

REFER 19

No. 2.



NEW ZEALAND

ANALYSIS

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1948, No. 12

Title.

AN ACT to provide for the Regulation of Civil Aviation and to give effect to a Convention on International Civil Aviation signed on behalf of the Government of New Zealand at Chicago on the Seventh Day of December, Nineteen hundred and forty-four.

[26th August, 1948

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Civil Aviation Act, 1948.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“Aerodrome” means any area of land or water normally used for the taking off, landing, or alighting of aircraft, and includes any buildings or installations on or adjacent to any such area used in connection with the aerodrome or its administration:

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- “ Aircraft ” means any air supported vehicle:
- “ Air navigation ” means the operation of guiding an aircraft from one place to another, and includes the operation of fixing the position of an aircraft when required:
- “ Air traffic ” includes the movement of aircraft on an aerodrome:
- “ Convention ” means the Convention on International Civil Aviation, signed on behalf of the Government of New Zealand in Chicago on the seventh day of December, nineteen hundred and forty-four, and includes the international standards and recommended practices and procedures adopted by the International Civil Aviation Organization, in pursuance of Article 37 of the Convention:
- “ New Zealand ” includes the Cook Islands, Western Samoa, the Tokelau Islands, and any other territory subject to the protection, trusteeship, or authority of the Government of New Zealand.

3. (1) The Governor-General may from time to time, by Order in Council, make such regulations as appear to him to be necessary or expedient—

Power to give effect to Convention and regulate civil aviation.

(a) For carrying out the Convention, any Annex thereto relating to international standards and recommended practices and procedures (being an Annex adopted in accordance with the Convention) and any amendment of the Convention or any such Annex made in accordance with the Convention; or

(b) Generally for regulating civil aviation.

(2) Without limiting the general powers hereinbefore conferred, it is hereby declared that regulations may be made under this section making provision—

(a) For the licensing, inspection, and regulation of aerodromes, for access to, or for prohibiting or controlling access to, aerodromes and places where aircraft have landed, for access to factories for the purpose of inspecting work therein carried on in relation to aircraft,

or parts thereof, or aviation equipment, and for prohibiting or regulating the use of unlicensed aerodromes:

- (b) For minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air traffic or air navigation, and for prohibiting or regulating the use of any such apparatus:
- (c) Regulating the display of signs and lights likely to endanger aircraft:
- (d) Generally for securing the safety, efficiency, and regularity of air traffic and the safety of aircraft and of persons and property carried therein, for preventing aircraft endangering other persons and property, and, in particular, for the detention of aircraft for any of the purposes specified in this paragraph:
- (e) Regulating the use of the civil air ensign and any other ensign authorized for purposes connected with civil aviation:
- (f) Regulating the charges that may be made for the use of aerodromes licensed or approved under the regulations and for any facilities provided or services rendered at those aerodromes or in connection with those aerodromes:
- (g) Prescribing the fees to be paid in respect of the issue, validation, renewal, extension, or variation of any certificate, licence, or other document or the undergoing of any examination or test required by the regulations and in respect of any other matters in respect of which it appears to the Governor-General in Council to be expedient for the purposes of the regulations to charge fees:
- (h) For obtaining such information as may be required for the purposes of the regulations, and for the forms of applications, certificates, and other documents required under the regulations:
- (i) Exempting from the provisions of the regulations or any of them any aircraft or persons or classes of aircraft or persons.

(3) Any regulations made under this section may provide for the imposition of penalties not exceeding a fine of two hundred pounds or imprisonment for a term of six months.

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4. (1) In time of war, whether actual or imminent, or of national emergency, the Governor-General may, by Proclamation, regulate or prohibit, either absolutely or subject to such conditions as may be contained in the Proclamation, and notwithstanding the provisions of this Act or of any regulations made thereunder, the flight of all or any descriptions of aircraft over New Zealand or any portion thereof; and without limiting the generality of this provision, any such Proclamation may provide for taking possession of and using for the purposes of His Majesty's Naval, Military, or Air Forces any aerodrome or any aircraft, machinery, plant, material, or things found therein or thereon, or any aviation equipment elsewhere, and for regulating or prohibiting the use, erection, building, maintenance, or establishment of any aerodrome, flying-school, or any class or description thereof.

Special powers
in case of
emergency.

(2) Any such Proclamation may provide for the imposition of penalties to secure compliance with the Proclamation, not exceeding those which may be imposed pursuant to subsection three of the last preceding section, and may authorize such steps to be taken in order to secure such compliance as appear to the Governor-General to be necessary.

(3) Any person who suffers direct injury or loss owing to the operation of a Proclamation under this section shall be entitled to receive compensation therefor, the amount of the compensation to be fixed by agreement with the Minister of Defence with the concurrence of the Minister of Finance, or in default of agreement to be fixed by a Compensation Court under Part III of the Public Works Act, 1928:

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Provided that no compensation shall be payable by reason of the operation of a general Proclamation under this section prohibiting flying in New Zealand or any part thereof.

See Reprint
of Statutes,
Vol. VII, p. 645

(4) A Proclamation under this section may be revoked or varied by a subsequent Proclamation.

Nuisance,
trespass, and
responsibility
for damage.

5. (1) Any regulations made under section three of this Act may provide for regulating the conditions under which noise and vibration may be caused by aircraft or aircraft engines on aerodromes and may provide that subsection two of this section shall apply to any aerodrome in respect of which provision as to noise and vibration caused by aircraft is so made.

(2) No action shall lie in respect of nuisance by reason only of the noise and vibration caused by aircraft or aircraft engines on an aerodrome to which this subsection applies by virtue of any regulations made under section three of this Act so long as the provisions of the regulations are duly complied with.

(3) No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, or the ordinary incidents of such flight, so long as the provisions of this Act and of any regulations or Proclamation made thereunder are duly complied with; but where material damage or loss is caused by an aircraft in flight, taking off, landing or alighting, or by any person in any such aircraft, or by any article or person falling from any such aircraft, to any person or property on land or water, damages shall be recoverable from the owner of the aircraft in respect of the damage or loss, without proof of negligence or intention or other cause of action, as if the damage or loss had been caused by his 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:

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

(a) Damages are recoverable from the owner in respect of the said damage or loss by virtue only of the preceding provisions of this subsection; and

(b) A legal liability is created in some person other than the owner to pay damages in respect of the said damage or loss,—

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

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

(5) For the purposes of this section the term "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, 1947, give rise to the defence of contributory negligence. 1947, No. 3

6. (1) Where an aircraft is operated in such a manner as to be the cause of unnecessary danger to any person or property, the pilot or the person in charge of the aircraft, and also the owner thereof unless he proves to the satisfaction of the Court that the aircraft was so operated without his actual fault or privity, shall be liable on summary conviction to a fine not exceeding two hundred pounds, or to imprisonment for a term not exceeding six months, or to both such imprisonment and such fine. Penalty for dangerous operation of aircraft. A.M.D. 19 No. 11.

(2) For the purposes of this section the expression "owner" in relation to an aircraft includes any person to whom the aircraft is demised, let, or hired out at the time of the offence.

(3) The provisions of this section shall be in addition to and not in derogation of any general safety or other regulations under this Act.

7. The law relating to wreck and to salvage of life or property, and to the duty of rendering assistance to vessels in distress (including the provisions of the Shipping and Seamen Act, 1908, and any other Act relating to those subjects), shall apply to aircraft on or over the sea or tidal waters as it applies to vessels, and the owner of an aircraft shall be entitled to a reasonable reward for salvage services rendered by the aircraft to any ship, aircraft, property, or persons in any case where the owner of a ship would be so entitled: Wreck and salvage. REP. 13 No. See Reprint of Statutes, Vol. VIII, p. 249

Provided that the Governor-General may from time to time, by Order in Council, make modifications of and exemptions from the provisions of any such law in their application to aircraft, to such extent and in such manner as appears necessary or expedient.

Power to provide for investigation of accidents.

8. (1) The Governor-General may from time to time, by Order in Council, make regulations providing for the investigation of any accident or any unusual or dangerous incident arising out of or in connection with air traffic or air navigation.

(2) Without limiting the generality of the foregoing provisions, regulations under this section may contain provisions—

(a) Requiring notice to be given of any such accident or incident as aforesaid in such manner and by such persons as may be specified in the regulations:

(b) Requiring a report to be made, in such manner and by such persons as may be specified in the regulations, of any mechanical or structural defect discovered during the operation of any aircraft:

(c) Prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred, and authorizing any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with any such aircraft:

(d) Conferring on any person holding an investigation under the regulations the rights and powers of a Commission appointed under the Commissions of Inquiry Act, 1908, and applying all or any of the provisions of that Act accordingly:

(e) Authorizing or requiring the cancellation, revocation, suspension, endorsement, or surrender of any licence or certificate granted under this Act or under any Proclamation, Order in Council, or regulations made thereunder, where it appears on an investigation that the licence or certificate ought to be cancelled, revoked, suspended, endorsed, or

See Reprint of Statutes, Vol I. p. 1036

surrendered, and for the production of any such licence or certificate for the purpose of being so dealt with.

(3) If any person contravenes or fails to comply with any regulations under this section he shall be liable on summary conviction to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding six months.

9. (1) Any Proclamation, Order in Council, or regulations under this Act may apply generally throughout New Zealand, or within any specified part or parts thereof, and may apply to all aircraft or to any specified class or classes of aircraft.

General provision as to Orders in Council, &c.

(2) In so far as the by-laws of any local authority in force in any locality are inconsistent with or repugnant to the provisions of any Proclamation, Order in Council, or regulations under this Act in force in the same locality, the by-laws shall, in so far as they relate to aircraft and air traffic be deemed to be subject to the Proclamation, Order in Council, or regulations, notwithstanding that any such by-laws may have been made under some other Act.

(3) All Proclamations, Orders in Council, and regulations made under this Act shall be laid before both Houses of Parliament within twenty-eight days after the making thereof if Parliament is then in session, and if not, then within twenty-eight days after the commencement of the next ensuing session.

10. (1) This Act shall bind the Crown:

Provided that, except as provided by any other Act, nothing in this Act or in any Proclamation, Order in Council or regulations made under this Act shall apply to aircraft used for the purposes of any of His Majesty's Naval, Military, or Air Forces.

Special provisions as to Crown.

(2) Nothing in this Act, or in any Proclamation, Order in Council, or regulations made under this Act shall prejudice or affect the rights, powers, or privileges of the Minister of Marine in respect of lighthouses.

11. (1) For the purposes of this Act there shall be an officer of the Air Department established under the Air Department Act, 1937, to be called the Director of Civil Aviation, who shall have such special duties and functions as may be conferred on him by regulations

Appointment of Director of Civil Aviation. 1937, No. 7

under this Act. The officer who, on the passing of this Act, holds office as the Director of Civil Aviation shall, without further appointment, be deemed to have been duly appointed as Director of Civil Aviation under this section.

(2) Section four of the Air Department Act, 1937, is hereby consequentially amended by repealing subsection two thereof.

Application of Act to Cook Islands, Western Samoa, and other territories.

12. (1) Except as otherwise provided by this section, this Act shall extend to and be in force in the Cook Islands, Western Samoa, the Tokelau Islands, and any other territory subject to the protection, trusteeship, or authority of the Government of New Zealand.

(2) The following provisions of this Act shall have no application in any of the said territories:—

(a) Section seven:

(b) Subsections two and three of section nine:

(c) Subsection two of section ten.

(3) The amount of compensation payable to any person resident in any of the said territories under subsection three of section four hereof shall be fixed by agreement with the Minister of Island Territories or, in default of agreement, by arbitration in accordance with the Arbitration Act, 1908.

(4) This Act shall be a reserved enactment for the purposes of section nine of the Samoa Amendment Act, 1947.

See Reprint of Statutes, Vol. I, p. 346
1947, No. 48

13. (1) The Air Navigation Act, 1931, and section four of the Statutes Amendment Act, 1939, are hereby repealed.

(2) The Samoa Aviation Regulations 1938 are hereby revoked.

(3) All Proclamations, Orders in Council, regulations, warrants, offices, appointments, registers, books, records, licences, certificates, notices, and generally all acts of authority that originated under any of the said enactments and are subsisting or in force on the passing of this Act shall enure for the purposes of this Act as fully and effectually as if they had originated under this Act, and accordingly shall, where necessary, be deemed to have so originated.

Repeals and savings.
See Reprint of Statutes, Vol. I, p. 424
1939, No. 39
Serial number 1938/8

(4) All matters and proceedings commenced under any of the enactments hereby repealed and pending or in progress on the passing of this Act may be continued and completed under this Act.

(5) All references in any unrepealed enactment to the Air Navigation Act, 1931, shall, unless the context otherwise requires, be hereafter read as references to this Act.