

AVIATION ACT, 1962 (ACT NO 74 OF 1962)

TWENTY EIGHTH AMENDMENT OF THE CIVIL AVIATION REGULATIONS, 1997

The Minister of Transport has under section 22(1) of the Aviation Act, 1962 (Act No 74 of 1962) made the regulations in the Schedule hereto.

SCHEDULE

Definition

1. In these regulations unless the context otherwise indicates “the Regulations” means the Civil Aviation Regulations, 1997, published by Government Notice No R.1219 of 26 September 1997 and R.1255 of 17 October 1997, as amended by Government Notice No R. 1735 of 24 December 1997, Government Notice No R. 1041 of 14 August 1998, Government Notice No R. 1148 of 18 September 1998, Government Notice No’s R. 1664 of 14 December 1998, and Government Notice No R. 1701 of 31 December 1998, Government Notice No 1702 of 31 December 1998, Government Notice No R.639 of 21 May 1999, Government Notice No R. 170 of 17 February 2000, Government Notice No R. 171 of 18 February 2000, Government Notice No R. 558 of 22 June 2001 Government Notice No R. 559 of 30 August 2002, Government Notice No R. 1367 of 15 November 2002, Government Notice No R. 1368 of 15 November 2002, Government Notice No 1369 of 15 November 2002, Government Notice No R. 1370 of 15 November 2002, Government Notice No R. 1371 of 15 November 2002, Government Notice No R. 1372 of 15 November 2002, Government Notice No R. 434 of 28 March 2003, Government Gazette No 435 of 28 March 2003 Government Gazette No R.1375 of 1 October 2003 and Government Gazette No 1340 of 31 March 2004, Government Gazette No R 29091 of 4 August 2006 and Government Gazette No R. 29511 of 28 December 2006.

2. Amendment of Regulation 1.00.1 of Part 1 of the Regulations

Regulation 1.00.1 of the Regulations is herewith amended by -

- (a) the insertion of the following definition after the definition of “alerting service”:

“**alleged offender**’ means an individual or an organisation accused of an offence listed in regulation 185.00.1;”;

- (b) the insertion of the following definition after the definition of “final approach fix”:
- “**final decision**’ means a written verdict issued in writing by the Commissioner in terms of regulation 185.00.03(14);”;
- (c) the insertion of the following definition after the definition of “incident”:
- “**individual**’ for the purpose of Part 185 includes a natural person, a partnership and a sole proprietorship;”;
- (d) the insertion of the following definition after the definition of “night duty”:
- “**notice of no further action**’ means a notice served in terms of regulation 185.00.3(6)(a);”;
- (e) the insertion of the following definition after the definition of “Notice to Airmen”:
- “**officer**’ means an Authorised Officer, an Inspector, or an Authorised Person, as contemplated in Regulation 185.00.3(1);”;
- (f) the substitution for the definition of “organisation” of the following definition:
- “**organisation**’ for the purpose of Part 185 excludes a natural person, a partnership and a sole proprietorship”
- (g) the insertion of the following definitions after the definition of “passenger aircraft”:
- “**penalty for a prescribed offence**’ means the administrative monetary penalties prescribed in terms of Regulation 185.00.3(2) and (4);”;
- and
- “**penalty notice**’ means a notice served in terms of regulation 185.00.3(7)(a) the intention of which serves as a notice of enforcement action”.
- (h) the insertion of the following definition after the definition of “preliminary report”:
- “**prescribed offence**’ means an offence under these Regulations.”.

Amendment of Regulation 13.00.1 of Part 13 of the Regulations

3. Regulation 13.00.1 of the Regulation is herewith amended by-

- (a) the deletion of the word “and” after the semi-colon at the end of paragraph (j) of Sub-regulation (1);

- (b) the insertion of the word “and” after the semi-colon at the end of paragraph (k) of Sub- regulation (1); and
- (c) the insertion of the following paragraph after paragraph (k) of Sub- regulation (1):

“(l) may assess and impose the Administrative Monetary Penalties prescribed in Part 185.”.

Amendment of Regulation 13.00.3 of Part 13 of the Regulations

4. Regulation 13.00.3 of the Regulations is herewith amended by-

- (a) the deletion of the word “and” after the semi-colon at the end of paragraph (e) of the said regulation;
- (b) the insertion of the word “and” after the semi-colon at the end of paragraph (f) of the said regulation; and
- (c) the insertion of the following paragraph after paragraph (f) of the said regulation;
- “(g) may assess and impose the Administrative Monetary Penalties prescribed in Part 185.”.

Amendment of Regulation 185.00.1 of Part 185 of the Regulations

5. Regulation 185.00.1 of the Regulations is herewith amended by-

- (a) the deletion of the word “or” after sub-regulation (k);
- (b) the insertion of the word “or” after sub-regulation (l); and
- (c) the addition of the following sub-regulation after sub-regulation (l)
 - “(m) contravenes in any manner the provisions of the Aviation Act, 1962, and regulations promulgated in terms of the said Act which are administered by the Authority in terms of the South African Civil Aviation Authority Act, 1998 (Act No. 40 of 1998)”

Amendment of Regulation 185.00.2 of Part 185 of the Regulations

6. Regulation 185.00.2 of the Regulations is herewith amended by the addition of the following paragraph after paragraph (c):

“(d) evidence supplied by the duly designated enforcement officer and obtained by the use of specialized equipment, such as weighing scales, video records, small hand-held recording devices, navigation and communication transceivers and secondary equipment, shall be accepted as *prima facie* proof of facts mentioned therein.”.

Insertion of Regulation 185.00.3 into Part 185 of the Regulations

7. The following Regulation is herewith inserted, after Regulation 185.00.2:

“Administrative Monetary Penalties

- “(1) An enforcement officer may assess and impose administrative monetary penalties for offences referred to in Regulation 185.00.1.
- (2) The administrative monetary penalty may be a spot fine or a fine following an investigation.
- (3) The following administrative penalties, in respect of the offences referred to in the table below, shall be applicable to individuals in the event of a criminal prosecution not being instituted:

PENALTY – INDIVIDUALS

	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE
185.00.1(1)(a)	R5000	R10000	R16 000
185.00.1(1)(b)	R5000	R10000	R16 000
185.00.1(1)(c)	R5000	R10000	R16 000
185.00.1(1)(d)	R10000		
185.00.1(1)(e)	R10000		
185.00.1(1)(f)	R10000	R20 000	
185.00.1(1)(g)	R10000	R20 000	
185.00.1(1)(h)	R10000		
185.00.1(1)(i)	R10000		
185.00.1(1)(j)	R10000		
185.00.1(1)(k)	R5000	R10000	
185.00.1(1)(l)	R10000		
185.00.1(1)(m)	Discretionary	Discretionary	Discretionary

(4) In the event of a conviction where a criminal prosecution has been instituted in accordance with the table above, the penalties referred to in the table may be used as guidance in determining the appropriate sentence.

(5). The following administrative penalties, in respect of the offences referred to in the table below, shall be applicable to organisations:

PENALTY- ORGANISATIONS

	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE
185.00.1(1)(a)	R16 000	R32 000	R44 000
185.00.1(1)(b)	R16 000	R32 000	R44 000
185.00.1(1)(c)	R16 000	R32 000	R44 000
185.00.1(1)(d)	R24 000		
185.00.1(1)(e)	R24 000		
185.00.1(1)(f)	R24 000	R53 000	
185.00.1(1)(g)	R40 000	R53 000	
185.00.1(1)(h)	R40 000		
185.00.1(1)(i)	R40 000		
185.00.1(1)(j)	R24 000		
185.00.1(1)(k)	R16 000	R32 000	
185.00.1(1)(l)	R40 000		
185.00.1(1)(m)	Discretionary	Discretionary	Discretionary

(6) In the event of a conviction where a criminal prosecution has been instituted in accordance with the table above, the penalties referred to in the table may be used as guidance in determining the appropriate sentence.

- (7) A Penalty Notice issued by an enforcement officer to the suspected offender must be in the appropriate form as prescribed in Document SA-CATS- OFF&PEN, which notice shall -
- (a) specify the offence allegedly committed;
 - (b) disclose possible evidence of the alleged offence;
 - (c) specify the reasons for the action taken;
 - (d) specify the rights and obligations arising there from, including time frames;
 - (e) invite the alleged offender to pay to the Authority the admission of guilt fine as stipulated by the enforcement officer in the Penalty Notice within 30 (thirty) days of the issue and service of the Penalty Notice; or
 - (f) invite the alleged offender to make representation on the allegation(s) within 30 (thirty) days of the issue and service of the Penalty Notice;
 - (g) provide for an opportunity for the alleged offender to obtain assistance in making representations; and
 - (h) specify the possible administrative action that may follow.
- (8) The enforcement officer who has issued a Penalty Notice for the payment of a spot fine must submit to the Commissioner, within 7 (seven) days after the issue and service of a Penalty Notice, a written report on the enforcement action taken which report must -
- (a) specify the nature of the alleged offence committed;
 - (b) include possible evidence of the alleged offence;
 - (c) include a copy of the Penalty Notice issued to the alleged offender;
 - (d) specify the reasons for the action taken; and
 - (e) include proof of service of the Penalty Notice on the alleged offender.
- (9) An Enforcement Officer must serve the alleged offender with a Notice of Intended Investigation, before issuing and serving a Penalty Notice for a fine following investigation.
- (10) The Notice of Intended Investigation must be served in person or by registered mail, on the appropriate form as prescribed in Document SA-CATS-OFF&PEN, and must-
- (a) specify the alleged offence to be investigated;
 - (b) disclose possible evidence of the alleged offence;
 - (c) specify the reasons for the action taken;

- (d) specify the rights and obligations arising there from, including time frames;
 - (e) invite the alleged offender to make representation on the allegation (s) within 30 (thirty) days of the issue of the Notice of Intended Investigation;
 - (f) provide an opportunity to the alleged offender to obtain assistance in making representations; and
 - (g) specify the possible administrative action that may follow.
- (11) Representation on the alleged offence may be made in writing or orally, at a formal meeting before the enforcement officers concerned.
- (12) The enforcement officer must assess all the relevant evidence before him or her and verify with the Legal Division of the Authority prior to issuing a Penalty Notice.
- (13) An enforcement officer who has issued a Penalty Notice must submit to the Commissioner within 7 (seven) days after the issue of the Penalty Notice a written report on the enforcement action taken, as detailed in the Penalty Notice.
- (14) An enforcement officer who has issued a Notice of No Further Action in terms of must submit to the Commissioner within 7 (seven) days after the issue of the notice a written report explaining why no further action was taken.
- (15) If a Penalty Notice is served on an alleged offender and he or she within 30 (thirty) days pays the monetary penalty specified therein -
- (a) any liability of the alleged offender specified in the notice is taken to be discharged;
 - (b) a Notice of No further Action shall be issued to the alleged offender on the appropriate form prescribed in Document SA-CATS-OFF&PEN; and
 - (c) the alleged offender shall not be regarded as having been convicted of the offence.
- (16) A copy of the Penalty Notice and proof of payment of the penalty must be placed in the official file of the Authority relating to the individual or organization, as the case may be.
- (17) If payment is made in the form of a cheque, the amount will be regarded as being paid only after the cheque is honoured upon presentation.

- (18) An alleged offender, who feels aggrieved by the Final Ruling, may appeal to the Commissioner against the terms of the Final Ruling within 14 days of the issue of Final Ruling.
- (19) The Enforcement Officer must, within 14 days of receipt of the copy of the appeal referred to in sub-regulation (12), deliver his or her written reply to such an appeal to the Commissioner.
- (20) The Commissioner must make a Final Decision on the appeal in the appropriate form as prescribed in Document SA-CATS-OFF&PEN, which decision may include withdrawal, confirmation or amendment of the Penalty Notice.
- (21) If the Penalty Notice is withdrawn by the Commissioner on appeal, after the alleged offender has paid the monetary penalty, the Commissioner must direct or instruct that the amount paid as the monetary penalty be refunded.
- (22) Nothing in this Part-
 - (a) prevents the service of a Penalty Notice on an individual or organization for repeating a prescribed offence;
 - (b) limits the amount of the fine that may be imposed by a court, subject to its punitive jurisdiction, on an individual or organization convicted of a prescribed offence; or
 - (c) limits the Commissioner in the exercise of any other powers granted to him or her elsewhere in these Regulations.
- (23) In proceedings against an individual or organization for an alleged offence specified in a Penalty Notice, a Certificate of Withdrawal in the appropriate form as prescribed in Document SA-CATS-OFF&PEN, signed by the Commissioner, stating that the notice was withdrawn on a day specified in the certificate, is prima facie evidence of that fact.
- (24) The Commissioner or an enforcement officer may serve a Penalty Notice, a Penalty Notice following Final Ruling, a Final Decision, a Notice of No Further Action or a Notice of Withdrawal of a Penalty Notice-
 - (a) on an individual-
 - (i) by giving it to the individual personally;
 - (ii) by leaving it at, or by sending it per registered mail to, the address of the place of residence or business of the individual last known to the Commissioner or the Enforcement officer;
 - (iii) by giving it, at the place of residence or business of the individual last known to the Commissioner or Enforcement Officer, to a person

who is, or is reasonably believed to be, above the age of 16 years and apparently an occupant of, or employed at the place; and

- (b) on an organization-
 - (i) by sending it per registered mail to the head office, registered office, principal office or other postal address of the organization; or
 - (ii) by giving it to a person who is, or is reasonably believed to be, an officer of, or in the service of the organization and above the age of 16 years, at the head office, registered office, principal office or other place of business of the organization.

- (25) The Authority must keep proper records of all enforcement actions taken in terms of this Regulation, and retain on the individual's or organization's file copies of all notices issued, reports written and decisions taken in respect of any alleged offence and any investigation undertaken in terms of this Part".

Short title and commencement

- 8. These Regulations are called the Twenty Eighth Amendment of the Civil Aviation Regulations, 1997, and come into operation 30 days after publication in the Government Gazette.