

Civil Aviation Act 2004

REPUBLIC OF KIRIBATI

CIVIL AVIATION ACT 2004
(№ 8 of 2004)

I assent,

Anote Tong

Beretitenti
03/02/2004

**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO CIVIL AVIATION
IN KIRIBATI, TO ESTABLISH RULES OF OPERATION AND DIVISIONS OF
RESPONSIBILITY WITHIN THE KIRIBATI CIVIL AVIATION SYSTEM AND FOR
CONNECTED PURPOSES**

Commencement:
2004

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

Part I-Preliminary

1. Short title and commencement

- (1) This Act may be cited as the Civil Aviation Act 2004.
- (2) This Act shall come into force on such date as the Minister may by notice appoint.

2. 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;

'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-

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

(b) all 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 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 manoeuvring 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' includes any-

(a) aerodrome control service;

(b) area control service;

(c) approach control service;

(d) flight information service;

(e) aerodrome flight information service;

(f) alerting service;

(g) 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

(b) an organisation or body declared to be an approved organisation by the Minister under section 5(2)(b);

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

'Authority' means the Civil Aviation Authority of Kiribati established pursuant to

section 6;

'aviation document' means any licence, permit, certificate 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 service' means any equipment, facility or service including any air traffic service (but excluding any accident or incident investigation service performed under Part VIII) 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 for the time being employed as such in the Aviation Security Service;

'Aviation Security Service' means the Aviation Security Service established under section 8(2)(d);

'Civil Aviation Registry' means the registry established under section 28;

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

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

'Convention' means the Convention on International Civil Aviation signed in Chicago on 7 September 1944 and ratified by the Republic of Kiribati through the Kiribati instrument of accession effective 14 May 1981, and includes-

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

(b) any Annex or amendment to any Annex accepted under Article 90 of the Convention, to the extent adopted by Kiribati; and

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

'dangerous goods' means articles or substances that are-

(a) capable of posing significant risk to health, safety or property when transported by air; and

(b) classified in Chapters 1 to 10 of Part 2 of the Technical Instructions;

'Director' means the person who is for the time being the Director of Civil Aviation appointed under section 13;

'Explanatory Memorandum' means a written instruction issued by the Minister under section 40(7);

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

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

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

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

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

'judicial officer' means a High Court judge or a Magistrate;

'Kiribati registered aircraft' means any aircraft that is for the time being registered by the Director under section 58(1)(a);

'Kiribati Register of Aircraft' means the register of that name that is established under section 27;

'manoeuvring 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 does not include areas set aside for loading, unloading or maintenance of aircraft;

'military aircraft' shall have the meaning assigned to it by the *Aircraft Security Act 1990*;

'Minister' means the Minister who is for the time being responsible for civil aviation;

'Ministry' means the department of government that is for the time being responsible for the administration of this Act;

'navigation installation' 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 includes any land adjacent to any such building, facility, work, apparatus, equipment or place, and used in connection therewith;

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

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

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

'prescribed' means prescribed by this Act or by regulations or rules made under this

Act;

'rules' means ordinary rules made by the Minister and emergency rules made by the Director under Part IV;

'Secretary' means the person who is for the time being the Secretary of the Ministry;

'security area' means an area that the Director has declared to be a security area under section 102;

'security designated aerodrome' means an aerodrome for the time being designated as a security designated aerodrome under section 100;

'security designated navigation installation' means a navigation installation for the time being designated as a security designated navigation installation under section 100;

'Technical Instructions' means ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air.

3. Act to bind the Republic

(1) Subject to subsection (2), this Act shall bind the Republic.

(2) Except as otherwise expressly provided in this Act or any other Act, or in the regulations or rules concerned, nothing in this Act or in any regulations or rules made under this Act shall apply to any disciplined force of Kiribati.

4. Application of Act

(1) This Act, and all regulations and rules made under this Act, shall apply to the following-

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

(b) every Kiribati registered aircraft whether within or outside Kiribati;

(c) every holder of an aviation document while outside Kiribati and exercising or purporting to exercise privileges accorded by that document; and

(d) every foreign registered aircraft operating in Kiribati.

(2) Notwithstanding subsection (1), the Minister, acting on the recommendation of the Authority or 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 responsibility for a Kiribati registered aircraft operated by that foreign operator that the Authority or the Director has under this Act or regulations or rules made under this Act;

(b) vest in the Authority or the Director, as the case may require, all or Part of the responsibility for foreign registered aircraft operated by a Kiribati operator that arises under this Act or regulations or rules made under this Act;

(c) grant exemptions from this Act, and from regulations and rules made under this Act, relevant to any exercise of the Minister's powers under this subsection.

(3) Every Kiribati registered aircraft shall, while being operated over the high seas, 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 or omission is required in order to comply with the laws of any foreign state, every holder of an aviation document who, while outside Kiribati and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in Kiribati, shall be deemed to have committed an offence under this Act and may be proceeded against in Kiribati as if the act or omission had occurred within Kiribati.

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

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

(a) any foreign military aircraft; or

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

Part II-The Minister, the Civil Aviation Authority and the Director - functions, powers, duties and delegations

Division 1-The Minister

5. Functions of the Minister

(1) The principal functions of the Minister under this Act shall be to promote safety in civil aviation at a reasonable cost, and to ensure that the obligations of Kiribati under international civil aviation agreements are implemented.

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

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

(b) to declare an organisation or body to be an approved organisation;

(c) to contract, in consultation with the Authority and the Director, 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.

(3) For the purposes of subsection (1), a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.

Division 2-Civil Aviation Authority of Kiribati

6. Establishment of Civil Aviation Authority of Kiribati

(1) The Minister, acting in accordance with the advice of the Cabinet, may by order establish the Civil Aviation Authority of Kiribati.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, with power to purchase, lease, take, hold and dispose of land and other property, to enter into contracts, and to sue and be sued in its own name.

(3) Except as provided in this Act, the Authority shall have the power to do anything it is authorised to do by or under-

(a) this Act;

(b) any other enactment; or

(c) any rule of law.

(4) The Authority shall not exercise any of its rights, powers or privileges except for the purpose of performing its functions.

(5) The provisions of Schedule 1 shall have effect as to the constitution of the Authority and otherwise in relation thereto.

(6) The provisions of Schedule 2 shall have effect as to the officers and employees of the Authority other than the Director.

(7) The Minister, acting in accordance with the advice of the Cabinet, shall have power by order to amend any or all of the provisions of Schedule 1 or 2.

7. Vesting of assets and liabilities

(1) The Minister may, upon such terms as may be agreed with the Authority, vest in the Authority the title, use, occupation, management or control of any State land or of any other land or property in which the Republic holds any interest, subject to any obligation, burden or liability of the Republic under any title or agreement relating to any land or interest therein or use thereof, where it appears to the Minister to be desirable to do so to enable the Authority to discharge its functions.

(2) Notwithstanding any of the provisions of this Act, except with the written consent of the Minister the Authority shall not dispose of, by way of sale or otherwise, any land or interest in land vested in it under the provisions of subsection (1).

8. Functions of Authority

(1) The principal function of the Authority shall be to undertake activities which promote safety in civil aviation at a reasonable cost.

(2) In furtherance of its principal function, the Authority shall also have the following functions-

(a) to establish safety and security standards relating to entry into the civil aviation system;

- (b) to monitor adherence to safety and security standards within the civil aviation system;
- (c) to ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security;
- (d) to establish and maintain a service to be called the Aviation Security Service;
- (e) to appoint where required a Chief Investigator to investigate and review civil aviation accidents and incidents in accordance with Part VIII;
- (f) to maintain and preserve records and documents relating to activities within the civil aviation system, and in particular to maintain the Kiribati Register of Aircraft and the Civil Aviation Registry;
- (g) to ensure the collection, publication and provision of charts and aeronautical information, and to enter into arrangements with any other person or organisation to collect, publish and distribute such charts and information;
- (h) to provide to the Minister, the Director or a Chief Investigator such information, advice, services and resources as may be required from time to time and which may assist in the implementation of this Act and regulations and rules made under this Act;
- (i) to promote safety and security in the civil aviation system by providing safety and security information and advice, and fostering safety and security information education programmes;
- (j) to enter into technical or operational arrangements, or both, with civil aviation authorities of other countries;
- (k) to carry out such other civil aviation functions, and such civil aviation duties, as the Minister may from time to time prescribe by notice in the *Gazette*;
- (l) to carry out such other functions as may be conferred or imposed on the Authority by this Act, regulations or rules made under this Act or any other enactment or as have been delegated to the Authority under this Act.

(3) For the purposes of subsection (1), a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.

9. Compliance with Government policy directions

(1) In the exercise of its functions and powers under this Act, the Authority shall have regard to the policy of the Government in relation to civil aviation, and shall comply with any directions relating to that policy given to it in writing signed by the Minister.

(2) The Minister shall not give any direction under subsection (1) which requires the Authority to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular person or persons.

10. Authority to consider delegating or contracting out of functions and powers

Subject to this Act, the Authority shall, in the course of performing its functions and powers, consider whether it could most efficiently and effectively perform those functions and powers by means of its own operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

11. Use of words 'Civil Aviation Authority'

(1) No company or other body shall be incorporated or registered under a name that contains the words 'Civil Aviation Authority', or under any name that so resembles such a name as to be likely to deceive.

(2) Nothing in subsection (1) shall apply to the Authority or to any person who is appropriately authorised by the Authority.

12. Transitional - Substitution of Secretary for Authority pending establishment of the Authority

Until such time as the Authority is established pursuant to section 6-

(a) all functions, powers, responsibilities and duties of the Authority as provided for in this Act shall reside with and be undertaken by the Secretary; and

(b) all references to the Authority in this Act, or rules made or adopted under it, shall be read, subject to any modification as the context requires, as references to the Secretary.

Division 3-Director of Civil Aviation

13. Director of Civil Aviation

(1) There shall be a chief executive of the Authority, who shall be known as the Director of Civil Aviation.

(2) The Director shall be appointed by the Beretitenti, acting in accordance with the advice of the Public Service Commission tendered after consultation with the Authority.

(3) The Director shall have and may exercise such functions and powers as may be conferred or imposed on the Director by this Act, or by regulations and rules made under this Act, and such functions and powers as may be delegated to the Director by the Authority under section 24.

(4) Without limiting subsection (3), the Director shall-

(a) exercise control over entry into the civil aviation system through the granting of aviation documents under this Act; and

(b) take such action as may be appropriate in the public interest to enforce the provisions of this Act and of regulations and rules made under this Act, including the carrying out or requiring of inspections and monitoring.

(5) In performing or exercising any functions or powers in relation to-

- (a) the issue, suspension or revocation of aviation documents;
- (b) the issue, suspension or revocation of medical certificates;
- (c) the granting of exemptions; or
- (d) the enforcement of the provisions of this Act or any other Act, or of rules or regulations made under any such Act,

in respect of any particular case, the Director shall act independently and shall not be subject to the direction of the Minister or the Authority for the performance or exercise of such functions or powers.

(6) Without limiting subsection (3), 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 may, by notice in writing, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design.

(7) Notice of an airworthiness directive issued under subsection (6) must be given in the *Gazette*.

(8) An airworthiness directive issued under subsection (6) comes into force on the date specified in the directive, which may be a date earlier than the date of notification of the issuing of the directive in the *Gazette* under subsection (7), if-

- (a) the Director considers that urgent action is required;
- (b) the Director notifies the affected parties before the directive comes into force; and
- (c) notification of the issuing of the directive is given in the *Gazette* not later than 28 days after the directive comes into force.

(9) In the case of absence from duty of the Director (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or pertaining to the position may be exercised and performed by-

- (a) any other employee for the time being directed by the Authority to exercise and perform them; or
- (b) any other person for the time being appointed by the Authority to exercise and perform them,

whether the direction has been given or the appointment has been made before the absence or vacancy occurs or while the absence or vacancy continues.

(10) No direction or appointment pursuant to subsection (9), and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.

(11) No person employed within the Aviation Security Service shall be given any direction or appointment by the Authority under subsection (9) without the prior written approval of the Minister.

14. Powers of Director in relation to examinations, etc.

For the purposes of granting or renewing aviation documents under this Act the Director may set, conduct and administer examinations and tests, conduct flight testing and carry out such other functions in relation to such examinations, tests and flight testing as may be necessary.

15. Director may require or carry out safety and security inspections and monitoring

(1) The Director may in writing require any person who-

(a) holds an aviation document; or

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

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

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

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

16. Power of Director to investigate holder of aviation document

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

(a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 52; or

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

(2) If the Director requires a holder to undergo an investigation, the Director must-

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

17. Power of Director to suspend aviation document or impose conditions

(1) The Director may suspend any aviation document issued under this Act or rules made under this Act or impose conditions in respect of any such document, if he considers such action necessary in the interests of civil aviation safety and security, and if he -

- (a) considers such action necessary to ensure compliance with this Act or rules made under this Act; or
- (b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 52; or
- (c) is satisfied the holder has contravened or failed to comply with section 150; or
- (d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.

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

(3) The suspension of any aviation document and any conditions imposed under subsection (1) or subsection (2) remain in force until the Director determines what action, if any, referred to in subsection (4) is to be taken; but any such suspension or conditions expire 10 working days after the date that the suspension or conditions are imposed unless, before the expiry of that 10-working day period, the Director extends the suspension or conditions for a further specified period.

(4) The Director may-

- (a) impose conditions for a specified period;
- (b) withdraw any conditions;
- (c) suspend any aviation document for a specified period; or
- (d) revoke or partially revoke any aviation document under section 18.

(5) If notice of a proposed revocation of an aviation document is given in accordance with section 18 (3), either at the same time as the suspension of the document under this section is imposed or while the suspension is in force, the document to which the notice relates remains suspended until the Director finally decides whether to revoke the document under section 18.

(6) Any person whose aviation document has been suspended or made subject to conditions under subsection (4) shall forthwith produce that document to the Director for appropriate endorsement.

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

(8) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 192.

18. Power of Director to revoke aviation document or impose conditions

(1) The Director may, if he considers it necessary in the interests of civil aviation safety and security after an inspection, monitoring or investigation carried out under this Act, revoke an aviation document or impose permanent conditions on an aviation document.

(2) Revocation under this section may be in respect of the whole or any Part of an aviation document.

(3) If the Director proposes to take action under this section, he must give notice in accordance with section 57, which applies as if the proposed action were a proposed adverse decision under this Act.

(4) 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;

(b) if the whole document is revoked, immediately surrender the document to the Director.

(5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 192.

19. Criteria for action taken under section 17 or section 18

(1) The provisions of this section shall apply for the purpose of determining whether an aviation document should be suspended or made subject to conditions under section 17 or revoked or made subject to conditions under section 18.

(2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters-

(a) the person's compliance history with transport safety regulatory requirements;

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

(i) the conviction was in a Kiribati court; or

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

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

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

(4) The Director may-

- (a) seek and receive such information as the Director thinks fit; and
- (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 shall, subject to subsection (6), as soon as is practicable, but, in the case of the suspension of an aviation document or the imposition of conditions under section 17, no later than 5 working days after suspending the aviation document or imposing conditions, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in subsection (5) requires the 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 that information, before suspending an aviation document or imposing conditions in respect of an aviation document under section 17.

20. Power of Director to amend or revoke aviation document in other cases

(1) The Director may, if so requested in writing by the holder of any aviation document, amend that document in the manner requested or revoke that document.

(2) Subject to subsection (3), the Director may-

- (a) amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;
- (b) revoke any aviation document if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder; 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 shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

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

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

(b) power to impose reasonable conditions.

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

21. Powers of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions, and powers in relation to 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 may endanger persons or property, the Director, if authorised by a warrant given by a judicial officer on written application on oath, may-

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

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

(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.

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

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

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

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

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

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

(5) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 192.

(6) For the purpose of subsections (1) and (2), the Director shall notify any prohibitions or conditions to such persons as he considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

(7) The Director may search any receptacle, container, package or goods offered for carriage by air

where the Director believes on reasonable grounds that the receptacle, container, package or goods may contain dangerous goods that are-

- (a) forbidden for carriage under the Technical Instructions; or
- (b) not classified, documented, certificated, described, packaged, marked or labelled in accordance with the Technical Instructions; or
- (c) not in the condition for shipment prescribed by the Technical Instructions.

(8) The Director may seize and detain any dangerous goods offered for carriage by air that are of a nature described in subsection (7) for the purpose of-

- (a) preventing the carriage by air of such dangerous goods; or
- (b) use as evidence in any prosecution under this Act or any other act; or
- (c) the safe disposal of such dangerous goods, if authorized by this or any other Act.

(9) Any seizure or detention under subsection (8) may be maintained only for such time as is necessary to achieve the relevant purpose or purposes in subsection (8).

22. General power of entry

(1) For the purpose of carrying out his functions, duties or powers under this Act or regulations or rules made under this Act, every person duly authorised by the Director shall have right of access at any reasonable time to-

- (a) any aircraft, aerodrome, building or place; and
- (b) any document or record concerning any aircraft, aeronautical product or aviation related service.

(2) Without limiting the power conferred by subsection (1), every person duly authorised by the Director who has reasonable grounds to believe that-

- (a) any breach of this Act or of regulations or rules made under this Act is being or about to be committed; or
- (b) a condition imposed under any civil aviation document is not being complied with; or
- (c) a situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property,

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

(3) Every person who is authorised to enter any aircraft, aerodrome, building or place under subsection (1) or subsection (2)-

(a) may require any person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice or other document that is required to be kept under this Act, to produce or surrender it; and

(b) must, if a document is surrendered under paragraph (a), inform the relevant aviation document holders orally, as soon as practicable, and in writing that the document has been surrendered.

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

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

(6) Every person exercising the power of entry conferred by subsection (1) or subsection (2) shall carry a warrant of authority issued by the Director specifying-

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

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

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

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

(b) whenever subsequently reasonably required to do so.

(8) Every Police officer shall have and may exercise all or any of the powers conferred on a person who has been duly authorised by the Director under this section.

Division 4-Delegations of functions and powers

23. Delegation of Minister's functions and powers to Authority

(1) The Minister may from time to time, either generally or particularly, delegate to the Authority all or any of the Minister's functions and powers under this Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section.

(4) The power of the Minister to delegate under this section is subject to section 31(8) and to any prohibitions, restrictions or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but does not limit any power of delegation conferred on the Minister

by any other Act.

(5) Subject to any general or special directions given or conditions imposed by the Minister, the Authority may exercise any functions or powers so delegated to the Authority in the same manner and with the same effect as if they had been conferred on the Authority directly by this section and not by delegation.

(6) Where the Authority purports to act pursuant to any delegation under this section, the Authority shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) No such delegation shall affect or prevent the exercise of any function or power by the Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.

24. Delegation of Authority's functions and powers to employees of the Authority

(1) The Authority may from time to time, either generally or particularly, delegate to the Director or any other employee of the Authority any of its functions and powers under this Act or any other Act, or under any regulations or rules made under this Act, including functions or powers delegated to the Authority under this Act.

(2) Every delegation under this section shall be in writing.

(3) The Authority shall not delegate any functions or powers delegated to the Authority by the Minister without the written consent of the Minister.

(4) In any case where the Authority has delegated any functions or powers to any employee of the Authority under this section, that employee may, with the prior approval in writing of the Authority, delegate to any other employee of the Authority such of those functions or powers as are so approved.

(5) No delegation of any functions and powers delegated to the Director by the Authority under this section shall be delegated by the Director under subsection (4) without the written consent of the Authority.

(6) Subject to any general or special directions given or conditions imposed by the Authority, any employee of the Authority to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that employee directly by this Act and not by delegation.

(7) Every employee of the Authority purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(8) Any delegation under this section may be made to a specified employee of the Authority or to employees of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices of the Authority.

(9) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Authority, nor shall any such delegation affect the responsibility of the Authority for the actions of any employee of the Authority acting under the delegation.

(10) Every delegation under this section shall, until it is revoked, continue in force according to its

tenor, notwithstanding the fact that the employee of the Authority by whom it was made may cease to hold office, and shall continue to have effect as if made by the employee for the time being holding that office.

(11) Every employee of the Authority purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his authority to so act.

(12) The Authority may not delegate any function or power that does not relate to the functions or powers of the Aviation Security Service to any person in the Aviation Security Service or outside that Service without the prior written approval of the Minister.

25. Delegation of Director's functions and powers to employees of the Authority

(1) The Director may from time to time, either generally or particularly, delegate to any employee of the Authority any of the Director's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act, including functions or powers delegated to the Director under this Act.

(2) Every delegation under this section shall be in writing.

(3) No delegation under this section shall include the power to delegate under this section.

(4) Notwithstanding subsection (1), the Director shall not delegate-

(a) any functions or powers delegated to the Director by the Authority without the written consent of the Authority; or

(b) the power under section 18 to revoke an aviation document.

(5) The provisions of subsections (3) to (12) of section 24 shall apply to delegations under this section as if-

(a) references in those provisions to the Authority were references to the Director; and

(b) references in those provisions to the Director or to any employee of the Authority were references to any employee of the Authority other than the Director.

26. Delegation of Authority's or Director's functions and powers to persons outside the Authority

(1) Subject to this section, the Authority may from time to time, either generally or particularly, delegate to any person who is not an employee of the Authority any of the Authority's functions and powers under this Act, or under any regulations or rules made under this Act.

(2) Subject to this section, the Director may from time to time either generally or particularly delegate to any person who is not an employee of the Authority any of the Director's functions and powers under this Act, or under any regulations or rules made under this Act, other than-

(a) the power under section 18 to revoke aviation documents; or

(b) the power under section 50 to suspend or revoke aviation documents.

(3) Every delegation under this section shall be in writing.

- (4) No delegation shall be made under this section without the written consent of the Minister.
- (5) In any case where the Authority or the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person such of those functions or powers as are so approved.
- (6) Subject to any general or special directions given or conditions imposed by the Authority or the Director, as the case may be, any person to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.
- (7) Any delegation under this section may be made to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or specified class of office.
- (8) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.
- (9) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Authority or by the Director, as the case may be, nor shall any such delegation affect the responsibility of the Authority or the Director, as the case may be, for the actions of any person acting under the delegation.
- (10) Every delegation under this section shall, until it is revoked or it expires, continue in force according to its tenor, notwithstanding the fact that the person by whom it was made may cease to hold office, and shall continue to have effect as if it was made by the person for the time being holding that office.
- (11) Every person purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his authority to so act.
- (12) Any person who exercises any function or power under a delegation made under this section may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.
- (13) Neither the Authority nor the Director may delegate any function or power that does not relate to the functions or powers of the Aviation Security Service to any person in the Aviation Security Service or outside that Service without the prior written approval of the Minister.

Part III-Registries and information services

27. The Kiribati Register of Aircraft

- (1) The Authority shall establish a register to be called the Kiribati Register of Aircraft.
- (2) The Authority shall enter in the Register such particulars as may be prescribed of every aircraft registered under section 58(1)(a).

28. Civil Aviation Registry

- (1) The Authority shall establish a Civil Aviation Registry.

- (2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry-
- (a) every current aviation document;
 - (b) the Kiribati Register of Aircraft;
 - (c) every regulation made under this Act and every rule notified in the *Gazette* and for the time being in force;
 - (d) any material incorporated into a rule by reference under section 44;
 - (e) every accident and incident notification given under Part VIII;
 - (f) every airworthiness directive issued by the Director under section 13(6);
 - (g) every delegation, authorisation and exemption granted in writing under this Act;
 - (h) the address for service of every current applicant for an aviation document and of every current aviation document holder;
 - (i) all information published under section 29.

(3) Documents kept at the Registry shall be made available by the Authority for inspection by the public free of charge.

29. Information services

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

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

Part IV-Rules

30. Interpretation

In relation to any of the Minister's powers to make ordinary rules in this Part 'make' shall be deemed to include the power of the Minister to adopt by reference any civil aviation rule Part or rule parts of a foreign jurisdiction pursuant to section 40 and 'making' and 'made' shall, in the context of ordinary rules, have a corresponding meaning throughout this Act.

31. Power of Minister to make ordinary rules

(1) The Minister may from time to time make rules (in this Act called ordinary rules) for all or any of the following purposes-

- (a) the implementation of the obligations of Kiribati under the Convention;

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

(c) any matter related or reasonably incidental to any of the following-

(i) the Minister's functions under section 5;

(ii) the Authority's functions under section 8;

(iii) the Director's functions under section 13;

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

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

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

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

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

(6) No breach of any ordinary rule shall constitute an offence against this Act unless that offence is prescribed in regulations made under this Act.

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

(8) The Minister shall not delegate his power to make ordinary rules under this Act.

32. Rules relating to safety and security

Without limiting the power conferred by section 31, in the interests of safety or security within the civil aviation system the Minister may make all or any of the following ordinary rules-

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

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

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

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

- (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft;
 - (ii) the prevention of aircraft endangering persons or property;
- (c) rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following-
- (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air;
 - (ii) the construction, use or operation of anything likely to be hazardous to aviation safety.

33. Rules relating to airspace

Without limiting the power conferred by section 31-

- (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 may make ordinary rules providing for the classification, designation, special use, prohibition and the restriction of airspace and things affecting navigable airspace, including airspace used by aircraft used by any Kiribati disciplined force or a visiting force.

34. Rules for noise abatement purposes

Without limiting the power conferred by section 31, the Minister may make ordinary rules prescribing flight rules, flight paths, altitude restrictions and operating procedures for the purposes of noise abatement in the vicinity of aerodromes.

35. Rules relating to general matters

Without limiting the power conferred by section 31, the Minister may make ordinary rules for all or any of the following purposes-

- (a) the designation, classification and certification of-
 - (i) aircraft;
 - (ii) aircraft pilots;
 - (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) aerodromes and aerodrome operators;
- (x) navigation installation providers;
- (xi) aviation training organisations;
- (xii) aircraft design, manufacture and maintenance organisations;
- (xiii) aeronautical procedures;
- (xiv) aviation security services;
- (xv) aviation meteorological services;
- (xvi) aviation communications services;
- (xvii) 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 setting of standards, specifications, restrictions and licensing requirements for all or any of those persons or things specified in paragraph (a), including but not limited to the following-

- (i) the specification of the privileges, limitations and ratings associated with licences or other forms of approval;
- (ii) the setting of standards for training systems and techniques, including recurrent training requirements;
- (iii) the setting of medical standards for personnel;
- (iv) the requirement for proof of access to appropriate weather services;
- (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval and identification of aircraft and aeronautical products;
- (vi) the requirements for notification of insurance coverage for air services;
- (vii) the format of aviation documents, forms and applications, including the specification of information required on all application forms for aviation documents;
- (viii) the provision of information to the Authority or 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 Kiribati;

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

36. Power of Director to make emergency rules

(1) Subject to subsection (2), the Director may from time to time, in accordance with section 43, make such emergency rules as may be necessary to alleviate or minimise any risk of the death of or a serious injury to any person, or of damage to any property.

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

(3) The Minister may revoke any emergency rule made under subsection (1), and the revocation shall be notified as if it were an emergency rule.

37. Procedures relating to rules

(1) Every ordinary rule shall-

(a) be signed by the Minister; and

(b) contain a statement specifying the objective of the rule and the extent of any consultation under section 39(1); 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 44.

(2) Every emergency rule shall-

(a) be signed by the Director; and

(b) contain a statement specifying the objective of the rule and the extent of the consultation under section 43(1) 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 44.

38. Matters to be taken into account in making rules

(1) The ordinary rules made by the Minister and the emergency rules made by the Director shall not be inconsistent with-

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

(b) the international obligations of Kiribati relating to aviation safety and security.

(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-

- (a) the recommended practices of ICAO relating to aviation safety and security, to the extent adopted by Kiribati;
- (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 Kiribati in general;
- (e) the need to maintain aviation safety and security;
- (f) the cost of implementing aviation safety and security measures;
- (g) the international circumstances in respect of aviation safety and security;
- (h) such other matters as the Minister or the Director consider appropriate in the circumstances.

39. Procedure for making ordinary rules

(1) Before making any ordinary rule the Minister shall-

- (a) publish a notice of his intention to make the rule in the *Gazette*; and
- (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 or elsewhere, or Government departments as the Minister in each case considers appropriate.

(2) Subject to subsection (3), every ordinary rule shall be notified in the *Gazette* and be made available by the Ministry for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.

(3) Where for reasons of security it is inappropriate to notify a rule under subsection (2), the Minister shall notify such persons as 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 in the *Gazette* or on such later day as may be specified in the rule or under section 31(4) or, where notified by service on any person under subsection (3), immediately upon service of the rule upon that person and in respect of that person only.

(5) The requirements of subsections (1) to (3) shall not apply to the making of ordinary rules by adoption under section 40.

40. Making of ordinary rules by adoption

(1) Despite 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 Kiribati and shall have full force and effect in Kiribati notwithstanding that the foreign rule Part from which the Kiribati 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 contracting State of ICAO other than Kiribati and which may be readily accessed by the public in Kiribati in electronic Form or otherwise.

(3) Any ordinary rule made by adoption under this section need not be reproduced in either electronic or printed Form in Kiribati but after determining to make any rule pursuant to this section the Minister must publish in the Gazette a notice of making of a rule by adoption, in accordance with Form 1 of Schedule 3, which shall contain-

(a) a Rule Adoption Statement identifying by country of origin and Part number in the country of origin the rule Part which has been adopted by reference and the Part number by which it will be known in the civil aviation system of Kiribati and specifying the date on which it shall become effective as a rule in Kiribati;

(b) a Rule Interpretation Statement containing any modifications, directions and information as the Minister may deem appropriate for the application of the adopted rule in the context of the Kiribati civil aviation system, including but not limited to-

(i) any words (including place names) and numbers (including section numbers) of Kiribati Acts to be substituted;

(ii) any Part or parts of the adopted rule which shall not apply in Kiribati;

(iii) any general exemptions which will apply in Kiribati;

(iv) any forms to be used in Kiribati;

(v) any equivalent documents to be substituted for documents referred to in the adopted rule part;

(vi) any direction as to the application or non-application to Kiribati of any amendment or repeal of an adopted rule Part in its country of origin;

(vii) any standards, requirements, recommended practices, rules or other written material or document incorporated by reference under section 40;

(viii) any other matter to assist in the practical, clear and unambiguous interpretation of the adopted rule in Kiribati.

(4) Any Rule Adoption Statement or Rule Interpretation Statement made under this section may, after consultation with the Director and Authority, be amended by the Minister after the rule has been brought into force as if the amendment were an ordinary rule made under this section.

(5) Where a rule is adopted under this section, all departments of government, judicial officers of the courts of Kiribati, officials, participants in the Kiribati 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, Kiribati, and any such reference-

(a) shall be deemed to be a reference to the corresponding law, agency, authority, document, procedure, person or thing within Kiribati or under the laws of Kiribati; and

(b) where there is no corresponding law, agency, authority, document, procedure, person or thing within Kiribati or under the laws of Kiribati, shall be deemed to refer to the closest equivalent law, agency, authority, document, procedure, person or things within Kiribati or under the laws of Kiribati and in any such case regard shall be had to any Explanatory Memorandum 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 Explanatory Memorandum and shall forthwith publish, distribute or otherwise make the Memorandum available to participants within the Kiribati 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 Explanatory Memorandum has been issued, shall forthwith make written notification to the Director who shall consider the same and within 30 days of his receipt of notification make a recommendation to the Minister with regard to the issue of an Explanatory Memorandum under subsection (7) or other appropriate action.

41. No requirement for translation or sale of adopted rules

(1) Notwithstanding anything to the contrary in this Act or any other Act there shall be no requirement that any adopted rule be printed in the Kiribati language or that it be made available for sale.

(2) A copy of each adopted rule and its Rule Adoption Statement and Rule Interpretation Statement and any Directive made under section 40(7) shall be kept at places determined by the Minister or the Director and shall be available for inspection.

(3) Copies of individual rules or provisions may be obtained if photocopying facilities are available and at a cost to be determined by the Director if copies are held under his control.

42. Amendments to adopted rules

(1) Where an adopted rule is amended in its country of origin the amendment shall in the first instance be deemed to apply in Kiribati from the date of its coming into force in the country of origin unless the Minister determines otherwise.

(2) Where the Minister determines that the amendment shall not apply in Kiribati or apply only in Part or with modification or shall come into to force in its entirety or in Part on a date other than that applicable in the country of origin the Minister shall issue and notify a revised Rule Adoption Statement and Rule Interpretation Statement and that determination shall take effect accordingly.

43. Procedure for making emergency rules

(1) Before making an emergency rule, the Director shall consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, and others as the Director in each case considers appropriate.

(2) Subject to subsection (4), every emergency rule shall be notified in the *Gazette* and given further notification as the Director may consider appropriate in each case and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.

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

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

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

(6) The Minister may, at any time while an emergency rule is in force in accordance with subsection (5), by notice in the *Gazette* renew the rule in accordance with subsection (7) for a further period not exceeding 180 days from the date of the notification.

(7) Before renewing an emergency rule under subsection (6), the Minister shall consult with such persons, representative groups within the aviation industry or elsewhere, Government departments, and others as the Minister thinks appropriate.

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

44. Incorporation by reference

(1) The following may be incorporated by reference into a rule made by the Minister or the Director-

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

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

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

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

(2) Any material incorporated in a rule by reference under subsection (1) shall be deemed for all purposes to Form Part of the rule; and, unless otherwise provided in the rules, every amendment to any material so incorporated by reference that is made by the person or organisation originating the material shall, subject to subsection (3) and subsection (4), be deemed to be Part of the rule.

(3) The Director shall, by notice in the *Gazette*, specify the date on which any amendment to material incorporated by reference under subsection (1) shall take effect.

(4) All material incorporated by reference under subsection (1) or subsection (2) shall be made available at the Civil Aviation Registry for inspection by the public free of charge.

(5) Where material is incorporated by reference in an adopted rule the material shall in the first instance be deemed to Form Part of the adopted rule in Kiribati from the date of its incorporation in the country of origin unless the Minister determines otherwise.

(6) Where the Minister determines that the material shall not apply in Kiribati or apply only in Part or with modification or shall be incorporated in its entirety or in Part on a date other than that applicable in the country of origin the Minister shall issue and notify a revised Rule Adoption Statement and Rule Interpretation Statement and that determination shall take effect accordingly.

45. Exemption power of Director

(1) The Director may, if he considers it appropriate and upon such conditions as he considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome or aviation related service from any specified requirement in any rule made under sections 31, 32, 35 or 40.

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

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

(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; or

(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 will not be significantly increased by the granting of the exemption.

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

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

Part V-Regulations, fees And charges

46. Regulations

(1) The Minister may, from time to time, make regulations for all or any of the following purposes-

- (a) prescribing, or providing for the fixing of, fees and charges payable under this Act;
- (b) prescribing those breaches of rules made under this Act that constitute offences against this Act;
- (c) prescribing those breaches of rules made under this Act that constitute infringement offences against this Act;
- (d) prescribing the penalty for each offence prescribed under paragraph (b), which-
 - (i) in the case of an individual, shall be a fine of \$5000; or
 - (ii) in the case of a body corporate, shall be a fine of \$50,000:
- (e) prescribing the infringement fee for each offence prescribed under paragraph (c), which-
 - (i) in the case of an individual, shall not exceed \$2000; or
 - (ii) in the case of a body corporate, shall not exceed \$20,000:
- (f) prescribing the matters in respect of which fees or charges are to be payable under Part XI, the amount of the fees or charges, and the persons liable to pay them;
- (g) providing for the refund or waiver of any fee or charge payable under Part XI, in whole or in part, in any specified case or class of cases;
- (h) prescribing the information and documents that may be required to be supplied by applicants for scheduled international air services licences under Part XI, and the time within which such information or documents must be supplied:
- (i) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

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

47. Fees and charges

(1) Without limiting the power to make regulations conferred by section 46, but subject to the provisions of this Act, the Minister may, from time to time make regulations prescribing, or providing for the fixing of, fees and charges payable for all or any of the following purposes-

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

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

(c) generally for the purposes of civil aviation.

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

(3) Any such regulations may-

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

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

(c) prescribe additional charges for reimbursement of travelling time, accommodation and other 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) Fees and charges in respect of the use of any aerodrome shall not be prescribed, except on the advice of the Minister given after consultation with the operator of that aerodrome.

(5) The power to prescribe, or provide for the fixing of, fees and charges in respect of any matter under this Act includes the power to prescribe, or provide for the fixing of, fees or charges, or both, in respect of any matter.

48. Rebates

(1) The department, authority, organisation or person to whom any fees or charges are payable under regulations made under this Act may grant a rebate of such fees or charges to any person who is liable to pay them.

(2) Every rebate of fees or charges granted under subsection (1) shall-

(a) be based on the quantity of services used by the person liable to pay the fees or charges; and

(b) be offered on an equal percentage basis to any other person using a similar quantity of such services; and

(c) be granted in accordance with regulations made under this Act.

49. Payment of fees and charges

(1) Except as otherwise provided in regulations made under this Act, every application under this Act shall be accompanied by payment of all relevant prescribed fees and charges.

(2) Any regulations made under this Act may-

(a) prescribe a date by which any such fee or charge is payable or authorise the Authority to fix the date by which the fee or charge is payable;

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

50. Suspension or revocation of aviation document where prescribed fees or charges unpaid

(1) Where any fee or charge payable under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the aviation document to which the unpaid fee or charge relates.

(2) Where any fee or charge payable under this Act is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the aviation document to which the fee or charge relates.

(3) Before suspending an aviation document under subsection (1), or revoking an aviation document under subsection (2), the Director shall notify the holder of that document of-

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

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

(4) Where a fee or a charge is payable in respect of an application under this Act or the provision of a service under this Act, the Authority or the Director or other person asked to process the application or provide the service, as the case may be, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, as the case may be, for payment of the fee or charge have been made.

(5) The holder of an aviation document that is suspended under subsection (1) or revoked under subsection (2) may appeal against that decision to the High Court under section 192.

51. Recovery of fees and charges

(1) Subject to subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty or service carried out or provided by the Authority or the Director in respect of any aircraft, the person whose name appears on the Kiribati Register of Aircraft in respect of that aircraft shall be deemed to be liable to pay that fee or charge.

(2) Any person who would otherwise be liable to pay a fee or charge in relation to any aircraft in terms of subsection (1) shall not be so liable if that person-

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

(b) has taken all reasonable steps to supply the Authority with such information as

would identify the actual user.

Part VI-The Kiribati civil aviation system - Entry, general requirements, responsibilities and protections

52. General requirements for participants in the Kiribati civil aviation system

(1) Every person who does anything for which an aviation document is required (in the succeeding provisions of this section called a participant) shall ensure that the appropriate aviation documents and all the necessary qualifications and other documents are held by that person.

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

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

(4) Every participant who holds an aviation document that authorises the provision of a service within the civil aviation system-

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

(b) shall 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) shall provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

53. Requirement for aviation document

(1) Rules made under this Act may require that an aviation document shall be required by or in respect of all or any of the following-

(a) Kiribati registered aircraft;

(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 specified in the rules;
- (s) any person who is an aviation examiner or medical examiner.

(2) The requirements, standards and application procedure for each aviation document, and the maximum period for which each document may be issued, shall be prescribed by rules made under this Act.

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

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 192.

54. Application for aviation document

(1) Every application for the grant or renewal of an aviation document shall be made to the Director in the prescribed Form or, if there is no prescribed form, in such Form as the Director may require.

(2) Every applicant for an aviation document shall include in the application the applicant's address for service in Kiribati including, where applicable, telephone and facsimile numbers.

(3) It shall be the duty of every holder of an aviation document to maintain the currency of the information provided under subsection (2) by promptly notifying the Director of any changes to the address, telephone number or facsimile number.

(4) The Director shall ensure that a record of all information provided under this section is

maintained at the Civil Aviation Registry.

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

55. Grant or renewal of aviation document

(1) After considering any application for the grant or renewal of an aviation document, the Director shall, as soon as is practicable, grant the application if he is satisfied that-

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

(b) the applicant and 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); and

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

(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.

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

(3) It shall be a condition of every current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in subsection (1)(b)(ii).

(4) 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 that decision to the High Court under section 192.

56. 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 shall, having regard to the degree and nature of the person's proposed involvement in the Kiribati civil aviation system, have regard to, and give such weight as the Director considers appropriate to-

(a) the person's compliance history with transport safety regulatory requirements;

(b) the person's related experience (if any) within the transport industry;

(c) the person's knowledge of the applicable civil aviation system regulatory

requirements;

(d) any history of physical or mental health or serious behavioural problems;

(e) any conviction for any transport safety offence, whether or not-

(i) the conviction was in a Kiribati Court; 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 rule made under this Act.

(2) The Director shall not be 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) The Director, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, may -

(a) seek and receive such information (including medical reports) as the Director thinks fit;

(b) consider information obtained from any source; and

(c) have regard to, and give such weight as the Director thinks appropriate to, any advice and recommendations provided by approved organisations contracted by the Minister under section 5(2)(c).

(4) Subsection (1) applies to a body corporate with the following modifications-

(a) paragraphs (a), (b), (c), (e) and (f) shall be read as if they refer to the body corporate and its officers;

(b) paragraph (d) shall be 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 shall, subject to subsection (6), disclose that information to that person and, in accordance with section 57, give that person a reasonable opportunity to refute or comment on it.

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

57. Rights of persons affected by proposed adverse decisions

(1) In this section, unless the context otherwise requires-

'adverse decision' means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act;

'affected document holder', in relation to a person directly affected by an adverse

decision, means the holder of or the applicant for the aviation document;

'person directly affected', in relation to any adverse decision, means the person who would be entitled under section 192 to appeal against that adverse decision;

'person on the basis of whose character the adverse decision arises', in relation to any adverse decision made or proposed to be made on the grounds referred to in section 56, means the person whom the Director assesses as not being a fit and proper person.

(2) Where the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, shall-

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

(b) subject to subsection (4), inform that person of the grounds for the proposed decision; and

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

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

(e) notify the person of the person's right of appeal under section 192, in the event of the Director proceeding with the proposed decision; and

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

(3) Where the Director gives a notice under subsection (2), the Director-

(a) shall also supply a copy of the notice to-

(i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and

(ii) any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and

(b) may supply a copy of the notice to any other affected document holder.

(4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 56(1), except to the extent that-

(a) the notice or copy is supplied to the person to whom the information relates; or

(b) that person consents to the supply of that information to any other person.

(5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply-

(a) it shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under subsection (2) (c), or within such further period as the Director may allow;

(b) the Director may consider any information supplied by that person after the expiry of the period referred to in paragraph (a), other than information requested by the Director and supplied by that person within such reasonable time as the Director may specify;

(c) the Director shall consider any submissions made in accordance with paragraph (a), other than information requested by the Director and supplied pursuant to a request referred to in paragraph (b).

(6) After considering the matters referred to in subsection (5), the Director shall-

(a) finally determine whether or not to make the proposed adverse decision; and

(b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3)(a), of-

(i) the Director's decision and the grounds for the decision; and

(ii) the date on which the decision will take effect; and

(iii) in the case of an adverse decision, the consequences of that decision and any applicable right of appeal (being a right of appeal specified in sections 17(8), 18(5) or 55(4)).

58. Requirement to register aircraft

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

(a) the Director; or

(b) the appropriate aeronautical authorities of a contracting State of ICAO; or

(c) the appropriate aeronautical authorities of another State that is party to an agreement with the Government of Kiribati which provides for the acceptance of each other's registrations.

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

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

(4) Any person in respect of whom any decision is taken under this section may appeal against that decision to the High Court under section 192.

59. Responsibilities of pilot-in-command and operator

(1) The pilot-in-command of an aircraft shall-

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

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

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

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

(a) the emergency involves a danger to life or property; 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 complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

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

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

(a) the emergency involves a danger to life or property; 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 Kiribati or elsewhere; or
- (b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or
- (c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.

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

- (a) immediately after the emergency has abated notify the relevant air traffic control service of the action; and
- (b) as soon as practicable, 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.

60. Nuisance, trespass and responsibility for damage

(1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any rules made under sections 31, 32 or 35, so long as the provisions of the rules are duly complied with.

(2) No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which, having regard to wind, weather and all the circumstances of the case, is reasonable, so long as the provisions of this Act and of any rules made under this Act are duly complied with.

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

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

- (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of subsection (3); and
- (b) some person other than the owner is liable to pay damages in respect of the damage or loss,

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

(5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered, the law relating to apportionment in respect of contributory negligence shall apply.

(6) Damages shall not be recoverable under subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute. Damages shall be recoverable from the person descending and the provisions of subsection (4) shall, with the necessary modifications, apply as if the person descending were the owner of the aircraft. This subsection shall not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death.

(7) 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 shall apply as if every reference to the owner were a reference to the person to whom the aircraft has been so hired out.

(8) For the purposes of this section, the term 'fault' means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from any statutory provision in respect of contributory negligence, give rise to the defence of contributory negligence.

Part VII-Medical certification

61. Interpretation

(1) In this Part, unless the context otherwise requires-

'applicant' means a person who has applied for recognition of a foreign medical certificate; and includes a licence holder who has reapplied for recognition of a foreign medical certificate;

'foreign medical certificate' means a medical certificate validly issued by or on behalf of the aviation authority of any contracting State of ICAO other than Kiribati;

'licence holder' means a person who-

(a) holds an aviation document or is a pilot; and

(b) holds, or is required under the rules to hold, a medical certificate;

'operator' includes an air traffic service provider.

(2) A medical certificate is not an aviation document.

(3) The phrase 'privileges to which a medical certificate relates', and its variations, means those privileges under this Act that may be exercised by a person who-

(a) holds a current aviation document; or

(b) is permitted under the rules to operate an aircraft solo as a pilot.

62. Power of Director to grant recognition to foreign medical certificate

(1) For the purpose of validating an overseas license or issuing a flight crew or an air traffic service officer license in Kiribati, and subject to the provisions of this Act, the Director-

(a) shall grant recognition to, and treat as a valid medical certificate for the purposes of this Act and all regulations and rules made under this Act, any current and validly issued medical certificate of Australia, New Zealand, the United States of America and the United Kingdom; or

(b) may at his sole discretion grant recognition to, and treat as a valid medical certificate for the purposes of this Act and all regulations and rules made under this Act, a current and validly issued medical certificate of any contracting State of ICAO other than those referred to in paragraph (a) upon being satisfied (at the cost of the applicant) that the relevant standards of that issuing authority are comparable to those of Australia, New Zealand, the United States of America or the United Kingdom and substantially meet the medical requirements or standards in regulations or rules made under this Act,

unless, regardless of whether paragraph (a) or (b) is applicable, the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.

(2) The Director may impose any conditions, restrictions or endorsements on a medical certificate granted recognition under this section.

(3) Before granting recognition to a foreign medical certificate, the Director may require the applicant, at the applicant's expense, to undertake any other test, examination or re-examination conducted by any suitably qualified and experienced person, or to provide any medical information, as the Director reasonably considers necessary to assess the applicant.

(4) The Director must maintain a register of current medical certificates granted recognition under this section.

63. Changes in medical condition of licence holder

(1) If a licence holder is aware of, or has reasonable grounds to suspect, any change in his medical condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which his medical certificate relates, the licence holder-

(a) must advise the Director of the change as soon as practicable; and

(b) may not exercise the privileges to which the licence holder's medical certificate relates.

(2) If a registered medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the registered medical practitioner, as soon as practicable, must-

(a) inform the licence holder that the Director will be advised of the condition; and

(b) advise the Director of the condition.

- (3) A registered medical practitioner is not subject to any civil or criminal liability for-
- (a) doing an indemnified act in good faith in the course of carrying out his functions under this Part; or
 - (b) doing an indemnified act in good faith in the course of answering any questions put to him by the Director that-
 - (i) concern a licence holder; and
 - (ii) are relevant to any action the Director may take under this Part.

(4) In this section, 'indemnified act' means any of the following acts-

- (a) advising the Director, whether in writing or otherwise, that a licence holder-
 - (i) may not meet the medical standards prescribed in the rules; or
 - (ii) may be unable to exercise safely the privileges to which the licence holder's medical certificate relates;
- (b) expressing to the Director, whether in writing or otherwise, an opinion that the licence holder who has been examined or treated may be unable to exercise safely the privileges to which the licence holder's medical certificate relates because of-
 - (i) illness or any bodily or mental infirmity, defect, incapacity or risk of incapacity suffered by the licence holder; or
 - (ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity or risk of incapacity;
- (c) stating to the Director, whether in writing or otherwise-
 - (i) the nature of a licence holder's illness, infirmity, defect, incapacity or risk of incapacity; or
 - (ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity or risk of incapacity.

64. Medical disclosure

The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to his medical condition or history for the purpose of determining whether or not the applicant is eligible for recognition of, or the continued holding of, a medical certificate.

65. Extension from expiry of medical certificate

The Director may, upon receiving an application from a licence holder before the expiry of his existing medical certificate, grant an extension of no more than 60 days from the expiry date of the licence holder's existing medical certificate with any additional conditions, restrictions or endorsements as the Director considers necessary.

66. Investigation of medical condition of licence holder

(1) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any test, examination or re-examination conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his medical certificate, if the Director has reasonable grounds to believe that the licence holder-

(a) may be unable to exercise safely the privileges to which the medical certificate relates; or

(b) has obtained his medical certificate fraudulently.

(2) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any test, examination or re-examination conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his medical certificate, if the Director has reasonable grounds to believe that the licence holder's medical certificate was issued in error.

(3) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant information for the purpose of determining whether or not the licence holder-

(a) meets the medical standards prescribed in the rules; or

(b) is able to exercise safely the privileges to which the medical certificate relates.

67. Revocation, suspension, amendment and surrender of medical certificate

(1) If the Director has reasonable grounds to believe that a licence holder may be unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director, by written notice to the licence holder, may-

(a) suspend any medical certificate issued to the licence holder; or

(b) impose or amend any conditions, restrictions or endorsements on any medical certificate issued to the licence holder.

(2) If the Director has reasonable grounds to believe that a licence holder is unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director, by written notice to the licence holder, must-

(a) suspend any medical certificate issued to the licence holder; or

(b) revoke any medical certificate issued to the licence holder; or

(c) impose or amend any conditions, restrictions or endorsements on any medical certificate issued to the licence holder.

(3) Any notice issued under this section must state the grounds for the Director's decision.

(4) A notice of suspension issued under subsection (1)(a) or subsection (2)(a) remains in force until the Director determines what action, if any, referred to in subsection (6) is to be taken, but any such suspension expires 10 working days after the date that the suspension is imposed unless, before the

expiry of that 10-working-day period, the Director extends the suspension for a further specified period not exceeding 10 working days. The aggregate suspension period may not exceed 20 working days after the date on which the suspension is imposed.

(5) Any conditions, restrictions or endorsements that are imposed or made under subsection (1)(b) or subsection (2)(c) remain in force until the Director determines what action, if any, referred to in subsection (6) is to be taken, but any of those conditions, restrictions or endorsements expire 10 working days after the date that they are imposed unless, before the expiry of that 10-working-day period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 10 working days. The aggregate period may not exceed 20 working days after the date on which the conditions, restrictions or endorsements are imposed.

(6) If a notice is issued under subsection (1) or subsection (2), the Director, by written notice, may-

- (a) impose or amend conditions, restrictions or endorsements for a specified period;
- (b) withdraw any conditions, restrictions or endorsements;
- (c) disqualify the licence holder from holding the medical certificate for a specified period;
- (d) revoke the medical certificate;
- (e) cancel the suspension.

(7) A person who has had his medical certificate revoked, withdrawn or suspended, or who is disqualified from holding the medical certificate for a specified period, must surrender the medical certificate to the Director, a person authorised by the Director, or a Police officer.

(8) If the Director issues a notice under this section, the Director-

- (a) must also, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director reasonably considers it necessary for reasons of aviation safety; and
- (b) may notify any other affected aviation document holder.

(9) The Director may, by written notice, revoke a medical certificate if a licence holder fails, without reasonable excuse, to comply with a demand under section 66 within a reasonable period of time.

(10) Any licence holder may return his medical certificate to the Director and ask the Director, in writing, to cancel the medical certificate.

(11) If a licence holder asks the Director to cancel his medical certificate, the Director must-

- (a) cancel the medical certificate; and
- (b) update the register of current medical certificates.

68. Right of appeal to High Court

Any person affected by a decision of the Director under section 62 (other than a decision made under section 62(3)), section 67(6) or section 67(9) has a right of appeal to the High Court under section 192.

69. Savings

Any medical certificate validly issued and granted recognition under the laws of Kiribati before the commencement of this Act is deemed to be a medical certificate granted recognition under this Act.

Part VIII-Accident and incident investigation

70. Obligation to notify all accidents and incidents

(1) The pilot-in-command of any aircraft that is involved in an accident shall notify the accident to the Authority as soon as practicable.

(2) Every 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,

shall, where required to do so under rules made under this Act, notify the incident to the Authority.

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

(4) The co-ordinator of any search and rescue operation for any aircraft shall notify the Authority of the operation as soon as practicable.

(5) The Authority may, on being notified under any of subsections (1) to (4), request such additional information, in such Form as it considers appropriate in each specific case, and the pilot-in-command, operator or other person of whom the request is made must provide the additional information forthwith.

71. Authority to further notify certain accidents and incidents

(1) The Authority must as soon as practicable notify the Minister and the Director of every notification received by the Authority relating to-

(a) an accident involving aircraft; or

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

(2) Without limiting subsection (1), the Authority must advise the Minister to appoint a Chief Investigator to investigate an accident or incident where it appears to the Authority that the accident or incident-

(a) is 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.

(3) If an aircraft to which an accident has occurred is registered in a State other than Kiribati the Authority must forward to the State of registry a copy of the relevant notification received by the Authority and a copy of all relevant information held by the Authority, together with advice as to the nature of the inquiry being conducted in respect of the accident.

72. Director to take further action

(1) Where an accident or incident is notified to the Director under section 71(1), the Director must-

(a) consider what action, if any, to take under this Act or regulations or rules made under this Act; and

(b) investigate and review the accident or incident; and

(c) take any other action appropriate in the circumstances.

(2) If the accident or incident is referred to a Chief Investigator under section 73(3), subsection (1)(b) is subject to the limitations set out in section 77.

73. Appointment of Chief Investigator and referral of accident or incident

(1) The Minister must appoint a Chief Investigator recommended by the Authority where-

(a) the Authority advises the Minister to do so under section 71(2); or

(b) the Minister considers that an accident or incident notified to the Minister under section 71(1) should be referred to and investigated by a Chief Investigator.

(2) The Authority must employ or engage the Chief Investigator-

(a) for the duration that the Authority considers necessary for the Chief Investigator to properly discharge his functions under section 74 in relation to the accident or incident referred to him; and

(b) on terms and conditions determined by the Authority, subject to this Act.

(3) The Authority must refer the relevant accident or incident to the Chief Investigator by forwarding to the Chief Investigator the notification received and all relevant information held by the Authority.

74. Functions of Chief Investigator

(1) The principal function of the Chief Investigator is to investigate the accident or incident referred to him under section 73(3) to determine the circumstances and causes of that accident or incident, with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person.

(2) Without limiting subsection (1), the Chief Investigator also has and may exercise the following functions-

(a) to make such inquiries and conduct such investigation as he considers appropriate in order to ascertain the cause or causes of the accident or incident;

(b) to co-ordinate and direct the investigation and to determine which other parties (if any) should be involved in the investigation;

(c) to make available to the Minister any preliminary report or preliminary recommendation that has major consequences for civil aviation safety or security;

(d) to deliver a written report to the Minister following the investigation, setting out findings and any recommendations for changes and improvements that the Chief Investigator considers will ensure the avoidance, or minimize the risk, of such an accident or incident in the future;

(e) to co-operate and co-ordinate with accident investigation organisations overseas, including taking evidence on their behalf;

(f) to perform any other function or duty conferred on him by this Act.

(2) As soon as practicable after the expiry of 21 days from the date that the report referred to in subsection (2)(d) is delivered to the Minister, the Chief Investigator must do the following in respect of that report:-

(a) publish it; and

(b) make it available for inspection by the public free of charge; and

(c) issue it to any person who asks for it on payment of a reasonable charge fixed by the Chief Investigator.

75. General powers of Chief Investigator

(1) For the purposes of carrying out his functions and duties under this Act, the Chief Investigator has the powers of a commission of inquiry and subject to the provisions of this Act, the law relating to commissions of inquiry shall apply with the necessary modifications.

(2) The Chief Investigator also has and may exercise all such powers as may be-

(a) conferred on him by this Act; or

(b) reasonably necessary or expedient to enable him to carry out his functions.

(3) For the avoidance of doubt, the Chief Investigator may investigate an accident or incident that

involves any combination of military and non-military persons or things.

76. Powers of entry and investigation

(1) Without limiting the powers conferred by section 75, for the purposes of carrying out the Chief Investigator's functions, duties or powers under this Act, an authorised investigator may-

(a) enter any aircraft, aerodrome, building or place, and inspect any thing where the authorised investigator believes on reasonable grounds that it is necessary to do so for the purposes of investigating an accident or incident;

(b) require the owner, operator or occupier of the aircraft, aerodrome, building or place to state, and produce satisfactory evidence of, his name and address;

(c) inspect, make copies of or take extracts from, or retain any document or record that the authorised investigator believes on reasonable grounds is relevant to the investigation of an accident or incident;

(d) where the authorised investigator believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation or destruction of any place or thing involved in any manner in an accident or incident, prohibit or restrict access of persons or classes of persons to the site of any accident or incident or to any thing involved in the accident or incident;

(e) where the authorised investigator believes on reasonable grounds that any thing is or contains evidence relevant to the investigation of any accident or incident, direct that the thing be taken to a place nominated by the authorised investigator;

(f) without limiting paragraphs (a) to (e), seize, detail, remove, preserve, protect or test any place or thing that the authorised investigator believes on reasonable grounds will assist in establishing the cause of an accident or incident.

(2) Nothing in this section confers on any person the power to enter any dwelling-house unless the entry is authorised by a warrant given by a judicial officer on written application on oath; and such warrant must not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(3) Every warrant issued under subsection (2) must be directed to a named person and is valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity must be shown in the warrant.

(4) Every person exercising the power of entry conferred by subsection (1) must carry, in the case of-

(a) the Chief Investigator, documentary evidence of his appointment as Chief Investigator;

(b) any other person, a warrant of authority issued by the Chief Investigator specifying-

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

(ii) that the person is authorised by the Chief Investigator to

exercise the power conferred by this section to enter aircraft, aerodromes, buildings and places, and to carry out inspections.

(5) Every person exercising the power of entry conferred by subsection (1) must produce the document required to be carried, and where applicable the warrant issued under subsection (2)-

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

(b) whenever subsequently reasonably required to do so.

(6) In this section, 'authorised investigator' means-

(a) the Chief Investigator;

(b) any person appointed under section 78(1) and authorised in terms of subsection (4)

(b) by the Chief Investigator.

77. Conduct of investigation

(1) When an accident or incident is under investigation by the Chief Investigator, the Chief Investigator is in charge of that investigation.

(2) The Chief Investigator must permit the participation or representation of such foreign organisations in any investigation as is provided for in the Convention.

(3) Except with the consent of the Chief Investigator, which consent must not be unreasonably withheld, no other person (including the Authority or the Director) may-

(a) participate in any investigation being undertaken by the Chief Investigator; or

(b) undertake any independent investigation at the site of any accident or incident being investigated by the Chief Investigator; or

(c) examine or cause to be examined any material removed from the site of any accident or incident being investigated by the Chief Investigator.

(4) Where the Chief Investigator refuses consent under subsection (3), he must give the person refused consent a written statement of the reasons for his refusal.

(5) Where any preliminary report issued by the Chief Investigator states or infers that the conduct of any person has contributed to the cause of an accident or incident being investigated by the Chief Investigator, the Chief Investigator must, before issuing a final report on the matter-

(a) give that person an opportunity to comment on or refute that statement or inference, either in a written statement or at a hearing, or both; and

(b) have regard to that person's statement or other evidence.

78. Appointment of investigators or assessors

(1) The Chief Investigator may, with the approval of the Authority, appoint any suitably qualified person that he considers necessary to assist the Chief Investigator with any investigation under this

Act.

(2) With the approval of the Authority, the Chief Investigator may, either generally or particularly, delegate to any person appointed under subsection (1) any function or power of the Chief Investigator under this Act, and-

(a) subsections (3), (6), (7), (8) and (11) of section 26, with the necessary modifications, shall apply to such a delegation;

(b) no such delegation shall affect or prevent the performance of any function or the exercise of any power by the person making that delegation; nor shall any such delegation affect the responsibility of the person making the delegation for the actions of the delegate.

(3) The Authority may, if the Authority considers appropriate, employ or engage any person appointed under subsection (1) on terms and conditions determined by the Authority, subject to this Act.

Part IX-Disclosure and admissibility of accident and incident investigation information

79. Interpretation

In this Part, unless the context otherwise requires-

'Chief Investigator' means the Chief Investigator appointed under section 73, and includes any person appointed by the Chief Investigator under section 78.

'disclose', in relation to a record referred to in this part, includes -

(a) relating the whole or Part of the contents of the record orally;
and

(b) producing the record, or a copy of the record, in whole or in Part in any form,

and 'disclosed' and 'disclosure' have corresponding meanings;

'proceedings' means-

(a) proceedings before a court or tribunal, including a court of, or enquiry established in respect of, a disciplined force;

(b) proceedings before any coroner;

(c) an arbitration under the laws relating to arbitration in Kiribati;

(d) proceedings before-

(i) a commission of inquiry; or

(ii) a body, other than the Chief Investigator,

having the powers or any of the powers of a commission of inquiry;

(e) an inquiry or investigation by any person other than the Chief Investigator.

80. Circumstances of disclosure, and admissibility, of certain investigation records

(1) A record specified in subsection (2)-

(a) may only be disclosed by the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; and

(b) is not admissible in any proceeding.

(2) A record referred to in subsection (1) is-

(a) a statement or submission made to the Chief Investigator in the course of an investigation; or

(b) a recording of an interview by a person engaged in an investigation by the Chief Investigator that is generated in the course of an investigation, or a transcript of such a recording; or

(c) a note or opinion of a person engaged in an investigation by the Chief Investigator that is generated in the course of an investigation; or

(d) information relating to an investigation that is provided in confidence by the Chief Investigator to any other person (unless that information is a record specified in section 81(2)).

(3) Notwithstanding subsection (1), a person who made a statement or submission referred to in subsection (2)(a), or who supplied any statement contained in a record referred to in subsection (2) (b) or (c), may disclose the information contained in the statement or submission to any person.

(4) No judicial officer may issue a search warrant in respect of a record specified in subsection (2).

81. Circumstances of disclosure of cockpit recordings and certain investigation records supplied to Chief Investigator

(1) A record specified in subsection (2) may only be disclosed-

(a) by the Chief Investigator, or another person with the written consent of the Chief Investigator, for the purposes of an investigation by the Chief Investigator into an accident or incident to which the record relates; or

(b) by order of the High Court under section 83 or section 84.

(2) A record referred to in subsection (1) is-

(a) a cockpit voice recording from a non-military aircraft or a transcript of a cockpit

voice recording from a non-military aircraft; or

(b) a cockpit video recording from a non-military aircraft or a transcript of a cockpit video recording from a non-military aircraft; or

(c) a document or other record held by the Chief Investigator that contains information about an identifiable natural person that was supplied to the Chief Investigator in the course of an investigation (not being information included in any statement, submission, recording, transcript or note referred to in section 80(2)(a), (b) or (c)).

(3) Nothing in subsection (1) prevents a person who is recorded on a record referred to in subsection (2)(a) or (b), or who supplied information contained in a record referred to in subsection (2)(c), from making a statement to any person about the accident or incident.

(4) No judicial officer may issue a search warrant in respect of a record specified in subsection (2).

82. Admissibility of cockpit recordings and certain investigation records supplied to Chief Investigator

(1) A record specified in section 81(2) is not admissible in-

(a) civil proceedings other than proceedings of a kind to which section 84 applies;

(b) proceedings before a court of, or inquiry established in respect of, a disciplined force.

(2) A record specified in section 81(2) is not admissible against a member of the flight crew of a military or a non-military aircraft in any proceedings.

(3) Nothing in subsection (2) affects the admissibility of a record specified in section 81(2) against a person other than a member of the flight crew of a military or a non-military aircraft.

(4) A record specified in section 81(2) is only admissible in particular civil proceedings of a kind to which section 84 applies if it was disclosed in relation to those proceedings in accordance with an order made under section 83 or section 84.

(5) Nothing in this section renders admissible any record that is inadmissible under any other enactment or rule of law.

83. Disclosure of record before civil proceedings commenced

(1) This section applies to civil proceedings if the amount of the damages claimed exceeds \$200,000.

(2) A person who is or may be intending to commence civil proceedings of the kind specified in subsection (1) may apply to the High Court for the disclosure of a record specified in section 81(2).

(3) The Court may order the disclosure of a record to a person who applies under subsection (2) if-

(a) it appears to the Court that-

(i) the person is or may be entitled to claim relief in the proceedings; and

(ii) it is impossible or impracticable for the person to formulate the person's claim without reference to the record sought; and

(b) the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

84. Disclosure of record in civil proceedings

(1) This section applies to civil proceedings if the amount of the damages claimed exceeds \$200,000.

(2) A party to any civil proceedings may apply to the High Court for the disclosure of a record specified in section 81(2).

(3) The Court may order the disclosure of a record under this section if the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

85. Provisions relating to application under section 83 or section 84

(1) Subject to this section, an application under section 83 or section 84 must be made and dealt with in accordance with the rules of court applicable to interlocutory applications.

(2) The applicant must notify the following persons of the making of the application-

(a) the person who has possession of the record; and

(b) any natural person who is the subject of the record or, if that person is deceased, that person's next of kin; and

(c) the owner of the record.

(3) A person who is served with a notice of an application, and any other person who satisfies the Court that he or she has a legitimate interest in the application, may appear before the Court and be heard in respect of the application.

(4) Only the following persons are permitted to be present at the hearing of an application under this section-

(a) the presiding Judge;

(b) officers of the Court;

(c) the applicant and the applicant's counsel;

(d) other parties to the proceedings to which the application relates (or intended parties in the case of an application under section 83) and their counsel;

(e) witnesses; and

(f) any person referred to in subsection (3).

(5) The Court may exclude any witness, or any person referred to in subsection (3), from any Part of the hearing of the application.

(6) The Court may adjourn the hearing of an application under section 83 or section 84 at any time if it appears to the Court, on the application of any person or on the Court's own motion, that the making of a disclosure order will prejudice any investigation into an accident or incident that is being undertaken by the Chief Investigator.

(7) Subsection (6) does not limit any other power of the Court to adjourn proceedings.

86. Court may order record to be produced

(1) For the purpose of determining whether a record should be disclosed under section 83 or section 84, the Court may order any person who has possession of the record to produce it to the Court.

(2) Subject to section 88, the Court may deal with the record as it thinks fit.

87. Restriction on publication of reports of proceedings

(1) No person may publish any report of an application under section 83 or section 84 without the leave of the Court.

(2) Notwithstanding subsection (1), a person may publish-

(a) the names and addresses of the parties;

(b) the name of the presiding Judge;

(c) the order made by the Court.

88. Further provisions relating to disclosure of record

(1) If the High Court makes a disclosure order under section 83 or section 84, the order relates only to the parts of the record that are relevant to the purpose for which the disclosure was ordered, and any Part of the record that is not relevant must not be disclosed.

(2) The record may be used only for the purpose for which the disclosure was ordered, and no person is permitted to copy the record or make notes from the record without the leave of the Court.

(3) The record must be returned to the person who produced the record to the Court when the record is no longer needed for the purpose for which the disclosure was ordered.

(4) No record that is ordered to be disclosed under section 83 or section 84 may be broadcast or published in the media.

89. Certain actions do not constitute disclosure

The following actions do not constitute disclosure of a record referred to in section 80 or section 81-

(a) the inclusion of the whole or Part of a record in any finding, recommendation or report, whether preliminary or otherwise, made, issued or published by the Chief

Investigator in the course of or following an investigation;

(b) the return of a recording to its owner with the consent of all the individuals recorded on it;

(c) the broadcast or publication in the media of any information disclosed to any person under section 80(3) or any statement made under section 81(3).

90. Admissibility of accident or incident findings, recommendations or report

No finding, recommendation or report, whether preliminary or otherwise, made, issued or published by the Chief Investigator following an investigation is admissible as evidence in any proceedings except-

(a) an inquiry conducted in accordance with the provisions of the *Death and Fire Inquiries Ordinance*; or

(b) an application for judicial review of a decision of the Chief Investigator.

91. Investigators not compellable to give opinion evidence in certain proceedings

No person engaged in an investigation by the Chief Investigator is compellable to give evidence in any proceedings to which the Chief Investigator is not a party as to-

(a) that person's opinion concerning any aspect of an investigation; or

(b) any matter included in any analysis, findings or recommendations made in the course of or following an investigation.

Part X-Aviation security

92. Aviation security

The prevention of the commission of crimes against the *Aircraft Security Act 1990* or section 165 at any security designated aerodrome or security designated navigation installation, and the protection of persons and property from dangers arising from the commission or attempted commission of such crimes, shall be the joint responsibility of the Kiribati Police Force and any authorised provider of aviation security services at that aerodrome or installation.

93. Responsibility of Minister

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

94. Authorised aviation security service providers

(1) Subject to subsection (2), aviation security services at any security designated aerodrome or security designated navigation installation may be provided by-

(a) the Aviation Security Service; or

(b) the operator of that aerodrome or navigation installation.

(2) No operator of an aerodrome or navigation installation, and no person employed by any such operator to provide aviation security services, shall provide aviation security services at that aerodrome or installation, except pursuant to a current aviation document issued by the Director under section 55.

(3) The holder of every such document shall comply with the relevant prescribed requirements and standards.

95. Functions and duties of Aviation Security Service

Without limiting the powers, functions, duties or responsibilities of the Kiribati Police Force under this Act or any other enactment, and without limiting the generality of section 93, the Aviation Security Service shall have the following functions and duties-

(a) to carry out-

(i) crew, passenger and baggage screening of all international aircraft passenger services; and

(ii) the screening specified in section 98(1);

(b) to undertake, if necessary, reasonable searches of crew, passengers, baggage, cargo, aircraft, aerodromes and navigation installations;

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

(d) to provide security support services to the Kiribati Police Force when requested by the Commissioner of Police, but only when the Commissioner is satisfied that the provision of those services to the Police Force is necessary to enable the Police Force to carry out its security duties and the Aviation Security Service is satisfied that the provision of those services to the Police Force will not compromise aviation security;

(e) to review, inquire into and keep itself informed on security techniques, systems, devices, practices and procedures related to the protection of civil aviation and persons employed in or using it;

(f) to undertake, or encourage or supervise, such experimental or research work in respect of any aspect of aviation security as the Director may specify;

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

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

96. Further provisions relating to Aviation Security Service

(1) Notwithstanding section 55 and section 94, but subject to subsection (2), the Minister may from time to time by notice in the *Gazette* specify that only the Aviation Security Service may be granted

an aviation document to provide aviation security services at any security designated aerodrome or security designated navigation installation. Any such notice may be amended or revoked by the Minister by notice in the *Gazette*.

(2) Where any person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome or security designated navigation installation, the Minister shall not give a notice under subsection (1) in respect of that aerodrome or navigation installation without the consent of that person.

(3) Notwithstanding section 94, the Minister may at any time, in the event of an emergency or other crisis, appoint the Aviation Security Service to provide aviation security services at any security designated aerodrome or security designated navigation installation, notwithstanding that the operator of that aerodrome or navigation installation is providing aviation security services.

(4) Any appointment made by the Minister under subsection (3) shall have effect for a period specified by the Minister, being not more than 10 days.

97. Functions and duties of other aviation security service providers

(1) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed by rules made under this Act.

(2) Such aviation security service providers shall designate employees to be aviation security officers; and every such officer shall have and may exercise, in relation to the aerodrome or navigation installation at which he or she is employed, all the powers of an aviation security officer under this Part, except the powers to arrest and detain any person.

98. Powers and duties of Director to require screening

(1) The Director may, if he believes on reasonable grounds that a security risk exists, direct an aviation security provider, by notice in the *Gazette*-

(a) to screen-

(i) any person boarding an aircraft; or

(ii) any thing to be carried by an aircraft; and

(b) if necessary, to undertake reasonable searches of-

(i) any person boarding an aircraft; or

(ii) any thing to be carried by an aircraft; or

(iii) any (as specified in the *Gazette* notice)-

(A) aircraft or class of aircraft; or

(B) aerodrome or class of aerodrome; or

(C) navigation installation or class of navigation installation.

(2) Before directing an aviation security provider under subsection (1), the Director must, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate, representative groups in the aviation industry, and any government department.

(3) A direction made under subsection (1) takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette*, if the Director-

(a) considers on reasonable grounds that urgent action is required; and

(b) has notified all affected parties (other than persons boarding an aircraft) before that date.

(4) If a direction takes effect on a date before the notice is published in the *Gazette*,-

(a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and

(b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period, the Director, after complying with subsection (3)(b), extends the period for a further specified period not exceeding 90 days. The aggregate period may not exceed 180 days after the date of publication of the notice.

(5) The Director may rescind a direction made under subsection (1).

(6) Subject to subsection (4), a direction remains in effect until it is rescinded.

99. Powers and duties of aviation security officer relating to dangerous goods

(1) Without limiting section 95(a) and (b), an aviation security officer may screen any person boarding an aircraft or any thing to be carried by an aircraft for the purpose of detecting dangerous goods.

(2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that they may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not they may be lawfully carried on an aircraft.

(3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation security officer must notify the relevant operator or delivery service as soon as practicable and-

(a) may detain the dangerous goods until they are dealt with in accordance with paragraph (b) or paragraph (c); or

(b) may deliver the dangerous goods to the operator or delivery service; or

(c) may, if the Director agrees, destroy or otherwise dispose of the dangerous goods.

(4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer must, as far as practicable, return the dangerous goods to the

owner of the dangerous goods.

(5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods.

(6) The aviation security officer must report the detection of dangerous goods in accordance with the rules or, in the absence of rules, as the Director may direct.

100. Security designated aerodromes and navigation installations

(1) The Minister may, by notice in the *Gazette*, designate any aerodrome or navigation installation as a security designated aerodrome or security designated navigation installation.

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

101. Right of access

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

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

(3) Where the Kiribati Police Force have taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any Part thereof or any aircraft, building or place shall be subject to such limitations as the senior Police officer present at the aerodrome or navigation installation specifies.

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

102. Security areas

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

(2) No person other than a Police officer on duty or an aviation security officer shall enter or remain in any security area unless authorised by the Director or the airport manager or other person having control thereof.

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

(4) Where a person who fails or refuses to provide an aviation security officer with satisfactory evidence of his name and address when requested by the aviation security officer, or where a person fails to satisfy the aviation security officer that he is authorised to be there, the aviation security officer may order that person to leave the aviation security area.

(5) An aviation security officer, and any person whom he calls to his assistance, may use such force as may be reasonably necessary to remove from any security area any person who fails or refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so under subsection (4).

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

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

103. Powers of arrest

(1) Every aviation security officer is justified in arresting without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if he has reasonable grounds to believe that an offence has been or is being committed by that person against any of the following enactments-

(a) section 165;

(b) sections 3, 4, 5, and 6 of the *Aircraft Security Act 1990*;

(c) section 4 of the *Arms and Ammunition Ordinance* and section 3 of the *Explosives Ordinance* (which relate to unlawful carriage of firearms, ammunition or explosives).

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

(3) An aviation security officer shall as soon as may be practicable deliver any person he arrests to a Police officer.

104. Arrest of persons delivered to Police

(1) A Police officer shall accept delivery of a person whom an aviation security officer seeks to deliver to him under this Part if he has reasonable grounds to suspect that person of having done or omitted to do anything if that act or omission is an offence against section 167 or any enactment specified in section 103(1).

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

(3) An aviation security officer who detains any person in accordance with the provisions of section 102(6) and delivers him to a member of the Police, and any person who at his request and in good faith assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using such force as may be reasonably necessary in doing so.

105. Powers of Police

Every Police officer shall have and may exercise all or any of the powers conferred on an aviation security officer under this Act or regulations or rules made under this Act.

Part XI-International air services

Division 1-Preliminary

106. Interpretation

In this Part, unless the context otherwise requires-

'capacity', in relation to a scheduled international air service, means-

(a) with respect to the transport of passengers, the number of seats provided per week on each route followed (expressed either as a number of seats or in terms of aircraft equivalents); and

(b) with respect to the transport of cargo, the amount of cargo space provided per week on each route followed (expressed in terms of cargo aircraft equivalents);

'foreign international airline' means an air transport enterprise of a country or territory other than Kiribati that is offering or operating a scheduled international air service or intends to offer or operate such a service;

'licensee' means the holder for the time being of a licence issued under this Part;

'Kiribati international airline' means a Kiribati air transport enterprise that is offering or operating a scheduled international air service or intends to offer or operate such a service;

'scheduled international air service' means a series of flights performed by aircraft for the transport of passengers, cargo or mail between Kiribati and one or more points in any other country or territory, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public; and, in relation to a Kiribati international airline, includes a seventh freedom service;

'seventh freedom service' means a series of flights between one or more points in one country or territory other than Kiribati and one or more points in another country or territory other than Kiribati, if-

(a) the airline is designated by Kiribati under the air services agreement (or similar arrangement) between Kiribati and each country or territory in which the service is being performed; and

(b) the service is performed according to the traffic rights allocated to the airline under those agreements (or arrangements); and

(c) the service is a scheduled service.

107. Scheduled international air service not to be carried on except pursuant to licence

No person shall carry on in Kiribati any scheduled international air service otherwise than pursuant to and in conformity with the terms of a scheduled international air service licence or, as the case may be, an open aviation market licence.

108. Application for licence

(1) Every application for a licence under this Part shall be lodged with the Minister.

(2) Every applicant for a licence shall, when making the application-

(a) supply such information and documents as may be required by regulations made under this Act or as may be specified by the Minister; and

(b) pay the prescribed fees and charges (if any).

Division 2-Scheduled international air service licences for Kiribati international airlines

109. Minister to be licensing authority for Kiribati international airlines

The Minister shall be the licensing authority to grant scheduled international air service licences to Kiribati international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

110. Notice of application

(1) Where an application for a scheduled international air service licence is lodged by a Kiribati international airline in accordance with section 108, the Minister shall give notice in the *Gazette* that the application has been received.

(2) Every notice under this section shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

111. Consideration of application for scheduled international air service licence by Kiribati international airline

(1) In considering any application for a scheduled international air service licence made by a Kiribati international airline the Minister shall take into account the following matters-

(a) any relevant international agreement, convention or arrangement to which Kiribati is a party;

(b) the safety and security requirements of the Director;

(c) the financial ability of the applicant to carry on the proposed service;

(d) the likelihood of the applicant carrying on the proposed service satisfactorily;

(e) any written representations received by the Minister in relation to the application;

(f) such other matters as the Minister thinks fit.

(2) If the granting of the licence would be contrary to any agreement, convention or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

112. Scheduled international air service licence may be granted subject to conditions

(1) The Minister, after giving consideration to the application in accordance with section 111, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.

(2) The scheduled international air service licence shall be in such Form as the Minister thinks fit.

(3) Without prejudice to the generality of subsection (1), the Minister, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service-

(a) the countries or territories, or points within those countries or territories, that may be served and the route or routes that may be followed;

(b) the maximum capacity that may be provided;

(c) a date not later than which the service shall be commenced.

113. Duration of scheduled international air service licence

(1) Every scheduled international air service licence granted under section 112 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case.

(2) Where an application is made under section 114 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

114. Renewal of scheduled international air service licence

(1) The Minister may, from time to time, renew a scheduled international air service licence granted under section 112.

(2) Every application for the renewal of a scheduled international air service licence granted under section 112 shall be lodged with the Minister not less than 3 months before the date on which the licence expires.

(3) Section 108(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.

(4) The Minister shall give notice in the *Gazette* of the Minister's intention to consider exercising the power conferred on the Minister by subsection (1).

(5) The notice given under subsection (4) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

(6) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 111 as if the application were an application for a new licence.

(7) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted, and may be for such term as the Minister considers appropriate in the particular case.

115. Variation of terms and conditions of scheduled international air service licence

(1) The Minister, while a scheduled international air service licence granted under section 112 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

(2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.

(3) Where any proposed variation involves-

(a) a change or addition to the route or routes to be operated; or

(b) an increase in the capacity of the service to be provided,

pursuant to the licence, the Minister shall, by notice in the *Gazette*, give not less than 21 clear days' notice of the Minister's intention to consider exercising the power conferred on the Minister by this section.

(4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations regarding the proposed variation.

(5) In considering any application referred to in subsection (3), the Minister shall take into account all the matters referred to in section 111 as if the application were an application for a new licence.

(6) Where the Minister has varied the terms or conditions of any scheduled international air service licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

116. Transfer of scheduled international air service licence

(1) Any scheduled international air service licence granted under section 112 may, subject to the provisions of this section, be transferred to any person.

(2) Every application for the transfer of a scheduled international air service licence shall be lodged with the Minister not less than 3 months before the date of the proposed transfer.

(3) The Minister shall give notice in the *Gazette* of the Minister's intention to consider the application for the transfer of the licence.

(4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person

relating to the application.

(5) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in section 111 as if the application were an application for a new licence.

Division 3-Scheduled international air service licences for foreign international airlines

117. Minister to be licensing authority for foreign international airlines

The Minister shall be the licensing authority to grant scheduled international air service licences to foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

118. Consideration of application for scheduled international air service licence by foreign international airline

(1) In considering any application for a scheduled international air service licence made by a foreign international airline the Minister shall take into account the following matters-

- (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention or arrangement to which Kiribati is a party;
- (b) the safety and security requirements of the Director;
- (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.

(2) If the granting of the licence would be contrary to any agreement, arrangement or convention referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

119. Scheduled international air service licence may be granted subject to conditions

(1) The Minister, after giving consideration to the application in accordance with section 118, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.

(2) The scheduled international air service licence shall be in such Form as the Minister thinks fit.

(3) Without prejudice to the generality of subsection (1), the Minister, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service-

- (a) the countries or territories, or points within those countries or territories that may be served and the route or routes that may be followed;
- (b) the maximum capacity that may be provided;
- (c) the date not later than which the service shall be commenced.

(4) Where the Minister grants a licence in accordance with this section, the Minister shall give notice in the *Gazette* that the licence has been granted.

120. Duration of scheduled international air service licence

(1) Every scheduled international air service licence granted under section 119 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.

(2) Where an application is made under section 121 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

121. Renewal of scheduled international air service licence

(1) The Minister may, from time to time, renew a scheduled international air service licence granted under section 119.

(2) Every application for the renewal of a scheduled international air service licence granted under section 119 shall be lodged with the Minister not less than 3 months before the date on which the licence expires.

(3) Section 108(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.

(4) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 118 as if the application were an application for a new licence.

(5) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted and may be for such term as the Minister considers appropriate in the particular case or, if the Minister thinks fit, for an indefinite term.

122. Variation of terms and conditions of scheduled international air service licence

(1) The Minister, while a scheduled international air service licence granted under section 119 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

(2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.

(3) Where any application under subsection (1) seeks approval for-

(a) a change or addition to the route or routes to be operated; or

(b) an increase in the capacity of the service to be provided, pursuant to the licence, the Secretary shall take into account all the matters referred to in section 118 as if the application were an application for a new licence.

(4) Where the Minister has varied the terms or conditions of any licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

Division 4-Open aviation market licences

123. Minister may designate countries or territories for open aviation market licences

The Minister may from time to time, by notice in the *Gazette*, designate any one or more countries or territories in respect of which-

- (a) scheduled international air services; and
- (b) non-scheduled international flights engaged in the carriage of passengers, cargo or mail for remuneration or hire,

may be carried on pursuant to and in conformity with an open aviation market licence.

124. Minister to be licensing authority for open aviation market licences

The Minister shall be the licensing authority to grant open aviation market licences to Kiribati international airlines and foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

125. Consideration of application for open aviation market licence

(1) In considering an application for an open aviation market licence made by a Kiribati international airline or a foreign international airline the Minister shall take into account the following matters-

- (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention or arrangement to which Kiribati is a party;
- (b) the safety and security requirements of the Director;
- (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.

(2) If the granting of the open aviation market licence would be contrary to any agreement, convention or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

126. Open aviation market licence may be granted subject to conditions

(1) The Minister, after giving consideration to the application in accordance with section 125, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.

(2) Without prejudice to the generality of subsection (1), the Minister, in granting any open aviation market licence, shall prescribe, in respect of any scheduled international air service and non-scheduled international flight carried on pursuant to the licence, the countries or territories that may be served.

(3) The open aviation market licence shall be in such Form as the Minister thinks fit.

(4) Where the Minister grants an open aviation market licence under this section, the Minister shall give notice in the *Gazette* that the licence has been granted.

127. Duration of open aviation market licence

(1) Every open aviation market licence granted under section 126 shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.

(2) Where an application is made under section 128 for the renewal of an open aviation market licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

128. Renewal of open aviation market licence

(1) The Minister may, from time to time, renew an open aviation market licence granted under section 126.

(2) Every application for the renewal of an open aviation market licence granted under section 126 shall be lodged with the Minister not less than 3 months before the date on which the licence expires.

(3) Section 108(2) shall apply to every application for the renewal of an open aviation market licence as if it were an application for a new licence.

(4) No person shall be entitled as of right to a renewal of an open aviation market licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 125 as if the application were an application for a new licence.

(5) The renewal of the open aviation market licence shall take effect from the date of expiry of the licence for which the renewal is granted and may be for such term as the Minister considers appropriate in the particular case or, in respect of a foreign international airline, if the Minister thinks fit, for an indefinite term.

129. Variation of terms and conditions of open aviation market licence

(1) The Minister, while an open aviation market licence granted under section 126 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

(2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.

(3) Where any application under subsection (1) seeks approval for a change or addition to the country or countries, or territory or territories, to be served pursuant to the open market aviation licence, the Secretary shall take into account all the matters referred to in section 125 as if the application were an application for a new licence.

(4) Where the Minister has varied the terms or conditions of an open aviation market licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

130. Transfer of open aviation market licence

(1) Any open aviation market licence granted to a Kiribati international airline under section 126 may, subject to the provisions of this section, be transferred to any other Kiribati international airline.

(2) Every application for the transfer of an open aviation market licence shall be lodged with the Minister not less than 3 months before the date of the proposed transfer.

(3) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in section 125 as if the application were an application for a new licence.

(4) Where the Minister transfers any open aviation market licence under this section, the Minister shall give notice in the *Gazette* that the licence has been transferred.

131. Holder of open aviation market licence may operate non-scheduled international flights without authorisation under section 136

The holder of an open aviation market licence under this Part shall be entitled to carry on, to or from the countries or territories that may be served pursuant to the licence as prescribed under section 126 (2), non-scheduled international flights engaged in the carriage of passengers, cargo or mail for remuneration or hire without authorisation under section 136.

Division 5-Requirements on licensees

132. Insurance cover against liability

The Minister may, before granting or renewing any licence, or at any other time while the licence is in force, call upon the applicant or the licensee, as the case may be, to furnish to the satisfaction of the Minister proof that the liability of the applicant or the licensee which may arise out of or in connection with the operation of the service in respect of the death of or bodily injury to any person and in respect of loss of or damage to any property is covered by insurance.

133. Returns to be furnished

Every person carrying on a scheduled international air service or non-scheduled international flight pursuant to a licence shall furnish to the Minister such financial and statistical returns and statements as the Minister may from time to time require by notice in writing addressed to that person.

Division 6-Suspension and revocation of licences

134. Suspension of licences

Where the Minister is satisfied that a licensee has wilfully committed a breach of any of the conditions of a licence granted under this Part, the Minister may suspend the licence for such period as the Minister thinks fit.

135. Revocation of licences

The Minister may revoke a licence granted under this Part if-

- (a) the service authorised by the licence is not commenced on the date specified in the licence; or
- (b) the Minister is satisfied that the service authorised by the licence is not being carried on in conformity with the terms and conditions of the licence; or
- (c) the service authorised by the licence has been terminated; or
- (d) the licence has been granted under or in accordance with any convention, agreement or arrangement between the Government of Kiribati and the Government of any other country (whether or not any other Government is also a party thereof) and that convention, agreement or arrangement has been terminated or has ceased to bind the Government of Kiribati or the Government of that other country; or
- (e) the licence has been granted under or in accordance with any such convention, agreement or arrangement referred to in paragraph (d) and circumstances have occurred or any condition has been fulfilled whereby the Minister, or the Government of Kiribati, has become entitled under or in accordance with the convention, agreement or arrangement, to revoke the licence.

Division 7-Non-scheduled international flights

136. Commercial non-scheduled international flights not to be operated except as authorised by Minister

(1) Subject to section 131, no person shall operate a non-scheduled international flight engaged in the carriage of passengers, cargo or mail for remuneration or hire between Kiribati and one or more points in any other country or territory, except as authorised by the Minister and in accordance with such conditions as the Minister may impose in accordance with guidelines specified by the Minister in accordance with subsection (2).

(2) For the purposes of this section, the Minister may issue guidelines for the regulation of flights described in subsection (1).

(3) The Minister may from time to time review and amend the guidelines referred to in subsection (2).

(4) The Minister shall, when requested by any person, make a copy of the guidelines issued in accordance with subsection (2) available to that person.

Division 8-No exemption from regulations and rules

137. Provisions of this Part in addition to requirements of regulations and rules

No aircraft being used in connection with any scheduled international air service pursuant to a licence granted under this Part or a non-scheduled international flight shall, by virtue of its being used in connection with that service or flight, be exempt from the operation of any regulation or rules made under this Act.

Division 9-Prohibition of smoking on international air routes

138. Minister may prohibit smoking on international air routes

(1) For the purposes of this section and section 164-

'Kiribati international airline' means a Kiribati air transport enterprise that is offering or operating a scheduled international air service or a non-scheduled international flight;

'to smoke' means to smoke, hold or otherwise have control over an ignited tobacco product, weed or plant, and 'smoked' and 'smoking' have corresponding meanings.

(2) The Minister may from time to time, by notice in the Gazette-

(a) designate any one or more international air routes, or class or classes of international air routes, or all international air routes generally, as non-smoking routes; and

(b) exempt any specified route or Part of a route from any designation imposed by the Minister in accordance with paragraph (a), subject to any conditions that the Minister thinks fit.

(3) The Minister shall, before giving any notice under subsection (2), consult with Kiribati international airlines.

(4) A Kiribati international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall ensure that-

(a) there are prominent notices displayed in the aircraft indicating that smoking is not permitted; and

(b) an announcement is made to passengers on the aircraft at the commencement of each journey on the route advising that smoking is not permitted.

(5) No Kiribati international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall permit any person to smoke on that aircraft.

(6) No person shall smoke while on any aircraft operated by a Kiribati international airline carrying passengers on any route designated as a non-smoking route pursuant to this section.

Part XII-Offences and penalties

Division 1-Safety offences

139. Endangerment caused by holder of aviation document

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

(2) Every person who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to imprisonment for 12 months or a fine of \$10,000; or

(b) in the case of a body corporate, to a fine of \$100,000.

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

140. Operating aircraft in careless manner

(1) Every person commits an offence who operates any aircraft in a careless manner.

(2) Every person who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to a fine of \$7000; or

(b) in the case of a body corporate, to a fine of \$70,000.

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

141. Dangerous activity involving aircraft, aeronautical product or aviation related service

(1) Every person commits an offence who-

(a) operates, maintains or services; or

(b) does any other act in respect of,

any aircraft, aeronautical product or aviation related service, in a manner which causes unnecessary danger to any other person or to any property.

(2) Every person commits an offence who-

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

(b) causes or permits any other act to be done in respect of any aircraft, aeronautical product or aviation related service,

in a manner which causes unnecessary danger to any other person or to any property.

(3) Every person who commits an offence against subsection (1) or subsection (2) is liable-

(a) in the case of an individual, to imprisonment for 12 months or a fine of \$10,000; or

(b) in the case of a body corporate, to a fine of \$100,000.

(4) The provisions of this section shall be in addition to and not in derogation of any regulations or rules made under this Act.

142. Failure to comply with inspection or monitoring requirement

(1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under section 15(1) or (3).

(2) Every person who commits an offence against subsection (1) is liable,-

(a) in the case of an individual, to a fine of \$10,000 and, if the offence is a continuing one, to a further fine of \$2000 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 of \$100,000 and, if the offence is a continuing one, to a further fine of \$20,000 for every day or Part of a day during which the offence is continued.

143. Court may disqualify holder of aviation document or impose conditions on holding of document in respect of certain offences

(1) In addition to any penalty the Court may impose under sections 139, 140, 141 or 142, the Court may, on convicting any person of an offence against any of those sections-

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

(b) impose on any aviation document held by or issued to the person convicted such restrictions or conditions or both as the Court, having regard to the circumstances of the offence, thinks fit,

for such period, not exceeding 12 months, as the Court thinks fit.

(2) Nothing in subsection (1) shall affect or prevent the exercise by the Director of his powers under sections 17 and 18.

144. Acting without necessary aviation document

(1) Every person commits an offence who, without holding the appropriate current aviation document-

(a) operates, maintains or services; or

(b) does any other act in respect of,

any aircraft, aeronautical product or aviation related service, where a current aviation document is required to be held in respect of that aircraft, product or service before that act may lawfully be done.

(2) Every person who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to imprisonment for 12 months or a fine of \$10,000; or

(b) in the case of a body corporate, to a fine of \$100,000.

145. Acting without required medical certificate

(1) Every person who exercises the privileges of any aviation document or operates an aircraft solo commits an offence if that person-

(a) does not hold an appropriate current medical certificate granted recognition by the Director under section 62; or

(b) knows or has reasonable grounds to suspect that he can no longer exercise safely the privileges to which his medical certificate relates; or

(c) fails to comply with any conditions, restrictions or endorsements specified by the Director under sections 62(2), 67(1)(b), 67(2)(c) or 67(6).

(2) Every person who commits an offence under subsection (1) is liable to imprisonment for 12 months or to a fine of \$10,000.

146. Fraudulent, misleading or intentionally false statements to obtain medical certificate

(1) Every person commits an offence who makes or causes to be made-

(a) any fraudulent, misleading or intentionally false statement for the purpose of obtaining, or obtaining recognition of, a medical certificate under Part VII; or

(b) any 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 certificate under Part VII; or

(c) any reproduction or alteration for fraudulent purposes of any medical certificate issued or granted recognition under Part VII; or

(d) any fraudulent, misleading or intentionally false statement during an investigation under section 66.

(2) Every person who commits an offence under subsection (1) is liable to imprisonment for 12 months or to a fine of \$10,000.

147. Failure to disclose information

(1) Every person commits an offence who fails to disclose, without reasonable excuse, information required to be disclosed under section 63(1).

(2) Every person commits an offence who fails to disclose, without reasonable excuse, information required by the Director under section 66(3).

(2) Every person who commits an offence under subsections (1) or (2) is liable to imprisonment for 12 months or to a fine of \$5000.

148. Additional penalty for offences involving commercial gain

(1) In addition to any penalty the Court may impose under sections 139, 141, 142 or 144, the Court may, on convicting any person of an offence specified in any of those sections, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the Court is satisfied that the offence was committed in the course of producing a commercial gain.

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

Division 2-General offences

149. Applying for aviation document while disqualified

(1) Every person commits an offence who applies for or obtains an aviation document while disqualified by an order of the Court from obtaining such a document and any such document so obtained shall be of no effect.

(2) Every person who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to imprisonment for 6 months or a fine of \$2000; or

(b) in the case of a body corporate, to a fine of \$20,000,

and the Court may order the person to be further disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the Court thinks fit.

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

(1) Every person commits an offence who-

(a) by any means, provides to the Authority or the Director information relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act, knowing the information to be false; or

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

(c) being the holder of an aviation document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the condition specified in section 55(3).

(2) Every person who commits an offence against subsection (1) is liable,-

(a) in the case of an individual, to imprisonment for 12 months or a fine of \$5000; or

(b) in the case of a body corporate, to a fine of \$50,000.

151. Carrying on scheduled international air service without licence or contrary to licence

(1) Every person commits an offence who-

(a) carries on a scheduled international air service in Kiribati without a licence granted under Part XI; or

(b) being the holder of a licence granted under Part XI, carries on a scheduled international air service in Kiribati in a manner contrary to the terms and conditions of the licence.

(2) Every person who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to a fine of \$5000; or

(b) in the case of a body corporate, to a fine of \$50,000.

152. Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence

(1) Every person commits an offence who-

(a) operates a non-scheduled international flight to which section 136 applies, contrary to the provisions of that section; or

(b) being the holder of an open aviation market licence, carries on a non-scheduled international flight in a manner contrary to the terms and conditions of the licence.

(2) Every person who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to a fine of \$3000; or

(b) in the case of a body corporate, to a fine of \$30,000.

153. Obstruction of persons duly authorised by Director

(1) Every person commits an offence who obstructs or impedes any person who is duly authorised by the Director and acting in the performance or exercise of any functions, duties or powers conferred on him by this Act, or by any rules made under this Act, and is liable-

(a) in the case of an individual, to imprisonment for 3 months or a fine of \$2000; or

(b) in the case of a body corporate, to a fine of \$20,000.

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

154. Failure or refusal to produce or surrender documents

(1) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a requirement made in accordance with section 22(3).

(2) Every person who commits an offence against subsection (1) is liable to a fine of \$1000.

155. Trespass

Every person commits an offence and is liable to imprisonment for 3 months or a fine of \$2000 who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain by a person duly authorised by the Director in writing for that purpose, a Police officer, an aviation security officer or by notice posted by one of those persons.

156. Failure to maintain accurate records

(1) Every person commits an offence who contravenes any provision of this Act or any rule made under this Act that requires that person-

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

(2) Every person who commits an offence against subsection (1) is liable-

- (a) in the case of an individual, to a fine of \$5000; or
- (b) in the case of a body corporate, to a fine of \$50,000.

157. Failure to notify emergency breach of Act or regulations or rules

Every pilot-in-command commits an offence and is liable to a fine of \$5000 who, without reasonable excuse, fails to comply with section 59(7) (which relates to the notification of breaches of this Act or regulations or rules made under this Act that are committed during an emergency).

158. Failure to notify accident or incident

(1) Every pilot-in-command or operator commits an offence who, without reasonable excuse, fails to comply with section 70(1), (2) or (3) (which relate to the notification of an accident or incident).

(2) Every pilot-in-command or operator who commits an offence against subsection (1) is liable-

- (a) in the case of an individual, to a fine of \$5000; or
- (b) in the case of a body corporate, to a fine of \$50,000.

159. Offences relating to disclosure of records

(1) Every person commits an offence who discloses a record specified in section 80(2) or section 81

(2) in breach of section 80 or section 81.

(2) Every person commits an offence who contravenes section 88(2).

(3) Every person who commits an offence against this section is liable-

(a) in the case of an individual, to a fine of \$5000:

(b) in the case of a body corporate, to a fine of \$50,000.

160. Offences relating to publication of reports of proceedings or publication of records

(1) Every person commits an offence who contravenes section 87 or section 88(4).

(2) Every person who commits an offence against this section is liable-

(a) in the case of an individual, to a fine of \$5000;

(b) in the case of a body corporate, to a fine of \$50,000.

161. Failure to provide identifying information

(1) Every operator of an aircraft or holder of a certificate of registration commits an offence who, without reasonable excuse, fails to comply with section 185 (which relates to the identification of the pilot in command of an aircraft).

(2) Every operator or holder of a certificate of registration who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to a fine of \$5000; or

(b) in the case of a body corporate, to a fine of \$50,000.

162. Contravention of emergency rule, prohibition or condition

Every person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with any emergency rule made under section 36 or any prohibition or condition notified under section 21, and is liable-

(a) in the case of an individual, to a fine of \$5000; or

(b) in the case of a body corporate, to a fine of \$50,000.

163. 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 Kiribati under this Act:

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

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

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

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

(a) the flight is not duly authorised; or

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

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

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

(8) Every person who commits an offence against subsection (2) or subsection (4) is liable-

(a) in the case of an individual, to imprisonment for 12 months or a fine of \$10,000; or

(b) in the case of a body corporate, to a fine of \$100,000.

164. Smoking on international air routes

A Kiribati international airline commits an offence and is liable to a fine of \$5000 if it, without reasonable excuse, fails to comply with the requirements of section 138(4) and (5).

Division 3-Security offences

165. Crimes relating to international airports

(1) A person commits a crime who, whether in or outside Kiribati, using any device, substance or weapon, intentionally does any of the following acts that endangers or is likely to endanger the safety of an international airport-

(a) at the international airport, commits an act of violence that causes or is likely to cause serious injury or death; or

(b) destroys or seriously damages the facilities of the international airport; or

(c) destroys or seriously damages an aircraft that is not in service and is located at the international airport; or

(d) disrupts the services of the international airport.

(2) Subject to subsection (3), every person who commits an offence against this section is liable to imprisonment for 14 years.

(3) Every person who commits an offence against subsection (1)(a)-

(a) in circumstances where the conduct concerned is the same as conduct described as murder under the Penal Code, shall be sentenced to imprisonment for life; and

(b) in circumstances where the conduct concerned is the same as conduct described as manslaughter under the Penal Code, is liable to imprisonment for life.

166. Offences against section 165 deemed to be included in extradition treaties

(1) For the purposes of the Extradition Act 2003 each offence described in section 165 is deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between Kiribati and any foreign country which is a party to the Montreal Protocol.

(2) Where subsection (1) deems an offence to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 2003 in respect of an act or omission which amounts to that offence is liable to be surrendered in accordance with the provisions of that Act, whether the act or omission occurred before or after the date on which the offence was deemed to be an offence described in the extradition treaty.

(3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of Kiribati, would not at that time have constituted an offence under Kiribati law.

(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) In this section, unless the context otherwise requires-

'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;

'Montreal Protocol' means the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation signed in Montreal on 24 February 1988;

'offence' includes-

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

167. Security area offences

(1) Every person commits an offence who, on being found in a security area-

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

- (i) having been informed that he 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.

(2) Every person who commits an offence against subsection (1) is liable to imprisonment for 3 months or a fine of \$2000.

168. Personation or obstruction of aviation security officer

(1) Every person commits an offence who, not being an aviation security officer-

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

(b) wilfully obstructs, or incites or encourages any person to obstruct an aviation security officer in the execution of his duty.

(2) Every person who commits an offence against subsection (1) is liable to imprisonment for 3 months or a fine of \$2000.

169. Communicating false information affecting safety

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

(2) Every person who commits an offence against subsection (1) is liable-

(a) in the case of an individual, to imprisonment for 12 months or a fine of \$10,000; or

(b) in the case of a body corporate, to a fine of \$100,000.

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

Division 4-Unruly passenger offences

170. Application of this Division

(1) Offences against any of the sections in this Division are collectively referred to as unruly passenger offences.

(2) This Division applies to any unruly passenger offence committed-

(a) on an aircraft in Kiribati, regardless of the nationality of the aircraft;

(b) outside Kiribati on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is Kiribati.

(3) For the purposes of this Division, 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.

(4) Notwithstanding subsection (3), in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

171. Liability for unruly passenger offences despite extraterritoriality

Any person who commits an act or omission on an aircraft in flight outside Kiribati that would be an unruly passenger offence if it occurred within Kiribati is liable, subject to this Act, as if the act or omission had occurred in Kiribati.

172. Liability for other offences despite extraterritoriality

(1) Any person who commits an act or omission on an aircraft in flight outside Kiribati that would, if it occurred in Kiribati, be an offence of disorderly behaviour or fighting in a public place or common assault or wilful damage or indecent exposure under the *Penal Code* or any other enactment is liable as if the act or omission had occurred in Kiribati.

(2) For the purposes of any of the provisions referred to in subsection (1), any reference to public place includes an aircraft.

173. Sanction of Attorney-General

(1) No proceedings for an unruly passenger offence may be commenced without the sanction of the Attorney-General if-

- (a) the offence has been committed on a foreign aircraft outside Kiribati; and
- (b) the offence carries a maximum sentence of more than 3 months' imprisonment.

(2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody or released on bail before the Attorney-General decides whether or not to consent to proceedings.

174. Acts endangering safety

(1) Every person commits an offence who acts in a manner that endangers an aircraft or any person in an aircraft.

(2) Every person who commits an offence against subsection (1) is liable to imprisonment for 2 years or a fine of \$10,000.

175. Disruptive conduct towards crew member

(1) Every person commits an offence who, while in an aircraft-

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

(2) Every person who commits an offence against subsection (1)(a), (b) or (c) is liable to a fine of \$5000.

(3) Every person who commits an offence against subsection (1)(d) is liable to imprisonment for 2 years or a fine of \$10,000.

176. Interference with aircraft

(1) Every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft or its equipment, including, but not limited to, smoke detectors.

(2) Every person who commits an offence against subsection (1) is liable to a fine of \$10,000.

177. Intoxicated persons on aircraft

(1) Every person (except a person under medical care) commits an offence who-

(a) is intoxicated and boards an aircraft; or

(b) becomes intoxicated on an aircraft.

(2) Every person who commits an offence against subsection (1) is liable to a fine of \$5000.

(3) 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

(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.

(4) In 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.

178. Non-compliance with commands given by pilot-in-command

(1) Every person commits an offence who fails to comply with any commands given to the person directly by the pilot-in-command, or indirectly by the pilot-in-command through a crew member, in accordance with his duties under section 59(1) or the rules.

(2) Notwithstanding section 31(6), every person who commits an offence against subsection (1) is liable to a fine of \$5000.

179. Offensive behaviour or words

(1) Every person commits an offence who, on any aircraft-

(a) behaves in a threatening, offensive, insulting or disorderly manner; or

(b) uses threatening, offensive or insulting words.

(2) Every person who commits an offence against subsection (1) is liable to a fine of \$2500.

180. Portable electronic devices not to be operated

(1) Every person commits an offence who operates a portable electronic device on board an aircraft in breach of the rules.

(2) Notwithstanding section 31(6), every person who commits an offence against subsection (1) is liable to a fine of \$2500.

181. Non-compliance with seating and seatbelt instructions

(1) Every person commits an offence 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.

(2) Every person who commits an offence against subsection (1) is liable to a fine of \$2500.

182. No smoking

(1) Every person commits an offence who smokes-

- (a) when instructed not to smoke by a crew member, passenger information signs or placards; or
- (b) in contravention of section 138(6).

(2) Every person who commits an offence against subsection (1) is liable to a fine of \$2,500.

(3) In subsection (1), 'to smoke' has the meaning set out in section 138(1).

183. Dangerous goods

(1) Every person commits an offence who, in breach of the rules, carries or causes to be carried on an aircraft any dangerous goods.

(2) Notwithstanding section 31(6), every person who commits an offence against subsection (1) is liable to a fine of \$2500.

184. Procedure for certain unruly passenger offences

(1) If an unruly passenger offence is alleged to have been committed by any person (in this section, the defendant), the pilot-in-command of the aircraft at the time of the commission of the alleged offence may, by any available means, notify, or cause to be notified-

- (a) an aviation security officer; or
- (b) a Police officer.

(2) If an aviation security officer or Police officer has reasonable cause to suspect that a person has committed an unruly passenger offence, he may require the person to give his full name, address and date of birth.

(3) If the aviation security officer or Police officer has reasonable grounds to suspect that any details provided under subsection (2) are false or misleading, he may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.

(4) If the person, without reasonable excuse, refuses or fails to comply with a request under subsection (2) or subsection (3), and persists in that refusal or failure after being warned by the aviation security officer or Police officer that he may be arrested for committing an offence by that refusal or failure, a Police officer may arrest that person without warrant.

(5) Every person commits an offence and is liable to a fine of \$1000 who, without reasonable excuse-

(a) refuses or fails to comply with a request under subsection (2) or subsection (3); or

(b) gives details that are false or misleading in a material respect to an aviation security officer or Police officer in response to such a request.

(6) Evidence produced by the defendant to the aviation security officer or Police officer under subsection (3) must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.

Division 5-Identification of offenders

185. 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 or the rules, 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 that person to give all information in that person's possession or reasonably obtainable by that person 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 (as the case may be) 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 suspected offence.

Division 6-Disqualification

186. 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 shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.

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

187. Commencement of period of disqualification

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

188. Retention and custody of document

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

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

(3) If the person entitled to the document is a person to whom section 186(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

189. Removal of disqualification

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

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

(3) Where the disqualification was ordered by a Court, every application under this section shall be made to a judicial officer exercising jurisdiction in the Court by which the order was made.

(4) Notice of every application under this section shall be served on the Director who shall have a right to appear and be heard in respect of the matter.

190. Particulars of disqualification orders, etc., to be sent to Director

Where a Court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions (or both) on any aviation document held by or issued to any person or makes an order under section 189 removing any disqualification, particulars of the order shall be sent by the Registrar of the Court to the Director.

191. Appeals against disqualification

(1) An order of a Court by which any person is disqualified from holding or obtaining an aviation document shall be deemed to be a sentence or Part of a sentence for the purpose of any appeal, as the case may be. If a notice of appeal against any such order is filed, the Court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.

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

(3) 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 High Court may, if it thinks fit, defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.

(4) Notice of every appeal or application under this section shall be served on the Director who shall have a right to appear and be heard in respect of the matter.

(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 Court shall send particulars thereof to the Director.

(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 shall be disregarded.

Part XIII-Rights of appeal

192. Appeal to High Court

(1) A person may appeal to the High Court against a specified decision made under this Act by the Director if another section of this Act gives that person a right of appeal under this section, 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 the 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) Every 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 of the provisions of this Act on the ground that any appeal is pending.

(4) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to the like right of appeal, refuse to grant, revoke, suspend, disqualify or otherwise deal with, in accordance with the provisions of this Act, any aviation document, any person to which or to whom the appeal related or any aviation document or approval granted or restored in compliance with the decision of the High Court on the 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 21;

(d) to decline to register an aircraft under section 58.

193. Appeal to Court of Appeal on question of law

(1) Every party to an appeal under section 192 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 section, or on any application for leave to appeal to the Court, shall be final.

(4) Subject to this section, the procedure in respect of any appeal under this section shall be in accordance with the rules of Court.

Part XIV-Financial provisions

Division 1-Pending the establishment of the Authority

194. Application of this Division

This Division shall apply until such time as the Authority is established pursuant to section 6.

195. The Civil Aviation Fund

A Special Fund, to be known as the Civil Aviation Fund, shall be established in accordance with section 107(2) of the *Constitution* and section 13 of the *Public Finance (Control and Audit) Ordinance*.

196. Payments into the Civil Aviation Fund

There shall be paid into the Civil Aviation Fund-

(a) any money appropriated by the Maneaba ni Maungatabu for the purposes of the Fund; and

(b) any monies collected or received by the Authority or the Director under this Act, or rules or regulations made under this Act; and

(c) any other money lawfully available to the Fund.

197. Payments out of the Civil Aviation Fund

(1) There shall be paid out of the Civil Aviation Fund-

(a) the amount of any expenditure by the Republic in respect of civil aviation; and

(b) the expenses, as approved by the Minister for the time being responsible for finance with the concurrence of the Minister for the time being responsible for civil aviation, of the administration and carrying into effect of the provisions of this Act, and rules and regulations made under this Act.

(2) No money shall be paid out of the Civil Aviation Fund except in accordance with a warrant under the hand of the Minister for the time being responsible for finance authorising the Chief Accountant to issue the money to the Director, who shall be the accounting officer responsible for operating the Fund.

(3) Notwithstanding section 13(2)(d) of the *Public Finance (Control and Audit) Ordinance*, no money shall be transferred from the Civil Aviation Fund to the Consolidated Fund so as to Form Part of the general revenues of the Government.

198. Control of the Civil Aviation Fund

In the performance of his functions under this Part and under section 13 of the *Public Finance (Control and Audit) Ordinance* in relation to the Civil Aviation Fund the Minister for the time being responsible for finance shall use his best endeavours to manage the Civil Aviation Fund in such a way that, taking one year with another, the income of the Fund is not less than sufficient to meet its outgoings, including depreciation charges.

199. Annual reports

(1) The Minister for the time being responsible for finance shall, before the end of each financial year, submit to the Maneaba ni Maungatabu-

(a) a statement showing the estimated income and expenditure of the Civil Aviation Fund for the current financial year; and

(b) estimates of the income and expenditure of the Civil Aviation Fund for the next financial year.

(2) The Minister for the time being responsible for finance shall, within 6 months after the end of each financial year, lay before the Maneaba ni Maungatabu a report dealing generally with the operations of the Civil Aviation Fund during the preceding financial year and containing the audited statement of accounts for that financial year.

Division 2-Following the establishment of the Authority

200. Application of this Division

This Division shall apply from the time the Authority is established pursuant to section 6.

201. Transfer and vesting of the Civil Aviation Fund

On the establishment of the Authority, all monies comprising the Civil Aviation Fund, together with the balance of monies issued from the Fund to the accounting officer in accordance with section 197 (2) for the current financial year, shall be transferred to, and vested in, the Authority.

202. Funds of the Authority

(1) The funds of the Authority shall comprise-

(a) the monies referred to in section 201;

- (b) revenue accruing from the activities of the Authority;
- (c) sums borrowed under the provisions of section 203; and
- (d) such further sums as may be provided by the Maneaba ni Maungatabu for the purposes of the Authority.

(2) It shall be the duty of the Authority so to exercise its powers and perform its functions under this Act as to secure that at the earliest possible date its total revenues are sufficient, taking one year with another, to meet its total outgoings properly chargeable to revenue account including depreciation and interest on capital.

203. Power to borrow or raise capital

(1) The Authority may, with the consent of the Minister, given after consultation with the Minister for the time being responsible for finance, borrow, secure or raise money by the issue of debentures or debenture stock, or upon other security (including its revenues) for all or any of the following purposes-

- (a) the provision of working capital;
- (b) the fulfilling of the functions of the Authority under this Act, and any rules and regulations made under this Act;
- (c) the provision of capital for the expansion of and addition to its fixed assets;
- (d) the redemption of any debenture or debenture stock or other security that the Authority is required or entitled to redeem; and
- (e) any other expenditure properly chargeable to capital account.

(2) The Authority may, with the consent of the Minister, given after consultation with the Minister for the time being responsible for finance, borrow by way of overdraft or otherwise such sums as the Authority may require for meeting its obligations and discharging its functions under this Act, and any rules and regulations made under this Act.

(3) The repayment of moneys borrowed or loans raised under this section and the payment of interest thereon may be guaranteed by the Government.

204. Application of revenue

(1) The revenue of the Authority for any financial year shall be applied in defraying the following charges-

- (a) the allowances of the members of the Authority;
- (b) the salaries, fees and remuneration of the officers, agents and employees, and technical and other advisers of the Authority;
- (c) working expenses, and expenditures on, or provision for, the maintenance of the property and of any of the works of the Authority, and the insurance of the same and the discharge of the functions of the Authority properly chargeable to revenue account;

(d) interest on any debenture or debenture stock or other security issued, or on any loan raised by the Authority;

(e) sums required to be transferred to a sinking fund or otherwise set aside for the purpose of making provision for the redemption of debentures or debenture stock or other security or the repayment of other borrowed money;

(f) such sums as it may be deemed appropriate to set aside in respect of depreciation on the property of the Authority; or

(g) any other expenditures authorised by the Authority and properly chargeable to revenue account.

(2) The balance of the revenue of the Authority shall be applied to the creation of reserve funds to finance the future activities of the Authority.

205. Authorised investments

Funds of the Authority not immediately required to be expended in the meeting of any obligations or the discharge of any functions of the Authority may be invested in securities approved by the Minister of Finance.

206. Estimates

(1) The Authority shall in every year cause to be prepared and shall adopt annual estimates of its income and expenditure for the ensuing year.

(2) Supplementary estimates may be adopted by the Authority at any time.

(3) The Authority shall transmit to the Minister for approval a copy of all annual and supplementary estimates upon their adoption by the Authority. Any variation of such estimates shall be transmitted to the Minister for approval.

207. Accounts and audit

(1) The Authority shall keep proper accounts and other records in respect of its operations and shall, not later than 31 March in each year, cause a statement of accounts to be prepared in respect of the preceding financial year.

(2) The annual statement of accounts of the Authority shall present a true and fair view of the financial position of the Authority and of the results of the operations of the Authority for the year to which it relates.

(3) The accounts of the Authority shall be audited annually by the Auditor-General.

208. Statement of accounts and annual report

(1) As soon as practicable after the end of each financial year, but not later than 31 May or such later date as the Minister may approve, the Authority shall transmit to the Minister-

(a) a copy of the statement of accounts;

(b) a copy of the report made thereon or on the accounts of the Authority by the Auditor-General; and

(c) a report containing details of the activities of the Authority during that year.

(2) The Minister shall cause copies of the accounts and reports to be printed and laid before the Maneaba ni Maungatabu as soon as practicable thereafter.

209. Exemption from income tax, customs duty and import levy

Notwithstanding the provisions of any other Act, the income of the Authority shall be exempt from payment of income tax, and the Authority shall not be liable for the payment of customs duty and import levy, or any other tax having a similar effect.

Part XV-Miscellaneous provisions

210. Evidence and proof

(1) In any proceedings for an offence against this Act, the following provisions shall apply-

(a) a copy of any aviation document which is certified correct by the Authority or the Director shall be sufficient, in the absence of proof to the contrary, to prove that document;

(b) evidence of the contents of the Kiribati Register of Aircraft maintained under section 27 may be given by a certificate signed by the Authority or Director and every such certificate shall be sufficient evidence of the matters stated in it, until the contrary is proved;

(c) the production of a certificate signed by the Authority or 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 shall be sufficient evidence 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 granted recognition under Part VII, or otherwise validly issued or recognized before the commencement of this Act, is sufficient evidence of the matter stated, until the contrary is proved;

(e) until the contrary is proved, it shall be presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Authority or Director;

(f) any licence granted under Part XI may be proved by the production of a copy of that licence certified to be correct by the Authority.

(2) Without limiting any other method of proof, the production in any proceedings of a copy of-

(a) any ordinary rule purporting to have been made by the Minister under Part IV; or

(b) any emergency rule purporting to have been made by the Director under section 36,

shall, in the absence of proof to the contrary, be sufficient evidence of the rule and of the fact that it has been made in accordance with the relevant provision of this Act.

211. Evidence of air traffic services provider

(1) Any document used in recording services in relation to the movement of any aircraft and purporting to have been initiated at the time of the movement by an employee of a person providing air traffic services shall be admissible in every Court and in every judicial examination or proceeding 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 a person providing air traffic services purporting to be a computer record of the provision of air traffic services, the particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, shall be admissible as if it were a document to which subsection (1) applies.

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

212. Repeals and savings

(1) The *Aerodromes and Air Navigation Aids Ordinance* is hereby repealed.

(2) The *Civil Aviation Act 1949* of England, and all subsidiary legislation thereunder, shall cease to have effect to the extent that it is Part of the law of Kiribati.

(3) Every licence, rating, certificate, permit, authorisation, approval or other document issued under the *Civil Aviation Act 1949* that is in force immediately before the commencement of this Act shall be deemed to be an aviation document issued under this Act, and shall have effect and be subject to the provisions of this Act accordingly.

Schedules

Schedule 1

(Section 6(5))

1. Appointment of members of the Authority

(1) The Authority shall consist of 5 members who shall be citizens or permanent residents of Kiribati.

(2) The members of the Authority shall be appointed by the Beretitenti, acting after consultation with the Minister.

(3) A person may hold office as a member concurrently with any other office.

(4) Neither the Director nor any other employee of the Authority may be a member of the Authority.

2. Chairman and Deputy Chairman

(1) The Minister shall appoint 1 of the members to be the Chairman and 1 of the members to be the Deputy Chairman of the Authority.

(2) The Chairman shall keep the Minister fully informed concerning the activities and operations of the Authority and shall furnish the Minister with such information as the Minister may request with respect to any particular matter relating to the activities or operations of the Authority.

(3) In the absence or inability to act of the Chairman, the Deputy Chairman shall perform the functions of the Chairman.

(4) In the absence or inability to act of the Chairman and the Deputy Chairman the Minister may appoint 1 of the remaining members to perform the functions of the Chairman.

(5) In the absence or inability to act at any meeting of both the Chairman and the Deputy Chairman the remaining members shall elect 1 of their number to act as Chairman at that meeting.

3. Tenure of office

(1) A member shall, subject to the provisions of this Schedule, hold office for such period being not less than 2 nor more than 4 years as may be specified in the notice appointing him, but shall be eligible for re-appointment.

(2) The Beretitenti, acting after consultation with the Minister, may at any time revoke the appointment of any member if he thinks it expedient so to do, and if the appointment of the Chairman or the Deputy Chairman is so revoked he shall cease to be Chairman or Deputy Chairman as the case may be.

4. Resignation

(1) Any member, other than the Chairman, may at any time resign his office by notice in writing addressed to the Minister and transmitted through the Chairman, and such resignation shall take effect as from the date of the receipt of such notice by the Minister.

(2) The Chairman may at any time resign his office by notice in writing addressed to the Minister, and such resignation shall take effect as from the date of the receipt of such notice by the Minister.

5. Authentication of seal and documents

All documents, other than those required by law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the Chairman or any member authorised to act in that behalf.

6. Procedure and meetings

(1) The Authority shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Authority shall determine.

(2) The Chairman may at any time call a special meeting of the Authority and shall call a special meeting to be held within 7 days of a written request to that effect addressed to him by any 2 members.

(3) The quorum of the Authority shall be 3, including the Chairman or the Deputy Chairman or the

member elected to act as the Chairman as aforesaid.

(4) Minutes in proper Form for each meeting shall be kept and shall be confirmed, whenever practicable, at the next meeting. Certified copies of such minutes when so confirmed shall be forwarded to the Minister.

(5) The Authority may co-opt any 1 or more persons to attend any particular meeting of the Authority for the purposes of assisting or advising the Authority, but no such co-opted person shall have any right to vote.

(6) Subject to the provisions of this Schedule, the Authority may regulate its own proceedings.

7. Allowances to members of Authority

(1) Members of the Authority may be paid, out of the funds of the Authority, such travelling and other expenses as may be incurred by them in respect of their duties as members of the Authority, and, subject to subparagraph (2), an attendance allowance at such rate as may be determined from time to time by the Minister.

(2) A member of the Authority who is an officer in the public service shall not be entitled to be paid an attendance allowance referred to in subparagraph (1) unless the meeting of the Authority in respect of which the allowance is to be paid is held on a Saturday, Sunday or public holiday.

8. Protection of members of Authority

No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Authority in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act or any rule or regulation made under this Act.

9. Declaration of interest of member

If a member of the Authority has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter, and is present at a meeting of the Authority at which the contract or other matter is the subject of consideration, he shall, as soon as practicable after the commencement of the meeting, disclose to the Authority the fact and nature of his interest, and shall not take Part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

SCHEDULE 2 (Section 6(6))

1. Appointment of staff of the Authority

(1) The Authority shall from time to time establish such posts as it considers necessary and proper for the due and efficient administration, management and performance by the Authority of its duties under this Act and shall appoint staff to fill those posts.

(2) The termination of appointment, dismissal and disciplinary control of the staff of the Authority shall be vested in the Authority.

(3) Following a request from the Authority, the Public Service Commission may second to any office in the service of the Authority any officer from the public service, and the Public Service

Commission may approve the transfer of an officer from the service of the Authority to the public service or from the public service to the service of the Authority.

2. Responsibility of certain officers

(1) Subject to this Act, the Director shall direct the entire staff and all other administrative and operational functions of the Authority.

(2) All officers charged with the receipt, accounting for, or disbursements of moneys or with the custody or delivery of stores or other property, belonging to the Authority shall be individually responsible for the due and efficient discharge of their respective duties, and for the exercise of proper supervision of the accounts kept or controlled by them and of all the property entrusted to their care, and for the due observance of all rules and regulations and of all orders and instructions prescribed for their guidance.

SCHEDULE 3

FORM 1

(Section 40)

NOTICE OF MAKING A RULE BY ADOPTION

(Section 40, Civil Aviation Act 2004)

In exercise of the powers conferred upon me by section 40 of the Civil Aviation Act 2004, I hereby give notice of the making of a Civil Aviation Rule by adoption, as follows-

part number

Kiribati Civil Aviation Rules Part

Rule Adoption Statement:

part number
country of origin
part number

This rule part, which shall be cited as Kiribati Civil Aviation Rule Part , adopts by reference the Civil Aviation Rules Part , which is hereby modified by and shall be read subject to the Rule Interpretation Statement set out below.

Effective date:

Rule Interpretation Statement:

{Here include the matters set out in section 40(3)(b).}

Dated this day of , 20 .

{Name of Minister}

{Title of Minister}

CIVIL AVIATION ACT 2004

EXPLANATORY MEMORANDUM

As the world changes and progresses most legislation eventually become out of date and no longer properly serve the interests of its people. Our present aviation legislation dates from 1949. At that time jet aircraft had only just been invented and would not be Part of civil aviation anywhere for several more years. Bonriki International Airport did not exist and sea planes landed in Tarawa lagoon. Although it would be technically possible to have amended the existing legislation, such a step would have been more difficult and less satisfactory than enacting completely new aviation legislation.

This new Civil Aviation Act 2004 will replace the 1949 Act and bring completely modern civil aviation legislation to Kiribati. The new Act is based on the New Zealand Civil Aviation Act 1990 which is becoming widely used as a model in the Pacific. Papua New Guinea, Vanuatu, the Cook Islands and Samoa all use this legislative model. The advantages of using this model include bringing Kiribati into compliance with ICAO requirements and give confidence to international airlines who wish to operate into Kiribati, and harmonising our civil aviation laws with our neighbouring Pacific countries and enable Kiribati to gain benefits of membership of the new Pacific Aviation Safety Office (PASO).

The new Act is particularly focused in bringing into force the latest ICAO initiatives regarding aviation security by providing contracts in respect of terrorism at airport, passenger screening and unruly passengers. The Act is in fact more up to date in this respect than any other New Zealand model legislation including that of New Zealand itself.

The Act is divided into 15 Parts and contains 212 sections and 89 pages in all including the schedules. Part I is a preliminary part. Section 3 makes the Act binding on the Republic. Section 4 outlines who or which the Act applies that is to every person, aircraft, aerodrome, aeronautical product, air service and aviation related service in Kiribati; to every Kiribati registered aircraft whether within or outside Kiribati; to every holder of an aviation document while outside Kiribati and exercising or purporting to exercise privileges accorded by that document and to every foreign registered aircraft operating in Kiribati.

Part II sets out the functions, powers; duties and delegations of powers of the Minister, the Civil Aviation Authority and the Director of Civil Aviation. Section 5 sets out the principal functions of the Minister which is to promote safety in civil aviation at a reasonable cost, and to ensure that the obligations of Kiribati under international civil aviation agreements are implemented. The Civil Aviation Authority of Kiribati may be established under Section 6. The Authority is vested with assets and liabilities to enable the Authority to discharge its functions. The function are set out in detail in Section 8 generally to undertake activities which promote safety in civil aviation at a reasonable cost. Section 8 (2) details other specific functions relating to safety and security standards, providing advice and many more. Section 9 require the Authority to comply with Government policy directions. Section 12 vests the Secretary to the Ministry with functions, powers, responsibilities and duties of the Authority until such time the Authority established.

Division 3 of Part II deals with the Office of the Director of Civil Aviation. Section 13 established the office of a Director, and sets out his functions which generally is to exercise control over entry into the civil aviation system through the granting of aviation documents and to enforce this Act, regulations or rules made under this Act, including the carrying out or requiring of inspections and monitoring. Where an unsafe condition exists in any aircraft or aeronautical product, the Director may by notice in writing issue an airworthiness directive as appropriate. Section 15 empowers the

Director to set, conduct and administer examination and tests and conduct flight testing. Sections 15 to 22 inclusive sets out specific powers of the Director relating to requiring and carrying out safety and security inspections and monitoring to investigate holder of aviation document, to suspend or revoke aviation document or impose conditions; to detain aircraft, seize aeronautical products, and impose prohibitions and conditions, and deal with the dangerous goods; and the power to enter an aircraft, aerodrome, building or place where the breach of the Act occurs.

Division 4 of Part II deals with delegation of functions and powers of the Minister, the Authority and the Director. The Minister can delegate his functions and powers under the Act, to the Authority (s.23). The Authority can delegate his functions and powers to the Director or to any employee of the Authority (s.25). The Authority or the Director can also delegate their respective functions and powers to any one outside the Authority but with the written consent of the Minister.

Part III is a small Part establishing the Kiribati Register of aircraft (s.27) and the Civil Aviation Registry (s.28) which is open for inspection to the public. The Authority is responsible for providing information comprising of collecting and dissemination of aeronautical information relating to the safety, regulatory and efficiency of air navigation (s.29), which is available to the public on payment of a reasonable charge fixed by the Authority.

Part IV empowers the Minister to make rules for the implementation of the obligations of Kiribati under the Convention; for the provision of aviation meteorological services, search and rescue services and civil aviation security programs and services; any matters related to the Minister's functions, the Authority's functions and the Director's functions under Part II. Sections 32-35 elaborate on those powers of the Minister to make rules. S.36 empowers the Director to make emergency rules. Sections 37-44 details the procedures relating to the making of ordinary rules, emergency rules and amendment of such rules. S.45 empowers the Director to exempt any person, aircraft, aeronautical product, aerodrome or aviation related service from the requirement of any rules.

Part V empowers the Minister to make regulations for fixing fees and charges payable under this Act; providing for the refund for waiver of such fees; prescribing the penalty for breaches of the rules made under Part IV; and prescribing the information or documents that may be required to be supplied by the applicants for scheduled international air services licensed under Part XI at the time within which such information or document must be supplied (ss 46-51).

Part VI is headed "The Kiribati Civil Aviation System - Entry General requirements, Responsibilities and Protections". S.52 outlines the general requirements in the Kiribati civil aviation system enforcing the notion that anyone who does anything for which an aviation document is required must have in possession the appropriate aviation documents and the necessary qualifications. S.53 details the requirement for aviation document which the rules made under Part II must specify. S.54 deals with Application for aviation documents. S.55 explains how the Director grants or renews the aviation document. S.56 details the criteria for fit and proper person test for any purposes of this Act. S.57 grants the right to persons affected by a decision of the Director stating that that person is not a fit and proper person under this Act to make submissions for the final determination. S.58 require that an aircraft which is flying to, from, within or over Kiribati territory must be registered in Kiribati, if it is not registered in any other country. S.59 sets out the responsibilities of pilot in command and operator which flying or operating. S.60 deals with nuisance, trespass in general and responsibility for damage arising out of flying over any property or land where the damage or loss was caused by the pilot or operator.

Part VII addresses the Medical Certification. S.62 empowers the Director to grant recognition to foreign medical certificate. S.63 requires the holder of the licence to advise the Director of any changes of his or her medical conditions. S.64 and 65 deals with medical disclosure and extension from expiry of medical certificate. S.66 allows the Director to investigate the license holder of his or medical condition. S.67 outlines how the Director revokes, suspends, amend and surrenders a

medical certificate. S.68 grants a right of appeal to any person affected by a decision of a Director under s.62.

Part VIII covers Accident and Incident Investigation. S.70 obligates a pilot or an operator in command of any aircraft or person involved in an accident to notify the Authority of an accident as soon as practicable. The Authority in turn, then notifies the Minister and the Director (s.70 and the Director must advise the Minister to appoint a chief investigator to investigate such accident or incident (ss 71 and 73) whose functions are extensively covered under s.74 which includes specific powers of entry and investigation (s.75). If the Chief Investigation Officer thinks that some other people are required to assist in the investigation he, the Chief Investigation Officer, can appoint those people upon the approval of the Authority.

Part IX further expands on Accident and Incident by emphasising on disclosure and admissibility of certain investigation records. S.80 specify certain records which may only be disclosed by the Chief Investigating Officer and is not admissible as evidence in court. S.81 specify certain records which may only be disclosed by the Chief Investigating Officer or by order of the High Court. Sections 82-89 details the issue of admissibility of certain records, disclosure of record before or during civil proceedings, and the court's power to order disclosure of record and non-publication of report of proceedings. S.90 addresses the issue of admissibility of accident or incident findings, recommendations or report. Section 91 states that the person engaged in an investigation by the Chief Investigator is not compellable to give evidence in any proceedings to which the Chief Investigator is not a party.

Part X addresses aviation security at an aerodrome or a security designated navigation installation. Generally it is the responsibility of the Minister to ensure that aviation security service is provided at such places. But the Aviation Security Service may be established for the purpose of providing security service or the operator of that aerodrome or navigation installation may carry out that task. The powers, functions and duties of the Aviation Security Service and other aviation security service providers and their officers are provided in sections 95-97 and 99, 101 and 103. The Director may also if he believes on reasonable grounds that a security risk exists to direct an aviation security provider to screen person boarding an aircraft or anything to be carried by an aircraft and where necessary conduct searches (s.98). The Director may declare certain areas to be security areas (s.102).

Part XI deals specifically with International Air Services. Section 107 and 108 emphasises the need to have an open aviation market licence to operate a scheduled international service in Kiribati. Division 2 of this Part covers Scheduled international air services licences for Kiribati national airlines. Division 3 covers Scheduled international air service licences for foreign international airlines. Division 4 describes how the open aviation market licences is granted, its conditions, variation of terms and conditions, duration, renewal, how it is transferred to another Kiribati international airline and the entitlements it attaches to the holder. Division 5 requires insurance cover against liability for holders of open aviation market licences and returns or financial and statistics to be furnished by such holders. Division 6 addresses suspension and revocation of licences issued under this Part. Division 7 stresses the point that commercial non-scheduled international flights cannot be operated except as authorised by the Minister. Division 8 emphasises that no licensed aircraft operating a scheduled international air service is exempted from the operation of the regulations or rules made under this Act. Division 9 provides for the prohibition of smoking on international air routes.

Part XII prescribes Offences and Penalties relating to safety (Division 1), general offences (Division 2), security (Division 3), unruly passengers on board the aircraft in Kiribati or outside Kiribati proceeding to Kiribati (Division 4). Division 5 at s.185 imposes a duty on the Director or a police officer to inform the operator of the aircraft or the holder of the certificate of registration and require them to give all information relating to the identification of the pilot where the pilot in command is alleged to have committed an offence under this Act or rules. Division 6 describes the effect of

disqualification of the holder of an aviation document by an order of the court from holding or obtaining an aviation document (s.186); the commencement of the period of such disqualification (s.187); the retention and custody of documents while being disqualified (s.188); and the removal of disqualification (s.189). S.191 provides for appeals against disqualification.

Part XIII grants the rights of appeal to any court against the decision of the Director exercised under this Act, regulations or rules. S.193 provides for appeal to the Court of Appeal on questions of law only.

Part XIV is a Financial Provisions part. Division 1 relates to the period pending the establishment of the Authority. S.195 mandates a Special Fund known as the Civil Aviation Fund to be established and payments into or out of this fund are outlined in Sections 196 and 197. The control of such Special Fund is vested in the Minister of Finance (s.198) who is responsible for annual reports on that fund to the Maneaba ni Maungatabu. Division 2 relates to the period following the establishment of the Authority. At that time, all monies from the Civil Aviation Fund will be transferred to the Authority. Sections 202-205 describes the power of the Authority with respect to raising revenue, power to borrow or raise capital, application of revenue, authorised investments. Sections 206 and 207 require the Authority to prepare annual estimates and to keep proper accounts and have them audited annually, S.208 require the Minister to have copies of accounts and audit reports and report to the activities of the Authority to be laid before the Maneaba ni Maungatabu. S.209 exempts the Authority from income tax, customs duty and import levy.

Part XV is a Miscellaneous Provisions part. S.210 addresses the issue of evidence and proof. S.211 touches on evidence of air traffic services provider. S.212 repeals the Aerodromes ad Air Navigation Aids Ordinance and the Civil Aviation Act 1949 of England to the extent that it is Part of the laws of Kiribati, and saves those licences, rating, certificate, permit, authorisation, approval or other document issued under the Civil Aviation Act 1949 to continue to be in force under this Act.

The Act contains only three Schedules. Schedule 1 deals with the Authority and its members. Schedule 2 deals specifically with officers of the Authority. Schedule 3 contains a prescribed Form of a Notice of making a Rule by Adoption as required under section 40.

Titabu Tabane
Attorney General
17 May 2004