

REPUBLIC OF SOUTH AFRICA

AIR SERVICES LICENSING AMENDMENT BILL

(As amended by the Portfolio Committee on Transport (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B 25B—2008]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Air Services Licensing Act, 1990, so as to substitute references to certain obsolete laws; to substitute certain gender-insensitive words; to clarify that the Minister of Transport designates the chairperson and vice-chairperson of the Air Services Council; to provide for a nomination procedure for candidates to be appointed as members of the council; to make further provision for the term of office of members of the council; and, in respect of certain members of the council, to make further provision for one of the grounds of disqualification for membership of the council; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 115 of 1990, as amended by Act 15 of 1992, Act 83 of 1995, Act 82 of 1997, Act 98 of 1996 and Act 40 of 1998

1. Section 1 of the Air Services Licensing Act, 1990 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “**resident of the Republic**” of the following definition: 5

“ ‘**resident of the Republic**’ means a person who has his or her ordinary residence [(within the meaning of the expression as it appears in section 10(1)(d) of the South African Citizenship Act, 1949 (Act No. 44 of 1949)),] in the Republic and 10 who is a South African citizen [or is in possession of a permit for permanent residence in the Republic issued in terms of section 4 of the Aliens Act, 1937 (Act No. 1 of 1937)] by virtue of the provisions of the South African Citizenship Act, 1995 (Act No. 88 of 1995);”.

Amendment of section 4 of Act 115 of 1990 15

2. Section 4 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) [a **chairman**] a chairperson, designated as such by the Minister; 20
(b) [a **vice-chairman**] a vice-chairperson, designated as such by the Minister; and”; and

- (b) by the insertion after subsection (1) of the following subsection:
 “(1A) For the purposes of the appointment of the members of the council contemplated in subsection (1) the Minister must, through the media, invite nominations of persons who comply with the requirements referred to in that subsection and who are not disqualified by virtue of section 6(1) as candidates for such appointment.” 5
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) The Minister **[may]** must, in appointing the members of the council, **[in his discretion]** consult with representatives of consumers of air services and representatives of the organized commerce, industry, transport and aviation sectors and organized labour.”; and 10
- (d) by the insertion after subsection (2) of the following subsection:
 “(2A) Despite section 6(1)(c), the Minister may appoint an employee of the department as the chairperson of the council.”.

Substitution of section 5 of Act 115 of 1990 15

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

“Term of office

5. A member of the council shall hold office for a period **[not exceeding]** of three years~~[: **Provided that a member**]~~ and shall be eligible for re-appointment **[at the expiry of his term of office]** for further periods not exceeding three years at a time.”. 20

Amendment of section 6 of Act 115 of 1990

4. Section 6 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 “(c) is an **[officer or]** employee as defined in **[section 1 of the Public Service Act, 1984 (Act No. 111 of 1984)]** section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); or” 25

Substitution of certain words in Act 115 of 1990

5. The principal Act is hereby amended—
- (a) by the substitution for the words “he”, “his” and “him”, wherever they occur in section 4(2) and (3), section 5, section 6(1), (2), (3) and (4), section 8(2), (4) and (5), section 10(2), section 11(1) and (3), section 15(5)(a), section 26(1)(g) and section 28(1), of the words “he or she”, “his or her” and “him or her”, respectively; 30
- (b) by the substitution for the word “he”, wherever it occurs in section 16(4)(c), of the words “the applicant”; 35
- (c) by the substitution for the words “his” and “he”, wherever they occur in section 19(a) and (b), of the words “the licensee’s” and “the licensee”, respectively;
- (d) by the substitution for the word “he”, wherever it occurs in section 20(3)(b), of the words “that person”; 40
- (e) by the substitution for the word “him”, wherever it occurs in section 25(1)(a), of the words “that person”; and
- (f) by the substitution for the words “chairman” and “vice-chairman”, wherever they occur in section 4(3), section 8(1), (2) and (7), section 11(1), section 16(3)(a)(ii) and section 27(d), of the words “chairperson” and “vice-chairperson”, respectively. 45

Short title

6. This Act is called the Air Services Licensing Amendment Act, 2008.

MEMORANDUM ON THE OBJECTS OF THE AIR SERVICES LICENSING AMENDMENT BILL, 2008

1. The purpose of the Air Services Licensing Amendment Bill, 2008, is to amend the Air Services Licensing Act, 1990 (Act No. 115 of 1990) (the Act), so as to effect certain technical amendments. These amendments can be summarised as follows:
 - 1.1 The Bill seeks to delete references to obsolete legislation. It also seeks to substitute certain words in the Act with gender-sensitive or neutral words, e.g. “he” with “he or she” and “chairman” with “chairperson” etc.
 - 1.2 The Bill furthermore seeks to clarify the fact that the Minister designates the chairperson and vice-chairperson. It also seeks to establish a nomination procedure for members of the council through public participation. Currently the Act makes no provision for any nomination procedure.
 - 1.3 In order to provide a measure of continuity of tenure for members of the council, it is proposed in the Bill that members are to be appointed for a period of three years and that they may be reappointed for further periods not exceeding three years at a time. Currently, members are appointed for a period “not exceeding three years” and are eligible for reappointment.
 - 1.4 The Bill also seeks to create the possibility that the chairperson of the Air Services Council may be an employee in the public service. Currently, section 6(1)(c) of the Act disqualifies any officer or employee in the public service from being appointed as a member of the Council. In order to promote continuity in deciding on matters pertaining to air licences, the Minister deemed it proper that he should be able to appoint the chairperson of the council from amongst employees in the public service.

2. CONSULTATION

The Bill was published for public comment in Government *Gazette* No. 29983 of 15 June 2007 (Volume 504). All relevant comments have been incorporated in the Bill.

3. FINANCIAL IMPLICATIONS

None.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Transport are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.