

SAMOA

CIVIL AVIATION ACT 1998

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CIVIL AVIATION ACT 1998

1998 **No. 4**

AN ACT to establish rules of operation and divisions of responsibility within the Samoa civil aviation system in order to promote aviation safety; and to ensure that Samoa's obligations under international aviation agreements are implemented; and to consolidate and amend the law relating to civil aviation in Samoa.

[Assent date: 19 June 1998]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – **(1)** This Act may be cited as the Civil Aviation Act 1998.

(2) This Act comes into force upon the publication by the Minister, of a notice to that effect in the Samoa *Gazette*, and any such notice may bring into force any designated sections or Parts of this Act.

2. Interpretation – In this Act, unless the contrary intention appears:

"accident" means an occurrence that is associated with the operation of an aircraft and takes place between the time any person boards the aircraft with the intention of flight and such time as all such persons have disembarked and the engine or any propellers or rotors come to rest, being an occurrence in which:

(a) a person is fatally or seriously injured as a result of—

(i) being in the aircraft; or

(ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or

(iii) direct exposure to jet blast, except when the injuries are self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew; or

(b) the aircraft sustains damage or structural failure that—

(i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and

(ii) would normally require major repair or replacement of the affected component, except engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, rotors, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or

(c) the aircraft is missing or is completely inaccessible;

"aerodrome" means:

(a) a defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft; and

(b) includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

"aerodrome control service" means an air traffic control service provided for the control of aerodrome traffic;

"aerodrome flight information service" means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome;

"aerodrome traffic" means:

(a) any traffic in the manoeuvring area of an aerodrome; and

(b) any aircraft flying in the vicinity of an aerodrome;

"aerodrome traffic circuit" means the pattern flown by aircraft operating in the vicinity of an aerodrome;

"aeronautical product" means anything that comprises or is intended to comprise any part of an aircraft or that is intended to be installed in or fitted or supplied to an aircraft; and includes fuel and other similar consumable items necessary for the operation of the aircraft;

"aircraft" means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

"aircraft flying in the vicinity of an aerodrome" means any aircraft that is in, entering, or leaving an aerodrome traffic circuit;

"air service" means an air transport service or an aerial work service, whether regular or casual;

"air service operations" means any operations by aircraft for the carriage of passengers, mail, or cargo for hire or reward;

"air traffic" means all aircraft in flight or operating on any manoeuvring area of an aerodrome:

"air traffic control service" means a service provided for the purposes of:

(a) preventing collisions—

(i) between 2 aircraft; and

(ii) between aircraft and any obstructions on any manoeuvring area; and

(b) expediting and maintaining a safe and efficient flow of air traffic;

"air traffic service" includes:

(a) any aerodrome control service;

(b) any area control service;

(c) any approach control service;

(d) any flight information service;

(e) any aerodrome flight information service;

(f) any alerting service;

(g) any other air traffic service considered by the Minister to be necessary or desirable forth safe and efficient operation of the civil aviation system;

"alerting service" means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

"area control service" means an air traffic control service provided for controlled flights in controlled airspace;

"aviation document" means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aero-nautical procedure, aeronautical product or aviation related service;

"aviation related service" means any equipment, facility or service, including any air traffic service operated in support or in conjunction with the civil aviation system; and includes the provision of aeronautical products;

"aviation security officer" means a person employed as such by the Airport Authority;

"Chief Executive Officer" means the Chief Executive Officer of the Ministry responsible for Transport;

"Civil Aviation Act 1963" includes all Regulations made under it;

"Civil Aviation Registry" means the Registry established under section 70;

"controlled airspace" means an airspace of defined dimensions within which an air traffic control service is provided to controlled flights;

"controlled flight" means any flight that is provided with or required by rules made under this Act to make use of an air traffic control service;

"Convention" means the Convention on International Civil Aviation signed at Chicago on 7 December 1944; and includes:

(a) any amendment to the Convention which has entered into force under Article 94 (a) of the Convention and has been ratified by Samoa; and

(b) any Annex or amendment thereto accepted under Article 90 of the Convention; and

(c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organisation under Article 37 of the Convention;

"convention country" means, for the purpose of this Act any country that is a State Party to the Tokyo Convention;

"commander" means the person who is in command of the aircraft;

"Director" means the person who the Director of Civil Aviation appointed under section 8;

"flight information service" means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;

"holder" in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document;

"ICAO" means the International Civil Aviation Organisation established under the Convention; and includes any successor to the Organisation;

"incident" means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation;

"international airport" means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out;

"judicial officer" means a Judge or a Court Registrar (other than a member of the Police);

"Manager, Airport Authority" means the Civil Aviation Manager appointed under section 17 of the Airport Authority Act 1984 and that Act is amended by replacing the words "Civil Aviation Manager" with the words "Manager, Airport Authority" wherever they appear;

"manoeuvring area" means:

(a) that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with take-off and landing; but

(b) does not include areas set aside for loading, unloading or maintenance of aircraft;

"Minister" means the Minister responsible for Transport;

"Ministry" means the Ministry responsible for Transport;

"navigation installation":

(a) means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation; and

(b) includes any land adjacent, equipment, or place and used in connection therewith;

"operate", in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft; and "operator" has a corresponding meaning;

"owner", in relation to any aircraft, includes any person lawfully entitled to the possession of the aircraft for 28 days or longer;

"pilot-in-command", in relation to any aircraft, means the pilot who:

(a) has the final authority and responsibility for the operation and safety of the aircraft;

(b) has been designated as pilot in command before or during the flight; and

(c) hold the appropriate category, class and type rating, if appropriate, for the safe conduct of a flight;

"prescribed" means prescribed by this Act or by Regulations or rules made under this Act;

"rules" means ordinary rules made by the Minister and emergency rules made by the Director under Part 3;

"Samoa registered aircraft" means any aircraft that is registered by the Minister under section 23(1)(a);

"Samoa Register of Aircraft" means the register of that name that is established under section 69;

"Samoan-controlled aircraft" means an aircraft that is registered in Samoa;

"security area" means an area that the Minister has declared to be a security area under section 78;

"security designated aerodrome" means an aerodrome designated as a security aerodrome under section 76;

"security designated navigation installation" means a navigation installation designated as a security navigation installation under section 76;

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

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

"the Tokyo Convention" means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963.

3. Act to bind the State – This Act binds the State.

4. Application of Act – **(1)** This Act and all Regulations and rules made under this Act apply to the following:

(a) any person, aircraft, aerodrome, aeronautical product, air service, and aviation related service, in Samoa;

(b) any Samoa registered aircraft whether within or outside Samoa;

(c) the holder of an aviation document whether within or outside Samoa and exercising or purporting to exercise privileges accorded by that document;

(d) any foreign registered aircraft operating in Samoa.

(2) Despite subsection (1), the Minister, acting on the recommendation of the Ministry may, by agreement with the appropriate foreign aeronautical authority:

(a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a Samoa registered aircraft operated by that foreign operator that the Ministry

or the Director has under this Act or Regulations or rules made under this Act;

(b) vest in the Ministry or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a Samoa operator that arises under this Act or Regulations or rules made under this Act.

(3) Except where an act or omission is required in order to comply with the laws of any foreign state, the holder of an aviation document who, while outside Samoa and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in Samoa, is taken to have committed an offence under this Act and may be proceeded against in Samoa as if the act or omission had occurred within Samoa.

(4) Nothing in this section shall be interpreted as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign state that applies to or in respect of the person or aircraft.

(5) Nothing in this Act shall be interpreted as limiting the privileges or immunities of:

(a) any foreign military aircraft; or

(b) the officers and crew of any foreign military aircraft.

5. Civil Aviation Authority – **(1)** For all purposes, including the international convention obligations of Samoa, the Ministry is the Civil Aviation Authority for Samoa.

(2) No company or other body shall be incorporated or registered under a name that contains the words "Civil Aviation Authority" or under any other name that, in the opinion of the Registrar of Companies, or within the provisions of the Trade Marks Act 1972, so resembles such a name as to be likely to deceive.

(3) Nothing in subsection (2) applies to the Ministry or to any person who is appropriately authorised by the Minister.

PART 1A
FUNCTIONS, POWERS, AND DUTIES OF PARTICIPANTS IN THE CIVIL AVIATION SYSTEM

6. Functions of Minister – (1) The principal function of the Minister under this Act is to promote safety in civil aviation and to ensure that Samoa's obligations under international civil aviation agreements are implemented.

(2) Without limiting subsection (1), the Minister shall also have the following functions:

(a) to administer Samoa's participation in the Convention and any other international aviation convention, agreement, or understanding to which the Government of Samoa is a party;

(b) to establish procedures relating to entry into the Samoa civil aviation system, and to exercise control over that entry through the granting of aviation documents;

(c) to monitor adherence to safety and security standards within the civil aviation system;

(d) to ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security;

(e) to initiate any investigation and review of civil aviation accidents and incidents in his capacity as the responsible safety and security authority and ensure all such accidents and incidents are investigated by an appropriate and competent organisation;

(f) to maintain and preserve records and documents relating to activities within the civil aviation system, and in particular to maintain the Samoa Register of Aircraft and the Civil Aviation Registry;

(g) to prepare, publish and maintain a National Aviation Security Program and ensure its implementation within the aviation system;

(h) to ensure the collection, publication, and provision of charts and aeronautical information, and to enter into arrangements with any other person or organisation to collect, publish, and distribute such charts and information;

(*i*) to take such action as may be appropriate in the public interest to enforce the provisions of this

Act and of Regulations and rules made under this Act, including the carrying out of inspections and monitoring;

(j) for the purpose of granting or renewing aviation documents in respect of flight crew or aircraft maintenance personnel under this Act, to set, conduct, and administer examinations and tests, conduct flight testing, and carry out such other functions in relation to such examinations, tests, and flight testing as may be necessary.

7. Functions of The Chief Executive Officer – The Chief Executive Officer has and may exercise such functions, powers and duties as may be conferred or imposed on the Chief Executive Officer by this Act, and as may be delegated by the Minister under section 15.

8. Director of Civil Aviation – **(1)** The Public Service Commission shall appoint a person to hold the Office of Director of Civil Aviation, and the appointment is to be made under the Public Service Act 2004.

(2) The Director has and may exercise the functions, powers, and duties as may be conferred or imposed on the Director by this Act, and as may be delegated under section 15.

(3) Subject to this Act, the Director shall, in the course of performing his or her functions and duties or when exercising his or her powers, consider whether these could be more efficiently or effectively delegated or contracted out to appropriate organisations or persons selected following a competitive process.

(4) Without limiting subsection (2), where the Director believes on reasonable grounds:

(a) that an unsafe condition exists in any aircraft or aeronautical product; and

(b) that condition is likely to exist or develop in any other aircraft or aeronautic products of the same design,–

the Director may, by notice in the Savali, or by such other notice as the Director considers appropriate in the circumstances, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design.

(5) An airworthiness directive made under subsection (4) comes into force on the date specified in the notice.

9. Director may require or carry out safety and security inspections and monitoring – **(1)** The Director may in writing require any person who:

(a) holds an aviation document; or

(b) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service or aeronautical procedure,–

to undergo or carry out such inspections and such monitoring as the Director considers necessary in the interests of civil aviation safety and security.

(2) For the purposes of any inspection or monitoring carried out in respect of any person under subsection (1), the Director may in writing require from that person such information as the Director considers relevant to the inspection or the monitoring.

(3) The costs incurred from any inspection or monitoring or any information supplied, as a result of this section shall be borne by the person described in subsection (1)(a) or (b) .

10. Power of the Director to suspend aviation document or impose conditions – **(1)** The Director may suspend any aviation document issued under this Act, or rules made under this Act, or impose conditions in respect of any aviation document, if the Director considers such action necessary in the interests of safety, and if the Director:

(a) considers such action necessary to ensure compliance with this Act or Regulations or Rules made under this Act; or

(b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 18; or

(c) is satisfied that the holder has given false information for the purpose of obtaining that or any other aviation document; or

(d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.

(2) Without limiting subsection (1), the Director may suspend any aviation document relating to the use of any aircraft, aeronautical product, or the provision of any service, or impose conditions in respect of any such document, if the Director considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the document relates.

(3) The suspension of any aviation document or conditions imposed in respect of any such document shall remain in force until the Director has determined, after due investigation, the action to be taken in respect of the causes requiring the suspension or imposition of conditions; but the duration of any such suspension or conditions shall not exceed 14 days unless the Director directs that a further specified period is necessary for the purposes of the investigation.

(4) If, after investigation, the Director considers such action to be warranted, the Director may suspend for a further period the aviation document or impose further conditions, and the Director shall cause the appropriate endorsement to be made on the document concerned.

(5) A person whose aviation document has been suspended or made subject to conditions under this section shall forthwith produce that document to the Director for appropriate endorsement.

(6) The whole or any part of an aviation document may be suspended under this section.

(7) A person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 62.

11. Power of Minister to revoke aviation document – (1) If, after an investigation under section 10, the Director recommends that any relevant aviation document be revoked, the Minister may revoke that document.

(2) Where the Minister proposes to revoke an aviation document, the Minister, by notice in writing, shall:

(a) notify the person directly affected by the proposed decision of the proposed decision; and

(b) shall inform that person of the grounds for the proposed decision; and

(c) specify a date by which submissions may be made to the Minister in respect of the proposed decision, which date shall not be less than 21 days after the date on which notice is given; and

(d) where appropriate, specify the date on which the proposed decision will, unless the Minister otherwise determines, take effect, being a date of not less than 28 days after the date on which the notice is given; and

(e) notify the person of the person's right of appeal under section 62, in the event of the Minister proceeding with the proposed decision; and

(f) specify such other matters as in any particular case may be required by any provision of this or any other Act.

(3) A person whose aviation document is revoked shall forthwith surrender that document to the Minister.

(4) A person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 62.

12. Criteria for action taken under section 10 or 11 – (1) The provisions of this section apply for the purpose of determining whether an aviation document should be suspended or made subject to conditions under section 10 or revoked under section 11.

(2) Where this section applies, the Minister or the Director, as the case may be, may have regard to, and give such weight as the Minister or the Director considers appropriate to, the following matters:

(a) the persons compliance history with transport safety regulatory requirements;

(b) any conviction for any transport safety offence, whether or not—

(i) the conviction was in a Samoa Court; or

(ii) the offence was committed before the commencement of this Act;

(c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this Act.

(3) The Minister or the Director shall not be confined to consideration of the matters specified in subsection (2) and may take into account other such matters and evidence as may be relevant.

(4) The Minister or the Director may:

(a) seek and receive such information as the Minister or the Director thinks fit; or

(b) consider information obtained from any source.

(5) If the Minister or the Director proposes to take into account any information that is or may be prejudicial to a person, the Minister or the Director shall, subject to subsection (6), as soon as is practicable disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) requires the Minister or the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.

13. Power of Minister to amend or revoke aviation document in other cases – (1) The Minister may, if so requested in writing by the holder of any aviation document, amend that document in the manner requested, or revoke that document.

(2) Subject to subsection (3), the Minister may do any of the following:

(a) amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;

(b) revoke any aviation document if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder;

(c) amend any aviation document to correct any clerical error or obvious mistake on the face of the document.

(3) Before taking any action under subsection (2), the Minister shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend an aviation document under this section includes:

(a) power to revoke the document and issue a new document in its place; and

(b) power to impose reasonable conditions.

(5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Minister.

14. Power of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions – **(1)** Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property, the Director may, if authorised by a warrant given by a judicial officer on written application on oath, do all or any of the following:

(a) detain the aircraft or any aircraft of that class;

(b) seize the aeronautical product or any aeronautical products of that class;

(c) prohibit the operation of the aircraft or aircraft of that class, or the use of any aeronautical product or any aeronautical products of that class.

(2) Where the Director believes on reasonable grounds that the operation or use of any aircraft of aeronautical product or any class of aircraft or aeronautical products may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following:

(a) prohibit or impose conditions on the operation of the aircraft or all aircraft of that class;

(b) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class;

(c) detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.

(3) A detention or seizure under subsection (1) or (2) shall be maintained for only such time as is necessary in the interest of safety; but, if aircraft, aeronautical products, or parts thereof are required for the purpose of evidence in any prosecution under the Act those aircraft, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.

(4) The Director shall, if requested by the owner or the person in charge of an aircraft detained or an aeronautical product seized under subsection (1), provide in writing to owner or that person the reasons for the detention or seizure.

(5) A person in respect of whom a decision is taken under this section may appeal against that decision to a District Court under section 62.

(6) For the purpose of subsection (2), the Director shall notify any prohibitions or conditions to such persons as the Director considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

15. Delegation of Minister's or Director's functions or powers to employees of Ministry – **(1)** The Minister may delegate to any employee of the Ministry (including the Director) any of the functions, powers, or duties of the Minister under this Act, other than the power under section 13 to revoke aviation documents.

(2) The Director may in like manner delegate to any employee of the Ministry any of the functions, powers or duties of the Director under this Act.

(3) A delegation under this section shall, until revoked, continue in force according to its tenor, even if the person by whom it was made may cease to hold office, and shall continue to have effect as if made by the person for the time being holding that office.

(4) A person purporting to act under any delegation under this section shall when reasonably requested produce evidence of his authority to do so.

(5) A delegation under this section shall be in writing.

16. Delegation of Minister's functions or powers to persons outside Ministry – **(1)** The Minister may, either generally or particularly, delegate to such persons (not being employees of the Ministry) as the Minister specifies, any of the Minister's functions or powers under this Act, other than the following:

(a) the power under this section to delegate functions and powers;

(b) the power under section 13 to revoke aviation documents; and

(c) the power under section 39 to suspend or revoke aviation documents.

(2) Subject to any general or special directions given or conditions imposed by the Minister, any person to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effects as if they had been conferred or imposed upon the person directly and not by delegation.

(3) The Minister may delegate any power or function under this section to a specified person or class of persons or to the holder or holders of a specified office or class of office for the time being.

(4) A delegation under this section shall be given for a specific or indefinite period but in either case shall be revocable at will and no such delegation shall prevent the exercise of any power or the performance of any function by the Minister.

(5) A delegation under this section shall, until revoked, continue in force according to its tenor, despite the fact that the Minister by whom it was made, may cease to hold office, and shall continue to have effect as if it was made by the person for the time being holding office as Minister.

(6) A person purporting to act under any delegation under this section shall when reasonably requested produce evidence of his authority to do so.

(7) A delegation under this section shall be in writing.

17. Duties of pilot-in-command – **(1)** The pilot-in-command of an aircraft shall:

(a) be responsible for the safe operation of the aircraft in flight, and the safety and well-being of all passengers and crew, and the safety of cargo carried;

(b) have final authority to control the aircraft while in command and for the maintenance of discipline by all persons on board; and

(c) subject to subsections (2) to (7), be responsible for compliance with all relevant requirements of this Act and Regulations and rules made under this Act.

(2) Subject to subsections (3) and (7), in an emergency that arises in flight, the pilot-in-command may breach the provisions of this Act or of Regulations or rules made under this Act.

(3) For the purposes of subsection (2), a breach of any prescribed requirement is permitted only if the pilot-in-command is satisfied that:

(a) the emergency involves a danger to life or property;

(b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency;

(c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and

(d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

(4) Subject to subsections (5) to (7), where an emergency (not being an emergency that arises in flight) necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command of the aircraft or the operator of the aircraft may breach the provisions of this Act or Regulations or rules made under this Act.

(5) For the purposes of subsection (4), a breach of any prescribed requirement is permitted only if:

(a) the emergency involves a danger to life or property;

(b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency;

(c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and

(d) the degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.

(6) Nothing in subsection (4) permits:

(a) the operation of an aircraft that is not registered in Samoa or elsewhere;

(b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or

(c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.

(7) Where in any emergency described in this section, a pilot-in-command or an operator breaches this Act or Regulations or rules made under this Act in accordance with the provisions of this section, the pilot-in-command or the operator, as the case may be, shall:

(a) immediately notify the relevant air traffic service of the action; and

(b) as soon as practicable, notify the Minister of the action and the circumstances which necessitated it, and, if requested by the Minister, provide a written report of the action.

18. General requirements for participants in civil aviation system – **(1)** A person who does anything for which an aviation document is required (in the succeeding provisions of this section called a participant) shall ensure that the appropriate aviation documents and all the necessary qualifications and other documents are held by that person.

(2) A participant shall comply with this Act, and the relevant rules made under this Act, and the conditions attached to the relevant aviation documents.

(3) A participant shall ensure that the activities or functions for which the aviation document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety standards and practices.

(4) A participant who holds an aviation document that authorises the provision of a service within the civil aviation system shall:

(a) if so required by rules made under this Act, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the documents; and

(b) provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and

(c) provide sufficient resources to ensure compliance with the relevant prescribed safety standards and any relevant prescribed conditions.

19. General power of entry – (1) For the purpose of carrying out his functions, duties, or powers under this Act or Regulations or rules made under this Act, a person duly authorised by the Minister has the right of access at any reasonable time to the following:

(a) any aircraft, aerodrome, building, or place;

(b) any document or record concerning any aircraft, aeronautical product, or aviation related service.

(2) Without limiting subsection (1), a person duly authorised by the Minister who has reasonable grounds to believe that:

(a) a breach of this Act or of Regulations or rules made under this Act is being or about to be committed;

(b) a condition imposed under any civil aviation document is not being complied with; or

(c) a situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property,–

may at any reasonable time enter any aircraft, aerodrome, building, or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) exists.

(3) A person who is duly authorised to enter any aircraft, aerodrome, building, or place under subsection (1) or (2) may require the owner, occupier or operator, as the case may be:

(a) to produce any aviation document, certificate, book, manual, record, list, notice, or other document required by or under this Act to be kept by that owner, occupier, or operator; and

(b) to surrender any such aviation document, certificate, book, manual, record, list, notice, or other document.

(4) Nothing in subsection (1) or (2) confers on any person the power to enter any dwelling place unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(5) A warrant issued under subsection (4) shall be directed to a named person and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.

(6) A person exercising the power of entry conferred by subsection (1) or (2) shall carry a warrant of authority issued by the Minister specifying:

(a) the name and the office or offices held by the person; and

(b) that the person is authorised by the Minister to exercise the power conferred by subsections (1) and (2) to enter aircraft, aerodromes, buildings, and places and to carry out such inspection.

(7) A person exercising the power of entry conferred by subsections (1) and (2) shall produce the warrant of authority and evidence of identity:

(a) if practicable on first entering the aircraft, aerodrome, building, or place; and

(b) whenever subsequently reasonably required to do so.

(8) A sworn member of the Police has and may exercise all or any of the powers conferred on a person who has been duly authorised by the Minister under this section.

20. Powers of entry of Airport Authority – **(1)** Subject to subsection (3), the Airport Authority may:

(a) enter upon any land for the purpose of gaining access to cables, wires, navigational aids, or other equipment used for the purpose of carrying out the functions of the Airport Authority; and

(b) perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing any such equipment.

(2) The power to enter upon land conferred by subsection (1) shall be subject to the following conditions:

(a) entry to the land shall be made only by an officer, employee, or agent of the Airport Authority authorised by it in writing, or by persons under the immediate control of such an officer, employee, or agent;

(b) entry shall be made at reasonable times; and

(c) the officer, employee, or agent shall have with him, and shall produce on initial entry and subsequently if required to do so, evidence of his identity and authority.

(3) Any equipment owned by the Airport Authority that is fixed to or installed over or under the land and is not owned by the Airport Authority is taken to be lawfully fixed or installed and shall continue to be fixed or installed until the Airport Authority otherwise decides, and no person other than the Airport Authority shall have any interest in any such equipment by reason only of having an interest in the land.

21. Obligation to notify all accidents and incidents – (1) The pilot-in-command of any aircraft that is involved in an accident or incident shall, where required by this Act or rules or Regulations made under this Act, notify the accident or incident to the Minister as soon as practicable.

(2) If, due to injuries or death, the pilot-in-command is unable to give the necessary notice under subsection (1), the operator shall provide the necessary notice.

(3) Any search and rescue operation for an aircraft which is terminated without finding either the aircraft or wreckage of the aircraft shall be notified to the Minister by the authorities concerned.

(4) The Minister may, on being notified under subsections (1) to (3) request such additional information, in such form as the Minister considers appropriate in each specific case, and the pilot in command or operator or person of whom the request is made shall provide the additional information forthwith.

22. Minister to notify accidents and incidents to the Chief Executive Officer and Director – (1) As soon as practicable after any accident or incident is notified under section 21, the Minister shall notify the Chief Executive Officer and Director that the Minister has been notified of the accident or incident if it is of any of the following kinds:

(a) an accident involving aircraft; or

(b) a serious incident in accordance with the provisions of the Convention.

(2) An accident or incident as defined in subsection (1)(a) or (b) shall be investigated in accordance with the provisions of this Act or under the provisions of rules or Regulations made under this Act.

PART 2
ENTRY INTO THE CIVIL AVIATION SYSTEM

23. Requirement to register aircraft – **(1)** Except as otherwise provided in this Act or rules made under this Act, a person lawfully entitled to the possession of an aircraft for a period of 28 days or longer of an aircraft which flies to, from, within, or over Samoa territory shall register that aircraft and hold a valid certificate of registration for that aircraft from:

(a) the Minister;
(b) the appropriate aeronautical authorities of a contracting state of ICAO; or
(c) the appropriate aeronautical authorities of another State that is party to an agreement with the Government of Samoa or the Civil Aviation Authority of Samoa which provides for the acceptance of each other's registrations.

(2) No aircraft shall be registered in or remain registered in Samoa if it is registered in any other country.

(3) The Minister may decline to register any aircraft in accordance with the provisions of Regulations or rules made under this Act.

(4) A person in respect of whom a decision is taken under this section may appeal against that decision to a District Court under section 62.

24. Requirement for aviation document – **(1)** Regulations or rules made under this Act may require that an aviation document shall be required by or in respect of all or any of the following:

(a) Samoa registered aircraft;
(b) aircraft pilots;
(c) flight crew members;
(d) air traffic services personnel;
(e) aviation security services personnel;
(f) aircraft maintenance personnel;

(g) air services;
(h) air traffic services;
(i) aerodromes and aerodrome operators;
(j) navigation installation providers;
(k) aviation training organisations;
(l) aircraft design, manufacture, and maintenance organisations;
(m) aeronautical procedures;
(n) aviation security services;
(o) aviation meteorological services;
(p) aviation communications services;
(q) Aviation Medical Services;
(r) Aviation Personnel Licensing and Examining:;
(s) any persons, services, or things within any of the classes specified in paragraphs (a) to (r);
(t) any other persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be prescribed.

(2) The requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued, shall be as prescribed.

(3) Subject to any Regulations or rules made under this Act, an aviation document may be issued by the Minister for such specified period and subject to such condition as the Minister considers appropriate in each particular case.

(4) A person in respect of whom a decision is taken under this section may appeal against that decision to a District Court under section 62.

25. Application for aviation document – (1) An application for the grant or renewal of an aviation document shall be made to the Minister in the prescribed form or, if there is no prescribed form, in such form as the Minister may require.

(2) An applicant for an aviation document shall provide his address for service in Samoa including where applicable, telephone and facsimile numbers.

(3) A record of information provided under subsection (2) shall be maintained by the Minister at the Civil Aviation Registry.

(4) The holder of an aviation document shall maintain the currency of the information provided under subsection (2) by promptly notifying the Chief Executive Officer of any changes to the address, telephone number, or facsimile number.

(5) Service of any notification under this Act on a holder of, or applicant for, an aviation document is effective if served on the address last provided by that holder or applicant under this section.

26. Grant or renewal of aviation document – (1) After considering any application for the grant or renewal of an aviation document, the Minister shall, as soon as is practicable, grant the application if the Minister is satisfied that:

(a) all things in respect of which the document is sought meet the relevant prescribed requirements; and

(b) the applicant or any person who is to have or is likely to have control over the exercise of the privileges under the document—

(i) either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Minister under subsection (2); and

(ii) is a fit and proper person to have such control or hold the document; and

(iii) meets all other relevant prescribed requirements.

(2) For the purpose of granting or renewing an aviation document, the Minister may, subject to any provisions in the Regulations or rules, accept such foreign qualifications or recognise such foreign certifications as the Minister considers appropriate in each case.

(3) It shall be a condition of a current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under this document continue to satisfy the fit and proper person test specified in subsection

(1)(b)(ii). If the Minister decides that he or she is no longer satisfied that the holder is a fit and proper person to hold that document, and notifies the holder in writing accordingly, the holder shall be in breach of that condition.

(4) A person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 62.

PART 3
RULES

27. Power of Head of State to make ordinary rules – (1) The Head of State, acting on the advice of Cabinet, may by Order make rules (in this Act called ordinary rules) for all or any of the following purposes:

(a) the implementation of Samoa's obligations under the Convention;

(b) the provision of aviation meteorological services, search and rescue services, and civil aviation security programs and services;

(c) a matter related or reasonably incidental to any of the functions of the Minister set out in section 6, or the functions of the Chief Executive Officer as set out in section 7, or the functions of the Director as set out in section 8;

(d) any other matter contemplated by any provision of this Act.

(2) Any ordinary rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of aircraft, aerodrome, aero-nautical product, aeronautical procedure, or aviation related service in different circumstances.

(3) Any ordinary rule may apply generally throughout Samoa or within any specified part or parts of Samoa.

(4) The commencement of any ordinary rule may be wholly suspended until it is applied by the Minister by notice in the Savali.

(5) No ordinary rule shall be invalid because it confers any discretion upon or allows any matter to be determined or approved by the Ministry or Director or any other person, or allows the Ministry or the Director or any other person to impose requirements as to the performance of any activities.

(6) Subject to section 138, an ordinary rule is taken to be a Regulation for the purposes of the Regulations Ordinance 1953.

(7) So far as the bylaws of any local authority are inconsistent with or repugnant to any ordinary rule made under this Act in force in the same locality, the bylaws shall be construed subject to the rules.

28. Rules relating to safety and security – Without limiting section 27, in the interests of safety or security within the civil aviation system ordinary rules may include:

(a) rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including airspace used by the Samoa Police Service or a visiting defence force;

(b) rules providing for the use of aerodromes and other aviation related facilities, including but not limited to the following—

(i) the provision of identification procedures for persons, aircraft, and any other aviation related things;

(ii) the prevention of interference with aerodromes and other aviation related facilities;

(c) general operating rules, air traffic rules, and flight rules, including but not limited to the following—

(i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from any aircraft;

(ii) the prevention of aircraft endangering persons or property;

(d) rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following—

(i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air;

(ii) the construction, use, or operation of anything likely to be hazardous to aviation safety.

29. Rules relating to general matters – Without limiting section 27, ordinary rules may be made for all or any of the following purposes:

(a) the designation, classification, and certification of all or any of the following—

(i) aircraft;
(ii) aircraft pilots;
(iii) flight crew members;
(iv) air traffic service personnel;
(v) aviation security personnel;
(vi) aircraft maintenance personnel;
(vii) air services;
(viii) air traffic services;
(ix) aerodromes and Aerodrome operators;
(x) navigation installation providers;
(xi) aviation training organisations;
(xii) aircraft design, manufacture, and maintenance organisations;
(xiii) aeronautical procedures;
(xiv) aviation security providers;
(xv) aviation meteorological services;
(xvi) aviation communications services;
(xvii) any other person who provides services in the civil aviation system, and any aircraft, aero-nautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system;

(b) the setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including but not limited to the following—

(i) the specification of the privileges, limitations, and ratings associated with licences or other forms of approval;

(ii) the setting of standards for training systems and techniques, including recurrent training requirements;

(iii) the setting of medical standards for personnel;

(iv) the requirement for proof of access to appropriate weather services;

(v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products;

(vi) the requirements for notification of insurance coverage for air services;

(vii) the format of aviation documents, forms, and applications, including the specification of information required on all application forms for aviation documents;

(viii) the provision of information to the Minister by applicants or holders of aviation documents;

(c) the conditions of operation of foreign aircraft and international flights to, from, or within Samoa; and

(d) the definitions, abbreviations, and units of measurement to apply within the civil aviation system.

30. Power of Director to make emergency rules – **(1)** Subject to subsection (2), the Director may, in accordance with section 34, make such emergency rules as may be necessary to alleviate or minimise any risk of the death of or serious injury to any person, or of damage to any property.

(2) The Director shall not make any emergency rules unless it is impracticable in the circumstances of the particular case for ordinary rules to be made to effectively alleviate or minimise the risk concerned.

(3) The Head of State, acting on the advice of Cabinet, may revoke any emergency rule made under subsection (1).

(4) Subject to section 138, an emergency rule is taken to be a Regulation for the purposes of the Regulations Ordinance 1953.

31. Procedures relating to rules – **(1)** An ordinary rule shall:

(a) be signed by the Head of State;

(b) contain a statement specifying the objective of the rule and the extent of any consultation under section 33; and

(c) set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under section 35.

(2) An emergency rule shall:

(a) be signed by the Director;

(b) contain a statement specifying the objective of the rule and the extent of the consultation under section 34 that took place before the making of the rule; and

(c) set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under section 35.

32. Matters to be taken into account in making rules – (1) The ordinary rules made by the Head of State acting on the advice of Cabinet, and the emergency rules made by the Director shall not be inconsistent with the following:

(a) the standards of ICAO relating to aviation safety and security, to the extent adopted by Samoa; and

(b) Samoa's international obligations relating to aviation safety and security.

(2) In making any rule, regard shall be had and such weight as is appropriate shall be given in each case to the following:

(a) the recommended practices of ICAO relating to aviation safety and security, to the extent adopted by Samoa;

(b) the level of risk existing to aviation safety in each proposed activity or service;

(c) the nature of the particular activity or service for which the rule is being established;

(d) the level of risk existing to aviation safety and security in Samoa in general;

(e) the need to maintain aviation safety and security;
(f) the costs of implementing aviation safety and security measures;
(g) the international circumstances in respect of aviation safety and security;
(h) such other matters as the Head of State or the Director considers appropriate in the circumstances.

33. Procedure for making ordinary rules – (1) Before an ordinary rule is made, the Minister may:

(a) give interested persons a reasonable time, which shall be specified, to make submissions on the proposed ordinary rule; and
(b) ensure consultation with such persons, representative groups within the aviation industry or elsewhere, Government departments, and State agencies as the Minister in each case considers appropriate.

(2) Subject to subsection (3) and section 138, an ordinary rule shall be notified in the Savali and be made available by the Chief Executive Officer for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.

(3) Where for reasons of security it is inappropriate to notify a rule under subsection (2), the Minister shall notify such persons as the Minister considers appropriate or necessary in the circumstances and service of notification may be effected in such other manner as the Minister considers appropriate or necessary in the circumstances, and the rule shall apply only to the persons so notified.

(4) An ordinary rule comes into force on the date of its notification in the Savali or on such later day as may be specified in the rule or under section 27(4) or, where notified by service on any person under subsection (3), immediately upon service of the rule upon that person and in respect of that person only.

34. Procedure for making emergency rules – (1) Before making an emergency rule, the Director may consult with such persons, representative groups within the aviation industry or

elsewhere, government departments, and State agencies as the Director in each case considers appropriate.

(2) Subject to subsection (4), an emergency rule shall be notified in the Savali and be made available by the Director for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.

(3) An emergency rule comes into force immediately upon its being notified in the Savali, or, where notified by service on any person under subsection (4) immediately upon service of notification upon that person and in respect of that person only.

(4) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule under subsection (2), the Director shall notify such persons as the Director considers appropriate or necessary in the circumstances and service of such notification may be effected by facsimile, telephone, or such other manner as the Director considers appropriate or necessary in the circumstances.

(5) An emergency rule may be in force for a period not exceeding 90 days and may be renewed by the Director once only for a further period not exceeding 30 days:

(a) the Minister may, at any time while an emergency rule is in force in accordance with subsection (5), by notice in the Savali, renew the rule in accordance with subsection (5)(b) for a further period not exceeding 180 days from the date of notification; and

(b) before renewing an emergency rule under subsection (5)(a), the Minister shall consult with such persons, representative groups within the aviation industry or elsewhere, Government departments and State agencies as the Minister thinks appropriate.

(6) So far as any emergency rule is inconsistent or repugnant to any ordinary rule made under this Act, the emergency rule shall prevail.

35. Incorporation by reference – The following may be incorporated by reference into on ordinary an emergency rule:

(a) standards, requirements, or recommended practices of international aviation organisations;

(b) standards, requirements, or rules prescribed under law by any other contracting State of ICAO;

(c) standards, requirements, or rules of any aviation sport or aviation recreational organisation; and

(d) any other written material or document that, in the opinion of the Minister or the Director, as the case may be, is too large or impractical to be printed as part of the rule, and Part 13 applies.

36. Exemption power of Director – **(1)** The Director may, if the Director considers it appropriate and upon such conditions as the Director considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any rule made under section 27, 28 or 29.

(2) Before granting an exemption under subsection (1), the Director shall be satisfied in the circumstances of each case that:

(a) the requirement has been substantially complied with and that further compliance is unnecessary; and

(b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective that actual compliance with the requirement; and

(c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; and

(d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case, and that the risk to safety will not be significantly increased by the granting of the exemption.

(3) The number and nature of exemptions granted under subsection (1) shall be notified as soon as practicable in the Savali.

(4) Nothing in this section applies in any case where any rule specifically provides that no exemptions are to be granted.

PART 4
FEES AND CHARGES

37. Fees and charges – (1) Without limiting section 126, but subject to the provisions of this Act, the Head of State, acting on the advice of Cabinet, may make regulations prescribing, or providing for the fixing of fees and charges payable for all or any of the following purposes:

(a) to provide funds for the establishment, maintenance, and operation of works, facilities, and services under this Act; and

(b) to defray the costs and expenses incurred by the Ministry or its officers and employees in the exercise of functions, powers, and duties and in providing services, under this Act; and

(c) generally for the purposes of civil aviation.

(2) Different rates of fees and charges may be so prescribed or fixed in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, air traffic services, or aeronautical procedures, or on the basis of different times of use, or on any other differential basis.

(3) Any such regulations may:

(a) specify the persons by whom and to whom any fees or charges are payable; and

(b) prescribe penal or overtime or additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays; and

(c) prescribe additional charges for reimbursement of traveling time, accommodation, and other expenses; and

(d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns; and

(e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.

(4) Fees and charges in respect of the use of any airport operated or managed by the Airport Authority shall not be prescribed, except on the advice of the Minister given after consultation with the Airport Authority.

(5) For the purposes of this section, "Airport Authority" has the same meaning as in the Airport Authority Act 1984.

38. Payment of fees and charges – **(1)** Except as otherwise provided in any regulations made under this Act, fees and charges payable under this Act shall accompany the application in respect of which the fees and charges are payable.

(2) Any regulations made under this Act may:

(a) prescribe a date by which any such fee or charge is payable or authorise the Chief Executive Officer to fix the date by which the fee or charge is payable; and

(b) provide for a discount for early payment of any such fee or charge or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee or charge.

39. Suspension or revocation of aviation document for failure to pay fees or charges – **(1)** The Minister may suspend any aviation document if all fees and charges payable in respect of that document under this Act have not been paid within the time prescribed or fixed for payment of those fees and charges, and the Minister may revoke that document if such fees and charges remain unpaid for a period of a least 6 months after the day on which payment is due.

(2) Before suspending or revoking any aviation document under subsection (1), the Minister shall notify the holder of:

(a) the Minister's intention to suspend or revoke the document; and

(b) the right of appeal available to the holder in the event of the document being suspended or revoked.

(3) Where any fee or charge is payable as part of any application or for the provision of any service, the Minister or other person asked to process the application or provide the service may, unless the safety of any person would be put at risk, decline to do so unless the appropriate fee or charge has been paid or arrangements acceptable to the Minister or other person have been made for the fee or charge to be paid.

(4) A person in respect of whom any decision is taken under subsection (1) may appeal against that decision to a District Court under section 62.

40. Recovery of fees and charges for aviation related services – **(1)** Subject to subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by the Ministry or the Airport Authority in relation to any aircraft, the person whose name appears in respect of that aircraft on the Samoa Register of Aircraft is liable to pay that fee or charge.

(2) A person who would otherwise be liable to pay a fee or charge in relation to an aircraft in terms of subsection (1) is not so liable if that person:

(a) proves that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and

(b) has taken all reasonable steps to supply the Ministry or the Airport Authority with such information as would identify the actual user.

PART 5
OFFENCES AND PENALTIES

Division 1 – Safety Offences

41. Endangerment caused by holder of aviation document – **(1)** The holder of an aviation document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, if the act or omission causes unnecessary danger to any other person or to any property.

(2) A person who is convicted of an offence against subsection (1) is liable:

(a) for an individual, to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months; or

(b) for a body corporate, to a fine not exceeding 250 penalty units.

(3) This section is in addition to and not in derogation of any regulations or rules made under this Act.

42. Dangerous activity involving aircraft, aeronautical product, or aviation related service – (1) A person commits an offence who:

(a) operates, maintains, or services; or

(b) does any other act in respect of any aircraft, aeronautical product, or aviation related service in a manner which causes unnecessary danger to any other person or to any property.

(2) A person commits an offence who:

(a) causes or permits any aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or

(b) causes or permits any other act to be done in respect of any aircraft, aeronautical product, or aviation related service, in a manner which causes unnecessary danger to any other person or to any property.

(3) A person who is convicted of an offence against subsection (1) or (2) is liable:

(a) for an individual, a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months; or

(b) for a body corporate, to a fine not exceeding 250 penalty units.

(4) This section is in addition to and not in derogation of any Regulations or rules made under this Act.

43. Court may disqualify holder of aviation document or impose conditions on holding of document – (1) In addition to any penalty the Court may impose under section 41 or 42, the Court may, on convicting any person of an offence against either of those sections:

(a) disqualify the person convicted from holding or obtaining an aviation document or a particular aviation document; or

(b) impose on any aviation document held by or issued to the person convicted, such restrictions or conditions or both as the Court, having regard to the circumstances of the offence, thinks fit for such period not exceeding 12 months as the Court thinks fit.

(2) Nothing in subsection (1) affects or prevents the exercise by the Minister of the powers under section 26.

44. Acting without necessary aviation document – (1) A person commits an offence who:

(a) operates, maintains, or services; or

(b) does any other act in respect of,–

any aircraft, aero-nautical product, or aviation related service, either without holding the appropriate current aviation document is required to be held in respect of that aircraft, product, or service before that act may lawfully be done and knowing that the appropriate aviation document is not held.

(2) A person who is convicted of an offence against subsection (1) is liable:

(a) for an individual, to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months; or

(b) for a body corporate, to a fine not exceeding 250 penalty units.

45. Additional penalty for offences involving commercial gain – (1) In addition to any penalty the Court may impose under section 41, 42 or 44, the Court may, on convicting any person of an offence specified in any of those sections, order that person to pay an amount 3 times the value of any commercial gain resulting from the commission of that offence if the Court is satisfied that the offence was committed in the course of producing a commercial gain.

(2) For the purpose of subsection (1), the value of any gain shall be assessed by the Court, and is recoverable in the same manner as a fine.

Division 2 – General Offences

46. Applying for Aviation Document while disqualified – **(1)** A person commits an offence who applies for or obtains an aviation document while disqualified by an order of the Court from obtaining such document and any such document so obtained is of no effect.

(2) A person who commits an offence against subsection (1) is liable:

(a) for an individual, to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 4 months or; or

(b) for a body corporate to a fine not exceeding 50 penalty units,- and the Court may order the person to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the Court thinks fit.

47. Communicating false information or failing to disclose information relevant to granting or holding of aviation document – **(1)** A person commits an offence who:

(a) by any means provides to the Minister information relevant to the Minister's exercise of powers under this Act, or under rules or Regulations made under this Act, knowing the information to be false or in a manner reckless as to whether it is false; or

(b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Minister information known to that person which is relevant to the Minister's exercise of powers under this Act, or under rules or Regulations made under this Act; or

(c) being the holder of an aviation document, fails without reasonable excuse to provide to the Minister information known to that person which is relevant to the condition specified in section 26(3).

(2) A person who commits an offence against subsection (1) is liable:

(a) for an individual, to a fine not exceeding 15 penalty units or to imprisonment for a term not exceeding 6 months; or

(b) for a body corporate, to a fine not exceeding 75 penalty units.

48. Obstruction of persons duly authorised by Minister – **(1)** A person commits an offence who obstructs or impedes any person who is duly authorised by the Minister and acting in the performance or exercise of any functions, duties, or powers conferred on him or her by this Act, or by any rules made under this Act, and is liable:

(a) for an individual, to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 4 months; or

(b) for a body corporate, to a fine not exceeding 25 penalty units.

(2) Subsection (1) applies only where the person obstructed or impeded is in uniform or produces evidence of his or her authority.

49. Trespass – A person commits an offence and is liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 4 months who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain by a person duly authorised by the Minister, the Chief Executive Officer or the Director in writing for that purpose, or a member of the Samoa Police, or the Manager, Airport Authority or an aviation security officer, or by notice posted by one of those persons.

50. Failure to maintain accurate records – **(1)** A person commits an offence who contravenes any provision of this Act or any rule made under this Act that requires that person:

(a) to make accurate entries in a record; or

(b) to maintain an accurate record; or

(c) to produce to the Minister an accurate record.

(2) A person who is convicted of an offence against subsection (1) is liable:

(a) for an individual, to a fine not exceeding 15 penalty units; or

(b) for a body corporate, to a fine not exceeding 75 penalty units.

51. Contravention of emergency rule, prohibition, or condition – A person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency rule made under section 30 or any prohibition or condition notified under section 14 commits an offence and is liable:

(a) for an individual, to a fine not exceeding 15 penalty units; or

(b) for a body corporate to a fine not exceeding 75 penalty units.

Division 3 – Security Offences

52. Security area offences – **(1)** A person commits an offence who, on being found in a security area:

(a) refuses to state his or her name, address, and authority to enter the security area after—

(i) having been informed that he or she is in the security area; and

(ii) having been requested by an aviation security officer to state those particulars; or

(b) refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so.

(2) A person who is convicted of an offence against subsection (1) is liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 4 months.

53. Personation or obstruction of aviation security officer – **(1)** A person commits an offence who, not being an aviation security officer:

(a) by words, conduct, demeanour or the assumption of the dress, name, designation, or description of an aviation security officer, holds himself or herself out as being 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 or her duty.

(2) A person who is convicted of an offence against subsection (1) is liable to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 4 months.

54. Communicating false information affecting safety – (1) A person commits an offence who by any means provides to another person information relating to the safety of an aircraft, aerodrome, aeronautical product, aviation related service, or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false.

(2) A person who is convicted of an offence against subsection (1) is liable:

(a) for an individual, to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 6 months; or

(b) for a body corporate, to a fine not exceeding 250 penalty units.

(3) Where the commission of an offence against subsection (1) causes financial loss to any person and where the court imposes a fine under subsection (2) in respect of that offence, the court may order that such part of the fine as it thinks fit, but in any event not more than one half of the fine, be awarded to that person.

Division 4 – Disqualification

55. Effect of disqualification – (1) Where the holder of an aviation document is disqualified by an order of a Court from holding or obtaining an aviation document, the document is deemed to be suspended while the disqualification continues in force, and during the period of suspension is of no effect.

(2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document, the document shall on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes and passes such

tests and fulfils such requirements as the Chief Executive Officer may specify.

56. Commencement of a period of disqualification – Where an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification shall commence on the date of the making of the order unless the Court making the order directs that the period of disqualification shall commence on a later date.

57. Retention and custody of document – **(1)** Where by an order of a Court the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall forthwith, and whether or not demand is made, surrender the document to:

(a) the Court where the order was made; or

(b) to any person authorised by the Minister to accept such documents.

(2) Where an aviation document is so surrendered, it shall forthwith be forwarded to the Minister who shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.

(3) If the person entitled to the document is a person to whom section 55(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that section.

58. Removal of disqualification – **(1)** Subject to this section, a person who by order of a Court is disqualified for a period exceeding 6 months from holding or obtaining an aviation document may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the Court by which that order was made to remove the disqualification.

(2) On the application under this section, the Court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.

(3) Where the disqualification was ordered by a District Court, where practicable, an application under this section is to be made to the Judge of the District Court who made the order in the first instance.

(4) Notice of any application under this section shall be served on the Chief Executive Officer who is to be a party to the proceeding.

59. Particulars of disqualification orders, etc., to be sent to Chief Executive Officer – Where a Court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions (or both) on any aviation document held by or issued to any person or makes an order under section 58 removing any disqualification, particulars of the order shall be sent by the Registrar of the Court to the Chief Executive Officer.

60. Appeals against disqualification – **(1)** An order of a District Court by which any person is disqualified from holding or obtaining an aviation document is deemed to be a sentence or part of a sentence, as the case may be. If a notice of appeal against any such order is filed, a Court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order has immediate effect.

(2) A person who is disqualified by an order of a District Court from holding or obtaining an aviation document and who applies for a removal of that disqualification and whose application is refused, may appeal against the refusal to the Supreme Court.

(3) Notice of any appeal under subsection (2) is to be served on the Chief Executive Officer who is to be a party to the appeal unless the Chief Executive Officer advises the Supreme Court otherwise; but in the event of the Court so being advised, the Court shall proceed to hear and determine the merits of the appeal.

(4) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section is to be disregarded.

Division 5 – Offences Punishable On Summary Conviction

61. Offences to be punishable on summary conviction – An offence against this Act is punishable on summary conviction.

PART 6
RIGHTS OF APPEAL

62. Appeal to District Court – Where the Minister or the Director, as the case may be:

(a) declines to register any aircraft under section 23;

(b) imposes conditions on any aviation document under section 14;

(c) refuses to grant any aviation document under section 26;

(d) finds under section 26(1)(b)(ii) or section 26(3) that a person is not a fit and proper person to hold an aviation document;

(e) suspends an aviation document or imposes conditions under section 10;

(f) revokes an aviation document under section 11;

(g) detains an aircraft, seizes an aeronautical product, or imposes any conditions or restrictions, under section 14;

(h) suspends or revokes an aviation document under section 39(1), the person in respect of whom the decision was taken may appeal to a District Court against that decision.

63. Procedure – **(1)** An appeal under section 62 shall be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the District Court may allow.

(2) In determining an appeal under section 62 the District Court may:

(a) hear all evidence tendered and representations made by or on behalf of any party to the appeal, whether

or not that evidence would be otherwise admissible in that Court; and

(b) either—

(i) confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Chief Executive Officer or the Director, as the case may require, as may be necessary to give effect to the Court's decision; or

(ii) refer the matter back to the Chief Executive Officer or the Director, as the case may require, with directions to reconsider the whole or any specified part of the matter.

(3) An appeal under this section is to be by way of rehearing.

(4) Subject to this section, an appeal shall be made and determined under the District Courts Act 1969 and the rules of Court made under that Act and the District Courts Rules 1971, or as determined by the Judge of the District Court.

(5) Subject to section 65, the decision of the District Court is final.

64. Decision of Minister or Director to continue in force pending appeal, etc. – **(1)** A decision of the Minister or the Director that is appealed against under section 62 continues in force pending the determination of the appeal, and no person shall be excused from complying with any of the provisions of the Act or the decision on the ground that any appeal is pending.

(2) Even if any appeal under section 62 may have been determined in favour of the appellant, the Minister or the Director, as the case may be, may, subject to the same right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal, in accordance with the provisions of this Act, with any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or restored in compliance with the decision of the District Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

65. Appeal to Supreme Court on a question of law – **(1)** A party to an appeal under section 62 may appeal to the Supreme Court on a question of law.

(2) An appeal under this section is to be heard and determined in accordance with the rules of Court.

66. Further appeal to Court of Appeal – A party to an appeal under section 65 may, with the leave of the Supreme Court or (if that leave is declined) with special leave of the Court of Appeal, appeal to the Court of Appeal in accordance with law.

67. Evidence and proof – In any proceedings for an offence against this Act, the following provisions apply:

(a) a copy of any aviation document which is certified correct by the Minister or an officer of the Ministry authorised in that behalf by the Minister is sufficient, in the absence of proof to the contrary, to prove that document;

(b) evidence of the contents of the Samoa Register of Aircraft maintained under section 69 may be given by a certificate signed by the Minister or any officer of the Ministry authorised in that behalf by the Minister; and the certificate is sufficient evidence of the matters stated in it, until the contrary is proved;

(c) the production of a certificate signed by the Minister or by an officer of the Ministry authorised in that behalf by the Minister to the effect that on a specified date a person or organisation was or was not the holder of any aviation document or any specified type of aviation document is sufficient evidence of the matter certified, until the contrary is proved; and

(d) until the contrary is proved, it is presumed that a certificate purporting to have been certified or given under this section has been certified or given by the Minister or by an officer of the Ministry authorised by the Minister to certify documents or give certificates under this section.

68. Evidence of air traffic services provider – (1) A document used in recording services in relation to the movement of any aircraft and purporting to have been initiated at the time of the movement by an employee of a person providing air traffic services is admissible in any Court and in any judicial examination or proceeding as *prima facie* evidence that the air traffic services described in the document were provided on the date and for the aircraft referred to in the document.

(2) A document certified by an employee of a person providing air traffic services purporting to be a computer record of the provision of air traffic services, the particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, is admissible as if it were a document to which subsection (1) applies.

(3) For the purposes of this section, "computer record" includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.

PART 7
REGISTRIES AND INFORMATION SERVICES

69. Samoa Register of aircraft – (1) The Minister shall establish a register to be called the Samoa Register of Aircraft.

(2) The Minister shall enter into the Register such particulars as may be prescribed of any aircraft registered under section 23(1)(a).

70. Civil Aviation Registry – (1) The Minister shall establish a Civil Aviation Registry.

(2) Copies or appropriate evidence of the following are to be recorded and maintained at the Registry:

(a) a current aviation document;
(b) the Samoa Register of Aircraft;
(c) a regulation made under this Act, and any rule notified in the Savali and for the time being in force;
(d) any material incorporated into a rule by reference under section 35;
(e) any accident and incident notification given under section 22;

(f) any airworthiness directive issued by the Director under section 8;

(g) any delegation, authorisation, and exemption granted in writing under this Act; and

(h) the address for service of any current applicant for an aviation document and of any current aviation document holder.

(3) Documents kept at the Registry are to be made available by the Minister for inspection by the public free of charge.

71. Information services – **(1)** The Manager, Airport Authority shall ensure that an information service is provided which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity, and efficiency of air navigation.

(2) The Manager, Airport Authority shall ensure that such information and instructions are readily available to any person upon payment of a reasonable charge fixed by the Minister.

PART 8
AVIATION SECURITY

72. Aviation Security – The safeguarding of international civil aviation operations against acts of unlawful interference and the protection of persons and property from dangers arising from the commission or attempted commission of such crimes, shall be the joint responsibility of the Samoa Police Service and the authorised provider of aviation security services at an aerodrome or navigation installation.

73. The responsibility of Minister – The Minister shall ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations.

74. Authorised aviation security services – Aviation security services shall be provided by the Airport Authority under the Airport Authority Act 2012.

75. Functions and duties of aviation security services– Without limiting the powers, functions, duties, or responsibilities of the Police under this Act or any other enactment, and without limiting section 73, aviation security services has the following functions and duties:

(a) to carry out passenger and baggage screening of all international aircraft passenger services and of such other services where the service or the screening is judged advisable by the Minister or the Chief Executive Officer and, where necessary, to undertake searches of passengers, baggage, cargo, aircraft, aerodromes and navigation installations; and

(b) to carry out aerodrome security patrols and patrols of navigation installations; and

(c) to review, inquire into, and 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

(d) to undertake, or encourage or supervise, such experimental or research work in respect of any aspect of aviation security as the Chief Executive Officer may specify; and

(e) for the purpose of better carrying out any of its functions under this Act, to cooperate with the Police, Government departments, operators, and authorities administering the airport security services of other countries, and with any appropriate international organisation; and

(f) to exercise and perform such other functions and duties as may be conferred on it by any other enactment.

76. Security designated aerodromes and navigation installations – **(1)** The Minister may, by notice in the Savali, designate any aerodrome or navigation installation as a security designated aerodrome or security designated installation.

(2) A designation under subsection (1) may at any time be revoked, in whole in part, or amended by the Minister by notice in the Savali.

77. Right of access – (1) Subject to subsections (2) and (3), an aviation security officer while on duty may at any time enter any security designated aerodrome or a security designated navigation installation, or any aircraft, building, or place in any part of a security designated aerodrome or security designated navigation installation, for the purpose of exercising and carrying out his powers, functions, and duties under this Act.

(2) Unless the aviation security officer is accompanied by an officer of the Police, the power of entry conferred by subsection (1) is limited to peaceful and non-forcible entry.

(3) If the Police have taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any part thereof or any aircraft, building, or place, is subject to such limitations as the senior member of the Police present at the aerodrome or navigation installation specifies.

(4) Where an aircraft or vehicle is not being used for commercial purposes, subsection (1) does not apply unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

78. Security areas – (1) The Minister may declare, by a sign or signs affixed at the perimeter thereof, that an area within any security designated aerodrome or security designated navigation installation is a security area.

(2) No person other than a member of the Police on official duties or an aviation security officer shall enter or remain in any security area unless authorised by the Minister or the Manager, Airport Authority or other person having control thereof.

(3) A person in a security area shall, on the request of an aviation security officer, state his or her name, address, the purpose of his or her presence in the security area, and his or her authority to enter it, and shall produce satisfactory evidence of the correctness of his or her stated name and address.

(4) Where a person who fails or refuses to provide an aviation security officer with satisfactory evidence of his or her name and address when requested by the aviation security officer, or where a person fails to satisfy the aviation security officer that he or she is

authorised to be there, the aviation security officer may order that person to leave the aviation security area.

(5) An aviation security officer, and a person whom the officer calls to his or her 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 under subsection (4).

(6) A person who refuses to comply with subsection (3) or (4) and, after having been warned that he or she commits an offence, persists in its commission, may be detained by an aviation security officer and in that case he or she shall as soon as may be practicable be delivered to a member of the Police.

(7) A passenger embarking or disembarking directly through gateways or thoroughfares in an airport approved for that purpose by the licensee of the airport is deemed to be authorised to pass through any security area forming part of those gateways or thoroughfares.

79. Powers of arrest – (1) An aviation security officer may arrest without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if the officer has reasonable grounds to believe that an offence has been or is being committed by that person against any of the following enactments:

(a) sections 107 and 112;

(b) section 13 of the Arms Ordinance 1960.

(2) A person called upon to do so by an aviation security officer is justified in assisting him or her in good faith to arrest any person.

(3) An aviation security officer shall as soon as may be practicable deliver the arrested person to a member of the Police.

80. Arrest of persons delivered to Police – (1) A member of the Police shall accept delivery of a person whom an aviation security officer seeks to deliver to the member under this Part if the member has reasonable grounds to suspect that person of having done or admitted to do anything if that act or omission is an offence against section 52 or any enactment specified in section 79(1).

(2) The member of the Police who accepts delivery of a person under subsection (1) may forthwith arrest that person.

(3) An aviation security officer who detains any person under section 78(6) and delivers that person to a member of the Police, and any person who at his or her 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 doing so.

81. Powers of Police – A sworn member of the Police shall have and may exercise all or any of the powers conferred on an aviation security officer under this Act or regulations or rules made under this Act.

PART 9
AIR SERVICE OPERATIONS

82. Offence to carry on air service without licence, etc. – (1) A person who:

(a) carries on an air service operation otherwise than pursuant to the authority of a licence;

(b) carries on an air service operation otherwise than in conformity with the conditions of a licence;

(c) knowingly does any act in any capacity as agent for any air service that he or she knows is being carried on otherwise than pursuant to the authority of a licence; and

(d) knowingly does any act in any capacity as agent for any air service that he or she knows is being carried on otherwise than in conformity with the conditions of a licence,–

commits an offence and is liable on summary conviction to a fine not exceeding 100 penalty units and if the offence is a continuing one, to a further fine not exceeding 20 penalty units for every day during which the offence has continued.

(2) If a body corporate is convicted of an offence against this section, any director and any other person concerned in the management of the body corporate commits the same offence if it is proved that the act or omission that constituted the offence occurred with his or her authority, permission, or consent.

83. Applications for licences – **(1)** An application for a licence is made to the Minister as prescribed, or in a form acceptable to the Minister.

(2) An application for a licence is accompanied by a statutory declaration by the applicant or (if the applicant is a body corporate) by a responsible officer of the applicant to the effect that all statements, information, and other particulars contained in the application are correct.

(3) An application for a licence is accompanied by 2 copies of:

(a) a written statement setting out the nature of the proposed air service; and—

(i) a statement detailing the full registered company name and any other trading name;

(ii) the address of the company for service of notices or correspondence and these to be clearly indicated;

(iii) a brief description of the company structure;

(iv) the companies bankers name and address;

(v) details of the aircraft to be operated and any proposed substitutions and state of registry of these aircraft;

(vi) a certificate with details of the insurance cover, the amount of that cover and what is covered;

(vii) details of the Civil Aviation Authority or equivalent organisation that issued the air operator certificate and a certified copy of that certificate;

(viii) details of the State conducting the continuing operator surveillance;

(ix) the proposed schedule and the proposed initial fare prices if applicable;

(x) the requested traffic rights if applicable;

(xi) the name and address for notice or correspondence in Samoa and the names of the key personnel at that address;

(xii) a copy of the business licence certificate in Samoa;

(xiii) any other document or information requested by the Minister or the Chief Executive Officer;

(b) any other submissions which the applicant wishes to make in support of the application;

(c) such documents, testimonials, or other written evidence as the applicant considers will assist the Minister in his or her consideration and determination of the application;

(d) a written statement identifying each person intended to be responsible for the management and control of the proposed air service; and

(e) if the applicant or a person referred to in subsection (2) is a body corporate, a written statement identifying the person or persons (not being bodies corporate) who in fact have control of the body corporate.

84. Public notice to be given of application – (1) The applicant shall give public notice of the application.

(2) The public notice shall contain:

(a) the name of the applicant;

(b) the nature of the proposed air service;

(c) an invitation for any person to supply to the Minister any written comments he or she may wish to make about the application within 14 days after the date of public notice; and

(d) a statement of the provisions of subsection (3).

(3) A written comment supplied to the Minister under subsection (2)(c) is to be accompanied by a statutory declaration by the person or persons making the comments to the effect that all statements of fact contained in those comments are correct.

(4) The Minister shall supply the applicant with a copy of all comments received following the invitation made under subsection (2)(c), as soon as practicable after the Minister has received them.

(5) Within 7 days after receiving such information and submissions or within such longer period as the Minister may allow at the request of the applicant, the applicant may supply the Minister with such additional written information and particulars as he or she thinks fit.

85. Consideration of application – As soon as practicable after the required procedure has been completed, the Minister shall proceed to consider and determine the application and if:

(a) after so considering the application the Minister reaches the provisional view that the application should be declined; or

(b) for any other reason it is considered the Minister should hear the applicant in person, the Minister shall hold a formal meeting and give no less than 10 days' notice of the proposed meeting to the applicant.

86. Grant of licence, etc – **(l)** Subject to subsection (3), after considering the application under section 85, the Minister shall

grant to the applicant the licence sought if the Minister is satisfied that:

(a) the proposed air service is likely to be carried on in a safe and reliable manner; and

(b) the applicant's liability for loss of or damage to property caused by events occurring in connection with the carrying on the proposed air service is or will be covered by insurance—

(i) in respect of such kinds of event; and

(ii) up to such amount in respect of each kind of event, as the Minister considers appropriate.

(2) In satisfying himself or herself that the proposed air service is likely to be carried on in a safe and reliable manner, the Minister shall have regard to the following matters, and no others:

(a) the nature of the proposed air service, including—

(i) the type of service proposed;

(ii) the area or areas within which, the locations between which, or the routes on which, it will operate;

(iii) the aircraft to be used in the service; and

(iv) the facilities for the repair and maintenance of the aircraft; and

(v) the operational conditions under which the aircraft will be used;

(b) the experience, competence, and repute as operators of or participating in any business, trade, or profession of the person or persons who will be responsible for the management and control of the proposed air service (including any relevant training or educational qualifications of those persons).

(3) In having regard under subsection (2)(b) to the experience, competence, and repute of any person that is a body corporate, the Minister shall have regard to the experience, competence, and repute of the person or persons (not being bodies corporate) who in fact have control of that body corporate.

(4) A decision of the Minister under this section shall be in writing and, if an application is not granted or is granted in terms not applied for by the applicant, the reasons for that decision are to be included in it.

87. Condition applying to licences – **(1)** It is a condition of a licence that the licensee shall not carry on the air service authorised by the licence unless all fees and other money payable under any Act, regulation, or bylaw in respect of the carrying on of the air service or in respect of any aircraft used in the air service have been duly paid.

(2) It is a condition of a licence that the licensee shall give not less than 14 days' notice to the Minister of any proposed change in or proposed addition to the aircraft or other major assets used in the air service authorised by the licence.

(3) It is a condition of a licence that the licensee shall give to the Minister notice of:

(a) any change in the person or persons responsible for the management or control of the air service authorised by the licence; and

(b) if the licensee or any of the persons referred to in paragraph (a) is a body corporate, any change in the person or persons (not being bodies corporate) who in fact have control of that body corporate, either before the change occurs or within 14 days after it has occurred.

(4) It is a condition of a licence that:

(a) the licensee shall not abandon the air service authorised by the licence without giving at least 21 days' written notice to the Minister, and not less than 21 days concurrent public notice, of the intention to abandon the service; and

(b) the licensee shall, not later than 4 p.m. on the due date for renewal of the insurance referred to in section 86(1)(b), deposit with the Minister a certificate endorsed by the insurers or an insurance broker of the renewal or replacement of the insurance.

(5) If the certificate referred to in subsection (4)(b) is not deposited with the Minister before that time on that date, the

licence is taken to be suspended until the certificate is so deposited.

(6) The licensee shall give not less than 14 days written notice to the Minister of:

(a) any alteration of the localities served by the service or of the route or routes on which it is to operate;

(b) any alteration to a published timetable setting out the service offered by the licensee; and

(c) any curtailment of any kind of the service which is proposed to last for more than 7 days.

(7) The Minister may direct the licensee to give public notice of any such alteration or curtailment in such form as the Minister considers appropriate.

88. Form and effect of licence – **(1)** A licence is to be in the prescribed form and shall be signed by the Minister.

(2) A licence shall authorise the licensee to carry on the air service specified in the licence subject to and in accordance with the provisions of this Act.

(3) During the period that any licence is suspended under section 92, the licence is taken not to have any force or effect.

89. Register of licences, etc – **(1)** The Minister shall keep a register of licences granted under this Part.

(2) Evidence of the contents of the register may be given in any proceedings by a certificate signed by the Minister and the certificate is sufficient evidence of the matters stated in it in the absence of proof to the contrary.

(3) A certificate signed by the Minister that on a date specified in the certificate the name of any person did not appear in any register as the holder of a licence under this Act, in the absence of proof to the contrary, is sufficient evidence that that person was not the holder of any such licence on that date.

(4) If the Minister is satisfied that a licence has been lost, defaced, or destroyed, the Minister may on payment of a prescribed fee and (if the licence has been defaced) on the surrender to him of the licence, issue a duplicate licence, which is to be signed by the Minister and endorsed as a duplicate licence.

90. Surrender and cancellation of licences – **(1)** A licensee may surrender his or her licence by forwarding it, together with written notice of the surrender to the Minister.

(2) If a licensee has abandoned the air service authorised by his licence, the Minister may without formality cancel the licence after giving not less than 14 days' notice of the intention to do so.

(3) If a licence has been superseded by another licence, the Minister may without formality cancel the superseded licence.

(4) The Minister shall note in the register kept under section 70 a surrender or cancellation of a licence under this section.

91. Duration and renewal of licences – **(1)** An air service licence takes effect or is taken to take effect on such day, whether before or after the date thereof, as may be stated in the licence and, unless sooner revoked, or unless expressed to expire on an earlier date, expires on the completion of 2 years or such other period and may be prescribed, after the date on which it took effect:

PROVIDED THAT where application for renewal of an air service licence is duly made and where the application is not disposed of before the date of the expiry of the licence, continue in

force until the application is disposed of, unless the Minister otherwise directs.

(2) For renewal of a licence, the Minister shall require any amendment to the information deemed necessary to be provided for the original application.

(3) The renewal of an air service licence has effect, unless expressed to expire at an earlier date, for a period of 2 years from the expiry of the licence in renewal of which it is granted, but any such renewal may be granted in advance to take effect as aforesaid.

92. Inquiry into operation of licences and breach of conditions – **(1)** If the Minister on stated grounds suspects that:

(a) owing to changed circumstances, any air service no longer meets the criteria set out in section 86(1); or

(b) a licensee has failed to comply with any condition of the licence,–

the Minister may conduct an inquiry under this section specifying the matters to be inquired into and the grounds on which the suspicion of the Minister is based.

(2) The Minister shall give not less than 28 days written notice to the licensee affected by the inquiry, and a concurrent period of not less than 28 days public notice, of the matters to be inquired into and of the time and place at which it is proposed to conduct the inquiry.

(3) The notice given under subsection (2) to the licensee affected shall also set out the grounds on which the suspicion of the Minister, is based.

(4) The Minister shall forward to the licensee affected a copy of all such information and of any submissions as soon as practicable after the Minister has received them.

(5) Only the licensee affected by the inquiry and the Minister, are entitled to be parties to any inquiry under this section.

(6) If the inquiry is into whether any air service still meets the criteria set out in section 86(1), section 86(3) applies with the necessary modifications.

(7) If as a result of the inquiry the Minister is satisfied that the air service concerned no longer meets the criteria set out in section

86(1) or that a licensee has failed to comply with any condition of the licensee's licence, as the case may be, the Minister may make an order:

(a) suspending the licence for a specified period not exceeding 1 year;

(b) imposing as a condition of the licence, a restriction on the number, type, and capacity of aircraft which may be operated by the licensee under the licence for a specified period not exceeding 1 year; or

(c) revoking the licence.

(8) The Minister may, whether or not the Minister exercises any powers under subsection (7), order any party to the inquiry to pay some or all of the costs of the inquiry, and to pay to any other party such costs and expenses (including expenses of witnesses) as it considers reasonable, and may apportion any such costs and expenses between the parties or either of them in such manner as the Minister thinks fit.

(9) The Minister may review any order made under subsection (7)(a) or (b) on the application of the licensee to whom the order applies and, if the Minister is satisfied that, because of changed circumstances, the order is causing undue hardship to the licensee and ought to be cancelled or modified, the Minister may:

(a) cancel any suspension of a licence or reduce the period of suspension; and

(b) cancel any conditions imposed under subsection (7)(b) or modify it so that it is less onerous.

(10) A decision of the Minister under subsection (7) or (9) shall be in writing and shall include the reasons for the decision.

(11) The Minister shall note, in the register kept under section 70, any decision under subsection (7) or (9).

93. Enforcing orders for costs and expenses – For the purpose of enforcing any order of the Minister for the payment of costs and expenses, a duplicate of such order may be filed by the person to whom the costs and expenses are payable in the office of the District Court named in the order and shall thereupon be enforceable in all respects as a final judgment of that Court in its civil jurisdiction.

94. Appeals from decisions of Minister – **(1)** Subject to section 95, there is a right of appeal to the District Court against the whole or any part of the decision of the Minister in respect of any air service licence or in respect of any application made to, or any inquiry or review conducted by, the Minister.

(2) The appeal is to be made by giving notice of appeal within 28 days from the date of the decision of the Minister appealed against.

(3) The notice of appeal shall state the grounds of appeal.

95. Persons entitled to appeal – The following persons may appeal:

(a) the person in respect of whose application the decision was given;

(b) the holder of the licence in respect of which the decision was given;

(c) a party to an inquiry under section 92.

96. Hearing of appeal – **(l)** Subject to this Part, the procedure in respect of any such appeal shall be as determined by the Court or in accordance with any rules of Court applicable.

(2) The Court may in any case, if it considers it is in the interests of the parties or of any of them and is not contrary to the interests of other persons concerned or the public interest, order that the hearing or any part of it is to be held in private.

(3) The Court may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it (whether heard in public or in private); but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal or of any decision of the Court.

97. Determination of appeal – **(1)** In its determination of any appeal, the Court may confirm, modify, or reverse the decision appealed against, or any part of that decision, and, subject to section 98 the decision of the Court is final.

(2) Despite subsection (1), the Court may in any case, instead of determining any appeal under that subsection, direct the Minister to reconsider, either generally or in respect of any specified matters,

the whole or any specified part of the matter to which the appeal relates.

(3) In giving any direction under this section the Court shall:

(a) advise the Minister of its reasons for so doing; and

(b) give to the Minister such directions as it thinks just concerning the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

98. Appeal to Court of Appeal – Any further appeal may be made in accordance with law.

99. Rights of licensee pending determination of appeal – Pending the determination of any appeal to the Court against a decision of the Minister, the licensee may carry on the air service to which the appeal relates in the manner in which and to the extent to which the licensee was entitled to carry it on at the time when the decision of the Minister was given or, in the case of a decision granting a new licence to the licensee in accordance with the terms of that decision.

Division 1 – General Provisions

100. .Service of notices – **(1)** A notice or other document under this Part may be served or given:

(a) by delivering it personally to the person on whom it is to be served or to whom it is to be given;

(b) by leaving it, or sending it by post in a registered letter addressed to such person, at his usual or last known place of residence or business in Samoa or at the address stated by him or her in any application or other document under this Act; or

(c) by so delivering or posting it to any agent or attorney of such person.

(2) If a notice or other document is sent by post in the manner prescribed by subsection (1), it is taken to be served at the time at which the letter would have been delivered in the ordinary course of post; and in proving service of any such notice or other document is sufficient to prove that it was properly addressed and that it was accepted by the Post Office as a registered letter and that the notice

or other document has not, to the knowledge of the person making the declaration or affidavit of service or otherwise proving service, been returned by the Post Office to the sender.

101. Prosecution of offences – **(1)** Any proceedings in respect of offences under this Part is to be taken on the information of the Minister or any other person appointed by the Minister for that purpose.

(2) In any proceedings for an offence against this Part, it is presumed, in the absence of proof to the contrary, that the informant is authorised under subsection (1) to take the proceedings.

102. Powers of authorised persons – For the purposes of any investigation, inquiry, or enforcement action under this Part, any officer of the Ministry shall have and may exercise the same

powers as the officer is authorised to exercise under this Act or under any Regulations in force under this Act.

103. Evidence and proof – In any proceedings for an offence under this Act:

(a) if it is proved that passengers or goods were carried on any aircraft, that fact is, in the absence of proof to the contrary, sufficient evidence that an air service was carried on by means of that aircraft; and

(b) a licence may be proved by the production of a copy of the licence certified to be correct by the Minister; and

(c) judicial notice is to be taken of the signature of the Minister or the Chief Executive Officer.

104. Regulations – The Head of State acting on the advice of Cabinet, may make Regulations for all or any of the following purposes:

(a) providing for the custody and production of licences, and providing for and requiring the production or return of licences that have been suspended, cancelled, or revoked, and for the production of

licences for the variation or revocation of conditions or the addition of new conditions;

(b) prescribing fees payable in respect of any application under this Part or in respect of any matter in relation to the administration of this Part for which it is expedient to charge fees;

(c) prescribing accounts and records required to be kept by licensees, and prescribing the statistical returns required to be made to the Chief Executive Officer by licensees;

(d) prescribing offences in respect of the contravention of or non-compliance with any Regulations made under this Part, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding 10 penalty units and, where the offence is a continuing one, a further amount not exceeding 1 penalty unit for each day or part of a day during which the offence has continued; and

(e) providing for such matters as are contemplated by or necessary for giving full effect to this Part and for its due administration.

PART 10
AVIATION CRIMES

105. Repealed by Act 17, 2014.

106. Repealed by Act 17, 2014.

107. Other crimes relating to aircraft – A person commits a crime, and is liable on conviction on indictment to imprisonment for a term not exceeding 14 years, who, whether in or outside Samoa:

(a) on board an aircraft in flight, commits an assault which is likely to endanger the safety of the aircraft;

(b) destroys an aircraft in service;

(c) causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight;

(d) places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight;

(e) destroys, damages, or interferes with the operation of any air navigation facility used for the purposes of international air navigation, where the destruction, damage, or interference is likely to endanger the safety of aircraft in flight;

(f) endangers the safety of an aircraft in flight by communicating to any other person any information which the person supplying the information knows to be false; or

(g) endangers the safety of an aircraft, whether in flight or on the ground, by interfering with—

(i) any part of the aircraft;

(ii) any item of aircraft equipment; or

(iii) any matter or thing related to the operational capability of the aircraft.

108. Crimes deemed to be included in extradition treaties – **(1)** *Repealed by Act 17, 2014*.

(2) For the purposes of the Extradition Act 1974 and any designation made by the Head of State under section 3 of that Act each crime described in section 107 (including attempting to commit that crime, aiding, abetting, inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed, and being an accessory after the fact to that crime) is taken to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between Samoa and any foreign country which is a party to the Montreal Convention. A certificate signed by the Minister of Foreign Affairs that any foreign country is a party as aforesaid is sufficient evidence of that fact.

(3) Where, under the provisions of subsection (2) , a crime is taken to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1974 in respect of an act or omission which amounts to that crime is liable to be surrendered under that Act, whether the act or omission occurred

before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(4) In this section, "foreign country" includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Hague Convention or, as the case may be, the Montreal Convention extends.

109. Surrender of offenders – **(1)** Where the surrender of a person is sought under the Extradition Act 1974 in respect of any act or omission which amounts to any crime described in section 107 of this Act (including attempting to commit any of the crimes so described, aiding, abetting, inciting, counselling, or procuring any person to commit any of the crimes so described, inciting, counselling, or attempting to procure any person to commit any of the crimes so described when it is not in fact committed, and being an accessory after the fact to any of the crimes so described), and for which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a country which is a party to the Hague Convention or the Montreal Convention, as the case may require, that act or omission is taken to have been committed within the jurisdiction of that country although it was committed outside the territory of that country. A certificate signed by the Minister of Foreign Affairs that a country is a party to either Convention is sufficient evidence of that fact.

(2) In this section, "country" includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty (if any) and the Hague Convention or, as the case may be, the Montreal Convention, extends.

110. Application of section 107 – (1) *Repealed by Act 17, 2014.*

(2) Nothing in section 107(a), (b), (c) or (d) applies if both the place of take-off and the place of actual or intended landing of the aircraft (not being a Samoa aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless:

(a) the alleged offender is a Samoa citizen or a person ordinarily resident in Samoa; or

(b) the act or omission occurred in Samoa; or

(c) the alleged offender is present in Samoa.

(3) Nothing in section 107(a), (b), (c) or (d) applies to aircraft used in military, customs, or police service (not being aircraft used for the purpose of the Samoa Customs Service or of the Samoa Police Service), unless:

(a) the alleged offender is a Samoa citizen or a person ordinarily resident in Samoa; or

(b) the act or omission occurred in Samoa.

111. Application of certain provisions of Crimes Act 2013 – Nothing in section 7 of the Crimes Act 2013 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond Samoa) applies with respect to any of the crimes described in section 107 of this Act.

Division 2 – Taking Firearms, Explosives, Ammunition Or Other Dangerous Weapon On To Aircraft

112. Taking firearms, explosives, ammunition or other dangerous weapon, on to aircraft – **(1)** A person commits a crime, and is liable to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft:

(a) any firearm;

(b) any other dangerous or offensive weapon or instrument of any kind whatsoever;

(c) any ammunition; or

(d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft.

(2) In this section, "firearm" means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any such

gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is for the time being dismantled.

Division 3 – Search of Passengers, Baggage and Cargo

113. Search of passengers, baggage, and cargo – **(1)** A sworn member of the Samoa Police, or any aviation security services officer, or any officer of Customs, or any employee or agent of the carrier authorised by the carrier for the purpose may, with the consent of the passenger, search any passenger and the passenger's baggage before the passenger boards any aircraft in Samoa under any contract providing for the carriage of the passenger by air from any place in Samoa to any other place (whether in Samoa or elsewhere).

(2) If the passenger declines to allow himself or herself or his or her baggage to be searched, the carrier may refuse to carry the passenger.

(3) A carrier is not liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part thereof, by reason of the fact that the carrier has refused to carry a passenger who has declined to allow himself or herself or his or her baggage to be searched.

(4) The following provisions apply with respect to any search made under subsection (1):

(a) the passenger is not required to remove any article of clothing (other than a coat or similar article) for the purpose of being searched; and

(b) except where the search is made by means of any mechanical or electrical or electronic or other similar device, no female is to be searched except by a female.

(5) An employee or agent of the carrier authorised by the carrier for the purpose, or any aviation security officer, may examine any

cargo before the cargo is loaded on to any aircraft in Samoa pursuant to a contract providing for the carriage of the cargo by air from a place in Samoa to any other place (whether in Samoa or elsewhere).

114. Search of persons declining to allow search – (1) Where:

(a) under section 113(2) a carrier refuses to carry a person who has declined to allow himself, herself, or his or her baggage to be searched; and

(b) a sworn member of the Samoa Police has reasonable grounds to suspect that a crime against this Act in relation to the aircraft on which that person was to be carried has been, or is being, or is likely to be, committed, whether by that person or by any other person, –

the sworn member of the Police may, without warrant, search the person and his or her baggage and may detain the person for the purposes of that search, and may take possession of any article referred to in section 112(a), (b), (c) or (d) found in the course of that search.

(2) The refusal of a person to allow himself, herself, or his or her baggage to be searched under section 113 is not of itself constitute reasonable grounds for suspecting that a crime against this Act in relation to the aircraft has been, is being, or is likely to be, committed.

(3) A sworn member of the Samoa Police Service exercising the power of search conferred by subsection (1) shall identify himself or herself to the person searched, and shall also inform that person that the search is being made pursuant to that subsection. The member shall also if not in uniform and if so required, produce evidence that he or she is a sworn member of the Samoa Police Service.

115. Evidence of offences – Nothing found in the course of a search or examination made under section 113 or 114 is admissible as evidence in any criminal proceedings against the person who, or whose baggage, has been searched, or, as the case may be, the consignor of any cargo that has been examined, other than proceedings in respect of a crime against this Act or the crime of

treason or any crime punishable by imprisonment for life or for a term of 3 years or more, or in respect of an offence against section 13 of the Arms Ordinance 1961, (which relates to the unlawful carriage or possession of firearms, ammunition, or explosives), or in respect of an offence against the Narcotics Act 1967.

Division 4 – Powers Of Aircraft Commander

116. Powers of aircraft commander – **(1)** Without limiting the Crimes Act 2013, if the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft:

(a) anything which is an offence under the law of the country in which the aircraft is registered (not being a law of a political nature or a law based on racial or religious discrimination);

(b) anything which jeopardises or may jeopardise—

(i) the safety of the aircraft or of persons or property on board the aircraft; or

(ii) good order and discipline on board the aircraft, –

the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary—

(A) to protect the safety of the aircraft or of persons or property on board the aircraft;

(B) to maintain good order and discipline on board the aircraft; or

(C) to enable the commander to disembark or deliver that person in accordance with subsection (4) or (5).

(2) A member of the crew of an aircraft and any other person on board the aircraft may:

(a) at the request or with the authority of the commander of the aircraft, and any member of the crew shall if so required by the commander, assist in restraining any person whom the commander is entitled under subsection (1) to restrain; and

(b) without the commanders authority, take with respect to any person on board the aircraft such

reasonable measures, including restraint, as he or she has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(3) A restraint imposed on a person on board an aircraft under the powers conferred by subsection (1) or (2) shall not be

continued after the aircraft ceases to be in flight, unless the commander of the aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in flight, either before or as soon as reasonably practicable after that time that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued:

(a) for a period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with the requisite consent of the appropriate authorities to disembark or deliver the person. under restraint in accordance with subsection (4) or (5); or

(b) if the person under restraint agrees to continue his or her journey under restraint on board that aircraft.

(4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardise:

(a) the safety of the aircraft or of persons or property on board the aircraft; or

(b) good order and discipline on board the aircraft: the commander may, if he or she considers it necessary in order to protect the safety of the aircraft, disembark that person in any country in which the aircraft may be.

(5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered, he or she may deliver that person:

(a) in Samoa, to a sworn member of the Samoa Police Service; or

(b) in any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a sworn member of the Samoa Police Service.

(6) If the commander of an aircraft disembarks any person under subsection (4), in the case of a Samoa aircraft, in any country, or, in the case of any other aircraft, in Samoa, the commander shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation (being, in Samoa, a sworn member of the Samoa Police Service and the appropriate diplomatic or consular office of the country of nationality of that person).

(7) If the commander intends to deliver any person in accordance with subsection (5), the commander must, before or as soon as practicable after landing, give notification of his or her intention and of the reasons:

(a) if the country is Samoa, to a sworn member of the Samoa Police Service or immigration officer or, for any other country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in Samoa; and

(b) in either case to the appropriate diplomatic or consular office of the country of nationality of the person.

(8) The commander of an aircraft who, without reasonable cause, fails to comply with the requirements of this section commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(9) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this section does not commit an offence and is not liable to any proceeding in respect of those measures.

116A. Other offences – A person who acts in a manner, or does anything, that:

(a) is contrary to section 116(1)(b); or

(b) requires or causes the commander of an aircraft to take measures referred to in section 116, –

commits an offence, and upon conviction is liable to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 5 years, or both.

117. Arrest of persons delivered to Police – **(1)** A sworn member of the Samoa Police Service shall accept delivery of a person whom the commander of an aircraft seeks to deliver to that member under section 116(5) if that member has reasonable grounds to suspect that person of having done or omitted on board that aircraft anything that is a crime against this Act or any other Act.

(2) If a sworn member of the Samoa Police Service accepts delivery of a person under subsection (1), that member shall forthwith arrest that person.

118. Power to search persons on aircraft – If the commander of an aircraft in flight has reasonable grounds to suspect that a crime against this Act has been, is being, or is likely to be, committed on board or in relation to that aircraft, the commander, or any member of the crew of the aircraft or any other person on board the aircraft authorised by him or her to do so, may search any person or baggage on board the aircraft, and may take possession of any article found which has been used or could be used to effect or facilitate the commission of a crime against this Act.

Division 5 – Miscellaneous Provisions

119. Attorney General's consent required for prosecutions – No proceedings for the trial and punishment of any person charged with a crime against section 107 or 112 shall be instituted in any court except with the consent of the Attorney General:

PROVIDED THAT a person charged with any such crime may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of a prosecution for the crime has not been obtained, but

no further proceedings shall be taken until that consent has been obtained.

120. Aircraft in military, customs, or police service – Nothing in sections 112 to 118 (inclusive) applies to aircraft used

in the military, customs, or police service of any country, including Samoa.

121. Joint registration of aircraft – Where an aircraft is subject to joint or international registration, it is taken for the purposes of this Act to be registered in the country which, according to the records of ICAO, is the country of registration.

PART 11
MISCELLANEOUS

122. Nuisance, trespass, and responsibility for damage – (1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any rules made under section 27, 28 or 29, so long as the provisions of the rules are duly complied with.

(2) 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, so long as the provisions of this Act and of any rules made under this Act are duly complied with.

(3) Where material damage or loss is caused to property on land or water by an aircraft in flight, taking off, landing, or alighting, or by any person or article in or falling from the aircraft, damages shall be recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his or her fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.

(4) Where damage or loss is caused in the manner described in subsection (3) and in circumstances in which:

(a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of subsection (3); and

(b) some person other than the owner is liable to pay damages in respect of the damage or loss,–

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

(5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered the provisions of the Contributory Negligence Act 1964 as to apportionment apply.

(6) Damages:

(a) shall not be recoverable under subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute; and

(b) shall be recoverable from the person descending, –

and subsection (4) shall, with the necessary modification, apply as if the person descending were the owner of the aircraft. This subsection does not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where it is required to avoid injury or death.

(7) Where an aircraft has been hired out to any other person by the owner of the aircraft, for a period greater than 28 days and no pilot, commander, or operative member of the crew of the aircraft is in the employment of the owner, this section applies as though a reference to the owner were a reference to the person to whom the aircraft has been so hired out.

(8) In this section, "fault" means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from the Contributory Negligence Act 1964, give rise to the defence of contributory negligence.

123. Indemnity in respect of certain messages – **(1)** No person shall have any right to compensation nor shall any liability be imposed upon the State or any person lawfully acting on its behalf by reason of any error, omission, or delay in the transmission of any message to which this section applies.

(2) This section shall apply to any message of a class prescribed in that behalf by Regulations or rules made under this Act (not being a message which may affect the safety of any

aircraft) transmitted through any aeronautical communication service established under this Act.

124. Airport Authority to be sole provider of air traffic services – The Airport Authority is the only person entitled to provide air traffic services in Samoa.

125. Flight over foreign country without authority or proper purpose – **(1)** This section applies to:

(a) any aircraft that is registered or required to be registered in Samoa under this Act; and

(b) any other aircraft operated by a person who is a permanent resident of Samoa or whose principal place of business is in Samoa.

(2) A person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or health of, or the safety of air navigation in relation to, that country or territory.

(3) In any prosecution for an offence against subsection (2), where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to the security of, public order or health of, or the safety of air navigation in relation to, the foreign country or territory, in the absence of evidence to the contrary it is presumed that the defendant knew that the aircraft was being so used.

(4) A person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where:

(a) the flight is not duly authorised; or

(b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory,–

unless the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.

(5) In any prosecution for an offence against subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary it is presumed that the defendant knew that the direction had been given.

(6) The requirement in subsection (4) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.

(7) In this section, "appropriate aero-nautical authority" includes any person, whether a member of the military authorities or the civil authorities of the foreign country or territory, who is authorised under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.

(8) A person who commits an offence against subsection (2) or (4) is liable on conviction:

(a) for an individual, to a fine not exceeding 25 penalty units or to imprisonment for a term not exceeding 12 months; or

(b) for a body corporate, to a fine not exceeding 250 penalty units.

126. General Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations for all or any of the following purposes:

(a) prescribing, or providing for the fixing of, fees and charges payable under this Act;

(b) prescribing those breaches of rules made under this Act that constitute offences against this Act;

(c) prescribing the penalty for each offence prescribed under paragraph (b), which—

(i) for an individual, is to be a fine not exceeding 15 penalty units; or

(ii) for a body corporate, is to be a fine not exceeding 75 penalty units; and

(d) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Any Regulations made under this Act may be so made that different Regulations apply with respect to different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, or aeronautical procedures, or with respect to the same class of person, aerodrome, aircraft, aero-nautical product, aviation related service, or aeronautical procedure in different circumstances.

127. Other Acts not affected – Nothing in this Act is to be construed to limit or affect the operation of any provision of the Citizenship Act 2004, or of any provision of the Immigration Act 2004, or, except as expressly provided in this Act, of any provision of the Crimes Act 2013.

PART 12
ACCIDENT INQUIRY

128. Notification of accidents – **(1)** Without limiting section 21, the responsible person who is required to notify the Minister of an accident shall advise by the quickest means, such of the following information as is immediately available:

(a) the type, nationality, and registration marks of the aircraft;
(b) the name of the owner, operator, and hirer (if any) of the aircraft;
(c) the name of the pilot in command;
(d) the date and time of the accident;
(e) the last point of departure and the point of intended landing of the aircraft;
(f) the position of the aircraft with reference to an easily defined geographical point;
(g) the number of persons killed and the number seriously injured (if any); and
(h) the nature and the extent of the damage to the aircraft so far as is known.

(2) If all the particulars specified in subsection (1) are not immediately available, the notification shall so state, and a

supplementary notification containing the particulars not included in the first notification shall be given to the Minister as soon as possible.

(3) If the aircraft to which the accident has occurred is registered in a State other than Samoa, the Minister shall forward to the State of registry the particulars supplied in the notifications required under this section, together with advice as to the nature of the inquiry being conducted in respect of the accident.

129. Custody of aircraft involved in accidents – **(1)** Where an accident occurs to an aircraft in Samoa territory, the aircraft (including the contents and parts thereof) is taken to be in the custody of the Minister for such period as the Minister considers necessary for the purposes of an accident inquiry, and shall not be removed or otherwise interfered with except with the permission of the Minister.

(2) Despite subsection (1), the aircraft may be moved to the extent necessary:

(a) to extricate persons, animals, mails, and valuables;

(b) to prevent destruction or damage by fire or other causes; and

(c) to eliminate any danger or obstruction to air navigation, to other transport, or to the public.

130. Constitution of Board of Inquiry – **(1)** The Minister shall constitute a Board of Inquiry of one or more members for the purpose of investigating the circumstances of an accident, or where the Minister considers it necessary in the public interest, any other occurrence:

(a) to a Samoa aircraft; or

(b) to any other aircraft in Samoa territory.

(2) A person appointed to a Board of Inquiry shall have appropriate aircraft accident investigation qualifications or other qualifications as the Minister considers appropriate in the circumstances.

131. Duties of Board of Inquiry – **(1)** The Board of Inquiry shall obtain and record all available information relevant to the circumstances of the accident or other occurrence and, where

appropriate, shall visit the scene of the accident and examine wreckage.

(2) Without limiting section (1), the Board of Inquiry has the following powers:

(a) to enter any aircraft, aerodrome, building or place where the board believes on reasonable grounds that it is necessary to do so for the purpose of investigating an accident or incident;

(b) to inspect, make copies of, or take extracts from, or retain any document or record that the Board believes on reasonable grounds is relevant to the investigation of an accident or incident;

(c) where necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any aircraft, place, aeronautical product, or any other thing involved in any manner in an accident or incident, to prohibit or restrict access of persons or classes of persons to the site of any accident or incident;

(d) to seize, detain, remove, preserve, protect, or test any aircraft, aeronautical product, or a thing that the Board believes on reasonable grounds will assist in establishing the cause of an accident or incident.

(3) Nothing in subsection (2) confers on any person the power to enter any dwelling house unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(4) A warrant issued under subsection (3) shall be directed to a named person and is valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.

(5) A person exercising the power of entry conferred by subsection (2) or (3) shall carry a warrant of authority issued by the Minister specifying:

(a) the name and the office or offices held by the person; and

(b) that the person is authorised by the Minister to exercise the power conferred by subsections (2) and (3) to enter aircraft, aerodromes, buildings, and places and to carry out such inspection.

(6) A person exercising the power of entry conferred by subsections (2) and (3) shall produce the warrant of authority and evidence of identity:

(a) if practicable on first entering the aircraft, aerodrome, building, or place; and

(b) whenever subsequently reasonably required to do so.

132. Accidents to aircraft of other states – **(1)** Where the aircraft to which the accident occurred is registered in a State other than Samoa, the Minister shall institute an inquiry into the circumstances of the accident and, subject to such conditions as he or she considers necessary, an accredited representative of the State of registry or of any Contracting State which has, on request, provided information in connection with the accident, together with advisers, may participate in the inquiry, and in that event the Minister shall, so far as he or she is able, facilitate inquiries by that representative.

(2) Despite subsection (1), the Minister may delegate the whole or any part of the inquiry to the accredited representative of the State of registry.

133. Accidents outside Samoa territory – Where an accident which occurred outside Samoa territory is being investigated by a Contracting State, the Minister shall, on request, provide that State with any relevant information available to him or her, including information concerning air navigation facilities and other aviation services which may have been used by the aircraft prior to the accident, on the condition that the State conducting the inquiry, if requested, permits a representative appointed by the Minister to participate in the inquiry.

134. Report on inquiry – **(1)** The Board of Inquiry shall, as soon as practicable after the completion of an inquiry, forward to the Minister a report of its findings including a summary of evidence and other essential information on which the findings are based.

(2) The Minister may cause the whole or any part of any such report to be made public in such manner as he or she thinks fit.

(3) Where the inquiry concerns an accident to an aircraft registered in another State the Minister shall, as soon as practicable, forward a copy of the report to that State, and relevant extracts from the report to any other State which has, on request, provided information to the Board of Inquiry.

(4) If after receipt of the report, new and significant evidence becomes available the Minister may re-open the inquiry.

135. Right of access over private lands – **(1)** Where an aircraft is wrecked or damaged at any place in Samoa, 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 a public road equally convenient, pass and re-pass either with or without vehicles, over any 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) The owner or occupier who suffers direct injury or loss in consequence of the exercise of the rights given by subsection (1) is entitled to receive compensation therefor, the amount of the compensation to be fixed by agreement with the Minister with the concurrence of the Minister of Finance, or in default of agreement by the Supreme Court.

136. Effect to Regulations – Where regulations or rules make provision in relation to the holding of inquiries and to any other matter provided for in this Part, full effect is to be given to the regulations and rules although they may require matters additional to, or be more onerous than the provisions of this Part.

PART 13
ADOPTION OF FOREIGN REGULATIONS AND CODES

137. Power to adopt Foreign Rules – **(1)** For the purposes of sections 27, 30, 104 and 126, regulations and rules made thereunder may adopt Regulations, Rules or Codes of Practice

applying to the regulation of civil aviation matters in foreign countries (hereinafter referred to in this Act as "foreign rules").

(2) Where foreign rules are adopted by regulation or rules made under this Act, all courts, departments, licensees, owners, officers and persons shall give full faith and effect to the foreign rules adopted.

(3) No foreign rule, or part thereof, is to be rendered invalid, inoperative or irrelevant because it makes reference to any law, agency, authority, document, procedure, person or thing that is not in existence, or is not applicable to the laws, in Samoa, and any reference to such law, agency, authority, document, procedure, person or thing:

(a) is taken to be a reference to the corresponding law, agency, authority, document, procedure, person or thing within Samoa or under the laws of Samoa; and

(b) where there is no clearly corresponding law, agency, authority, document, procedure, person or thing within Samoa or under the laws of Samoa—

(i) the closest equivalent law, agency, authority, document, procedure, person or things within Samoa or under the laws of Samoa is deemed to be the law, agency, authority, document, procedure, person or thing referred to and in this respect regard shall be had to any directive issued by the Minister for the purpose of identifying the closest equivalent; and

(ii) where, despite subparagraph (i), it remains impossible to determine the closest equivalent, the Minister may designate any law, agency, authority, document, procedure, person or thing to be the equivalent in Samoa.

138. Regulations Ordinance 1953 modified – **(1)** Despite anything to the contrary in this Act or in sections 3 and 6 of the Regulations Ordinance 1953 there shall be no requirement that foreign rules be printed in the Samoan language or that they be made available for sale.

(2) A copy of each foreign rule adopted by Regulation is to be kept at places determined by the Minister or the Director and shall be available for inspection.

(3) Copies of individual rules or provisions may be obtained if photocopying facilities are available and at a cost to be determined by the Director or by the Manager, Airport Authority, if copies are held under his or her control.

139. Foreign Rules to remain in force – **(1)** Where a foreign rule has been adopted by regulations or rules made under this Act, it shall stand and apply as if made under this Act and shall remain in force despite that it may have at any time ceased to have operation in the country of its origin.

(2) Where a foreign rule is amended in its country of origin the Minister may determine that the amendment applies in Samoa and the foreign rule is thereby taken to have been amended by regulations made under this Act.

140. Application of foreign rules delayed – **(1)** Where the Minister determines that the application of any provision of a foreign rule should be deferred until persons affected by it can reasonably be expected to comply with it, the Minister may at any time determine that the operation of such provision be deferred until a date set by the Minister.

(2) Where a time or time for compliance is stipulated in any provision of a foreign rule, in the absence of a determination made by the Minister under subsection (1), regard may be had to any directive issued by the Minister for the purpose of determining the appropriate time or time for compliance to apply in Samoa.

PART 13
SAVINGS AND REPEAL

141. Saving of licenses, inquiries, proceedings, documents, and conditions imposed – **(1)** All aviation documents issued under the Civil Aviation Act 1963, and being current at the time of this Act coming into force, shall be of full effect as if issued under this Act and shall remain in force as if commencing on the date that the Civil Aviation Act 1963 is repealed and this Act comes into force.

(2) Despite subsection (1), the Minister may determine that any aviation document issued under the Civil Aviation Act 1963 shall expire on the date on which it was originally intended to terminate.

(3) Any requirement made, or condition imposed upon the holder of, or applicant for, an aviation document under the Civil Aviation Act 1963 shall have full effect as if made, imposed or required under this Act.

(4) Any enforcement proceeding, prosecution or inquiry taken under the Civil Aviation Act 1963 and as yet undetermined at the time of the coming into force of this Act shall remain in force and shall be maintainable under the Civil Aviation Act 1963 notwithstanding that the Act may be repealed during the course of such proceeding, prosecution or inquiry.

(5) The Minister may determine that any enforcement, proceeding, prosecution or inquiry referred to in sub-section 4 hereof shall be deemed to proceed under the corresponding or similar provision under this Act and thereafter it shall proceed as if taken under the provision of this Act.

142. Repeal of Acts and Regulations – The Acts and Regulations specified in Schedule 1 are repealed upon the coming into force of this Act.

SCHEDULE
(Section 142)

REPEAL OF ACTS AND REGULATIONS

1. Civil Aviation Act 1963 and the Regulations made thereunder;

2. Ministry of Transport Amendment Act (No.10 of 1989) sections 2, 3(c), 4, 5, 6 and 7.

REVISION NOTES 2008 – 2018

This is the official version of this Act as at 31 December 2018.

This Act has been revised by the Legislative Drafting Division from 2008 to 2018 respectively under the authority of the Attorney General given under the Revision and Publication of Laws Act 2008.

The following general revisions have been made:

(a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.

(b) Amendments have been made to up-date references to offices, officers and statutes.

(c) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

- (i) "Every" and "any" changed to "a" or "each" where appropriate
- (ii) "shall be" changed to "is" and "shall be deemed" changed to "is taken"
- (iii) "shall have" changed to "has"
- (iv) "shall be guilty" changed to "commits"
- (v) "notwithstanding" changed to "despite"
- (vi) "pursuant to" changed to "under"
- (vii) Numbers in words changed to figures
- (viii) "hereby" and "from time to time" (or "at any time" or "at all times") removed
- (ix) "under the hand of" changed to "signed by"
- (x) Parts and Divisions inserted
- (xi) Sections 116(2) and 122(6) divided into paragraphs
- (xii) "Etc." deleted and replaced with complete sentences
- (xiii) Arrangement of provisions made consisted with the text.
- (xiv) "Crimes Ordinance 1961" deleted and replaced with "Crimes Act 2013.
- (xv) Section 116(2) paragraphed.
- (xvi) Parts numbering changed to decimal numbers.

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the *Counter Terrorism Act 2014, (No.7), (commenced on 7th April 2014)*:

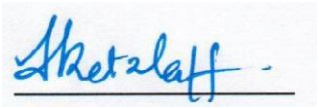
Section 2: inserted new definitions for "convention country", "commander" and "Samoan-controlled aircraft".

By the *National Prosecution Office Act 2015 (commenced on 1 January 2016):*

Section 119 Omit references to "Attorney General" and substitute with "Director of Public Prosecutions".

By the *Constitution Amendment Act (No. 1) 2017, No. 8:*

Section 119 Omit references to "Director of Public Prosecutions" and substitute with "Attorney General".



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

This Act is administered by
the Ministry of Works, Transport and Infrastructure.