

REPUBLIC OF SOUTH AFRICA

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# CIVIL AVIATION AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 41962  
of 8 October 2018)*  
*(The English Text is the official text of the Bill)*

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(MINISTER OF TRANSPORT)

**[B 44—2018]**

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

To amend the Civil Aviation Act, 2009, so as to amend existing, and insert new, definitions; to rectify references to certain Ministries and Government Departments; to amend Chapter 4 of the Act so as to make provision for the operational independence of aircraft accident and incident investigation; to rectify the provision regarding the establishment of the South African Civil Aviation Authority; to give the South African Civil Aviation Authority environmental protection oversight function; to do away with the requirement for the development of a corporate governance plan; to make provision for an employee of the Department to be a member of the Civil Aviation Authority Board; to amend the provisions relating to the appointment and removal of the Commissioner for Civil Aviation and matters related to his or her functions and responsibilities; to amend the provisions relating to the performance agreement between the Minister and the Aviation Safety Investigation Board; to clarify the provisions dealing with conflict of interest; to provide for the designation of the Chairperson of the National Aviation Security Committee and matters connected with the operations of the Committee; to delete the provisions dealing with compliance notices; to amend the provisions dealing with appeals; to authorise the Minister to issue exemptions and to prescribe additional offences and additional enforcement mechanisms; to extend the powers of the Minister to make regulations; to move the procedures for the establishment of consultative structures to the regulations; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 13 of 2009**

1. The Civil Aviation Act, 2009 (Act No. 13 of 2009) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “aircraft incident” of the following definitions:

“**aircraft in flight**” refers to an aircraft at any time from the moment when all its external doors are closed following embarkation, until the moment when any such door is opened for disembarkation, and in the case of a forced landing, the flight shall be deemed to continue until the

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- competent authorities take over the responsibility for the aircraft and for persons and property on board the aircraft;
- ‘aircraft in service’** refers to an aircraft from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight, until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight;”;
- (b) by the substitution for the definition of “airport” of the following definition:  
 “**‘airport’** means [an aerodrome as defined in section 1 of this Act] a demarcated area on land or water which is used or intended to be used, either wholly or in part, for the arrival or departure of aeroplanes, and includes any building, installation or equipment within such area which is used or intended to be used in connection with the arrival, departure or movement of an aeroplane;”;
- (c) by the substitution for the definition of “air service” of the following definition:  
 “**‘air service’** means an air service as defined in [Section] section 1 of the Air Services Licensing Act, [1999] 1990 (Act No. 115 of [1999] 1990);”;
- (d) by the insertion after the definition of “airport manager” of the following definition:  
 “**‘Annex 13’** means Annex 13 to the Convention;”;
- (e) by the insertion after the definition of “appointed member” of the following definition:  
 “**‘appropriate authority’** means a person or entity empowered by legislation to exercise certain authority;”;
- (f) by the insertion after the definition of “commander” of the following definition:  
 “**‘Commissioner’** means the Commissioner for Civil Aviation appointed in terms of section 85;”;
- (g) by the insertion after the definition of “Criminal Procedure Act” of the following definition:  
 “**‘Customs’** means the South African Revenue Service established in terms of section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);”;
- (h) by the deletion of the definition of “Director”;
- (i) by the deletion of the definition of “Director of Investigations”;
- (j) by the insertion after the definition of “Director of Investigations” of the following definition:  
 “**‘Executive responsible for Aircraft Accident and Incident investigation’** means an official appointed by the Authority as the responsible Executive for aircraft accident and incident investigation;”;
- (k) by the substitution for the definition of “helistop” of the following definition:  
 “**‘helistop’** means a heliport either at a ground level or elevated on a structure, for the landing and take-off of helicopters, including the minimum prescribed safety equipment but excluding auxiliary facilities such as a parking area, a waiting room or a hanger;”;
- (l) by the substitution for the definition of “investigator” of the following definition:  
 “**‘investigator’** means a person [appointed under section 26] designated as such under section 33;”;
- (m) by the insertion after the definition of “NASP” of the following definition:  
 “**‘nuclear material’** means nuclear material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);”;
- (n) by the insertion after the definition of “Public Finance Management Act” of the following definition:  
 “**‘radioactive material’** means radioactive material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);”;
- (o) by the insertion after the definition of “restricted area” of the following definition:  
 “**‘safety programme’** means an integrated set of regulations and activities aimed at improving safety;”;

- (p) by the insertion after the definition of “search” of the following definition:  
 “**‘source material’** means source material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999)”;
- (q) by the insertion after the definition of “Transit Agreement” of the following definition: 5  
 “**‘weapon of mass destruction’** means a weapon of mass destruction as defined in the Non-proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993)”; and
- (r) by the deletion of subsections (2), (3) and (4).

#### **Amendment of section 2 of Act 13 of 2009** 10

2. Section 2 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
 “This Act, [**the Convention, the Transit Agreement and Protocol,**]  
 except where expressly excluded under this Act, [**apply**] applies to—”; 15
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:  
 “This Act [**, the Convention and the Transit Agreement do**] does not  
 apply to—”;
- (c) by the substitution for subsection (4) of the following subsection: 20  
 “(4) Notwithstanding subsection (3), Part 1 of Chapter 11 [**and the Civil Aviation Regulations, 1997, apply**] applies to—  
 (a) an aircraft belonging to the South African National Defence Force,  
 [**and**] the South African Police Service and Customs; and  
 (b) an aircraft in use exclusively by the South African National Defence 25  
 Force, [**and**] the South African Police Service and Customs,  
 where such aircraft are in flight through controlled airspace or in use at  
 non-military aerodromes and heliports.”; and
- (d) by the addition of the following subsection: 30  
 “(5) Despite subsection (3), the Minister may, after consultation with the Cabinet members responsible for defence, police and customs, by notice in the Gazette, determine which provisions of the civil aviation regulations are applicable to the aircraft referred to in subsection (3).”.

#### **Amendment of section 3 of Act 13 of 2009**

3. Section 3 of the principal Act is hereby amended— 35
- (a) by the substitution for the heading of the following heading:  
 “**Power to carry out and apply Convention [,] and Transit Agreement [and Protocol]**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40  
 “The Minister [**, in consultation with the Civil Aviation Authority,**]  
 may”; and
- (c) by the substitution in subsection (1) for paragraph (a) of the following paragraph:  
 “(a) do all things necessary to ratify, or cause to be ratified on behalf of 45  
 the Republic, any amendments of or additions to the Convention [**,**]  
and the Transit Agreement [or Protocol] which may be made;  
 and”.

#### **Amendment of section 4 of Act 13 of 2009**

4. Section 4 of the principal Act is hereby amended— 50
- (a) by the substitution for the heading of the following heading:  
 “**Functions of Minister in connection with Act[, Convention and Transit Agreement]**”; and
- (b) by the deletion of subsection (4).

**Substitution of section 5 of Act 13 of 2009**

5. The following section is hereby substituted for section 5 of the principal Act:

**“Enactment of Convention [,] and Transit Agreement [and Protocol]**

5. (1) The Convention [,] and the Transit Agreement [and Protocol] referred to in Schedules 3 and 4, respectively, have, subject to this Act, the force of law in the Republic. 5

(2) The Minister may by notice in the *Gazette* amend Schedules 3 and 4 to reflect any changes made to the Convention [,] and the Transit Agreement [and Protocol] if those changes are binding on the Republic in terms of section 231 of the Constitution.”. 10

**Amendment of section 7 of Act 13 of 2009**

6. Section 7 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Subject to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), the National Environmental Management Act, 1998 (Act No. 107 of 1998), the National Water Act, 1998 (Act No. 36 of 1998), and the Constitution, the Minister [**of Minerals and Energy**] responsible for mineral resources may permit the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission, for the establishment of [**airports or heliports**] an aerodrome. 15 20

(2) Before granting any permission in terms of subsection (1) for the use of land held under any reconnaissance permission, exploration, prospecting or mining authorisation or permission for the establishment of [**airports or for landing places for aircraft**] an aerodrome, the Minister [**of Minerals and Energy**] responsible for mineral resources must consult with the Minister and all interested parties.”. 25

**Amendment of section 8 of Act 13 of 2009**

7. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) No action lies in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height, which, having regard to wind, weather and other circumstances of the case, is reasonable, or the ordinary incidents of such flight, so long as this Act[, **the Convention and the Transit Agreement are**] is duly complied with.”; and 30 35

(b) by the substitution for subsection (5) of the following subsection:

“(5) A registered owner or operator of an aircraft must have insurance as prescribed for any damage or loss that [**is**] may be caused by [**an**] his or her aircraft to any person or property on land or water.”.

**Substitution of Chapter 4 of Act 13 of 2009**

8. The following Chapter is hereby substituted for Chapter 4 of the principal Act:

**“CHAPTER 4**

*Part 1*

**AIRCRAFT ACCIDENTS AND INCIDENTS INVESTIGATION  
AND ESTABLISHMENT OF AVIATION SAFETY  
INVESTIGATION BOARD** 45

**Application of Chapter**

9. (1) This Chapter applies in respect of aircraft accidents and incidents in or over—

(a) the Republic; 50