For the purpose of enabling the Department to carry out its functions under this Act the Minister may:
- (a) Give special directions to the Secretary or such other officer of the Department as he thinks fit in connection with the administration of this Act or any other Act administered by the Department:
 - (b) Exercise such powers as are conferred on him by this or any other enactment:
 - (c) Exercise such other powers as are reasonably necessary for the effective performance of the functions of the Department.

5. Secretary, officers and employees - (1) There shall from time to time be appointed as a member of the Public Service a Secretary of Civil Aviation who shall be the administrative head of the Department, and such other officers and employees of the Department as may be necessary.

(2) The positions of Secretary or any other officer or employee may be a full-time or part-time position as circumstances require, and if part-time, may be held concurrently with any other position in the Public Service.

6. Delegation by Secretary - (1) The Secretary may from time to time, either generally or particularly, delegate to such officer or officers of the Department as he thinks fit or, with the consent of the Minister, to any person not an officer of the Department, all or any of the powers exercisable by him under any enactment, but not including this present power of delegation.

(2) Subject to any general or special direction given or condition attached by the Secretary, the person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting within the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

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(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Secretary.

(6) Every such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Secretary by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the person for the time being holding office as Secretary.

7. Officers to act under the direction of the Secretary

- All extension officers, inspectors, clerks, officers and employees of the Department shall act under the direction of the Secretary in the exercise and performance of the powers, duties and functions conferred or imposed on them by any enactment of which the Department or the Secretary is charged with the administration by this Act or any other enactment, provided however that nothing in this Act shall derogate from the powers duties and responsibilities conferred upon the Director of Civil Aviation, or the Chief Inspector of Air Accidents, by the Minister or any Act or regulation.

8. Regulation of domestic tariffs - (1) For the purposes of giving effect to:

(a) Policies on domestic aviation from time to time promulgated by the Government of the Cook Islands, and,

(b) Regulating and fixing tariffs for domestic carriage by air:

the Minister may from time to time by notice published in the Gazette issue fare-pricing rules and general tariff conditions, or either of them.

(2) For the purpose of giving effect to the provisions of subsection (1), the Minister may, by notice in the Gazette:

(a) Issue specific fares or tariffs for the domestic carriage by air of passengers and goods;

(b) Establish rules providing for the approval, regulation, control prescription substitution and amendment by the Minister of fares or tariffs for the domestic carriage by air of passengers and goods, and establishing forms and procedures in relation to applications by carriers for such approvals.

(3) In this section, unless the context otherwise requires, "domestic carriage by air" means any service provided by means of an aircraft for the carriage of passengers and goods for hire or reward by virtue of an air services licence issued pursuant to the provisions of the Air Services Licensing Act 1984 in respect of any journey beginning and ending in the Cook Islands without any intermediate stop outside the Cook Islands whether or not the aircraft leaves and returns to the same airport without any intermediate stop.

9. Regulation of international tariffs - (1) For the purpose of giving effect to:-

(a) Policies on external aviation from time to time promulgated by the Government of the Cook Islands, or

- (b) Any relevant international convention, agreement, or arrangement to which the Government of the Cook Islands is a party; or
- (c) Any relevant resolution or decision of the International Civil Aviation Organization or of the International Air Transport Association, - the Minister may from time to time, by Notice published in the Gazette, issue fare pricing rules and general tariff conditions, or either of them.

(2) For the purpose of giving effect to any of the matters specified in any of paragraphs (a) to (c) of subsection (1) of this section, the Minister may from time to time, by notice in the Gazette, -

(a) Issue specific tariffs:

(b) Amend or revoke any specific tariff so issued.

(3) Subject to subsection (5) of this section, no person who is engaged (whether in conjunction with any other business or not) in the business of arranging, providing, or selling international carriage by air (whether as principal, agent, sub-agent, or otherwise howsoever) shall arrange, provide, or sell any international carriage by air otherwise than in accordance with the relevant tariff.

(4) Subject to subsection (5) of this section, no person shall undertake, or advertise his ability or willingness, to arrange, provide, or sell international carriage by air that, if arranged, provided, or sold in accordance with the undertaking or advertisement concerned, would be arranged, provided, or sold otherwise than in accordance with the relevant tariff.

(5) Any person may apply to the Minister for approval to arrange or sell, and undertake and advertise his ability and willingness to arrange, provide, or sell international carriage by air in anticipation of the issue of a relevant tariff in accordance with which it is intended to be provided; and in that case, the following conditions shall apply:

- (a) The Minister may, in his absolute discretion, grant, or refuse to grant that approval:
- (b) Where the Minister grants that approval, he may grant it subject to any conditions he thinks fit:
- (c) It shall be deemed to be a condition of every such approval that the international carriage by air concerned is, or is to be, arranged or sold subject to the condition that it will not be provided unless it is provided in accordance with the relevant tariff:
- (d) Subject to the condition specified in paragraph (c) of this subsection, and to the other conditions (if any) subject to which the Minister granted that approval, any person may arrange or sell, or undertake or advertise his ability or willingness to arrange, provide, or sell, international carriage by air in accordance with that approval.

(6) The Minister may from time to time, by notice in the Gazette: -

- (a) Issue commission regimes:

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- (b) Amend or revoke any commission regime so issued.

(7) No person shall allow, charge, demand, disburse, give, offer, pay, provide, or retain, any agency commission otherwise than in accordance with every regime so issued and not revoked in its entirety.

(8) Subject to subsection (9) of this section, every airline operator, travel agent, tour wholesaler, freight forwarder, customs agent, and other person in the Cook Islands engaged (whether in conjunction with any other business or not) in the arrangement or provision of international carriage by air of passengers or cargo (whether for reward or on behalf of members or employees, and whether or not that transport is intended to be provided together with any other service or form of transport) shall keep and make available for inspection, the taking of copies, or both, by the Secretary or persons authorised by him, books, documents, papers, receipts, and information stored or recorded by any computer or other device whatsoever, relating to all or any of the following matters:

- (a) The fares charged or intended to be charged for the international carriage by air of any passenger or group of passengers and the conditions subject to which those fares apply or are intended to apply:
- (b) The charges made or intended to be made for the international carriage by air of baggage and cargo, and the conditions subject to which those charges apply or are intended to apply:
- (c) The agency commissions advertised, allowed, charged, demanded, disbursed, given, offered, paid, provided, or retained in respect of the international carriage or intended international carriage by air of passengers, baggage, and cargo:
- (d) The rates, bases of calculation, circumstances and conditions for agency commissions allowed, charged, demanded, given, offered, paid, provided, or retained in respect of the international carriage or intended international carriage by air of passengers, baggage, and cargo:
- (e) In the case of any service comprising both international carriage by air and any other services (such as accommodation, entertainment, admission to any place, or event, the provision of a guide, food, the provision of equipment, or transport of any other kind), the proportion of the total amount of any charge made or intended to be made therefor that is attributable to each other service.

(9) Nothing in subsection (8) of this section shall require any person to keep any book, document, paper, receipt, or information, after the expiration of 2 years from the date that all the international carriage by air to which it relates was completed.

(10) For the purpose of this section, international carriage by air shall be deemed to be not in accordance with a relevant tariff if there is allowed, given, offered, paid, or provided, in connection therewith, by or to any person, whomsoever, any allowance, bonus, discount, gift, payment, prize, rebate, reward, service, or other benefit whatsoever -

- (ii) To the extent (if any) to which the application to international carriage by air between those points of the fares, rates, and charges, or any of them, specified in that specific tariff is specified in that specific tariff to be subject to the conditions specified in the general tariff conditions, the general tariff conditions,
read together as one statement; and
 - (b) In every other case, means fares, rates, and charges, calculated in accordance with, or ascertained from the fare pricing rules:
- "Specific tariff" means a statement, expressed to apply to one or more specified airlines, or to all airlines other than one or more specified airlines, or to all airlines, specifying:-
- a) The fares, rates, and charges applicable to international carriage by air between specified points (whether direct or indirect, and whether or not including any stopovers), that may at any time be provided by the airlines to which it is expressed to apply; and
 - (b) Any conditions (not being conditions specified in the general tariff conditions) subject to which any such fares, rates, and charges, or any of them, are to apply to international carriage by air between those points;
 - (c) The extent (if any) to which the application to international carriage by air between those points of any such fares, rates, and charges, or any of them, is to be subject to the conditions specified in the general tariff conditions.

10. General provisions as Gazette Notices - (1) Any Gazette Notice under this Act may apply generally throughout the Cook Islands, or within any specified part or parts thereof, and may apply to all aircraft or to any specified class or classes of aircraft.

(2) Insofar as the bylaws of any local authority in force in any locality are inconsistent with or repugnant to the provisions of any Gazette Notice under this Act in force in the same locality, the bylaws shall, in so far as they relate to aircraft and air traffic, be deemed to be subject to the Gazette Notice notwithstanding that any such bylaws may have been made under some other Act.

11. Annual report - (1) As soon as practicable after the end of each year ending with the 31st day of March the Secretary shall furnish to the Minister a report of the activities of the Department during that year.

(2) A copy of the report shall be laid before Parliament within 28 days after its receipt by the Minister if Parliament is then in Session, and, if not, for forthwith after the commencement of the next ensuing session.

- (a) Not specified in that tariff; or
- (b) Otherwise than subject to the conditions, and in the circumstances, specified in that tariff in that behalf.

(11) Every person who acts in contravention of or fails to comply with any provision in this section commits an offence against this Act, and shall be liable on conviction to a fine not exceeding \$5,000. (12) In this section, unless

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

"Agency commission", in relation to any international carriage by air (whether provided or to be provided) means any allowance, bonus, discount, gift, payment, prize, rebate, reward, service, or other benefit whatsoever (however described), allowed, given, offered, paid, or provided to any person for or in respect of the arrangement, provision, or sale of that commission:

"Commission regime" means a statement, expressed to apply to any specified international carriage by air, specifying the rates and bases of calculation of agency commissions to be allowed, charged, disbursed, given, offered, paid, provided, or retained, in relation to the international carriage by air to which it is expressed to apply, and the circumstances and conditions under and subject to which any such commission is to be so allowed, charged, disbursed, given offered, paid, provided, or retained; and different rates, bases, circumstances, and conditions, may be specified in respect of all or any of the following:

- (a) International carriage by air provided by different airlines:
- (b) International carriage by air arranged by persons travelling by different classes:
- (c) International carriage by air provided for persons travelling by different classes:

"Fare pricing rules" means a statement of rules for calculating or ascertaining fares, rates, and charges, for carriage by air that are not capable of being ascertained by reference only to the general tariff conditions, and specific tariffs.

"General tariff conditions" means a statement of the conditions, subject to which fares, rates, and charges specified in specific tariffs are generally to be payable for carriage by air:

"International carriage by air" means the carriage by air of persons, baggage, or cargo:-

- (a) Between the Cook Islands and any place outside the Cook Islands; or
- (b) Where that carriage is purchased, sold, or arranged in the Cook Islands between places outside the Cook Islands.

"Relevant tariff": -

- (a) In relation to carriage by air between points specified in a specific tariff (being carriage provided by an airline to which that specific tariff is expressed to apply) means:-
 - (i) That specified tariff; and

SCHEDULE

Enactments and Regulations administered by the
Department: (Section 4):

Enactments

Aviation Offences Act 1973
Civil Aviation Act 1985
Air Services Licensing Act 1984
Air Services Licensing Amendment Act 1985
Air Services Licensing Amendment Act 1986
Airport Security Act 1986

Regulations

Civil Aviation Regulations 1985
Civil Aviation Regulations 1953 Amendment No.1 (S.R.1955/143)
Civil Aviation Regulations 1953 Amendment No.2 (S.R.1956/134)
Civil Aviation Regulations 1953 Amendment No.3 (S.R. 1959/ 3)
Civil Aviation Regulations 1953 Amendment No.4 (S.R.1959/158)
Civil Aviation Regulations 1953 Amendment No.5 (S.R. 1960/71)
Civil Aviation Regulations 1953 Amendment No.6 (S.R.1961/109)
Civil Aviation Regulations 1953 Amendment No.7 (S.R.1962/130)
Civil Aviation Regulations 1953 Amendment No.8 (S.R.1964/ 2)
Civil Aviation Regulations 1953 Amendment No.9 (S.R.1965/ 16)
Civil Aviation Regulations 1953 Amendment No.10 (S.R.1965/206)
Civil Aviation Regulations 1953 Amendment No.11 (S.R.1966/147)
Civil Aviation Regulations 1953 Amendment No.12 (S.R.1968/143)
Civil Aviation Regulations 1953 Amendment No.13 (S.R.1968/203)
Civil Aviation Regulations 1953 Amendment No.14 (S.R.1970/136)
Civil Aviation Regulations 1953 Amendment No.15 (S.R.1970/253)
Civil Aviation Regulations 1953 Amendment No.16 (S.R.1972/91)
Civil Aviation Regulations 1953 Amendment No.17 (S.R.1972/172)
Civil Aviation Regulations 1953 Amendment No.18 (S.R.1973/91)
Civil Aviation Regulations 1953 Amendment No.19 (S.R.1973/301)
Civil Aviation Regulations 1953 Amendment No.20 (S.R.1975/91)
Civil Aviation Regulations 1953 Amendment No.21 (R.1975/143)
Civil Aviation Regulations 1953 Amendment No.22 (S.R.1979/18)
Civil Aviation Regulations 1953 Amendment No.23 (S.R.1982/90)
Civil Aviation Regulations 1953 Amendment No.24 (S.R.1983/100)
Civil Aviation Regulations 1953 (Amendment No. 25)
Regulations 1986
Civil Aviation (Investigation of Accidents) Regulations 1978
(S.R.1978/112)
Rarotonga Airport (Obstruction Removal) Order 1969
Rarotonga Airport (Land Use Restrictions) Order 1972