



ANALYSIS

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1984, No. 16

An Act to make provision for the licensing of air services within the Cook Islands

(27 December 1984)

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

1. Short Title - This Act may be cited as the Air Services Licensing Act 1984.
2. Interpretation - In this Act, unless the context otherwise requires -

"Aircraft" means any machine that can derive support in the atmosphere from the reactions of the air; and includes any equipment or device attached to an aircraft while in flight;

"Air service" means an air transport service, whether regular or casual, in respect of any journey beginning and ending in the Cook Islands; and includes any such service in which the aircraft used leaves and returns to the same aerodrome without any intermediate stop;

"Air transport service" means any service provided by means of an aircraft for the carriage of passengers or goods for hire or reward; but does not include any such service carried or solely for the purpose of giving instruction in the control or navigation of aircraft in flight;

"Goods" means all kinds of movable property; including animals and mail;

"Licence" means an air service licence granted under this Act;

"Licensee" means the holder for the time being of a licence;

"Minister" means the Minister of Civil Aviation;

"Passenger" means any person carried on an aircraft other than-

- (a) A person assigned by the operator of the aircraft for duty as a member of the crew of the aircraft; or
- (b) A person carried solely for the purpose of assisting in the operation of the aircraft or in the performance of any service in which the aircraft is or will be engaged;

"Secretary" means the Secretary of Trade, Labour, and Transport.

3. Air service not to be carried on without licence - (1) Every person commits an offence, and is liable to a fine not exceeding \$200, for every day on which the offence has been committed, who-

- (a) Carries on an air service otherwise than pursuant to the authority of a licence; or
- (b) Carries on an air service otherwise than in conformity with the conditions of a licence; or
- (c) Knowingly does any act in any capacity as an agent for any air service that he knows is being carried on otherwise than pursuant to the authority of a licence; or
- (d) Knowingly does any act in any capacity as an agent for any air service that he knows is being carried on otherwise than in conformity with the conditions of a licence.

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

4. Minister to be sole licensing authority - (1) The Minister shall be the sole licensing authority to grant air service licences and to exercise jurisdiction in respect of them.

(2) For the purpose of enabling the Minister to discharge his functions, the Minister may from time to time appoint any person or persons to inquire into and report to him upon matters in relation to any licence or application for a licence.

(3) For the purposes of this section, the Commissions of Inquiry Act 1966 shall, as far as it is applicable and with the necessary modifications, apply as if the Minister and any person or persons appointed by him under subsection (2) were a Commission of Inquiry appointed under that Act.

5. Application for licence - (1) Every application for a licence shall be lodged with the Secretary.

(2) Every applicant for a licence shall, in support of his application, supply such information and documents as may be required by the Secretary.

6. Public notice to be given of application - (1) On receiving an application for a licence, the Minister shall give public notice, in such manner as he thinks fit, of the receipt of the application; specifying in the notice a time, being not less than 21 clear days from the date of the notice, within which he will receive written representations relating to the application.

(2) The Minister shall not finally consider the application until after the expiry of the time so specified.

7. Matters to be taken into consideration when granting licence - In considering any application for the grant of a licence, the Minister shall take into consideration-

- (a) The extent to which the proposed service is necessary in the public interest;
- (b) Any matters affecting the safe, orderly, and economic development of air services within the Cook Islands;
- (c) The financial ability of the applicant to carry on the proposed service, and the likelihood of his carrying it on satisfactorily;
- (d) Timetables or frequency of the proposed service;
- (e) The proposed fares and charges for the carriage of passengers and goods;
- (f) The air services already provided in respect of the places to be served and in respect of the proposed routes and the air transport requirements of those places;
- (g) The capacity of the aircraft proposed to be used in connection with the service;
- (h) The technical and operational aspects of the proposed service, and any other matters likely to affect safety;
- (i) Any written representations received by the Minister in relation to the application;
- (j) Such other matters as the Minister thinks fit.

8. Licence may be granted subject to conditions - (1) The Minister, in considering any application for the grant of a licence, may refuse it, or may grant it wholly or partly, and subject to such conditions as he thinks fit, including, but without limiting the generality of the Minister's powers, power to prescribe-

- (a) The class and number of aircraft to be used in connection with the service, and the maximum or minimum capacity thereof;
- (b) Any class of goods that may or may not be carried;
- (c) A date not later than which the service shall be commenced;
- (d) The places to be served and the routes to be followed;
- (e) The frequency of service to be observed;
- (f) The fares to be charged for the carriage of passengers and the charges to be made for the carriage of goods.

(2) The licence shall be in such form as the Minister thinks fit.

9. Proof of insurance cover - The Minister may, before granting any licence or the renewal of any licence, require the applicant for the licence or renewal (whether or not at the time of the making of the application he was actually carrying on the service to which it relates) to furnish to the satisfaction of the Minister proof that his liability which may arise out of or in connection with the operation of the service in respect of the death of or bodily injury to any person, and in respect of loss of or damage to any property, is covered by insurance or otherwise to such extent as the Minister thinks reasonable, having regard to the nature and extent of the service.

10. Licensee not to abandon service - (1) It shall be a condition of every licence (whether inserted therein or not) that the licensee will not abandon or curtail the authorised service without the consent of the Minister.

(2) If a licensee abandons or curtails any service in breach of subsection (1), the Minister may, in his discretion, revoke the licence.

11. Register of licences (1) The Secretary shall keep a register of licences, and shall note therein from time to time every renewal, transfer, revocation, suspension, or variation of any licence.

(2) The contents of the register may be evidenced in any proceedings by a certificate under the hand of the Secretary, and every such certificate shall, until the contrary is proved, be sufficient evidence of the matters stated therein.

(3) A certificate under the hand of the Secretary that on a date specified in the certificate the name or any person did not appear in the register as the holder of a licence shall, until the contrary is proved, be sufficient evidence that that person was not the holder of a licence on that date.

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12. Duration of licence - Every licence shall take effect or be deemed to have taken effect on such day, whether on or before or after the date thereof, as may be stated therein, and shall, unless sooner revoked, or unless expressed to expire at an earlier date, expire on the completion of one year after the date on which it took effect:

Provided that where application for the renewal of a licence is duly made as provided in section 14, the licence shall, 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.

13. Variation of licence - (1) During the currency of a licence, the Minister may, of his own motion or on the application of the licensee, amend or revoke any of the terms or conditions of the licence or add any terms or conditions which are necessary in the public interest.

(2) The Minister shall give to the licensee, and to every other person who in his opinion is likely to be affected, not less than 21 clear days' notice of his intention to exercise any power conferred on him by this section.

(3) Every such amendment or revocation or addition of new terms or conditions made pursuant to this section shall be noted on the register of licences.

14. Renewal of licence - (1) Every application for the renewal of a licence shall be lodged with the Secretary not less than 3 months before the date on which the licence expires.

(2) Section 5(2) shall apply to every application for the renewal of a licence as if it were an application for a new licence.

(3) The Minister shall give to every person who in his opinion is likely to be affected not less than 21 clear days' notice of every application for the renewal of a licence.

(4) No person shall be entitled as of right to the renewal of a licence, and, in considering any application for a renewal, the Minister shall take into consideration all that he is required by section 8 to take into consideration in considering an application for a licence.

(5) The renewal of a licence shall take effect, unless expressed to expire at an earlier date, for a period of one year 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.

15. Inquiries as to carrying on of service - (1) The Minister may at any time appoint any person or persons to hold a public inquiry as to whether or not any air service carried on under the authority of a licence is being carried on in conformity with the terms and conditions of the licence.

(2) Notice in writing of the intention to hold the inquiry shall-

- (a) Be given to the licensee and to all persons who in the opinion of the person or persons appointed to hold the inquiry are interested; and

- (b) Contain particulars of the day, time, and place fixed for the inquiry and of the matters proposed to be inquired into; and
- (c) In the case of a notice to the licensee, be given not less than 21 clear days before the date fixed for the inquiry.

(3) For the purposes of the inquiry, the Commissions of Inquiry Act 1966 shall, so far as it is applicable and with the necessary modifications, apply as if the person or persons appointed to hold the inquiry were a Commission of Inquiry appointed under that Act.

(4) If, after considering the report of the person or persons holding the inquiry, the Minister is satisfied that the licensee is not carrying on the service in conformity with the licence, or that he has disposed of the service to any other person, the Minister may, in his discretion, revoke the licence.

(5) Instead of revoking any licence under this section, the Minister may suspend the licence for such period as he thinks fit, and he may in any case, without any inquiry being held under this section, so suspend any licence if he is satisfied that the licensee has wilfully committed a breach of any of the conditions of the licence.

16. Revocation of licence where service not commenced - Notwithstanding anything in section 15, a licence may be revoked by the Minister, without any inquiry being held under that section, if the service authorised by the licence is not commenced on the date specified in that behalf in the licence.

17. Transfer of licence - (1) Subject to this section, a licence may with the consent of the Minister be transferred to any person.

(2) Every application for the Minister's consent to a transfer of a licence shall be lodged with the Secretary not less than 3 months before the date of the proposed transfer.

(3) The Minister shall give to every person who, in his opinion, is likely to be affected not less than 21 clear days' notice of his intention to consider any application for consent to the transfer of a licence.

(4) The Minister, after considering the application and any objections thereto, may grant or refuse his consent to the transfer of the licence, but shall not grant his consent to the transfer unless he is satisfied that the proposed transferee is financially able to carry on the service and is likely to carry it on satisfactorily.

18. Minister's decision final - (1) Proceedings before the Minister under this Act shall not be held bad for want of form.

(2) No appeal shall lie from any decision made by the Minister under or for the purposes of this Act, and, except on the ground of lack of jurisdiction, no such proceeding or decision shall be liable to be challenged, reviewed, quashed, or called in question in the High Court.

19. Returns to be furnished - Every person carrying on an air service pursuant to a licence, shall furnish to the Secretary such financial and statistical returns and statements as the Secretary may from time to time require, by notice in writing addressed to and given to that person.
20. Proceedings for offences - (1) All proceedings for offences against this Act shall be taken on the information of the Secretary or a person appointed by the Secretary.
- (2) No person so appointed shall be called upon to prove that he has been so appointed.
21. Evidence in proceedings - In any proceedings for an offence against this Act-
- (a) Proof that any person has carried passengers or goods on any journey beginning and ending in the Cook Islands shall, until the contrary is proved be sufficient evidence of the carrying on of an air services:
 - (b) Any licence may be proved by a copy of the licence certified to be correct by the Secretary:
 - (c) Judicial notice shall be taken of the signature of the Minister and of the Secretary.
22. Provisions of this Act in addition to provisions of other Acts - (1) The provisions of this Act are in addition to and not in derogation of any other Act relating to the licensing and control of aircraft.
- (2) In particular, no aircraft, by virtue of it being used in connection with any air service licensed under this Act shall be exempt from the operation of any regulations under the Civil Aviation Act 1964 of the Parliament of New Zealand.
23. Regulations - The Queen's Representative may from time to time, by Order in Executive Council, make such regulations as may be necessary for giving effect to this Act and for its due administration, including prescription of fees for licences issued under this Act.
24. Savings - Every air service licence in force at the commencement of this Act granted pursuant to the International Air Services Licensing Act 1947 of the Parliament of New Zealand (as applied to the Cook Islands by section 24A of that Act) continue in force after the commencement of this Act, according to its tenor, as if it had been granted under this Act.
25. Repeals - The following enactments of the Parliament of New Zealand shall cease to have effect as part of the law in the Cook Islands:
- (a) The International Air Services Licensing Act 1947:
 - (b) The International Air Services Licensing Amendment Act 1965.

This Act is administered in the Department of Trade, Labour and Transport.