



Civil Aviation Reform Act 2026

No. 387

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Schedule 1
Repeal and Amendments to Acts

An Act to—

To consolidate the laws relating to civil aviation and civil aviation offences within and outside Niue; to provide for the powers and functions of the Cabinet, the Minister and the Director in relation to the enablement and regulation of civil aviation to, from and within Niue; to provide for a regulatory and control framework for maintaining and enhancing the safety and security of civil aviation in Niue, to promote and adopt the safety and security standards of certain international aviation agreements to the extent consistent with the distinctive culture, circumstances and requirements of Niue; and to provide for incidental matters.

The Assembly enacts as follows—

1 Title

This Act is the Civil Aviation Reform Act 2026.

2 Commencement

This Act comes into force on the day after the date on which this Act becomes law in accordance with Article 34 of the Constitution.

Part 1

Preliminary matters

3 Interpretation

In this Act, unless the context otherwise requires,—

“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, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or
- (c) the aircraft is missing or is completely inaccessible;

“Act” includes regulations and rules made, adopted or otherwise applicable under this Act;

“act of violence” means an act which, if committed in Niue, would constitute -

- (a) an assault constituting the crime, whether common law or statutory, of
 - (i) aggravated assault;
 - (ii) assault with intent to injure;
 - (iii) assault on a child or by a male on a female;
 - (iv) common assault;
 - (v) assault with a weapon;
- (b) any of the following crimes whether common law or statutory -
 - (i) wounding with intent;
 - (ii) injuring with intent;
 - (iii) injuring by unlawful act;
 - (iv) aggravated wounding or injury;
 - (v) disabling;
 - (vi) discharging a firearm or doing a dangerous act with intent;
 - (vii) using any firearm against a law enforcement officer;
 - (viii) commission of a crime with a firearm;
 - (ix) acid throwing;
 - (x) poisoning with intent;
 - (xi) setting traps;
 - (xii) endangering transport; or
 - (xiii) kidnapping;

“aerial work service” means an aircraft operation in which an aircraft is used for specialized services including but not limited to agriculture, construction, photography, surveying, observation and patrol, search and rescue and aerial advertisement.

“aerodrome” means any 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 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 all -

traffic in the maneuvering area of an aerodrome; and 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 or 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 navigation facility” means premises used for the handling of cargo, baggage or mail, an aircraft hangar, a fuel storage area, an on board services preparation facility and any other premises, building, structure or place to which the public has no right of access and in which a service is rendered for the operation of an airport or aircraft or for the public at an airport or on board an aircraft, whether or not such premises, building, structure or place are situated within the boundaries of a designated airport;

“airport” means Hanan International Airport and also includes:

any other defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement, or servicing of aircraft,

any other area declared by the Minister to be part of the airport; and

any buildings, installations, and equipment on or adjacent to any such area used in connection with the airport or its administration;

“air navigation services” means services provided to air traffic during all

phases of operations to ensure their safe and efficient movement, and includes

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- (a) air traffic control services, including air traffic control services for arriving and departing controlled flights, for controlled flights in controlled areas or for traffic within any manoeuvring area and other aerodrome traffic;
- (b) air traffic advisory services provided within advisory airspace to ensure separation, insofar as is practical, between aircraft which are operating on flight plans in accordance with Instrument Flight Rules;
- (c) flight information services;
- (d) alerting services provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as may be required;
- (e) communications, navigation and surveillance services;
- (f) meteorological services for air navigation;
- (g) search and rescue services; and
- (h) aeronautical information services for the provision of aeronautical information and data necessary for the safety, regularity and efficiency of air navigation;

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

“air traffic” means all aircraft in flight or operating on any maneuvering area of an aerodrome;

“air traffic control service” means a service provided for the purposes of -

- (a) preventing collisions -
 - (i) between aircraft; and
 - (ii) between aircraft and obstructions on any manoeuvring area; and
- (b) expediting and maintaining a safe and efficient flow of air traffic;

“air traffic service/aviation related 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; and
- (g) any other air traffic service considered by the Director to be necessary or desirable for the 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;

“approach control service” means an air traffic control service for arriving or departing controlled flights;

“approved organisation” means -

(a) an aeronautical authority of a contracting state of ICAO; or
an organization or body declared to be an approved organisation under section 8(1)(b);

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

“Arms Act” means the Arms Act of 1975;

“authorised person” means -

- (a) any member of the Niue Police Department as appointed by the Niue Public Service Commission;
- (b) any person appointed in writing by the management of a security designated airport, with the approval of the Minister;
- (c) any person designated in writing by the Director as an authorised person in terms of section 17(1); or
- (d) any other person appointed in writing by the Minister as an authorised person for the purposes of this Act;

“aviation document” means any licence, permit, certificate, approval, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

“aviation related facility” means any installation, equipment, facility or service, including any aerodrome operated in support of or in conjunction with the civil aviation system;

“aviation related service” means any equipment, facility or service, including any air traffic service operated in support of 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 an aviation security service organization pursuant to this Act;

“baggage”, in relation to any contract of carriage, means checked baggage or baggage, personal effects, or other articles, not being checked baggage, in the possession of the passenger, or in the possession of another person, being a person accompanying the passenger or a servant or agent of the carrier, whether the contract of carriage is for international carriage or domestic

carriage;

“cargo”, in relation to any contract of carriage, means all kinds of movable property, including animals, but excludes baggage and mails or postal articles whether the contract of carriage is for international carriage or domestic carriage;

“carrier”, in relation to any contract of carriage, includes a contracting carrier and an actual carrier whether the contract of carriage is for international carriage or domestic carriage;

“Civil Aviation Registry” means the Registry established under section 68 of this Act;

“commander”, in relation to an aircraft, or “commander of an aircraft” or “pilot in command” means the pilot for the time being in lawful command of the aircraft;

“commercial air transport operation” means an aircraft operation involving the transport of passengers, cargo or mail or aerial work for remuneration or hire;

“contract”, in relation to any contract of carriage, includes an arrangement made without consideration whether the contract of carriage is for international carriage or domestic carriage;

“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 this Act to make use of an air traffic control service;

“Convention” means the Convention on International Civil Aviation signed in Chicago on 7 September 1944, and includes -

- (a) any amendment to the Convention that has entered into force under Article 94(a) of the Convention; and
- (b) any Annex or amendment to any Annex accepted under Article 90 of the Convention; and
- (c) the international standards and procedures from time to time adopted and amended by the International Civil Aviation Organisation under Article 37 of the Convention;

“corporate manslaughter in civil aviation” means the culpable homicide of one or more persons, not amounting to murder, which is committed in the course of any activity involving an aircraft (including a remotely piloted aircraft) whether on the ground or in the air, or in the course of any other activity associated with the design, maintenance or operation of any aircraft;

“crew member” means a person assigned by an operator to carry out duties

onboard an aircraft during a flight duty period.

“customs officer” means a member of the Niue Customs as appointed by the Niue Public Service Commission;

“dangerous goods” means articles or substances that are capable of posing risk to health, safety, property or the environment, and -

- (a) are listed in, or classified in accordance with the ICAO’s Technical Instructions for the Safe Transportation of Dangerous Goods by Air; or
- (b) while not so listed or classified as referred to in paragraph (a), nevertheless have features or properties that in the opinion of the Director might reasonably qualify them for listing or classification as dangerous goods under the ICAO’s Technical Instructions for the Safe Transportation of Dangerous Goods by Air;

“Director” means the person appointed under section 14 as Director of Civil Aviation;

“Extradition Act” means the Extradition Act, 2007;

“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;

“foreign in-flight security officer” means an enforcement officer or person with authorisation from a country other than Niue who is -

- (a) authorised to act on an aircraft that is in flight by the State that has issued the air operating certificate, or its equivalent, under which the air operation is conducted; and
- (b) subject to an in-flight security officer arrangement or agreement between Niue and the State that has issued the air operating certificate, or its equivalent, under which the air operation is conducted;

“foreign license” or “foreign medical assessment” or “foreign medical certificate” means a license, medical assessment or medical certificate issued outside Niue by the appropriate authority of an ICAO member state approved by Niue;

“Government entity” means a ministry, office or agency of Government or other institution or body wholly owned or controlled by the Government and operated within the national sphere of government;

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

“holder”, in relation to any aviation document, includes any person entitled to exercise privileges in respect of the document;

“IATA” means International Air Transport Association.

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

“in flight”, in relation to an aircraft, means from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation, but in the case of a forced landing, an aircraft is in flight -

- (a) until the time when the competent authorities of the country in which the forced landing takes place; or
- (b) in the case where the forced landing takes place in a place that is not within the territorial limits of any country, until the time when the competent authorities of any country,
- (c) assume responsibility for the aircraft and for persons and property on board the aircraft;

“in-flight security officer” means a member of the Niue Police authorised by the Chief of Police pursuant to section 90 to be an in-flight security officer;

“in service”, in relation to an aircraft, means from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft crew begins for a specific flight until -

- (a) the flight is cancelled;
- (b) 24 hours after the aircraft, having commenced the flight, lands;
- (c) the aircraft, having commenced the flight, makes a forced landing and any competent authorities referred to in section 145 subsection (3) assume responsibility for the aircraft and for persons and property on board the aircraft; or
- (d) the aircraft, having commenced the flight, ceases to be in flight,

whichever is the latest;

“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;

“Inquests Act” means the Inquests Act 1964;

“international airport” means, in the context of Niue, Hanan International Airport or any other 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;

“international flight”, for the purposes of section 8 (1)(f), means flight, whether conducted for private or commercial purposes, which arrives from a place outside Niue or which departs for a destination outside Niue;

“life imprisonment” means imprisonment for the rest of the natural life of a convicted person without parole;

“maneuvering area” means 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 excludes areas set aside for loading, unloading, or maintenance of aircraft;

“military conveyance” means the transportation of goods or persons by means of an aircraft that is operated by or on behalf of the Ministry responsible for defence or a visiting force;

“Minister” means the Minister responsible, for the time being, for civil aviation;

“Ministry” means the Ministry responsible for the administration of civil aviation;

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

“Montreal Protocol” means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation done at Montreal on 24 February 1988;

“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 to any such building, facility, work, apparatus, equipment, or place, and used in connection therewith;

“Niue” means the self-governing state of Niue; and includes, in addition to its land territory, its territorial sea and the airspace above each part of its land territories and territorial sea;

“Niue Register of Aircraft” means a Niue Register of Aircraft established under section 68(2)(b).

“Niue aircraft” means an aircraft registered as referred to in section 66 or required to be registered in Niue under section 37(1) of this Act;

“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;

“owner”, in relation to any aircraft, includes a person entitled to the possession of the aircraft for 28 days or longer;

“participant” means a person who performs any function or activity, or who occupies any position, or offers or undertakes the provision of any service or product, or does any other thing, for which an aviation document is required;

“passenger”, in relation to any contract of carriage, means a person carried pursuant to a contract of carriage of such person whether the contract of carriage is for international carriage or domestic carriage, and includes a person who has reported to an employee or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him as a passenger;

“PASO” means the Pacific Aviation Safety Office established under the Pacific Islands Civil Aviation Safety and Security Treaty of 2005.

“PICASST” means the Pacific Islands Civil Aviation Safety and Security Treaty of 2005.

“pilot-in-command”, in relation to any aircraft, means the pilot responsible for the operation and safety of the aircraft;

“police officer” means a member of the Niue Police Department as appointed by the Niue Public Service Commission.

“prescribed” means prescribed by regulation;

“regulation” means a regulation made under this Act;

“remotely piloted aircraft” means an aircraft without human pilot, crew or passengers onboard and may be referred to in this Act and any Rules made

under this Act as an “RPA”. The designation remotely piloted aircraft (RPA) is used throughout this Act but note that RPA may also be referred to as: Drone; Unmanned Aerial Vehicle (UAV); Remotely Piloted Aircraft System (RPAS); Urban Air Mobility Vehicle (UAM); Advanced Air Mobility Vehicle (AAM); and various other names from time to time as RPA are developed. RPA range from miniature handheld machines through to the largest aircraft currently flying. They may be fixed wing or vertical take-off aircraft and range from recreational to commercial;

“safety purposed information” for the purposes of section 40 means information acquired by the Director under the required notification of an incident which information could reasonably be considered to be beneficial or potentially beneficial in increasing the understanding of aviation operational risks and associated potential for the reduction or prevention of future accidents or incidents.

“security area” means an area that the Director has declared to be a security area under an ordinary rule made pursuant to section 51;

“security designated aerodrome” means any aerodrome, helistop or heliport designated as a security designated aerodrome under section 129 and includes Hanan International Airport;

“security designated navigation installation” means a navigation installation designated as a security navigation installation under section 117;

“security restricted area” means an area that the Director has declared to be a security restricted area under section 118;

“sterile area” means the area at an aerodrome between the passenger inspection and screening station and the aircraft into which access is strictly controlled;

“this Act”, includes any rules and regulations made under it;

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

4 Act binds the Government

This Act binds the Government.

5 Objectives and application of the Act

(1) Subject to subsection (2) -

(a) this Act; and

- (b) the principles and objectives of the Convention, except where they are inconsistent with or are expressly excluded by this Act or rules made under it,
apply to –
 - (i) a person, an aircraft, aerodrome, aeronautical product, air service, and aviation related service in Niue;
 - (ii) a Niue registered aircraft whether within or outside Niue;
 - (iii) a holder of an aviation document while outside Niue and exercising or purporting to exercise privileges accorded by the document;
 - (iv) a foreign registered aircraft operating in Niue.
- (2) Despite subsection (1), the Minister, acting on the recommendation of the Director, 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 responsibilities for a Niue registered aircraft operated by that foreign operator that the Minister or the Director has under this Act;
 - (b) accept for the Minister or the Director all or part of the responsibilities that arise under this Act for foreign registered aircraft operated by a Niue operator
- (3) A Niue registered aircraft, while being operated over the high seas, must be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.
- (4) Except where an act is required in order to comply with the laws of such foreign state, a holder of an aviation document who, while outside Niue and exercising or purporting to exercise the privileges accorded by the document commits an act or omission that would constitute an offence if it were committed in Niue is deemed to have committed an offence as if the act or omission had occurred in Niue.
- (5) Nothing in this section may 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.
- (6) Nothing in this Act may 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.
- (7) This Act does not apply -

- (a) to aircraft belonging to the New Zealand Ministry of Defence or for the time being leased, commandeered or sequestered or otherwise used exclusively by the New Zealand Ministry of Defence; and
 - (b) to any person employed on or in connection with the aircraft referred to in paragraph (a), irrespective of whether such person is so employed in a military or civil capacity.
- (8) The Minister, after consultation with the Director, may by public notice, make any provision of this Act applicable to any aircraft or person referred to in subsection (7) with or without modification.

6 Application of international aviation agreements

- (1) The Minister may, in accordance with section 51, issue such rules as appear to him or her necessary for giving effect to the principles of the Convention and any of its provisions.
- (2) In issuing rules in accordance with subsection (1) the Minister;
 - (a) may have regard to the status of Niue as an independent state not party to the Convention and not thereby bound, and;
 - (b) despite subparagraph (a), must ensure, as far as practicable, that the civil aviation system of Niue is aligned or in harmony with internationally accepted civil aviation safety and security practices including but not limited to;
 - (i) the principles of the Convention;
 - (ii) current best practices of states party to the Convention; and
 - (iii) current regional practices and procedures within the civil aviation systems of existing PASO member states.
- (3) In determining what is practicable in terms of subsection (2)(b) the Minister may, provided in each case that safety and security is not thereby compromised, consider whether the principles or provisions of the Convention to which effect may be given in terms of subsection (1),
 - (a) will give rise to any unjustifiable impact upon the circumstances, including the environment and culture of Niue; and
 - (b) will be practicable and achievable in Niue taking account of the circumstances of Niue including, but not limited to, its geographical location, its size and the extent of its economic and human resources,and may require that his or her consideration of these matters be addressed in a ny proposed rule.
- (4) Despite subsections (1) to (3) the Minister may for the purposes of civil aviation in Niue issue such rules or such directives to the Director as appear to him or her necessary to achieve, as far as the Minister deems it practicable and desirable having regard to the circumstances of Niue, the

alignment with or the adoption of the principles of any other international civil aviation agreement to which Niue is not a party.

- (5) If -
- (a) the Convention or other international civil aviation agreement is amended;
 - (b) Niue enters into or becomes party to an international aviation agreement; or
 - (c) an international aviation agreement is amended,
- the Minister may issue such rules, amendment of rules or directives as appear to him necessary for carrying out and for giving effect to any of the provisions of the agreement or amendment.

7 Relationship with external civil aviation organisations including PASO.

The Minister, in consultation with Cabinet, may cause Niue to enter into a relationship with PASO or other external organization offering resources beneficial to the promotion and effective regulation of civil aviation in Niue.

Part 2

Powers and Functions of Minister

8 Powers and functions of the Minister

- (1) In ensuring the achievement of an integrated, safe, secure, responsive and sustainable transport system, the implementation of the obligations of Niue under international civil aviation agreements including, but not limited to, PICASST, the Minister may -
- (a) establish an aviation policy unit;
 - (b) declare an organisation or body to be an approved organization;
 - (c) after consultation with the Director, contract with one or more approved organisations for the provision of advice and recommendations to the Director in relation to the granting and renewal of aviation documents;
 - (d) enter into technical or operational arrangements, or both, with any suitable organization outside Niue including, without limitation,
 - (i) a regional civil aviation organization including PASO or
 - (ii) an international civil aviation organization including ICAO and IATA;
 - (e) enter into technical or operational arrangements, or both, with civil aviation authorities of other countries;

- (f) designate Hanan International Airport, having regard to its customs, immigration and other border control facilities, as the airport to be used for the arrival or departure of aircraft performing international flights.
- (2) The functions of the Minister in terms of this Act are -
 - (a) to promote safety and security in civil aviation;
 - (b) to promote the development, safety record and reputation of civil aviation in Niue as a prime means of economic growth within Niue
 - (c) to administer the participation of Niue any international aviation convention, agreement, or understanding to which Niue is a party;
 - (d) to take such steps as may be required under this Act or rules made under this Act with regard to the investigation of accidents or incidents;
 - (e) to ensure that aviation security services are provided at Hanan International Airport and associated security designated navigation installations;
 - (f) to provide to the Director or the office of the Director such information, advice, services and resource as may be required and which may assist in the implementation of this Act;
 - (g) to promote, to the extent practicable, the harmonization of civil aviation practices in Niue; with the practices of other modes of transport within Niue.
 - (h) to promote, to the extent practicable, the harmonization of the aviation safety and security practices of Niue with the aviation safety and security practices of other states conducting international civil aviation in the Pacific region;
 - (i) to assist other Government entities as appropriate in the effective use of other legislation affecting the safety and security of civil aviation in Niue, including but not limited to, the effective use of the Terrorism Suppression and Transnational Crimes Act of 2006;
 - (j) to perform other functions imposed on the Minister by or under this Act or any other law.

9 Delegation and assignment of powers and functions by Minister to the Director and to persons outside the Ministry.

- (1) The Minister may, either generally or particularly, in writing delegate or assign to the Director or any other employee of the Ministry or any other competent person or body any power or function conferred or imposed on the Minister by or under this Act, except the power -
 - (a) to appoint any person;
 - (b) to make rules under this Act; and
 - (c) to delegate and assign powers and functions, under this Act.
- (2) A delegation or assignment made under subsection (1) -

- (a) does not divest Minister of the power or function so delegated or assigned;
- (b) does not prevent the exercise of the power or the performance of the function by the Minister himself or herself; and
- (c) may at any time be revoked in writing by the Minister,

and the Minister may, without prejudice of any right, amend or set aside any decision made under such delegation.

10 Facilitation of expeditious aircraft navigation and clearance of aircraft, crews, passengers and cargoes

The Minister may, in recognition of the objectives of Article 22 of the Chicago Convention, adopt practicable measures -

- (a) to facilitate and expedite navigation by aircraft between Niue and the territories of other States; and
- (b) to prevent unnecessary delays in the clearance of aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine and customs.

11 Annual report by the Minister

The Minister must, as soon as practicable after the end of each year, cause to be prepared a report on the exercise and performance of his or her powers and functions in relation to civil aviation in Niue during such year.

12 Removal of dangerous obstructions

- (1) The Minister may, by order, require the removal of any building, structure, erection, tree or other thing whatsoever on any land or water which, in the opinion of the Minister on advice of the Director, may constitute a danger to aircraft flying in accordance with normal aviation practice.
- (2) The Minister may, by order, authorise such persons as he or she may think appropriate to remove or to alter to such extent as may be specified in the order, such building, structure, erection, tree or thing which is in contravention of an order made under subsection (1).
- (3) A copy of every order made under subsection (1) or (2) is served upon the owners or occupiers of all land affected by such order.
- (4) In considering the making of any order under this section the Minister must have due regard for the status of any building, structure, erection, tree or other thing which may be granted protection or special status or be entitled to protection or the grant of special status in terms of any other law.
- (5) A person suffering loss or damage as a consequence of an order issued under subsection (1) may claim compensation therefore and, in default of an agreement on the amount of compensation, such amount is fixed by the High Court.
- (6) Where an order is issued under subsection (4) the compensation is paid by the Crown;

- (7) Despite subsection (5), no compensation is payable for any loss or damage suffered as a consequence of an order made under subsection (1), if the building, structure, erection, tree or thing has been erected or planted in contravention of any law or regulation.

13 Prohibitions and restrictions on use of land, sea, internal waters or airspace

- (1) For the purpose of ensuring the safety of aircraft flying in accordance with normal aviation practice, the Minister may prescribe prohibitions and restrictions for the use of land, sea, airspace or water in the vicinity of airports, relating to -
 - (a) the erection of buildings, structures or other things in any area specified;
 - (b) the planting of, or the limitation of the height of, any trees in any area specified;
 - (c) the sowing or growing of any plant or crop in any area specified;
 - (d) the bringing of vessels or vehicles into any area specified, or the anchoring or mooring of any vessel or vehicle therein.
 - (e) the operation of remotely piloted aircraft, whether of any specific type or generally, in any area specified.
 - (f) the use in any part of Niue, whether on land or on any vessel or structure on the sea, for the transmission of laser beams or any other equipment of any type whatsoever which has, or may have, the potential to interfere with the safe operation of aircraft.
- (2) An owner or occupier of land who suffers economic loss or damage as a consequence of any prohibition or restriction prescribed under subsection (1) (a) to (d) inclusive is eligible for compensation if he or she submits a claim within a prescribed period -
 - (a) to the Minister in respect of an airport owned by the State; or
 - (b) to the owner in the case of any other airport.
- (3) The loss or damage referred to in subsection (2) is assessed taking into account the circumstances in existence at the time the prohibition or restriction becomes applicable.
- (4) The maximum amount of compensation payable under subsection (2) may not exceed the amount by which the market value of such land is reduced as a result of such prohibition or restriction.
- (5) In the event of disagreement as to the amount of compensation which is payable in respect of a claim for compensation under subsection (2), the amount is fixed by the High Court.

Part 3

Director and Staff of the Office of the Director

14 Director of Civil Aviation

- (1) The Minister must, appoint a suitable person -
 - (a) who has qualifications, knowledge and expertise directly relevant to the administration and functions of the office of the Director;
 - (b) to be the chief executive officer of the Office and who is known as the Director of Civil Aviation; and
 - (c) who must attend meetings of the Cabinet as required in the performance of his or her duties and may participate in any deliberation of the Cabinet but has no right to vote.
- (2) The Director is appointed -
 - (a) subject to the approval of the Minister; and;
 - (b) on such terms and conditions as the Public Service Commission may determine.
- (3) The Cabinet may permit the Director to carry out his or her duties while permanently resident outside Niue.
- (4) Where the Director is absent from office or when a vacancy for the post of the Director occurs, the powers and functions of the Director may be exercised and performed by -
 - (a) any other suitable employee of the Office assigned by the Minister; or
 - (b) any other suitable person appointed by the Cabinet,and it does not matter whether the assignment or appointment has been made before or after the absence or vacancy occurred.

15 Accountability of Director

- (1) The Director is the head of the administration and accounting officer of the Office of the Director and manages the Office of the Director.
- (2) In the exercise and performance of the powers and functions of the Office of the Director under this Act, unless otherwise specified in this Act, the Director is accountable solely and directly to the Minister in respect of issues relating to -
 - (a) civil aviation safety and security oversight;
 - (b) the implementation of the governance policies as directed by the Cabinet;
 - (c) the implementation of the decisions of the Cabinet;
 - (d) the administration and management of the Office of the Director; and
 - (e) the performance of the functions of the Office of the Director.
- (3) The Director must for every quarter in each year submit to the Minister a quarterly report on his or her performance -

- (a) in the execution of the functions of the Office of the Director; and
- (b) in the implementation of the decisions and governance policies of the Cabinet.

16 Administrative powers and functions of Director

Apart from the powers and functions contained in other provisions of this Act, the Director, subject to the directions of the Minister, has administrative powers and functions -

- (a) to appoint the staff of the Office with the approval of the Minister;
- (b) to organise and control the staff;
- (c) to form and develop an efficient system of administration;
- (d) to establish and maintain a register of inspectors, authorised officers and authorised persons;
- (e) to maintain discipline;
- (f) to effectively deploy and utilise staff to achieve maximum operational results; and
- (g) to submit to the Cabinet, at least six months before the start of a financial year or another period agreed to between the Minister and the Director, the estimated revenue and expenditure for such financial year.

17 Designation of inspectors and authorised officers and persons

- (1) Without prejudice to his or her general powers of appointment and delegation in terms of this Act, the Director may designate one or more -
 - (a) persons in the service of the Office of the Director as inspectors or authorised officers;
 - (b) persons who are not in the service of the office of the Director as authorised persons.
- (2) The Director must sign and issue to each authorised officer, inspector and authorised person appointed by him or her, a document which must state the full name and contain a photograph of such authorised officer, inspector or authorised person and contain a statement indicating that -
 - (a) such authorised officer, inspector or authorised person has been designated in terms of subsection (1) ; and
 - (b) such authorised officer, inspector or authorised person is empowered to exercise the powers entrusted to him or her in terms of this Act directly or entrusted to him or her in the exercise and performance of powers and functions of the Director under delegation.
- (3) The Director may in any case exercise any powers and discharge any duties or obligations imposed on him or her by this Act or Rules made under this Act through the exercise of his or her powers of delegation to employees including officers, inspectors and authorised persons.

- (4) The Director may, when necessary, limit the powers of authorised officers, inspectors or authorised persons when designating such authorised officer, inspector or authorised person in terms of subsection (1)(a).
- (5) The qualifications and requirements for persons designated in terms of subsection (1) are as prescribed.

18 General powers and functions of Director

- (1) The Director generally -
 - (a) has powers conferred on the Director by or under this Act, including powers delegated to the Director under this Act;
 - (b) performs the functions imposed on the Director by or under this Act, including functions assigned to the Director under this Act.
 - (c) at all times acts independently and free of influence or directive when performing certain powers and functions set out in this section.
- (2) Without limiting subsection (1), the Director must -
 - (a) exercise control over entry into the civil aviation system through -
 - (i) the granting of aviation documents, including the validation of foreign aviation documents;
 - (ii) the medical certification of applicants or participants by granting recognition to foreign medical certificates or, where circumstances permit, by issuing medical certificates in accordance with this Act and the Niue Civil Aviation Rules.
 - (iii) the issue of aviation directives under section 32.
 - (b) take such actions as may be appropriate in the public interest –
 - (i) to enforce this Act; and
 - (ii) to carry out inspections and monitoring; and
 - (iii) to assist in the enforcement of other legislation that is directly related to aviation safety and security and where written approval or instruction for proposed action has been given by the Minister; and
 - (iv) to ensure as and where circumstances require it, the initiation and ongoing performance of security checks, screening and other prescribed measures in the protection of civil aviation security.
 - (c) take such steps as may be required under this Act or rules made under this Act with regard to the timely and effective investigation of accidents and incidents;
 - (d) monitor adherence, within the civil aviation system, to any regulatory requirements relating to safety and security, including personal security; access and mobility; public health; environmental sustainability and any other matter;

- (e) ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security.
- (3) Without limiting subsection (1), 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 aeronautical products of the same design,

the Director, by notice in writing, may issue to the affected parties an airworthiness directive in respect of aircraft or aeronautical products of that design.

- (4) An airworthiness directive issued under subsection (3) –
- (a) is announced, by public notice, not later than 28 days after the directive comes into force;
 - (b) comes into force on the date specified in the directive, which may be a date earlier than the date of announcement of the issuing of the directive under paragraph (a), if -
 - (i) the Director considers that urgent action is required; and
 - (ii) the Director notifies the affected parties before the directive comes into force.
- (5) The Director may not exercise any of his or her rights, powers, or privileges except for the purpose of performing his or her functions.

19 Independence of Director in the performance of certain specified powers and functions.

In exercising or performing any powers or functions in relation to –

- (a) the granting of aviation documents;
- (b) the suspension of aviation documents;
- (c) the revocation of aviation documents;
- (d) the issue, suspension, or revocation of medical certificates;
- (e) the issue of a validation permit for a foreign license;
- (f) the granting of recognition of a foreign medical assessment or certificate;
- (g) the granting of exemptions; or
- (h) the enforcement of this Act or any other law relating to aviation safety and security,

the Director acts independently and is not subject to any influence or directive from any person or authority.

20 Examinations and tests for granting aviation documents

For the purposes of granting or renewing aviation documents under this Act, the Director may –

- (a) set, conduct, and administer examinations and tests;
- (b) conduct flight testing;
- (c) carry out other functions in relation to such examinations, tests, and flight testing under this section as may be necessary.

21 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 -

- (i) undergo such inspections and such monitoring; or
- (ii) carry out such inspections and such monitoring,

as the Director considers necessary in the interests of civil aviation safety and security.

(2) The Director may, in respect of any person described in subsection (1)(a) or (b), carry out such inspections and monitoring as the Director considers necessary in the interests of civil aviation safety and security.

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

22 Investigation of holder of aviation document

(1) The Director, in writing, may require a holder of an aviation document to undergo an investigation conducted by the Director if he or she believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety or security, and if the Director has reasonable grounds to believe -

- (a) that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 33; or
- (b) that the privileges or duties for which the document has been granted are being utilised or carried out in a careless or incompetent manner.

(2) If the Director decides to investigate a holder of an aviation document, the Director must –

- (a) conclude the investigation as soon as practicable; and
- (b) inform the holder, in writing, of -
 - (i) the date on which the investigation begins; and
 - (ii) the results of the investigation, including any recommendations arising out of the investigation and the grounds for those recommendations.

23 Suspension of aviation documents and imposition of conditions

- (1) Subject to section 25, the Director may suspend the whole or a part of an aviation document issued under this Act or impose conditions in respect of any such document, if he or she considers such action necessary in the interests of safety or security, and if he or she -
 - (a) considers such action necessary to ensure compliance with this Act;
 - (b) is satisfied that the holder has failed to comply with any conditions of the aviation document or with the requirements of section 33;
 - (c) is satisfied that the holder contravenes or fails to comply with section 91; or
 - (d) is satisfied that the privileges or duties for which the document has been granted are being utilised or carried out in a careless or incompetent manner.
- (2) A holder whose aviation document has been suspended or made subject to conditions under subsection (1) must forthwith produce such document to the Director for appropriate endorsement.
- (3) A person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under section 153.

24 Revocation of aviation documents and imposition of conditions

- (1) Subject to section 25, if after an inspection, monitoring, or investigation carried out under this Act, the Director considers it necessary in the interests of aviation safety or security, he or she may -
 - (a) revoke the whole or any part of an aviation document; or
 - (b) impose permanent conditions on an aviation document.
- (2) A person whose aviation document is revoked or made subject to permanent conditions under this section must -
 - (a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement; or
 - (b) if the whole document is revoked, immediately surrender the document to the Director.
- (3) A person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under section 153.

25 Criteria for suspension or revocation of or imposition of conditions on aviation documents

- (1) Before the Director determines whether an aviation document should be suspended or made subject to conditions under section 23 or revoked or made subject to conditions under section 24, the Director must consider the criteria set out in this section.
- (2) Where the question of suspension or revocation of or imposition of conditions on an aviation document of a person arises, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters -
 - (a) the history of compliance of such person with transport safety regulatory requirements;
 - (b) any conviction for any transport safety offence, whether or not -
 - (i) the conviction was in a Niue court; or
 - (ii) the offence was committed before the commencement of this Act;or
 - (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 Director is not confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as he or she considers relevant.
- (4) The Director may -
 - (a) seek and receive such information as the Director thinks fit; or
 - (b) consider information obtained from any source.
- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director must, subject to subsection (6) -
 - (a) in the case of revocation of an aviation document, as soon as practicable; or
 - (b) in the case of the suspension of an aviation document or the imposition of conditions under section 23, no later than five working days after suspending the aviation document or imposing conditions,disclose the information to the person and give the person a reasonable opportunity to refute or comment on the information.
- (6) Nothing in subsection (5) requires the Director to disclose -
 - (a) any information, the disclosure of which would endanger the safety of any person; or
 - (b) any information or the fact of non-disclosure of the information, before suspending an aviation document or imposing conditions in respect of an aviation document under section 24.

26 Amendment or revocation of aviation documents on request

- (1) The Director may, if so requested in writing by the holder of any aviation document, amend the document in the manner requested or revoke the document.
- (2) Subject to subsection (3), the Director, after having received and considered a request submitted under subsection (1), may do any of the following -
 - (a) amend an aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being enjoyed or carried out, or is no longer able to be enjoyed or 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 enjoyed or carried out, or are able to be enjoyed or carried out, by the holder; or
 - (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 Director must -
 - (a) notify the holder in writing of the proposed action; and
 - (b) 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) the power to revoke the document and issue a new document in its place; and
 - (b) the 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 must forthwith produce the document to the Director.

27 Exemption from certain requirements under certain rules

- (1) The Director, if he or she considers it appropriate and upon such conditions as he or she considers appropriate, may exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any rule made under sections 51, 52, 53, 54 or 55.
- (2) Before granting an exemption under subsection (1), the Director must be satisfied in the circumstances of each case that -
 - (a) the requirement has been substantially complied with and that further compliance is unnecessary;
 - (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement;

- (c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
- (d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,

and that the risk to safety is not likely to be significantly increased by the granting of the exemption.

- (3) The Director must, as soon as practicable by notice, announce the exemption granted under subsection (1).
- (4) Nothing in this section applies in any case where a rule made under the sections referred to in subsection (1) specifically prohibits the granting of an exemption.

28 Detention of aircraft, imposition of prohibitions and conditions and seizure of aeronautical products and dangerous goods

- (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 or any aerodrome may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may -
 - (a) detain the aircraft or any aircraft of that class in order to prevent their operation or use;
 - (b) seize a particular aeronautical product or any aeronautical products of that class where necessary in order to prevent their operation or use;
 - (c) prohibit or impose conditions on the operation of the aircraft or aircraft of that class or the use of any aeronautical product or any aeronautical products of that class;
 - (d) prohibit or impose conditions on the operation of the aerodrome.
- (2) Any detention or seizure under subsection (1) is maintained for only such time as is necessary in the interest of safety, but, if an aircraft, aeronautical products, or parts thereof are required for the purpose of evidence in any prosecution under this Act such aircraft, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.
- (3) The Director, if requested by the owner or the person for the time being of an aircraft detained or an aeronautical product seized under subsection (1), must provide in writing to the owner or such person the reasons for the detention or seizure.
- (4) The Director may seize and detain any dangerous goods where he or she believes on reasonable grounds that they may not be lawfully carried in an aircraft but which are offered for carriage by air for the purpose of -
 - (a) preventing the carriage by air of such dangerous goods;

- (b) use as evidence in any prosecution under this Act or any other law; or
 - (c) the safe disposal of such dangerous goods, if authorised by this Act or any other law.
- (5) Any seizure or detention under subsection (4) may be maintained only for such time as is necessary to achieve the relevant purpose or purposes in subsection (4).
- (6) A person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under section 152.

29 Right of access to aircraft, aerodromes, buildings and places

For the purposes of exercising and performing his or her powers and functions under this Act, a person duly authorised by the Director has right of access at any time to -

- (a) any aircraft, aerodrome, building, or place;
- (b) any document or record concerning any aircraft, aeronautical product, or aviation related service; and
- (c) any other place, document or thing as may be prescribed.

30 Delegation and assignment of powers and functions by Director

- (1) The Director, in writing and subject to such conditions as the Director may determine, may delegate or assign in writing any power or function conferred or imposed on him or her by or under this Act to any employee of the Ministry, including the powers and functions delegated and assigned to the Director under this Act.
- (2) The Director may not delegate -
 - (a) any power delegated to the Director by the Minister without the written approval of the Minister;
 - (b) the power to make emergency rules;
 - (c) the power to suspend or revoke an aviation document under section 23 or 24; or
 - (d) the power to appoint or discharge employees of the office of the Director.
- (3) A delegation under this section may be made to -
 - (a) a specified employee or other person;
 - (b) the employees or other persons of a specified class; or
 - (c) a holder or holders of a specified office or specified class of office.
- (4) An employee of the office of the Director or other person purporting to act pursuant to any delegation under this section -

- (a) is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation;
 - (b) must, when reasonably requested to do so, produce proof of his or her authority to so act.
- (5) A delegation or assignment made under this section -
 - (a) does not divest the Director of the power or function so delegated or assigned; and
 - (b) does not prevent the exercise of the power or the performance of the function by the Director himself or herself;
 - (c) may at any time be revoked in writing by the Director,and the Director may, without prejudice of any right, amend or set aside any decision made under such delegation.
- (6) A delegation under this section, until it is revoked or expires -
 - (a) continues in force according to its tenor, despite the fact that the Director by whom it was made ceases to hold office;
 - (b) continues to have effect as if it was made by the Director for the time being holding that office.

31 Contracting the performance of specified powers and functions of the office of the Director PASO and other approved external organisations.

The Director may with regard to any aviation activity authorised by this Act, and with the consent of the Minister, contract out the performance of specified powers and functions of the office of the Director to approved external organisations including but not limited to PASO, ICAO and IATA.

32 Power of Director to issue aviation directives

The Director may with regard to any aviation activity authorised by this Act, or rules made under this Act, issue an aviation directive in the form of either:

- (1) an approval, a permission, or a procedure, or
- (2) the imposition of a restriction or prohibition,

which the Director believes on reasonable grounds to be:

- (a) consistent with the objectives of applicable regulatory requirements, procedures or documents under this Act; and
- (b) necessary or expedient to better achieve the objects of this Act.

Part 4

Niue Civil Aviation System

33 General requirements for participants in Niue civil aviation system

- (1) A person who –
- (a) performs any function or activity;
 - (b) occupies any position or office;
 - (c) provides any service or product; or
 - (d) does any other anything,

for which an aviation document is required (in this section called a “participant”) must ensure that he or she holds the appropriate aviation documents and all the necessary qualifications and other required documents.

- (2) A participant must –
- (a) comply with this Act and the conditions attached to the relevant aviation documents; and
 - (b) ensure that the activities or functions for which the aviation document has been granted are carried out safely and in accordance with the relevant prescribed safety standards and practices.
- (3) A participant who holds an aviation document that authorises the provision of a service within the civil aviation system must –
- (a) if so required by or under this Act, establish and follow a management system that ensures compliance with the relevant prescribed safety standards and the conditions attached to the document; 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 the conditions attached to the document.

34 Requirement for aviation document

- (1) A rule made under this Act may require that an aviation document is required in respect of –
- (a) an aircraft registered in Niue;
 - (b) aircraft pilots;
 - (c) flight crew members;
 - (d) air traffic service personnel;
 - (e) aviation security service 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) any persons, services, or things within any of the classes specified in paragraphs (a) to (p);
 - (r) such 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; or
 - (s) any person who is an aviation examiner or medical examiner.
- (2) The requirements, standards, forms and application procedure for an aviation document, the maximum period for which an aviation document may be issued and the procedures to be followed where there is an adverse decision to an application for the granting or renewal of an aviation document are as prescribed.
- (3) Subject to this Act, the Director may issue an aviation document for such specified period and subject to such conditions as the Director considers appropriate in each particular case.

35 Application for and grant of aviation document

- (1) An application for the grant or renewal of an aviation document is made to the Director in the prescribed form.
- (2) After considering an application for the grant or renewal of an aviation document, the Director must, as soon as is practicable, grant the application if he or she 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 Director under subsection (2);
 - (ii) is a fit and proper person to have such control or hold the document;
 - (iii) meets all other relevant prescribed requirements; and
 - (c) it is not contrary to the interests of aviation safety for the document to be granted or renewed.
- (3) For the purpose of granting or renewing an aviation document, the Director may, subject to the rules, accept such foreign qualifications or recognise such foreign certifications as he or she considers appropriate in each case.
- (4) It is a condition of every aviation document that the holder or any person who has or is likely to have control over the exercise of the privileges under the document continues to satisfy the fit and proper person test specified in subsection (2)(b)(ii).
- (5) Where the Director declines to grant an application for the grant or renewal of an aviation document under this section, the applicant may appeal against the decision to the High Court under section 153.

36 Criteria for fit and proper person test

- (1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Director, having regard to the degree and nature of the proposed involvement of the person in the Niue civil aviation system, must have regard and give such weight as the Director considers appropriate to -
- (a) the compliance history of the person with transport safety regulatory requirements;
 - (b) the related experience, if any, of the person within the transport industry;
 - (c) the knowledge of the person in the applicable civil aviation system regulatory requirements;
 - (d) any history of any physical or mental health problem, disability or incapacity or of any serious behavioural problem of the person;
 - (e) any conviction of the person for any transport safety offence, whether or not -
 - (i) the conviction was in a court in Niue; or
 - (ii) the offence was committed before the commencement of this Act;
 - (f) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any regulation.

- (2) The Director is not confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.
- (3) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Director may -
 - (a) seek and receive such information, including medical reports, as the Director thinks fit;
 - (b) consider information obtained from any source; or
 - (c) have regard to, and give such weight as the Director thinks appropriate to, any advice and recommendations provided by approved organizations contracted under section 8(1)(c).
- (4) Subsection (1) applies to a body corporate with the following modifications -
 - (a) paragraphs (a), (b), (c), (e), and (f) of that subsection are read as if they refer to the body corporate and its officers;
 - (b) paragraph (d) of that subsection is read as if it refers only to the officers of the body corporate.
- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director, subject to subsection (6), must disclose that information to the person and give the person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) may require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.
- (7) If the Director proposes to make a determination that any holder of or applicant for an aviation document is not a fit and proper person, the Director, subject to subsection (6), must -
 - (a) disclose the grounds for the proposed determination to the holder or applicant; and
 - (b) give the holder or applicant a reasonable opportunity to make submissions on the proposed decision before proceeding to make a final determination.
- (8) If the Director makes a final determination that the holder of or applicant for an aviation document is not a fit and proper person for the purposes of this Act, the Director must -
 - (a) inform the holder or applicant of the decision; and
 - (b) notify the holder or applicant of a right of appeal against the decision to the High Court under section 153.

37 Requirements to register aircraft

- (1) Unless as otherwise provided in this Act, an owner of an aircraft which flies to, from, within, or over Niue territory must register the aircraft and hold a valid certificate of registration for the aircraft issued by -
 - (a) the Director; or
 - (b) the appropriate aeronautical authorities of a contracting State of ICAO; or
 - (c) the appropriate aeronautical authorities of another State which is party to an agreement with the Government of Niue providing for the acceptance of the registration of the aircraft of each other.
- (2) An aircraft may not be registered in or remain registered in Niue if it is registered in any other country.
- (3) The Director may decline to register an aircraft if it does not meet the requirements of this Act.
- (4) Any person in respect of whom a decision is taken under this section may appeal against the decision to the High Court under section 153.

38 Powers, functions and duties of pilot-in-command and operator

- (1) A pilot-in-command of an aircraft -
 - (a) must ensure the safe operation of the aircraft in flight, the safety and wellbeing of all passengers and crew, and the safety of cargo carried; and
 - (b) has final authority to control the aircraft while in command and, where passengers are being carried, for the maintenance of discipline by all persons on board; and
 - (c) subject to subsections (2) to (7), must comply with all relevant requirements of this Act; and
 - (d) which is remotely piloted, must, in addition to the requirements in subparagraphs (a) to (c) above, comply with any rules applicable to remotely piloted aircraft, and

ensure the safety and wellbeing of other aircraft in flight and of persons and property on the ground.

- (2) Subject to subsections (3) and (7), in an emergency that arises in flight, the pilot-in-command may breach 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 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; and
 - (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
 - (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 Niue 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 such aircraft.
 - (7) Where, in any emergency described in this section, a pilot-in-command or an operator breaches this Act in accordance with this section, the pilot-in-command or the operator must -
 - (a) immediately, after the emergency has abated, notify the relevant air traffic control service of the action; and
 - (b) as soon as practicable, and at the latest within seven days of the action, notify the Director of the action and the circumstances that necessitated it, and, if requested by the Director, provide to the Director a written report in respect of the action.
- 39 Obligation to notify all accidents and incidents.**
- (1) The pilot-in-command of any aircraft, other than a recreational remotely piloted aircraft, that is involved in an accident must notify the accident to the Minister and the Director as soon as practicable.
 - (2) Any person who -

- (a) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, or aviation related service; and
- (b) is involved in an incident,

must, if the rules so provide, notify the incident to the Minister and the Director.

- (3) If, due to injuries or death, the pilot-in-command is unable to give the necessary notice under subsection (1), the operator must provide the necessary notice.
- (4) The coordinator of any search and rescue operation for any aircraft must notify the Director of that operation as soon as practicable.
- (5) The Minister must, as soon as practicable, notify the Director after receiving any notification relating to -
 - (a) an accident involving an aircraft (other than a recreational remotely piloted aircraft); or
 - (b) a serious incident – as defined in accordance with the Convention.
- (6) Without limiting subsection (1), the Minister must advise the Director to appoint a Chief Investigator to investigate an accident or incident, if it appears to the Minister that the accident or incident -
 - (a) would, if Niue were a party to the Convention, be required by the Convention to be investigated; or
 - (b) involves circumstances -
 - (i) which have, or are likely to have, significant implications for civil aviation safety; or
 - (ii) which may allow a Chief investigator to establish findings or make recommendations that increase civil aviation safety.
- (7) If an aircraft to which an accident has occurred is registered in a country other than Niue, the Director must forward to that country's aviation authority or registry a copy of the relevant notification received by the Minister or Director and a copy of all relevant information held by the Minister and the Director, including an advice as to the nature of the inquiry being conducted on the accident.
- (8) If the Director is notified under subsection (5) the Director must,-
 - (a) consider what action, if any, to take under this Act or its regulations or rules;
 - (b) investigate and review the accident or incident; and
 - (c) take any other action appropriate in the circumstances.
- (9) Further provision with regard to-
 - (a) the notification of accidents and incidents involving aircraft (including remotely piloted aircraft); and
 - (b) the requirements and procedures for the investigation of such accidents and incidents; and
 - (c) the protection or use of information thereby gained in the course of such investigations,

may be made in rules made under Part 5 of this Act.

Part 5

Rules

40 Conditional Application of New Zealand Civil Aviation Rules to Niue

- (1) Subject to the provisions of this Act and of Rules made under this Act, ordinary rules, being the New Zealand Civil Aviation Rules made either under the Civil Aviation Act of New Zealand 1990 or the Civil Aviation Act of New Zealand 2023, may by the request and consent of Cabinet be extended, shall extend to and be in force in Niue.
- (2) An amendment made to the New Zealand Civil Aviation Rules shall not extend to and be in force in Niue if the Cabinet so resolves.
- (3) Any provision of the New Zealand Civil Aviation Rules as extended to and in force in Niue by virtue of this Act shall cease to extend to and be in force if the Cabinet so resolves.
- (4) A provision of the New Zealand Civil Aviation Rules shall cease to extend to or be in force in Niue where such provision is either in conflict with, or expressly overruled by, an ordinary rule made in Niue pursuant to sections 41 or 50 or where its extension and application to Niue has ceased pursuant to a resolution of Cabinet under subsection (2).

41 The making of ordinary rules in Niue

- (1) Despite the provisions of section 40 the Cabinet, on a recommendation of the Minister, made in consultation with the Director, may make rules relating to -
 - (a) the voluntary alignment of the Niue civil aviation system, to the extent practicable, with the objectives and principles of the Convention and any other relevant and beneficial international civil aviation agreement;
 - (b) the provision of aviation meteorological services,
 - (c) the provision of civil aviation security programs and services,
 - (d) the investigation of incidents and accidents and the disclosure and admissibility of information gained in the course of such investigations
 - (e) the coordination of aviation search and rescue services;
 - (f) the fees, levies and charges payable under this Act;
 - (g) the medical certification of pilots and air traffic service personnel;
 - (h) the commercial and economic development of the civil aviation industry;
 - (i) the protection and promotion of public health;

- (j) the sustainability of the environment;
 - (k) any matter related or reasonably incidental to any of the following -
 - (i) the functions of the Minister in terms of section 8;
 - (ii) the functions of the Director under section 18; and
 - (iii) any matter required or permitted by this Act to be prescribed or necessary or expedient to be prescribed to give effect to this Act.
- (2) A rule made under subsection (1) may -
- (a) apply generally or with respect to different classes of persons, aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of person, aircraft, aerodrome, aeronautical product, aeronautical procedure, or aviation related service in different circumstances;
 - (b) apply generally throughout Niue or within any specified part or parts of Niue; or
 - (c) prescribe penalties in respect of a contravention of or a failure to comply with any provision thereof not exceeding a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

42 Rules relating to safety and security

Without limiting the power conferred by section 41, in the interests of safety or security within the civil aviation system, the Minister, after consultation with the Cabinet, may make rules relating to –

- (a) the use of aerodromes and other aviation related facilities, including -
 - (i) the identification procedures for persons, aircraft, and any other aviation related things;
 - (ii) the prevention of interference with aerodromes and other aviation related facilities;
 - (iii) the designation of any aerodromes and air navigation installations as security designated aerodromes or security designated air navigation installations;
 - (iv) the ongoing review, update and implementation of security measures for the protection of all users of aircraft and aerodromes;
 - (v) the functions, powers, and duties of aviation security providers;
 - (vi) the screening, searching and seizure of items and substances;
- (b) general operation, air traffic and flight, including -
 - (i) the conditions under which aircraft may be used or operated, or conditions under which any act may be performed in or from an aircraft;
 - (ii) the prevention of aircraft from endangering persons or property;

- (c) the control of things likely to be hazardous to aviation safety and security, including but not limited to -
 - (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.

43 Rules relating to airspace

Without limiting the power conferred by section 41 -

- (a) in the interests of safety or security within the civil aviation system; or
- (b) in the interests of national security; or
- (c) for any other reason in the public interest,

the Minister, after consultation with Cabinet, may make rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including the airspace used by the military or police force aircraft.

44 Rules for noise abatement and emission control purposes

Without limiting the power conferred by section 41, the Minister, after consultation with Cabinet, may make rules relating to -

- (a) flight rules, flight paths, altitude restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes;
- (b) limitation of engine emissions consequential upon the operation of aircraft.

45 Rules relating to general matters

Without limiting the powers conferred by section 41, the Minister, after consultation with the Cabinet, may make rules relating to -

- (a) the designation, classification, and certification of -
 - (i) aircraft (including remotely piloted aircraft of any type or description);
 - (ii) aircraft pilots (including the pilots, controllers or operators of remotely piloted aircraft);
 - (iii) flight crew members;
 - (iv) air traffic service personnel;
 - (v) aviation security service personnel;
 - (vi) aircraft maintenance personnel;
 - (vii) air services;

- (viii) air traffic services;
 - (ix) flight service operations
 - (x) experimental and developmental flight operations
 - (xi) remotely operated control towers;
 - (xii) aerodromes and aerodrome operators;
 - (xiii) aviation training organisations
 - (xiv) regulated cargo agents
 - (xv) air navigation installations;
 - (xvi) air navigation installation providers;
 - (xvii) aviation training organisations;
 - (xviii) aircraft design, manufacture, and maintenance organisations;
 - (xix) aeronautical procedures;
 - (xx) aviation security services;
 - (xxi) aviation security measures
 - (xxii) aviation meteorological services;
 - (xxiii) aviation communications services;
 - (xxiv) accident investigation
 - (xxv) aviation search and rescue services;
 - (xxvi) any other person who provides services in the civil aviation system, and any 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;
- (b) the standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in paragraph (a), including -
- (i) the privileges, limitations, and ratings associated with licences or other forms of approval;
 - (ii) the standards for training systems and techniques, including recurrent training requirements;
 - (iii) the medical standards for specified personnel;
 - (iv) the requirement for proof of access to appropriate weather services;
 - (v) the 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 Director by applicants for or holders of aviation documents;

- (c) the conditions of operation of foreign aircraft and international flights to, from, or within Niue;
- (d) the conditions of importation into Niue of remotely piloted aircraft (RPAs),
including ding notification requirements; and
- (e) the definitions, abbreviations, and units of measurement to apply within the civil aviation system.

46 Matters to be taken into account in making ordinary Rules

- (1) The ordinary Rules made by the Minister under section 41 and the emergency Rules made by the Director under section 48 shall have regard to the following —
 - (a) the standards of ICAO relating to aviation safety and security, to the extent that Cabinet considers them to be feasible and appropriate to the circumstances and requirements of Niue;
 - (b) the desirability in principle of the alignment by Niue, to the extent practicable, with the international obligations relating to safety and security operative in other states being member states of ICAO and in particular with PASO member states.
- (2) In making any Rule the Minister or the Director, as the case may be, shall have regard to, and shall give such weight as he considers appropriate in each case to, the following —
 - (a) the standards and recommended practices made under the Chicago Convention;
 - (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 Niue in general;
 - (e) the need to maintain aviation safety and security;
 - (f) the desirability of promoting, to the extent practicable, the harmonisation of aviation safety and security practices, procedures and programs within the Pacific region;
 - (g) the need to maintain Niue's reputation in the global civil aviation system.
 - (h) the costs of implementing aviation safety and security measures in Niue having regard to its human and economic resources;
 - (i) international circumstances and developments relevant to aviation safety and security in Niue;

- (j) such other matters as the Minister, on advice of the Director, considers appropriate in the circumstances.

47 Procedure for making ordinary Rules

- (1) Before making any ordinary Rule, the Minister shall —
 - (a) give notice by Public Notice of his or her intention to make the Rule;
 - (b) give interested persons a reasonable time, which shall be specified in the notice published under paragraph (a), to make submissions on the proposed ordinary Rule; and
 - (c) consult with such persons, representative groups within the aviation industry, in Government departments or elsewhere as the Minister in each case considers appropriate.
- (2) Subject to subsection (3), every ordinary Rule shall be notified publicly and be made available by the Ministry for inspection free of charge.
- (3) Where for reasons of security it is inappropriate to notify a Rule under subsection (2), the Minister shall notify such persons as he 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) Every ordinary Rule shall come into force 28 days after the date of its notification or on such later day as may be specified in the Rule 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.
- (5) The requirements of subsections (1) to (3) shall not apply to the making of ordinary Rules by adoption under section 50.
- (6) Every ordinary rule (other than an ordinary rule made by adoption pursuant to the provisions of section 50) shall —
 - (a) be signed by the Minister;
 - (b) contain a statement specifying the objective of the Rule and the extent of any consultation under this section; 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 51.

48 Emergency rules

- (1) Subject to subsection (2), the Director may make such emergency rules in accordance with this section and with section 52 as may be necessary to alleviate or minimise —
 - (a) any risk of death of or a serious injury to any person; or
 - (b) any risk of damage to any property.

- (2) The emergency rules under subsection (1) are made when –
 - (a) there is no rule in place dealing with the particular situation; and
 - (b) it is impracticable in the circumstances of the particular case for the Minister to make rules to effectively alleviate or minimise the risk concerned.
- (3) The Director may revoke any emergency rule made under subsection (1), and the revocation is notified in the same manner as an emergency rule.
- (4) So far as any emergency rule is inconsistent or repugnant to any rule made under this Act, the emergency rule prevails.

49 Procedure for making emergency rules

- (1) Before making an emergency rule under section 48 the Director must, so far as is practicable in the circumstances, consult with such persons, representative groups within the aviation industry or elsewhere, Government entities, and others as the Director in each case considers appropriate.
- (2) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule, the Director must notify such persons as he or she considers appropriate or necessary in the circumstances by e-mail, facsimile, telephone, or such other manner as the Director considers appropriate or necessary in the circumstances.
- (3) An emergency rule may be in force for a period not exceeding 90 days, and the Director may renew such rule once for a further period not exceeding 90 days.
- (4) The Minister may, at any time while an emergency rule made by the Director is in force in accordance with subsection (3), by public notice extend the rule in accordance with subsection (5) for a further period not exceeding 180 days from the date of its publication.
- (5) Before extending an emergency rule under subsection (4), the Minister must consult with such persons, representative groups within the aviation industry or elsewhere, Government entities, and others as the Minister thinks appropriate.
- (6) Every emergency Rule must —
 - (a) be signed by the Director;
 - (b) contain a statement specifying the objective of the Rule and the extent of the consultation under this section 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 61.

50 Making of Ordinary Rules by Adoption

- (1) Notwithstanding any other procedure by which the Minister may make ordinary rules in accordance with the provisions of this Act the Minister may when he deems it appropriate make an ordinary Rule or Rules by adopting, with or without modification, a civil aviation rule part or parts of a foreign jurisdiction pursuant to the provisions of this section. Any such adopted Rule part or parts shall be incorporated by reference as an ordinary Rule part or parts of Niue and shall have full force and effect in Niue notwithstanding that the foreign Rule part from which the Niue rule part is derived may at any time have ceased to be in force within the jurisdiction of its origin.
- (2) For the purposes of this section “a civil aviation rule part of a foreign jurisdiction” shall mean any ordinary civil aviation rule part which has been duly promulgated and published by any member state of ICAO and which may be readily accessed by the public in Niue in electronic form or otherwise.
- (3) Any Rule part made by adoption under this section need not be reproduced in either electronic or printed form in Niue but after determining to make any Rule pursuant to this section the Minister shall publish a notice of the making of a Rule by adoption which shall contain —
 - (a) a Rule Adoption Statement in a form which shall be prescribed, identifying by country of origin and rule part number in the country of origin the Rule part which has been adopted and the part number by which it will be known in the civil aviation system of Niue and specifying the date on which it shall become effective as a Rule in Niue;
 - (b) a Rule Interpretation Statement as prescribed containing any modifications, directions and information as the Minister may deem appropriate for the application of the adopted rule in the context of the Niue civil aviation system including but not limited to —
 - (c) any words (including place names) and numbers (including section numbers of the Niue Acts to be substituted;
 - (d) any part or parts of the adopted Rule which shall not apply in Niue;
 - (e) any general exemptions which will apply in Niue;
 - (f) any forms to be used in Niue;
 - (g) any equivalent documents to be substituted for documents referred to in the adopted rule part;
 - (h) any direction as to the application or non-application to Niue of any amendment or repeal of an adopted rule part in its country of origin;

- (i) any standards, requirements, recommended practices, rules or other written material or document incorporated by reference under section 61;
 - (j) any other matter likely to assist in the practical, clear and unambiguous interpretation of the adopted Rule in Niue.
- (4) Any Rule Adoption Statement or Rule Interpretation Statement made under this section may, in consultation with the Director, be amended by the Minister after the Rule part has been brought into force pursuant to the provisions of this section.
- (5) Where a Rule is adopted under this Act, all departments of government, judicial officers of the courts of Niue, officials, participants in the Niue civil aviation system, government officials or any other person before whom such rule comes for consideration shall, in their interpretation of such rule or decision or action to be taken under it, give effect to the adopted rule according to its purpose and intent to the fullest extent practicable.
- (6) No adopted Rule, or part thereof, shall be rendered invalid, inoperative or unenforceable only because it contains a reference to any law, agency, authority, document, procedure, person or thing that is not in existence in, or is not applicable to the laws of Niue, and any such reference —
 - (a) shall be deemed to be a reference to the corresponding law, agency, authority, document, procedure, person or thing within Niue or under the laws of Niue; and
 - (b) where there is no corresponding law, agency, authority, document, procedure, person or thing within Niue or under the laws of Niue shall be deemed to refer to the closest equivalent law, agency, authority, document, procedure, person or things within Niue or under the laws of Niue and in any such case regard shall be had to any Implementation Directive issued by the Minister under subsection (7).
- (7) For the purpose of the clarification and effective implementation of any adopted Rule the Minister may from time to time issue an Implementation Directive and shall forthwith publish, distribute or otherwise make the Implementation Directive available to participants within the Niue civil aviation system.
- (8) Where any of the persons referred to in subsection (5), whether individual or an incorporated body, identifies any matter within an adopted rule upon which uncertainty has arisen or might reasonably arise with regard to its meaning, interpretation or application, and in respect of which no Implementation Directive has been issued, that person may, in writing, notify the Director who shall consider the notification and within 30 days of his receipt of notification make a recommendation to the Minister with

regard to the issue of a suitable Implementation Directive under subsection (7) or other appropriate action.

- (9) A copy of each adopted rule and its Rule Adoption Statement and Rule Interpretation Statement and any Implementation Directive made under this section shall be kept at the Civil Aviation Registry and shall be available for inspection at all reasonable times.

51 Incorporation into rules by reference

- (1) The Minister, after consultation with the Director, may, respectively, incorporate by reference into a rule made by the Minister, or into emergency rule made by the Director, any -
 - (a) standards, requirements, or recommended practices of international aviation organisations;
 - (b) standards, requirements, or rules prescribed by any other state being a Contracting State of ICAO;
 - (c) standards, requirements, or rules of any aviation sport or aviation recreational organisation; or
 - (d) any other written material or document that, in the opinion of the Minister or Director, is too large or impractical to be printed as part of the regulation.
- (2) A material incorporated in a rule by reference under subsection (1) -
 - (a) is deemed for all purposes to form part of the rule or emergency rule; and
 - (b) unless otherwise provided in the rule or emergency regulation, every amendment to any material so incorporated by reference that is made by the person or organisation from whom the material originated, the amendment, subject to subsections (3) and (4), is deemed to be part of the rule or emergency rule.
- (3) The Minister or Director, by notice, must specify the date on which any amendment to material incorporated by reference under subsection (1) takes effect.
- (4) The Civil Aviation Registry must make all the materials incorporated by reference under subsection (1) or (2) available for inspection by the public.
- (5) Where any material specified in subsection (1) is incorporated by reference into a rule or emergency rule pursuant to this section the rule or emergency rule must –
 - (a) include a statement to the effect that the material has been incorporated pursuant to this section;

- (b) clearly identify the material so incorporated; and
- (c) advise that the incorporated material is available for inspection in accordance with subsection (4).

PART 6

Fees, Charges and Levies

52 Fees, charges and levies

- (1) Cabinet, with the concurrence of the Minister responsible for finance, on the recommendation of the Director given after consultation with such persons, representative groups within the aviation industry or elsewhere, Government entities, and others as the Minister in each case considers appropriate, may make rules relating to -
 - (a) the fees, charges and levies payable under this Act;
 - (b) the matters in respect of which fees, charges or levies are to be payable under this Act, the amount of the fees, charges or levies and the persons liable to pay them;
 - (c) the dates by which fees, charges or levies are payable;
 - (d) discounts for early payment of fees, charges or levies or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee, charge or levy;
 - (e) the refund or waiver of any fee, charge or levy payable under this section in whole or in part, in any specified case or class of cases;
 - (f) such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) Different rates of fees, charges and levies may be prescribed 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) A rule made under this section may -
 - (a) specify the persons by whom and to whom any fees, charges or levies are payable;
 - (b) prescribe additional fees, allowances, charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays;
 - (c) prescribe rates for reimbursement of traveling time, accommodation, and other daily expenses;
 - (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;

- (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) The Minister may not prescribe fees, charges and levies in respect of the use of any aerodrome or airport operated or managed by an airport company, except with the approval of such airport company.

53 Rebates

- (1) Subject to subsection (2), a Government institution, an organisation or a person to whom any fees, charges or levies are payable under any rule may grant a rebate of such fees, charges or levies to any person who is liable to pay such fees, charges or levies.
- (2) A rebate of fees, charges or levies granted under subsection (1) is -
 - (a) based on the quantity of services used by the person liable to pay the fees, charges or levies;
 - (b) offered on an equal percentage basis to every person using a similar quantity of such services; and
 - (c) granted in accordance with the prescribed requirements.

54 Payment of fees, charges and levies

- (1) Unless otherwise provided in a rule or regulation, every application made under this Act must be accompanied by the payment of all relevant prescribed fees or charges.
- (2) Where a fee, charge or levy payable under this Act is not paid by the date prescribed for payment of such fee, charge or levy, the Director may suspend the aviation document to which the unpaid fee, charge or levy relates.
- (3) Where any fee, charge or levy payable under this Act is not paid 60 days after the date prescribed for payment of such fee, charge or levy, the Director may revoke the aviation document to which the fee, charge or levy relates.
- (4) Before suspending an aviation document under subsection (1), or revoking an aviation document under subsection (2), the Director must notify the holder of the document of -
 - (a) his or her intention to suspend or revoke the document; and
 - (b) the right of appeal available to the holder of the document in the event of the document being suspended or revoked.
- (5) Where a fee or a charge is payable in respect of an application or the provision of a service under this Act, the Director 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 process the application or provide the service until -

- (a) the appropriate fee or charge has been paid; or
 - (b) arrangements for payment of the fee or charge acceptable to the Director or such other person have been made.
- (6) A holder of an aviation document that is suspended under subsection (1) or revoked under subsection (2) may appeal against the decision of the Director to the High Court under section 153.

55 Recovery of fees, charges, levies and penalties

- (1) Without limiting the powers contained in subsections (2), (3) and (5) of section 54, the Director may recover any fee, charge, levy or administrative fine that is not paid to the Ministry by the due date as a debt due to the Ministry.
- (2) Subject to subsection (3), where a fee, charge, levy or penalty is payable under this Act in respect of any aircraft, the person whose name appears on the register of aircraft in respect of such aircraft is deemed to be liable to pay such fee, charge, levy or penalty.
- (3) Any person who would otherwise be liable to pay a fee, charge, levy or penalty in relation to any aircraft in terms of subsection (2) is not so liable if the person -
 - (a) proves that during any relevant period of use of the aircraft the 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 provide the Director with such information as would identify the actual user.

56 Reserved

PART 7

Registries, Recordation of Interests in Aircraft and Information Services

57 Niue Register of Aircraft

- (1) The Director must establish a register to be known as the Niue Register of Aircraft.
- (2) The Director must enter in the Niue Register of Aircraft such particulars, as may be prescribed, of every aircraft registered under section 37(1).

58 Recordation of interests in aircraft

- (1) The Director must, when appropriate, establish a national system for recording documents which affect the title to or any interest in -
 - (a) any civil aircraft registered in Niue; and
 - (b) any aircraft engine, propeller, appliance, or spare part intended for use on any aircraft registered in Niue.
- (2) Upon the Director establishing a recording system, no document affecting title to or any interest in such registered aircraft, aircraft engines, propellers, appliances, or spare parts is valid, except between the parties thereto, unless it is recorded in that system.
- (3) The validity of any document so recorded, unless otherwise specified by the parties thereto, is determined under the laws of Niue.
- (4) The requirements for documents to be recorded and the manner of recordation may be prescribed by the Director.

59 Civil Aviation Registry

- (1) The Director must establish a registry to be known as the Civil Aviation Registry.
- (2) Copies or appropriate proof of the following documents and information are recorded and maintained at the Civil Aviation Registry -
 - (a) all aviation documents;
 - (b) the Niue Register of Aircraft;
 - (c) all rules and all notices under this Act and for the time being in force;
 - (d) any material incorporated into a rule by reference under section 52;
 - (e) all accident and incident notifications given under section 39;
 - (f) all airworthiness directives issued by the Director under section 18(3);
 - (g) all aviation directives issued by the Director under section 32;
 - (h) all delegations, authorisations, and exemptions made or granted in writing under this Act;
 - (i) the address for service of every current applicant for an aviation document and of every current aviation document holder;
 - (j) all information published under section 60; and

- (k) all document of recordation of title or interest pursuant to section 58.
- (3) The Director must take such measures as are necessary to ensure that the public has access to documents described in subsection (2) and kept at the Civil Aviation Registry.
- (4) The Director must make the documents and information described in subsection (2) available during the business hours of the office of the Director -
 - (a) for inspection by the public free of charge; and
 - (b) for copying upon payment of such fee as the office of the Director may determine.
- (5) The Director may exclude any information relating to documents kept at the Civil Aviation Registry, if the disclosure of such information may -
 - (a) prejudice the safety and security of civil aviation; or
 - (b) risk the national interest of Niue.

60 Information services

The Director must ensure that -

- (a) an information service is provided comprising the collection and dissemination of aeronautical information and instructions relating to the safety, security, regularity, and efficiency of air navigation; and
- (b) such information and instructions referred to in paragraph (a) are readily available to any person upon payment of a fee determined by the Director.

PART 8

Air Service Operations

61 Scheduled air service operations

A person may not engage in a scheduled air service operation between Niue and elsewhere except -

- (a) under the authority of and in conformity with the terms and conditions of an air service licence granted under this Act; or
- (b) where stops are only made in Niue for non-traffic purposes.

Penalty:

- (a) In the case of an individual, a fine not exceeding 50 penalty units;
- (b) In the case of a body corporate, a fine not exceeding 500 penalty units.

62 Non-scheduled flights

- (1) An aircraft of a state other than Niue that is not engaged in scheduled international air service operation may –
 - (a) make a non-scheduled flight in transit non-stop across Niue territory; or
 - (b) make a stop in Niue for a non-traffic purpose.
- (2) The Director may require an aircraft referred to in subsection (1) –
 - (a) to land; or
 - (b) to obtain special permission for the flight.
- (3) A person must comply with a requirement of the Director imposed under subsection (2).

Penalty:

- (a) In the case of an individual, a fine not exceeding 50 penalty units;
 - (b) In the case of a body corporate, a fine not exceeding 500 penalty units.
- (4) The pilot of an aircraft of a state other than Niue that is not engaged in a scheduled international air service operation may not make a non-scheduled flight across Niue territory with a stop in Niue for traffic purposes except –
 - (a) with the approval of the Director; and
 - (b) in compliance with any condition or limitation the Director imposes on that approval.

Penalty:

- (a) In the case of an individual, a fine not exceeding 50 penalty units;
- (b) In the case of a body corporate, a fine not exceeding 500 penalty units.

63 Cabinet is licensing authority

- (1) Cabinet may grant an air service licence.

- (2) Cabinet may appoint a person to inquire into and report upon a matter in relation to –
 - (a) An air service licence; or
 - (b) An application for an air service licence.

64 Application for an air service licence

- (1) An application for an air service licence must –
 - (a) be made to Cabinet; and
 - (b) be accompanied by such information and documents in support of the application as Cabinet requires.
- (2) Cabinet may –
 - (a) refuse an application for an air service licence; or
 - (b) grant it –
 - (i) in whole or in part; and
 - (ii) subject to any condition Cabinet considers necessary in the public interest.
- (3) An air service licence must be in a form approved by Cabinet.

65 Duration of air service licence

- (1) An air service licence –
 - (a) takes effect on the date stated in it; and
 - (b) unless sooner revoked or expressed to expire earlier expires 5 years later.
- (2) If –
 - (a) an application for the renewal of an air service licence has been made; but
 - (b) the application has not been disposed of before the date of expiry of the licence,

the licence continues in force until the application is disposed of unless Cabinet otherwise directs.

66 Terms of air service licence may be varied during currency

- (1) Cabinet may if Cabinet considers it to be in the public interest to do so –

- (a) amend or revoke a term or condition of an air service licence; or
 - (b) add a new term or condition in an air service licence.
- (2) Before exercising a power under subsection (1) Cabinet must give –
- (a) the licensee; and
 - (b) any other p.
 - (c)
 - (d) .erson Cabinet believes is likely to be affected, at least 21 days notice of its intention to do so.

67 Renewal of air service licences

- (1) An application for the renewal of an air service licence must –
- (a) be made to Cabinet; and
 - (b) be accompanied by such information and documents in support of the application as Cabinet requires.
- (2) Cabinet may –
- (a) refuse an application for the renewal of an air service licence; or
 - (b) grant it –
 - (i) in whole or in part; and
 - (ii) subject to any condition Cabinet considers necessary in the public interest.
- (3) The renewal of an air service licence –
- (a) unless sooner revoked or expressed to expire earlier expires 2 years after it takes effect; and
 - (b) may be granted in advance to take effect on the expiry date of the licence being renewed.

68 Inquiries as to air service licence

- (1) Cabinet may appoint a person to hold a public inquiry to determine if an air service operation being carried on under the authority of an air service licence is being carried on in conformity with its terms and conditions.
- (2) A person appointed under subsection (1) must give at least 21 days notice of his or her intention to hold the inquiry to –
- (a) the licensee; and

- (b) any other person he or she believes has an interest in the air service licence.
- (3) The notice must –
 - (a) state the day, time, and place fixed for the inquiry; and
 - (b) contain details of the matter proposed to be inquired into.

69 Revocation of air service licences

Cabinet may revoke an air service licence or suspend it for any period the Cabinet considers appropriate –

- (a) If the air service operation authorised by the licence is not started on the date specified in it for the start of the operation; or
- (b) If the licensee abandons or curtails the air service operation authorised by the licence; or
- (c) If after receiving the report of a person appointed to hold an inquiry Cabinet is satisfied that the licensee is not carrying on the air service operation in conformity with the licence; or
- (d) If Cabinet is satisfied that the licensee has disposed of the air service operation authorised by the licence to another person without –
 - (i) transferring the licence to that person; or
 - (ii) obtaining Cabinet's consent to the transfer.

70 Transfer of licence

- (1) A licensee under an air service licence may not transfer the licence without Cabinet's written consent.
- (2) An application for Cabinet's consent to transfer an air service licence must –
 - (a) be made to Cabinet; and
 - (b) be accompanied by such information and documents in support of the application as Cabinet requires.
- (3) Cabinet may –
 - (a) refuse consent for the transfer of an air service licence; or
 - (b) grant consent –
 - (i) in whole or in part; and
 - (ii) subject to any condition Cabinet considers necessary in the public interest.

71 Licensee to provide information

It is an implied condition of an air service licence that the person authorised to carry on an air service operation by virtue of the licence must provide the Minister with any financial and statistical returns and statements the Minister requires.

72 Licensee to uplift disembarked passengers.

- (1) It is an implied condition of an air service license granted under this Act that the person authorized to carry on an air service operation by virtue of that license must in the event that it disembarks any passenger in Niue in accordance with section 78,
 - (a) consult with the Director as soon as practicable after such disembarkation regarding a date, to be determined by the Director, for the uplift and carriage of that passenger out of Niue under its license, such occasion to be the earliest practicable date following the disembarkation, and,
 - (b) further consult with the Director regarding any security requirements or other conditions to be imposed by the Director in respect of the uplift and carriage of that passenger out of Niue, and,
 - (c) at the licensee's cost re-embark and undertake the carriage of that passenger out of Niue on the date determined by the Director under subparagraph (a) and in accordance with any requirements which may be notified by the Director under subparagraph (b).
- (2) The Director must, where practicable, confer with the Minister regarding any arrangements made or to be made with the licensee under paragraph (1).
- (3) In determining,
 - (a) A date under subsection (1)(a), or
 - (b) any security requirements or other conditions to be imposed under subsection (1)(b),the Director must have regard to;
 - (i) the observable physical and mental condition of the disembarked passenger with respect to his or her fitness for travel on the licensee's aircraft.
 - (ii) any assessment of the fitness for travel of the disembarked passenger made by a registered medical practitioner and notified to the Director.
- (4) The provisions of this section are without prejudice to any rights of prosecution and/or detention within Niue arising out of the conduct on the aircraft which resulted in the disembarkation of the passenger in Niue.

73 **Reserved**

74 **Reserved**

PART 9

Civil Aviation Security

75 National civil aviation security policy

Subject to this Act, the Cabinet must establish a National Security Committee charged with the protection of Niue and its citizens so far as possible from acts of terrorism and in the context of civil aviation;

- (a) the promotion, inter alia, of a secure civil aviation environment in Niue.
- (b) the development and review of a national aviation security policy for Niue.

76 Functions of the National Security Committee in Relation to Civil Aviation

The National Security Committee must -

- (a) develop a National Aviation Security Program (NASP) in due accordance with Annex 17 to the Convention and review the NASP to ensure that it continues to reflect the standards and requirements in Annex 17 and is consistent with Government policy;
- (b) provide input, as required, into the making and development of ordinary Civil Aviation Rules of Niue in order to give effect to Government policy with regard to civil aviation security.
- (c) define and allocate tasks within Government policy for implementation of the National Aviation Security Program as between the Police, agencies, airline operators and other concerns;
- (d) develop technical criteria to be met by those persons responsible for implementing security measures under the national aviation security program and publish it, to the extent deemed necessary, for the use of those persons;
- (e) constantly analyse the level of threat to civil aviation and initiate such action by airlines, the airport and the Police as providers of security services and other organisations contributing to the program as are sufficient to effectively counter the perceived level of threat;

- (f) develop and implement policy to ensure that surveys, inspections, audits, tests and investigations of security standards and security measures as well as operating procedures of airports, airlines and providers of security services for purposes of the compilation of the NASP are conducted;
- (g) receive, collate, analyse and disseminate information on any threat or incident and information on the numbers and types of prohibited articles discovered or confiscated and, if considered appropriate, provide a technical reference and information centre for the use of the Police, airport administration, operators and any other agency authorised to provide aviation security services;
- (h) foster and promote good working relationships, cooperation and the exchange of relevant information and experience among States, particularly with adjacent States and those with which the State has significant air transport relationships;
- (i) ensure that the NASP is current, effective and upgraded as required by changing circumstances;
- (j) guide and assist the Director as circumstances may require in;
 - (i) the development and implementation of policy in respect of the development and production of suitable training materials that can be used in the training of persons concerned with the implementation of the NASP;
 - (ii) the development as required of national standards relating to the specifications of security equipment, systems and airport design;
 - (iii) the co-ordination of security measures and procedures with appropriate organisations, agencies and relevant departments;
 - (iv) the development of strategies to secure effective oversight, monitoring, and compliance with aviation security standards;
 - (v) the assessment of security related decisions taken by industry at all levels for the impact on aviation security, and the timely and regular conduct regular and timely assessment of international security developments;
 - (vi) the development of effective strategies to secure compliance, to the extent deemed necessary by the Minister having regard to the circumstances and requirements of Niue, with facilitation standards in accordance with Annex 9 of the Convention.
 - (vii) the development of a Quality Program and the implementation where required of a Safety Management System and Security Management System where contained in the Program;
 - (viii) the development of aviation security training and standards as required.

77 Access to relevant information and resources by the National Security Committee

- (1) The National Security Committee may, in the context of an aviation security issue which comes before it, require the attendance, input and assistance from time to time of –
 - (a) the Director;
 - (b) any person or persons designated by the Director after consultation with the Minister;
 - (c) a staff member of the Ministry of Infrastructure designated by the Minister;
 - (d) a staff member of the Niue Airports division;
 - (e) a member of the Niue Police Force designated by the Chief of the Niue Police Force;
 - (f) a staff member of the Air Traffic Service designated by the Director;
 - (g) a staff member of the division responsible for foreign affairs designated by the Secretary of Government;
 - (h) a staff member of the division responsible for immigration designated by the Head of Immigration;
 - (i) an officer of the division responsible for customs designated by the Head of Customs; and
 - (j) any other person designated by the Director on the basis of any relevant expertise.
- (2) The National Security Committee may, in appropriate circumstances require the vetting of persons designated under subsection (1) (m) by a competent authority for security clearance.
- (3) A person designated in pursuance of subsection (1) as a member of the National Security Committee must be a staff member at management level who is –
 - (a) authorised to bind his or her employer in decisions taken; and
 - (b) to advise the Minister in the exercise of the functions of the National Security Committee.
- (4) In the process of developing the policies contemplated in section 83, where any matter may affect any stakeholder in the aviation industry or otherwise, the National Security Committee must, except in a situation of immediate emergency, consult with the stakeholder.
- (5) The strategies and policies contemplated in section 76 and other aviation security policies and measures developed may, where appropriate, reflect or be incorporated in Rules made under section 43.

78 Powers of aircraft commander on board aircraft

- (1) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that a person on board the aircraft has done, is doing 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
 - (b) anything, whether an offence or not, 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 such reasonable measures, including restraint, as may be necessary against the person.

- (2) The measures taken under subsection (1) are taken -
- (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 the person in accordance with subsection (5) or (6).
- (3) A member of the crew of an aircraft, in-flight security officer or any other person on board the aircraft may -
- (a) at the request or with the authority of the commander of the aircraft, restrain any person whom the commander may restrain under subsection (1), and any member of the crew, if so required by the commander, must assist in restraining the person;
 - (b) without the authority of the commander, take against any person on board the aircraft such reasonable measures, including restraint, to protect the safety of the aircraft, persons or property on board the aircraft as he or she has reasonable grounds to believe that the measures are immediately necessary.
- (4) A restraint imposed on any person on board an aircraft under subsection (1) or (2) -
- (a) does not continue 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 practicable after the flight ceases, that a person on board is under restraint and the reasons for the continuation of the restraint;
 - (b) may be continued -

- (i) for any 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 (5) or subsection (6); or
 - (ii) if the person under restraint agrees to continue his or her journey under restraint on board the aircraft.
- (5) 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,he or she may, if he or she considers it necessary to do so in order to protect the safety of the aircraft, disembark the person in any country in which the aircraft may be.
- (6) 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 his or her opinion is a serious offence under the law of the country in which the aircraft is registered, he or she may deliver the person -
 - (a) in Niue, to any police officer; or
 - (b) in any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a police officer in Niue.
- (7) If the commander of an aircraft disembarks any person pursuant to subsection (5), in the case of a Niue registered aircraft, in any country, or, in the case of any other aircraft, in Niue, he or she must report the fact and the reasons for the disembarkation to an appropriate authority in the country of disembarkation, in the case of Niue, being a police officer.
- (8) If the commander of an aircraft intends to deliver any person in accordance with subsection (5) in Niue or, in the case of a Niue aircraft, in any other country which is a party to the Tokyo Convention, he or she must, before or as soon as practicable after landing, give notification of his or her intention and of the reasons for his or her intention to an appropriate authority in the country, in Niue, being a police officer.
- (9) A commander of an aircraft who without reasonable cause fails to comply with subsection (6) or (7) commits an offence and is liable to a fine not exceeding 20 penalty units or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

- (10) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with this section does not commit any offence and is not liable to any civil claim or proceedings in respect of those measures.

79 Delivery of disembarked persons to police officer

Where the commander of an aircraft delivers a person to a police officer in accordance with section 78(6), the police officer must -

- (a) accept delivery of the person, if he or she has reasonable grounds to suspect the person of having done or omitted to have done anything on board the aircraft that is an offence against this Act or any other law; and
- (b) after having complied with paragraph (a) arrest the person.

80 Searching of persons and baggage on aircraft

If the commander of an aircraft in flight has reasonable grounds to suspect that an offence against this Act has been, is being, or is likely to be, committed on board or in relation to the aircraft -

- (a) the commander;
- (b) any member of the crew of the aircraft; or
- (c) any other person on board the aircraft authorized by the commander 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.

81 Approval of carriage and use of firearms, weapons, ammunition, and other equipment by in-flight security officers

The Director may approve firearms, weapons, ammunition, and other equipment for carriage and use on board an aircraft by an in-flight security officer.

82 Foreign in-flight security officers

- (1) Despite section 131, the Director, with the consent of the Inspector-General and other affected parties the Director considers appropriate, and in accordance with this Act, may authorise a foreign in-flight security officer who is, or a class of foreign in-flight security officers who are, accompanied by a police officer and is or are carrying an item, being a firearm, weapon, ammunition, or any other equipment, to -

- (a) disembark from an aircraft;
- (b) board an aircraft;

- (c) pass through a -
 - (i) security area;
 - (ii) security restricted area;
 - (iii) sterile area.
- (2) The authorisation of a foreign in-flight security officer by –
 - (a) the Director is not an aviation document;
 - (b) the State that has issued the air operating certificate, or its equivalent, for the aircraft operator only applies while the aircraft is in service.

83 Authorisation of police officers to be in-flight security officers

- (1) The Chief of Police may authorise any police officer to be an in-flight security officer.
- (2) When providing authorisation under subsection (1), the Chief of Police must have regard to the views of the Director.
- (3) When forming his or her views, the Director, as he or she considers appropriate and practical, must have regard to the views of representative groups in the aviation industry.

84 Possessing, carrying, and use of firearms, weapons, ammunition, and other equipment on board certain aircraft in certain circumstances by in-flight security officers

Despite section 131, an in-flight security officer may, on board an aircraft operated by an operator conducting commercial air transport operations in Niue, possess, carry, and use a firearm, weapon, ammunition, or other equipment that the Director has approved under section 88 if –

- (a) the officer is on duty; and
- (b) the aircraft is in flight.

85 Taking of action or measures reasonably necessary to restore or preserve control of aircraft by in-flight security officers

Without limiting the powers of the commander of an aircraft or a person authorised by the commander under section 78, an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or to preserve the control of the aircraft by the commander, including the use of –

- (a) reasonable force; or
- (b) assistance that is reasonably necessary in the circumstances.

86 Arresting of persons in certain circumstances by in-flight security officers

- (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed or is committing an offence under this Act, the in-flight security officer may arrest the person -
 - (a) without a warrant;
 - (b) with the use of -
 - (i) reasonable force; or
 - (ii) assistance that is reasonably necessary in the circumstances.
- (2) Despite subsection (1), an in-flight security officer may not arrest a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- (3) If an in-flight security officer arrests a person without the prior approval of the commander of an aircraft, the in-flight security officer must -
 - (a) inform the commander of the arrest as soon as practicable; and
 - (b) seek the approval of the commander to keep the person under arrest.
- (4) An in-flight security officer who arrests a person under this section must, as soon as practicable, deliver the person to -
 - (a) a police officer, if the arrested person is in Niue; or
 - (b) a person exercising the functions corresponding to those of a police officer, if the arrested person is in a country other than Niue that is a party to the Tokyo Convention.
- (5) Nothing in this section limits the justifications for the use of force under any other law.

87 Restraining of persons under arrest in certain circumstances by in-flight security officers

- (1) Subject to subsection (2), an in-flight security officer may, with the use of reasonable force, or assistance that is reasonably necessary in the circumstances, restrain a person arrested under section 86 until the person is delivered as required under section 86(4).
- (2) An in-flight security officer may not restrain a person without the prior approval of the commander of the aircraft, unless –
 - (a) seeking prior approval is not practicable; or
 - (b) the in-flight security officer has reasonable grounds to believe that the person must be restrained immediately to protect the safety of the aircraft or persons or property on the aircraft.

- (3) If an in-flight security officer restrains a person without the prior approval of the commander of an aircraft, the in-flight security officer must –
 - (a) inform the commander of the restraint as soon as practicable; and
 - (b) seek the approval of the commander to keep the person under restraint.

88 Searching of certain persons and seizing of items or substances in certain circumstances by in-flight security officers

- (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed, is committing, or is likely to commit an offence under this Act, the in-flight security officer may, with the use of reasonable force, or of assistance that is reasonably necessary in the circumstances –
 - (a) search –
 - (i) the person for any item or substance that has been, is being, or may be, used to commit an offence under this Act;
 - (ii) any property on board the aircraft for any item or substance that has been, is being, or may be used to commit an offence under sections 123, 131, 132, 133 or 134; and
 - (b) seize the item or substance contemplated under paragraph (a).
- (2) Despite subsection (1), an in-flight security officer may not search a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.
- (3) If an in-flight security officer searches a person without the prior approval of the commander of an aircraft, the in-flight security officer must inform the commander of the search as soon as practicable.
- (4) With respect to a search made under subsection (1), an in-flight security officer may use any aid or device that is reasonably necessary to facilitate the search, including a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

89 Persons assisting in-flight security officer to use reasonable force in certain circumstances

A person assisting an in-flight security officer under section 86, 87 or 88 is justified in using force if –

- (a) the person acts in good faith; and
- (b) the force is reasonable.

PART 10

General Offences

90 Applying for aviation document while disqualified

- (1) A person who applies for or obtains an aviation document while disqualified by an order of the Court from obtaining such a document –
 - (a) commits an offence; and
 - (b) the document so obtained is of no effect.
- (2) A person who commits an offence in terms of subsection (1) is liable –
 - (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (b) in the case of a body corporate, to a fine not exceeding 2,000 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.

91 Communicating false information or failing to disclose information relevant to granting or holding of aviation document

A person who –

- (a) by any means, provides to the Director information relevant to the exercise of powers of the Director under this Act, knowing the information to be false ;
- (b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Director information known to that person which is relevant to the exercise of powers of the Director under this Act; or
- (c) being the holder of an aviation document, fails, without reasonable excuse, to provide to the Director information known to that person which is relevant to the condition specified in section 35(4),

commits an offence and is liable –

- (i) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
- (ii) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

92 Obstruction of persons duly authorised by Director

- (1) A person who obstructs or impedes a person who is duly authorised by the Director and acting in the exercise or performance of any powers or functions conferred or imposed on him or her by or under this Act commits an offence and is liable –
 - (a) to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (b) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.
- (2) Subsection (1) applies only where the person obstructed or impeded is in a uniform or produces proof of his or her authority.

93 Failure or refusal to produce or surrender documents

A person who, without reasonable excuse, fails or refuses to comply with a requirement for the production or surrender of documents or other records in accordance with this Act commits an offence and is liable to a fine not exceeding 20 penalty units or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

94 Trespassing in aerodrome, building or area used for civil aviation

A person 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 so remain by -

- (a) a person duly authorised by the Director in writing for that purpose,
- (b) a police officer, or an aviation security officer; or
- (c) a notice posted by one of those persons,

commits an offence of trespassing and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

95 Failure to maintain accurate records

A person who contravenes any provision of this Act or any rule that requires the person-

- (a) to make accurate entries in a record;
- (b) to maintain an accurate record; or
- (c) to produce to the Minister or the Director an accurate record,

commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
- (ii) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

96 Failure to notify emergency breach

A pilot-in-command who, without reasonable excuse, fails to comply with section 38(7), relating to the notification of breaches committed during an emergency, commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

97 Failure to notify accident or incident

A pilot-in-command or operator who, without reasonable excuse, fails to comply with section 39(1), (2) or (3), relating to the notification of an accident or incident, commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period of two years and, if the offence is a continuing one, to a further fine not exceeding 10 penalty units for every day or part of a day during which the offence is continued; or
- (b) in the case of a juristic person, to a fine not exceeding 2,000 penalty units and, if the offence is a continuing one, to a further fine not exceeding 100 penalty units for every day or part of a day during which the offence is continued.

98 Offences relating to disclosure of privileged information

(1) A person who -

- (a) knowingly communicates or permits to be communicated to any other person an on board recording in breach of the provisions of any ordinary rule made under section 45 (1) (a) relating to the investigation of accidents and incidents or any ordinary rule made under section 45 (1) (a) relating to the disclosure or the admissibility of information gained in the course of the investigation of an accident or incident;
- (b) knowingly communicates or permits to be communicated to any person a privileged statement in breach of any rule referred to in subparagraph (a);
- (c) knowingly communicates or permits to be communicated to any person privileged identity information in breach of any rule referred to in subparagraph (a),

commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding 250 penalty units or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
 - (ii) in the case of a body corporate, to a fine not exceeding 2,500 penalty units.
- (2) A person who knowingly communicates or permits to be communicated any information pertaining to the content, design, management or operation of any aviation security equipment, facility, procedure or other security measure in effect at, or intended for -
 - (a) any aerodrome;
 - (b) air navigation installation or aircraft;
 - (c) entity associated with the supply of goods and services to any such aerodrome, air navigation installation or aircraft,

in breach of any confidentiality requirement or knowingly communicates or permits to be communicated such information to any person or organisation having no lawful interest in the receipt of the same commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding 500 penalty units or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment; or
 - (ii) in the case of a body corporate, to a fine not exceeding 5,000 penalty units.

99 Offences relating to production and discovery of on board recordings and statements

A person who contravenes –

- (a) any restriction or condition imposed by any Court or judicial inquest in ordering the production and discovery of an on board recording under the provisions of any ordinary rule relating to the investigation of accidents and incidents made under section 46(1)(a);
- (b) any restriction or condition imposed by any court, or person conducting an inquest or public enquiry in ordering the production and discovery of a statement under the provisions of any ordinary rule relating to the investigation of accidents and incidents made under section 46(1) (a);

commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding 250 penalty units or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or

- (ii) in the case of a body corporate, to a fine not exceeding 2,500 penalty units.

100 Other actions contrary to the efficient investigation of accidents and incidents

A person who -

- (a) without lawful excuse, wilfully resists or otherwise obstructs a member or an investigator in the execution of powers or functions under any provision of this Act or under any rule relating to accident and incident investigation;
- (b) knowingly gives false or misleading information at any investigation or public inquiry;
- (c) makes a report that the person knows to be false or misleading;
- (d) without lawful authority removes, conceals or withholds, or attempts to remove, conceal or withhold any part of an aircraft involved in an accident or incident, or any property on board an aircraft at the time of an accident or incident in breach of the provisions of this Act or of any rule made under this Act,

commits an offence and is liable to a fine not exceeding 250 penalty units or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

101 Failure to provide identifying information

An operator of an aircraft or holder of a certificate of registration who, without reasonable excuse, fails to comply with section 157, relating to the identification of the pilot in command of an aircraft commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years; or
- (b) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

102 Contravention of emergency rule, prohibition or condition under section 28(1) or aviation directive under section 32.

A person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency rule made under section 49, or any prohibition or condition notified under section 28(1), or any aviation directive issued under section 32 commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years; or
- (b) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

103 Flight over foreign country without authority or for improper purpose

- (1) This section applies to -
- (a) any aircraft that is registered or required to be registered in Niue under this Act;
 - (b) any other aircraft operated by a person who is a permanent resident of Niue or whose principal place of business is in Niue.
- (2) A person 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 the aircraft to be used for a purpose that is prejudicial -
- (a) to the security of;
 - (b) to public order or public health of; or
 - (c) to the safety of air navigation in relation to,
- the country or territory commits an offence.
- (3) In any prosecution for an offence under subsection (2), where it is proved that the aircraft was used for a purpose that is prejudicial to -
- (a) the security of;
 - (b) public order or public health of;
 - (c) 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 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 the 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 -
 - (i) the security of;
 - (ii) the public order or public health of; or
 - (iii) the safety of air navigation in relation to,

the 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, commits an offence.

- (5) In any prosecution for an offence under 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) For the purposes of this section, “appropriate aeronautical 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 the country or territory.
- (8) A person who commits an offence in terms of subsection (2) or (4) is liable
 - (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (b) in the case of a juristic person, to a fine not exceeding 2,000 penalty units.

104 Failure to disclose the importation into Niue of a notifiable remotely piloted aircraft (RPA)

A person who imports into Niue a remotely piloted aircraft (RPA), the importation of which is required under an ordinary rule made under section 46 (1) (a) to be notified to the Director, and who fails to comply with such notification requirement commits an offence and is liable to a fine of 20 penalty units or to imprisonment for a period not exceeding six months.

PART 11

Safety Offences

105 Endangerment caused by holder of aviation document

A holder of an aviation document 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 to be committed or omitted, and the act or omission causes

unnecessary danger to any other person or to any property commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
- (b) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

106 Operating aircraft in careless manner

A person who operates an aircraft, including a remotely piloted aircraft) in a negligent, careless or reckless manner commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or both such fine and such imprisonment; or
- (b) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

107 Operating a remotely piloted aircraft in contravention of the rules or conditions imposed by the Director

- (1) A person who operates a remote piloted aircraft in contravention of safety requirements or restrictions contained in civil aviation rules or an aviation directive made under this Act relating to such aircraft commits an offence and is liable, -
 - (a) in the case of an individual, to a fine not exceeding 20 penalty units or to imprisonment for a period not exceeding six months; or
 - (b) in the case of a body corporate, to a fine not exceeding 200 penalty units.
- (2) In addition to any penalty which the court may impose under this section the court may make an order of confiscation, either temporary or permanent, of the remote piloted aircraft used in the commission of the offence.

108 Dangerous activity involving aircraft, aeronautical product, or aviation related service

- (1) A person 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 commits an offence.

(2) A person 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 commits an offence.

(3) A person who causes or permits any act to be done in respect of any aircraft which either adversely affects or has the potential to adversely affect the safe and proper operation of that aircraft commits an offence.

(4) A person who commits an offence in terms of subsection (1), (2) or (3) is liable -

- (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or both such fine and such imprisonment; or
- (b) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

109 Failure to comply with inspection or monitoring requirements

A person who, without reasonable excuse, fails to comply with any requirement of the Director under section 21 (1) or (3) commits an offence and is liable -

- (a) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years and, if the offence is a continuing one, to a further fine not exceeding 10 penalty units for every day or part of a day during which the offence is continued; or
- (b) in the case of a body corporate, to a fine not exceeding 2,000 penalty units and, if the offence is a continuing one, to a further fine not exceeding 100 penalty units for every day or part of a day during which the offence is continued.

110 Disqualification of holder of aviation document and imposition of conditions on holding of document for certain offences

- (1) (1) In addition to any penalty a court may impose under section 105, 107, 108, 109 or 111, the court may, on convicting a person of an offence against either of those sections -

- (a) disqualify the person 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 Director from exercising his or her powers under section 35.

111 Acting without a necessary aviation document

A person who -

- (a) operates, maintains, or services; or
- (b) does any other act in respect of,

any aircraft, aeronautical product, or aviation related service, either without holding the appropriate current aviation document or knowing that a current aviation document is required to be held in respect of that aircraft, product, or service before the act may lawfully be done and knowing that the appropriate aviation document is not held commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years or, to both such fine and such imprisonment; or
- (ii) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

112 Acting without required medical certificate

A person who exercises the privileges of any aviation document or operates an aircraft solo, where the person -

- (a) does not hold an appropriate valid medical certificate issued or granted recognition by the Director under this Act;
- (b) knows or has reasonable grounds to suspect that he or she can no longer exercise safely the privileges to which his or her medical certificate relates; or
- (c) fails to comply with any conditions, restrictions, or endorsements imposed on a medical assessment or certificate by the Director under this Act,

commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

113 Fraudulent, misleading, or intentionally false statements to obtain medical certificate

- (1) A person who makes or causes to be made -
- (a) a fraudulent, misleading, or intentionally false statement for the purpose of obtaining a medical certificate;
 - (b) a fraudulent, misleading, or intentionally false entry in any logbook, record, form, or report that is required to be kept, made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical assessment or certificate;
 - (c) a reproduction or alteration for fraudulent purposes of any medical assessment or certificate issued under this Act; or
 - (d) a fraudulent, misleading, or intentionally false statement during an investigation conducted under this Act to determine whether a license holder -
 - (i) is able to exercise safely the privileges to which a medical certificate relates; or
 - (ii) has obtained his or her medical certificate fraudulently,

commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

114 Failure to disclose information required by Director

A person who, without reasonable excuse, fails to disclose information required by the Director for the purposes of investigating or determining the changes in the medical condition of a license holder under this Act commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

115 Additional penalty for offences involving commercial gain

- (1) In addition to any penalty a court may impose under section 105, 108, 109, or 111, the court, on convicting any person of an offence specified in any of those sections, may order the person to pay an amount not exceeding three times the value of any commercial gain resulting from the commission of the 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 is assessed by the court.

116 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 -
 - (a) is deemed to be suspended while the disqualification continues in force; and
 - (b) is of no effect during the period of suspension.
- (2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification expires before the expiration of the term of the document, the document, on the expiration of the disqualification, continues to be of no effect until the holder -
 - (a) undergoes and passes such tests; and
 - (b) fulfils such requirements,

as the Director may specify.

117 Commencement of period of disqualification

Where an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification commences on the date of the making of the order unless the court making the order directs the period of disqualification to commence on a later date.

118 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, and whether or not demand is made, must forthwith surrender the document to the Director.
- (2) Where an aviation document is so surrendered, the Director must 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 a person entitled to the document is a person to whom section 116 (2) applies, the document may not be returned to the person until the person has passed the tests and fulfilled the requirements referred to in that section.

119 Removal of disqualification

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

- (2) On an application under this section, the Court, having regard to the character and conduct of the applicant subsequent to the order, the nature of the offence and any other circumstances of the case, may -
 - (a) remove the disqualification as from such date as may be specified in the order; or
 - (b) refuse the application.
- (3) Where the disqualification was ordered by a court, an application under this section is made to a judge exercising jurisdiction in the court by which the order was made.
- (4) A notice of an application under this section is served on the Director who has the right to appear and be heard in respect of the matter.

120 Particulars of disqualification orders to be sent to Director

Where a court makes an order -

- (a) disqualifying a person from holding or obtaining an aviation document;
- (b) imposing restrictions or conditions on any aviation document held by or issued to any person; or
- (c) removing any disqualification under section 119,

the Registrar of the High Court must forthwith send particulars of the order to the Director.

121 Offences by juristic persons against public safety in aviation amounting to corporate manslaughter.

- (1) A juristic person to which this section applies is guilty of an offence if the way in which its activities are managed or organised—
 - (a) causes a person's death, and
 - (b) amounts to a “gross” breach of a relevant duty of care owed by the organisation to the deceased.
- (2) For the purposes of this section, whether a particular organisation owes a duty of care to a particular individual is a question of law to be determined by the judge making any findings of fact necessary to decide that question.
- (3) The juristic persons to which this section applies are those engaged in the operation of aircraft (including remotely piloted aircraft in Niue, whether for commercial gain or otherwise and for the carriage of passengers or otherwise and including the flight of any such aircraft for any of the purposes of development, testing or calibration of that aircraft.

- (4) A juristic person is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).
- (5) For the purposes of this section —
 - (a) **“relevant duty of care”** has the meaning given by subsection (2), read with subsections (4) and (5);
 - (b) a breach of a duty of care by a juristic person is a **“gross”** breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;
 - (c) **“senior management”**, in relation to an organisation, means the persons who play significant roles in—
 - (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
 - (ii) the actual managing or organising of the whole or a substantial part of those activities.
- (6) An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine not exceeding 1,000,000 penalty units and may in addition be required to publicise the defaults in management leading to the conviction on terms to be specified by the judge.
- (7) Proceedings with regard to the offence of corporate homicide may be commenced in the High Court of Niue.

PART 12

Security Offences

122 Application

- (1) For the purposes of this Part “airport” has the meaning assigned to “aerodrome” in Rule Part 1, and includes all areas comprising, and any defined area adjacent to, any airport in Niue.
- (2) The offences in this Part are deemed to be serious offences for the purposes of the Tokyo Convention.

123 Offences relating to safety and security of airports

A person who, whether in or outside Niue, intentionally uses any device, substance, or weapon, or any vehicle or any aircraft, in a manner which endangers or is likely to endanger the safety of an international airport or any other airport in order to -

- (a) commit an act of violence that causes or is likely to cause serious injury or death at the airport;
- (b) destroy or seriously damage the facilities of the airport;
- (c) destroy or seriously damage an aircraft that is not in service and is located at the airport; or
- (d) disrupt the services of the airport,

commits an offence and is liable to -

- (i) imprisonment for a period not exceeding 14 years; or
- (ii) in the case where the conduct concerned is the same as conduct which constitutes under the laws of Niue,
 - (A) culpable homicide, imprisonment for a period not exceeding 14 years, or
 - (B) murder, imprisonment not exceeding life imprisonment.

124 Offence under section 123 deemed to be included in extradition treaties

- (1) For the purposes of the Extradition Act 1965 each offence described in section 123 is deemed to be an offence described in any extradition agreement concluded before the commencement of this section and for the time being in force between Niue and any foreign country which is a party to the Montreal Protocol.
- (2) When subsection (1) deems an offence to be an offence described in an extradition agreement, a person whose surrender is sought under the Extradition Act in respect of an act or omission which amounts to that offence is liable to be surrendered in accordance with that Act.
- (3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of Niue, would not at that time have constituted an offence under the laws of Niue.
- (4) A certificate given under the hand of the Minister that any foreign country is a party to the Montreal Protocol is sufficient evidence of that fact.
- (5) For the purposes of this section -

“offence”, includes -

- (a) an attempt to commit such offence;

- (b) aiding, abetting, inciting, counselling, or procuring a person to commit such offence;
- (c) inciting, counselling, or attempting to procure a person to commit such offence when it is not in fact committed; and
- (d) being an accessory after the fact to such offence.

“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 Montreal Protocol extends.

125 Acts contrary to public safety and order at airport

- (1) A person who acts in a manner that endangers any member of the public at an airport commits an offence.
- (2) A person who, while in an airport, and in a manner contrary to public order or safety at the airport -
 - (a) uses any threatening, offensive or insulting words or gestures;
 - (b) behaves in a threatening, offensive or insulting manner;
 - (c) without justification makes an alarming statement or uses alarming words or behaves in an alarming manner contrary to good order at the airport;
 - (d) behaves in a manner that interferes with the performance of functions by aircrew, airline officials or airport workers; or
 - (e) behaves in a manner that interferes with or is likely to interfere with the performance of functions by police officers or aviation security officers,commits an offence.
- (3) A person convicted of an offence under -
 - (a) subsection (1) or (2)(e) is liable to a fine not exceeding 250 penalty units or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; or
 - (b) subsection (2)(a), (b) (c) or (d) is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

126 Security area offences

A person 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 a 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,

commits an offence and is liable to a fine not exceeding 2,000 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

127 Offence of impersonation or obstruction of authorised persons

A person who, not being an authorised person -

- (a) by words, conduct, demeanour, or by assuming the dress, name, designation, or description of an authorised person, holds himself or herself out as being an authorised person; or
- (b) wilfully obstructs, or incites or encourages any person to obstruct an authorised person in the execute of his or her functions,

commits an offence and is liable to a fine not exceeding 2,000 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

128 Communicating false information affecting safety

A person who by any means provides to another person information relating to the safety of –

- (a) an aircraft, aerodrome, aeronautical product, aviation related service;
- (b) any other facility or product used in or connected with aviation or any person associated therewith,

knowing the information to be false or providing it in a manner reckless as to whether it is false commits an offence and is liable -

- (i) in the case of an individual, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (ii) in the case of a body corporate, to a fine not exceeding 2,000 penalty units.

129 Illegal practices in connection with cargo, baggage, mail or other goods

A person who within an aerodrome and without due authority -

- (a) wilfully tampers with, opens, damages, destroys or interferes with the conveyance of cargo, baggage, mail or other goods, or makes away with or interferes with such cargo, baggage, mail or other goods;
- (b) detains or keeps any cargo, baggage, mail or other goods which ought to have been delivered to another person or which has been found by himself or herself or by any other person; or
- (c) by false pretence or misstatement induces any person to deliver or dispose of such cargo, baggage, mail or other goods to him or her or to any other person who is not the intended addressee or recipient thereof,

commits an offence and liable to a fine not exceeding 500 penalty units or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

130 Prohibition of conveyance of firearms, drugs or animal products in aircraft

- (1) For the purposes of this section -

“animal product” means any part or portion of, or product derived from, any animal, including any such part, portion or product in any processed form;

“drugs” means any drug as defined in the Misuse of Drugs Act 2007, that has not been acquired, bought or possessed lawfully as contemplated in section 4 of that Act;

“firearms” has the same meaning assigned by the Arms Act 1975 but excludes any such firearms while they are being conveyed in an aircraft –

- (a) on behalf of the State;
- (b) by or on behalf of any person in his or her capacity as an officer or employee of the State; or
- (c) for the purpose of the defence of Niue.

- (2) A person may not convey any conventional arms, drugs or animal product in an aircraft, except with the written permission -

- (a) of the Minister or a person in the service of the State authorised by the Minister; and
- (b) subject to such conditions as the Minister or such person may determine.

- (3) A person who contravenes subsection (2) commits an offence and is liable to a fine not exceeding 750 penalty units or to imprisonment for a period not exceeding 14 years, or to both such fine and such imprisonment.

131 Taking of firearms, ammunitions and other explosives onto aircraft or into security area

- (1) A person 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 or into any sterile area or security restricted area -
 - (a) any firearm;
 - (b) any other dangerous or offensive weapon or instrument of any kind whatsoever;
 - (c) any ammunition;
 - (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;
 - (e) any imitation of an item or substance specified in paragraphs (a) to (d); or
 - (f) any blunt, pointed or bladed item capable of being used to cause injury;
 - (g) any chemical, toxic, explosive or highly combustible substance posing a risk to the health of passengers or crew or the security or safety of aircraft;
 - (h) any property or object capable, or appearing capable, of discharging a projectile or causing injury, including any item that -
 - (i) is listed in, or classified in accordance with, the ICAO's Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference; or
 - (ii) while not so listed or classified as specified in subparagraph (i), nevertheless has features or properties that in the opinion of the Director might reasonably qualify them for listing or classification as prohibited items under the ICAO's *Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference* or other document issued by ICAO after the commencement of this Act in replacement or substitution of the *Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference*; or
 - (iii) any other item as may be prescribed,

commits an offence and is liable to a fine not exceeding 750 penalty units or to imprisonment for a period not exceeding 14 years, or to both such fine and such imprisonment.

- (2) For the purposes of this section,

“firearm” means any gun, rifle, or pistol, whether acting by force of explosives or not, and includes -

- (a) 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
 - (b) any such gun, rifle, or pistol which is for the time being dismantled.
- (3) For the purposes of subsection (1) **“lawful authority”**, **“reasonable excuse”** and **“permission”** is deemed to have been established in respect of any person who -
- (a) is a person, or a member of a class of persons, duly designated, authorised and approved in writing by the Director to act on board any aircraft as an in-flight security officer; and
 - (b) takes any of the items in subsection (1)(a), (b), (c), (d), (e), (f), (g) or (h) on board any aircraft or into any security area for the purposes of his or her functions as an in-flight security officer.

132 Hijacking

A person who, while on board an aircraft in flight, whether in or outside Niue, unlawfully, by force or threat of force, or by any form of intimidation -

- (a) seizes or exercises control; or
- (b) attempts to seize or exercise control,

of the aircraft commits the offence of hijacking and is liable to life imprisonment.

133 Offences in connection with hijacking

- (1) A person who, while on board an aircraft in flight outside Niue, does or omits anything which, if done or omitted by the person in Niue, would be an offence, commits such offence if the act or omission occurred in connection with the offence of hijacking.
- (2) Without limiting the generality of subsection (1), an act or omission by any person is deemed to occur in connection with the offence of hijacking if it was done or omitted with intent -
 - (a) to commit or facilitate the commission of the offence of hijacking;
 - (b) to avoid the detection of himself or herself or of any other person in the commission of the offence of hijacking; or
 - (c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission of the offence of hijacking.

134 Other offences relating to aircraft

- (1) A person who, whether in or outside Niue -
 - (a) on board an aircraft in flight, commits an act of violence 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 renders 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 in international air navigation, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight; or
 - (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,
 - (g) uses, or causes to be used, an aircraft in flight with intent to cause –
 - (i) death or serious bodily injury to any person;
 - (ii) serious damage to any aircraft in flight or on the ground or to any other property of any kind wherever situated;
 - (iii) or with intent to cause serious damage or destruction to the environment,

commits an offence and is liable to imprisonment for a period not exceeding 14 years.

- (2) A person who is convicted of an offence under subsection (1)(a), (b), (c), (d), (e) or (g), in circumstances where the conduct concerned is the same as -
 - (a) a conduct which constitutes culpable homicide under the common law of Niue, is liable to a fine or imprisonment or both such fine and such imprisonment; or
 - (b) a conduct which constitutes murder under the common law of Niue, is liable to imprisonment not exceeding life imprisonment.

135 Offence of hijacking deemed to be included in extradition treaties

- (1) For the purposes of the Extradition Act 1965 the offence of hijacking, if not already described in an extradition agreement, is deemed to be -
 - (a) an extraditable offence; and

- (b) an offence described in any extradition agreement for the time being in force between Niue and any country that is a party to the Hague Convention.
- (2) For the purposes of the Extradition Act, each offence in section 134 if not already described in an extradition agreement, is deemed to be -
 - (a) an extraditable offence for the purposes of that Act; and
 - (b) an offence described in any extradition treaty for the time being in force between Niue and any country that is a party to the Montreal Convention.
- (3) If, under subsection (1) or subsection (2), an offence is deemed to be -
 - (a) an offence described in an extradition agreement; or
 - (b) a relevant offence for the purposes of the Extradition Act.

a person may be surrendered for such offence in accordance with the Extradition Act.

- (4) For the purposes of this section -

“country”, includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty and the Hague Convention or the Montreal Convention extends.

“offence”, includes -

- (a) aiding, abetting, inciting, counselling, or procuring any person to commit the offence; and
 - (b) inciting, counselling, or attempting to procure any person to commit the offence when it is not in fact committed; and
 - (c) being an accessory after the fact to the offence.
- (5) A certificate by the Minister that a country is a party to the Hague Convention or Montreal Convention is sufficient evidence of that fact.

136 Application of sections 132 and 133

- (1) Nothing in section 132 or 133 applies, if both the place of take-off and the place of actual landing of the aircraft, not being an aircraft registered in Niue, are -
 - (a) in the territory of the country in which the aircraft is registered; or
 - (b) 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 -

- (i) the alleged offender is a citizen of Niue or a person ordinarily resident in Niue;
 - (ii) the act or omission occurred in Niue;
 - (iii) the alleged offender is present in Niue; or
 - (iv) the aircraft is leased without crew to the lessee -
 - (A) whose principal place of business is in Niue; or
 - (B) in any other case, who is a citizen of Niue or a person ordinarily resident in Niue.
- (2) Nothing in section 131, 132 or 133 applies to aircraft used in military, customs, or police service, unless -
- (a) the alleged offender is a citizen of Niue or a person ordinarily resident in Niue; or
 - (b) the act or omission occurred in Niue.

137 Application of certain provisions relating to jurisdiction in respect of offences on aircraft beyond Niue and relating to the Terrorism Suppression and Transnational Crimes Act 2006

- (1) Nothing in this Act or any other law of Niue relating to the jurisdiction in respect of offences on ships or aircraft beyond Niue may limit the application of -
- (a) this Act;
 - (b) the Terrorism Suppression and Transnational Crimes Act; or
 - (c) the criminal law of Niue with respect to -
 - (i) the offence of hijacking; or
 - (ii) any of the offences described in sections 140 and 141 committed in connection with the offence of hijacking.
- (2) The offences described in –
- (a) section 123, which relate to acts of violence and destruction at an airport;
 - (b) section 128
 - (c) which relate to communicating false information affecting safety;
 - (d) section 131, which relate to taking firearms, ammunitions and other explosives, on to aircraft or into a security area;
 - (e) section 132, which relate to hijacking;
 - (f) section 134, which relate to other offences related to aircraft, including destroying aircraft and air navigation facilities and the misuse of aircraft as a weapon.

apply independently of, and without prejudice to, the application of the Terrorism Suppression and Transnational Crimes Act 2006.

PART 13

Unruly Passenger Offences

138 Application of this Part

- (1) This Part applies to any unruly passenger offence committed -
 - (a) on an aircraft in Niue, regardless of the nationality of the aircraft:
 - (b) outside Niue on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is in Niue.
- (2) For the purposes of this Part an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.
- (3) Despite subsection (2), in the case of a forced landing an aircraft is in flight until –
 - (a) the time when the competent authorities of the country in which the forced landing takes place; or
 - (b) in the case of a forced landing in a place that is not within the territorial limits of any country, the time when the competent authorities of any country,

assume responsibility for the aircraft and for persons and property on board the aircraft.
- (4) The offences in this Part are deemed to be serious offences for the purposes of the Tokyo Convention.

139 Liability for unruly passenger offences despite extraterritoriality

A person who commits an act or omission on an aircraft in flight outside Niue that would be an offence under this Part if it occurs within Niue is, subject to this Act, liable as if the act or omission had occurred in Niue.

140 Liability for other offences despite extraterritoriality

- (1) A person who commits an act or omission on an aircraft in flight outside Niue that would, if it occurred in Niue, be an offence of disorderly

behaviour or fighting in a public place or common assault or wilful damage or indecent exposure is liable as if the act or omission had occurred in Niue.

- (2) For the purposes of subsection (1), a reference to a “public place”, includes an aircraft.

141 Acts endangering aircraft or persons in aircraft

A person who acts in a manner that endangers an aircraft or any person in an aircraft commits an offence and is liable to a fine not exceeding 250 penalty units or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

142 Disruptive conduct towards crew member

A person who, while in an aircraft -

- (a) uses any threatening, offensive, or insulting words towards a crew member;
- (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member;
- (c) behaves in a manner that interferes with the performance by a crew member of his or her functions; or
- (d) intentionally interferes with the performance of the functions of a crew member,

commits an offence and is liable -

- (i) in case of paragraphs (a) to (c), inclusive, to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
- (ii) in case of paragraph (d), to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

143 Interference with aircraft

A person who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, smoke detectors commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

144 Intoxicated persons on aircraft

- (1) A person, except a person under medical care, who -
- (a) is intoxicated and boards an aircraft; or
 - (b) becomes intoxicated on an aircraft,

commits an offence and is liable –

- (i) in case of paragraph (a), to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment; or
 - (ii) in case of paragraph (b), to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (2) For the purposes of this section, a person is intoxicated if the pilot-in-command, or senior flight attendant authorised by the pilot-in-command for this purpose, has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to –
 - (a) be incapable of properly conducting himself or herself;
 - (b) present a hazard or potential hazard to the aircraft or to persons on the aircraft; or
 - (c) offend against the good order and discipline required on an aircraft.
- (3) For the purposes of this section, “person under medical care” means a person who –
 - (a) is under the supervision of an attendant; and
 - (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

145 Non-compliance with commands given by pilot-in command

A person who fails to comply with any commands –

- (a) directly given to the person by the pilot-in command; or
- (b) indirectly given to the person by the pilot-in-command through a crew member, in accordance with his or her functions in terms of section 78,

commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

146 Offensive behaviour or words

A person who, on any aircraft –

- (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
- (b) uses threatening, offensive, or insulting words,

commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

147 Portable electronic devices not to be operated

A person who operates a portable electronic device on board an aircraft in breach of this Act commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

148 Non-compliance with seating and seatbelt instructions

A person who fails to comply with an instruction given by a crew member, passenger information signs, or placards to -

- (a) occupy a seat or berth; and
- (b) fasten and keep fastened about the person any installed safety belt or safety harness,

commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

149 No smoking or vaping on board aircraft carrying passengers

- (1) A person on board any aircraft that is carrying passengers for hire and reward on any internal or international flight who smokes or vapes when instructed not to smoke or vape by -

- (a) a crew member; or
- (b) a passenger information notice, sign, or placard,

commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

- (2) In this section;

- (a) “**smoke**” means to smoke, hold, or otherwise have control over an ignited tobacco product, weed or plant.
- (b) “**vape**” means to use, hold or otherwise have control over any activated electronic smoking device including but not limited to devices known as Electronic Nicotine Delivery systems (ENDS), Electronic Non Nicotine Delivery systems (ENNDS), Electronic cigarettes or e - cigarettes.

150 Dangerous goods on aircraft

A person who carries or causes to be carried on an aircraft any dangerous goods in breach of this Act commits an offence and is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

151 Infringement offences relating to unruly passengers

- (1) The offences listed in sections 138 to 150 inclusive may be proceeded against by:
 - (a) filing an infringement notice pursuant to section 253 of the Niue Act 1966;
 - or
 - (b) the Director or a person authorised by the Director (or the Chief of Police) issuing an infringement notice in respect of the alleged offence.
- (2) The Director / Chief of Police may issue an infringement notice to a person if he or she believes on reasonable grounds that the person has committed any of the offences listed in sections 138 to 150 inclusive and thereby has committed an infringement offence.
- (3) The infringement notice must be served by a constable delivering it (or a true copy of it) personally to the person or the person's last known place of residence or business.
- (4) The penalties for infringement offences are as respectively set out as penalty units in sections 138 to 150.

152 Contents of infringement notices

- (1) An infringement notice—
 - (a) must contain all of the following information:
 - (b) details of the alleged infringement offence that are sufficient to fairly inform the person of the time, place, and nature of the alleged offence;
 - (c) the amount of the infringement fee in respect of the alleged offence, the address at which the infringement fee may be paid;
 - (d) that the infringement fee must be paid within 15 days from the date on which it is served;
 - (e) that the person has a right to request in writing to the Director/Chief of Police a hearing of the alleged infringement offence within 15 days from the date it is served;
 - (f) a clear statement of what will happen if the person does not pay the fee and does not request a hearing; and

- (g) may contain any other information the Director/Chief of Police considers should be included in the notice.
- (2) An infringement notice must be worded in both the Niuean and English languages.

153 Procedures applicable to infringement offences

- (1) If the person pays the infringement fee within the required period—
 - (a) no further action may be taken against that person; and
 - (b) no conviction may be entered against that person for the offence.
- (2) If a person does not pay the infringement fee and does not request a hearing, within the period stated in the infringement notice, proceedings may be commenced against that person by filing the notice with the Court and, for that purpose,—
 - (a) the notice must be treated as an information for the infringement offence; and
 - (b) the Court is to be treated as having made an order, on the date the notice is filed in the Court, that the defendant pay a fine equal to the amount of the infringement fee together with costs that the Court considers appropriate, but no conviction may be entered against the person.
- (3) A person requests a hearing by, within the period stated in the infringement notice,—
 - (a) indicating on the infringement notice that—
 - (i) that person agrees that he or she committed the offence but wishes to explain the circumstances to the High Court; or
 - (ii) that person believes that he or she did not commit the offence and wishes to contest the charges in the High Court; and by signing the notice; and delivering the notice to the Director/ Chief of Police.
- (4) If a hearing is requested and the person is found guilty by the Court, he or she is liable to a fine equal to the amount of the infringement fee or a lesser amount or no amount (as determined by the Court) together with costs that the Court considers appropriate, but no conviction may be entered against the person.
- (5) If an infringement fee becomes a fine by order of the Court under either of the following, it must be paid together with any costs that are ordered within 14 days of the order either where the person has not requested a hearing or following

PART 14

Rights of Appeal

154 Appeals against disqualification

- (1) An order of a Court by which a person is disqualified from holding or obtaining an aviation document comes into effect forthwith.
- (2) A person who is disqualified by an order of Court from holding or obtaining an aviation document may appeal to the Court of Appeal against the refusal.
- (3) If a notice of appeal against an order disqualifying a person from holding or obtaining an aviation document is filed, the Court, if it thinks fit, may defer the operation of the order pending the appeal.
- (4) Where application is made to the Court of Appeal for leave to appeal to that Court against a sentence of the High Court that is, or includes, an order of disqualification, the Court of Appeal, if it thinks fit, may defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.
- (5) Where an appeal to the High Court or Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the High Court must send a notice thereof to the Director who has a right to appear and be heard in respect of the matter.
- (6) 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 disregarded.

155 Appeal to High Court

- (1) A person may appeal to the High Court against a specified decision made by the Director under this Act if the person has the right to appeal under this Act, and -
 - (a) the person -
 - (i) is a person in respect of whom the decision was made; and
 - (ii) is dissatisfied with the decision; or
 - (b) the person is the owner, operator, or person for the time being in charge of an aircraft or aeronautical product that is the subject of the decision.

- (2) The High Court may confirm, reverse, or modify the decision appealed against.
- (3) A decision of the Director appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any provision of this Act on the ground of a pending appeal.
- (4) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to any right of appeal -
 - (a) refuse to grant;
 - (b) revoke, suspend, disqualify; or
 - (c) in accordance with this Act, otherwise deal with -
 - (i) any aviation document;
 - (ii) any person to whom the appeal is related;
 - (iii) any aviation document granted or restored in compliance with the decision of the High Court on appeal,

on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

- (5) In this section, a “**specified decision**” is a decision -
 - (a) concerning the grant, issue, revocation, or suspension of an aviation document;
 - (b) to impose conditions on an aviation document;
 - (c) to exercise powers under section 28; or
 - (d) to decline to register an aircraft under section 37.

156 Appeal to Court of Appeal on question of law

- (1) A party to an appeal under section 159 may, with the leave of the High Court, or if that leave is declined, with special leave of the Court of Appeal, appeal to the Court of Appeal on a question of law.
- (2) On any appeal under subsection (1), the Court of Appeal may make such order or determination as it thinks fit.
- (3) The decision of the Court of Appeal on an appeal under this Act, or on any application for leave to appeal to that Court is final.

- (4) Subject to this section, the procedure in respect of any appeal under this section is in accordance with the Rules of the High Court.

PART 15

Miscellaneous Provisions

157 Advisory Circulars for civil aviation

- (1) The Director may issue Advisory Circulars for civil aviation on such matters as may be prescribed.
- (2) The manner in which an Advisory Circulars for civil aviation may be issued, amended or withdrawn, and the procedure to be followed in respect of any such issue, amendment or withdrawal is as prescribed.

158 Evidence and proof

- (1) 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 Director is sufficient, in the absence of proof to the contrary, to prove such document;
 - (b) evidence of the contents of the Niue Register of Aircraft maintained under section 66 may be given by a certificate signed by the Director and every such certificate is sufficient proof of the matters stated in it, until the contrary is proved;
 - (c) the production of a certificate signed by the Director 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 proof of the matter certified, until the contrary is proved;
 - (d) the production of a written statement signed by the Director to the effect that on a specified date a person was or was not the holder of a current medical certificate issued or granted recognition under this Act, or otherwise validated or issued or recognized before the commencement of this Act, is sufficient proof of the matter stated, until the contrary is proved;
 - (e) it is presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Director, until the contrary is proved;
 - (f) a licence granted under this Act may be proved by the production of a copy of such licence certified to be correct by the Director.
- (2) Without limiting any other method of proof, the production in any proceedings of a copy of -

- (a) a rule purporting to have been made by the Minister under Part 6; or
- (b) an emergency rule purporting to have been made by the Director under section 58,

is sufficient proof of such rule and of the fact that it has been made in accordance with that Part, in the absence of proof to the contrary.

159 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 an air traffic services provider is admissible in -

- (a) any Court; and
- (b) any judicial examination or proceedings,

as prima facie evidence that the air traffic services described in such document were provided on the date and for the aircraft referred to in the document.

- (2) A document certified by an employee of an air traffic services provider 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, the expression “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.

160 Obligation to identify pilot-in-command

- (1) If a pilot in command of an aircraft is alleged to have committed an offence under this Act, the Director or a police officer may -
 - (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and
 - (b) require the operator of the aircraft or the holder of the certificate of registration for the aircraft to give all information in his or her possession or reasonably obtainable by him or her that may lead to the identification of the pilot.
- (2) A request under subsection (1) may be made orally or in writing, and the operator or holder of the certificate of registration must comply with the request within 10 working days.

- (3) Subsection (1) does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the same suspected of

161 Exemption of aircraft from seizure on patent claims

- (1) A lawful entry into Niue, or a lawful transit across Niue, with or without landings, of an aircraft to which this section applies may not entail -

- (a) any seizure or detention of the aircraft;
- (b) any proceedings being brought against the owner or operator thereof; or
- (c) any other interference therewith,

by or on behalf of any person in Niue on the ground that the construction, mechanism, parts, accessories or operation of the aircraft is or are an infringement of any patent, design or model.

- (2) Subject to subsection (3), the importation into and storage in Niue of spare parts and spare equipment for an aircraft to which this section applies and the use and installation thereof in the repair of such an aircraft may not entail -

- (a) any seizure or detention of the aircraft or of the spare parts or spare equipment;
- (b) any proceedings being brought against the owner or operator of the aircraft or the owner of the spare parts or spare equipment; or
- (c) any other interference with the aircraft,

by or on behalf of any person in Niue on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

- (3) Subsection (2) does not apply in relation to any spare parts or spare equipment which are sold or distributed in Niue or are exported from Niue for sale or distribution.

- (4) This section applies -

- (a) to an aircraft registered in a contracting state other than an aircraft used in military, customs or police services; and
- (b) to such other aircraft as the Minister may specify by public notice.

162 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 rule made under section 51, 52 or 55, so long as the rule is duly complied with.

- (2) No action may 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 this Act is duly complied with.
- (3) Where material damage or loss is caused to property on land or water by -
 - (a) an aircraft in flight, taking off, landing, or alighting; or
 - (b) any person or article in or falling from any such aircraft,

damages are 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 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 the 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 law relating to apportionment in respect of contributory negligence applies.
- (6) Damages are not 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, unless the descent is required to avoid injury or death.
- (7) Where damages are recoverable from the person descending, subsection (4) applies, with the necessary modifications, as if the person descending were the owner of the aircraft.
- (8) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section applies as though every reference to

the owner were a reference to the person to whom the aircraft has been so hired out.

- (9) For the purposes of 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 any statutory provision in respect of contributory negligence, give rise to the defence of contributory negligence.

163 Penalties

A person who commits an offence under this Act for which no penalty is specifically provided is liable to a fine not exceeding 200 penalty units or to imprisonment for a period not exceeding two (2) years, or both such fine and such imprisonment.

164 Repeal and amendment of laws

The laws set out in Column 1 of Schedule 1 to this Act are repealed or amended to the extent set out in Column 3 of that Schedule.

165 Transitional and savings provisions

- (1) A licence, a rating, a certificate, a permit, an authorization, an approval or other document validly issued by an authorized staff member of the Office of the Director of Civil Aviation –
- (a) prior to the commencement of this Act;
 - (b) in accordance with the repealed Niue Civil Aviation Act 1999;
 - (c) in accordance with the NZ Civil Aviation Rules, 2001; and
 - (d) is in force at the commencement of this Act,

is deemed to be an aviation document issued under this Act and is accordingly in force under this Act.

- (2) A rule or standard made, a circular, order or directive issued, or any other thing done or purported to have been done under a provision of a law repealed by section 164, and which could be made, issued or done under a corresponding provision of this Act, is deemed to have been made, issued or done under that corresponding provision.
- (3) A matter that is in the course of being investigated, or that has been investigated by the Director pursuant to the law repealed by section 164 but on which a report has not been made at the commencement of this Act, is continued and finalized by the Director as if it had been an investigation under this Act.
- (4) A reference in a law repealed by section 164 or in anything made, issued or done under that law to the “Director” or the “Office of the Director” is

deemed to refer to the “Director” or the “Office of the Director” appointed or established under or by this Act.

Regulations

166 Regulations

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) In particular, regulations may be made for all or any of the following purposes—
 - (a) prescribing forms to be used for the purposes of this Act;
 - (b) prescribing matters for which fees are payable under this Act and the amounts of those fees;
 - (c) prescribing grounds for an exemption from fees, in whole or in part;
 - (d) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

Schedule 1
Repeal and Amendments to Acts

Acts	Regs/Rules	Amended or repealed
Civil Aviation Act 1999		Repealed

I, Hima Douglas, Speaker of the Niue Assembly, certify that the requirements of Article 34 of the Niue Constitution have been complied with.

SIGNED AND SEALED at the Assembly Chambers this 12th day of Mar 2026.

Hima Douglas
Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker

MD Douglas
Clerk of the Niue Assembly

This Act is administered by the Department of Transport.
This Act was passed by the Niue Assembly on the 11th day of March 2026

