



Tuvalu

# **CIVIL AVIATION AMENDMENT ACT 2014**





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Tuvalu

# CIVIL AVIATION AMENDMENT ACT 2014

## AN ACT TO AMEND THE CIVIL AVIATION ACT

Commencement [18th December, 2014]

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### 1 Short Title

This Act may be cited as the Civil Aviation Amendment Act 2014.

### 2 Commencement

This Act comes into force on the date of its publication.

### 3 Functions of Director

Section 4 of the Civil Aviation Act is amended by repealing subparagraph (h) and substituting the following:

"(h) Performing such other functions as are conferred on him or her by this Act or any other enactment or by regulations or rules made under this Act."

### 5 Commencement and Duration of Orders, Rules and Regulations

Section 6 of the Civil Aviation Act is amended by repealing subsections (4) and (5) and substituting a new subsection 4 as follows:

"(4) Except in an emergency situation, nothing in this section authorises the Director to suspend or modify any order, rule or regulation made by the Minister or to make any orders, rules or regulations that would be inconsistent with any regulation or any rule made by the Minister under this Act."

## **6 Delegation of Powers**

Part II of the Civil Aviation Act is amended by inserting sections 6A, 6B and 6C after section 6 as follows:

### **"6A. Delegation of Minister's functions or powers to Director**

- (1) Subject to this section the Minister may from time to time, either generally or particularly, delegate to the Director 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 Minister's power to delegate under this section-
  - (a) Is subject to section 18B(8) of this Act 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
  - (b) 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 Director may exercise any functions or powers so delegated to the Director in the same manner and with the same effect as if they had been conferred on the Director directly by this section and not by delegation.
- (6) Where the Director purports to act pursuant to any delegation under this section, the Director 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.

### **6B. Delegation of Director's functions or powers to employees of the Ministry**

- (1) Subject to this section the Director may from time to time, either generally or particularly, delegate to any employee of the Ministry 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.
- (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) of this section, the Director shall not delegate the power under section 27 of this Act to revoke an aviation certificate.
- (5) Any delegation under this section may be made to a specified employee of the Ministry 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 office.
- (6) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Director.

**6C. Delegation of Director's functions or powers to persons outside the Ministry**

- (1) 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 Ministry any of the Director's functions and powers under this Act, or under any Regulations or Rules made under this Act, other than the power under section 27 of this Act to revoke aviation certificates.
- (2) Every delegation under this section shall be in writing.
- (3) No delegation shall be made under this section without the written consent of the Minister.
- (4) Subject to any general or special directions given or conditions imposed by the Director 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.
- (5) 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.
- (6) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.
- (7) No delegation under this section shall affect or prevent the performance of any function or the exercise of any power by the Minister or by the Director, as the case may be, nor shall any such delegation affect the responsibility of the Minister or the Director, as the case may be, for the actions of any person acting under the delegation.
- (8) 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.

- (9) 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.
- (10) 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 approved by the Minister in respect of the exercise of that function or power."

## **7 Power to give effect to the Chicago Convention**

Section 7 of the principal Act is amended by repealing section 7 and substituting the following:

"The Minister may in accordance with the provisions of this Act make such provision as appears to him or her to be requisite or expedient for carrying out the Chicago Convention, any Annex thereto relating to international Standards and Recommended Practices (being an Annex adopted in accordance with the Convention.)"

## **8 Power to regulate air navigation**

Section 8 of the principal Act is repealed.

## **9 Commercial air transport security**

Section 11 of the principal Act is repealed and substituted as follows:

### **"11. Commercial air transport security-**

- (1) The Minister shall ensure that:
  - (a) aviation security services are provided at all security designated airports and security designated air navigation installations; and
  - (b) a written Tuvalu National Civil Aviation Security Programme is established and implemented to safeguard civil aviation operations against acts of unlawful interference, through regulations, practices and procedures which take into account the safety, regularity and efficiency of international flights and to the extent practicable, domestic flights; and
  - (c) a National Aviation Security Committee or similar arrangement is established for the purpose of coordinating

- security activities between departments, agencies and other organisations of the State, airport and aircraft operators and other entities concerned with or responsible for the implementation of various aspects of the national civil aviation security programme; and
- (d) a Tuvalu National Aviation Security Quality Control Programme is developed, implemented and maintained to ensure the effectiveness of its national civil aviation security programme; and
  - (e) training programmes are developed and implemented to ensure the effectiveness of its national civil aviation security programme. These programmes shall include training of civil aviation security personnel in human performance.
- (2) The authorised aviation security service provider providing security at an airport or navigational installations must ensure the establishment and implementation of a written airport security programme appropriate to meet the requirements of the National Civil Aviation Security Programme.
  - (3) The Director shall prescribe reasonable procedures requiring that all passengers and all property intended to be carried in the aircraft cabin in commercial air transport be screened by detecting procedures or facilities employed or operated by employees or agents of the air operator or foreign air operator prior to boarding the aircraft for transportation.
  - (4) The Director may prescribe such practices, methods, and procedures as the Director may find necessary to protect persons and property aboard aircraft operating in commercial air transport against acts of criminal violence and aircraft piracy.
  - (5) The Director shall, to the extent practicable, require uniform procedures for the inspection, detention, and search of persons and property in domestic commercial air transport and international commercial air transport to assure their safety and that they will receive courteous and efficient treatment by aviation security providers, air operators and their agents and employees.
  - (6) The Director's powers under this section shall be exercised with the approval of the Minister."

## 10 Accident Investigation

Section 12 of the principal Act is amended as follows:

- (1) By repealing subsection (1) and substituting the following:

"(1) The Minister may make such rules as may be necessary governing the notification and reporting of accidents and incidents involving aircraft."

(2) Adding a further subsection (5):

"(5) No cockpit voice recorder or transcript of a cockpit voice recording shall be admissible in evidence in any criminal proceeding against the flight crew of an aircraft except with the consent of the flight crew."

(3) Adding a further subsection (6):

"(6) Any accident or incident investigation conducted under this section shall so far as possible be conducted in accordance with the standards and recommended practices in Annex 13 to the Convention."

## **11 Flight Safety Standards**

Section 13 of the Principal Act is amended by adding an additional subsection as follows:

"(4) Notwithstanding the provisions of this section the Director may, instead of or in addition to the powers in this section arrange for any regional aviation safety and security organization to which Tuvalu belongs to carry out any of the Director's safety and security responsibilities under this Act or regulations or rules made under this Act."

## **12 Rules**

The principal Act is amended by inserting a new Part IIIA after section 18 as follows:

### **"PART IIIA - RULES**

#### **18A. 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;

“**make, making and made**” shall, in the context of ordinary Rules, have a corresponding meaning throughout this Act.

#### **18B. 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 Tuvalu under the Convention:
  - (b) the provision of aviation meteorological services, search and rescue services, and civil aviation security programmes and services:
  - (c) any matter related or reasonably incidental to any of the Minister's functions under of this Act or the Director's functions under this Act:
  - (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 Tuvalu or within any specified part or parts of Tuvalu.
- (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 Minister or the Director or any other person, or allows the Minister 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 bylaws of any legally constituted organization are inconsistent with or repugnant to any ordinary Rule made under this Act, the bylaws shall be construed subject to the Rules.
- (8) The Minister shall not delegate his power to make ordinary Rules under this Act.

### **18C. Rules relating to safety and security**

Without limiting the power conferred by section 18B of this Act, 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.

**18D. Rules relating to airspace**

Without limiting the power conferred by section 18B of this Act,—

- (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 Tuvalu disciplined force or a visiting force.

**18E. Rules for noise abatement purposes**

Without limiting the power conferred by section 18B of this Act, 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.

**18F. Rules relating to general matters**

Without limiting the power conferred by section 18B of this Act, the Minister may make ordinary Rules for all or any of the following purposes:

- (a) The designation, classification, and certification of all or any of the following:
- (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) of this section, 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 Director by applicants for or holders of aviation documents:

(c) The conditions of operation of foreign aircraft and international flights to, from, or within Tuvalu:

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

(e) Prescribing the design and colours of a Civil Air Ensign of Tuvalu, and where and by whom it may be flown.

#### **18G. Power of Director to make emergency Rules**

(1) Subject to subsection (2) of this section, the Director may from time to time, in accordance with section 18N of this Act, 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) of this section, and the revocation shall be notified as if it were an emergency Rule.

#### **18H. Procedures relating to Rules**

(1) Every ordinary Rule (other than an ordinary Rule made by adoption pursuant to the provisions of section 18K) 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 18J of this Act; 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 18O of this Act.

(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 18N of this Act 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 18O of this Act.

**18I. 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 the following:

(a) the standards of ICAO relating to aviation safety and security, to the extent applicable to Tuvalu:

(b) the international obligations of Tuvalu 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, the following:

(a) the standards and recommended practices made under the Chicago Convention:

(b) the level of risk existing to aviation safety in each proposed activity or service:

(c) the nature of the particular activity or service for which the Rule is being established:

(d) the level of risk existing to aviation safety and security in Tuvalu in general:

(e) the need to maintain aviation safety and security:

(f) the costs 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 considers appropriate in the circumstances.

**18J. 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) of

this subsection, 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; and

(2) Subject to subsection (3) of this section, 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) of this section, 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 on the 28th day after the date of its notification in the Gazette or on such later day as may be specified in the Rule or under section 18B(4) of this Act or, where notified by service on any person under subsection (3) of this section, immediately upon service of the Rule upon that person and in respect of that person only.

(5) The requirements of subsections (1) to (3) of this section shall not apply to the making of ordinary Rules by adoption under section 18K of this Act.

#### **18K. Making of Ordinary Rules by Adoption**

(1) Notwithstanding any other procedure by which the Minister may make ordinary Rules in accordance with the provisions of this Act the Minister may when he deems it appropriate make an ordinary Rule or Rules by adopting, with or without modification, a civil aviation Rule part or parts of a foreign jurisdiction pursuant to the provisions of this section. Any such adopted Rule part or parts shall be incorporated by reference as an ordinary Rule part or parts of Tuvalu and shall have full force and effect in Tuvalu notwithstanding that the foreign Rule part from which the Tuvalu Rule part is derived may at any time have ceased to be in force within the jurisdiction of its origin.

(2) For the purposes of this section “a civil aviation Rule part of a foreign jurisdiction” shall mean any ordinary civil aviation Rule part which has been duly promulgated and published by any member state of ICAO other than Tuvalu and which may be

readily accessed by the public in Tuvalu in electronic form or otherwise.

(3) Any Rule part made by adoption under this section need not be reproduced in either electronic or printed form in Tuvalu but after determining to make any Rule pursuant to this section the Minister shall publish in the Gazette a notice of the making of a Rule by adoption which shall contain;

(a) a Rule Adoption Statement in accordance with Form 1 of the First Schedule to this Act 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 Tuvalu and specifying the date on which it shall become effective as a Rule in Tuvalu.

(b) a Rule Interpretation Statement in accordance with Form 1 of the First Schedule to this Act containing any modifications, directions and information as the Minister may deem appropriate for the application of the adopted Rule in the context of the Tuvalu civil aviation system including but not limited to:

(i) any words (including place names) and numbers (including section numbers of the Tuvalu Acts to be substituted.

(ii) any part or parts of the adopted Rule which shall not apply in Tuvalu.

(iii) any general exemptions which will apply in Tuvalu.

(iv) any forms to be used in Tuvalu.

(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 Tuvalu 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 18O of this Act.

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

(4) Any Rule Adoption Statement or Rule Interpretation Statement made under this section may, in consultation with the Director, be amended by the Minister after the Rule part has been brought into force pursuant to the provisions of section 18M of this Act.

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

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

(b) Where there is no corresponding law, agency, authority, document, procedure, person or thing within Tuvalu or under the laws of Tuvalu shall be deemed to refer to the closest equivalent law, agency, authority, document, procedure, person or things within Tuvalu or under the laws of Tuvalu and in any such case regard shall be had to any Directive issued by the Minister under subsection (7) of this section.

(7) For the purpose of the clarification and effective implementation of any adopted Rule the Minister may from time to time issue a Directive and shall forthwith publish, distribute or otherwise make the Directive available to participants within the Tuvalu civil aviation system.

(8) Where any of the persons referred to in subsection (5) of this section, 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 Directive 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 a Directive under subsection (7) of this section or other appropriate action.

**18L. 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 Tuvalu 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 18K(7) of this Act 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.

#### **18M. 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 Tuvalu from the date of its coming into force in the country of origin unless the Minister determines otherwise.

(2) Where the Minister forms an opinion, on advice from the Director:

(a) that an amendment referred to in subsection (1) of this section should not apply in Tuvalu or

(b) that such amendment should apply only in part or with modification or should come into to force in its entirety or in part on a date other than that applicable in the country of origin or

(c) that any Rule previously adopted pursuant to the provisions of section 18K of this Act should be amended or modified

the Minister shall comply with the procedures set out in section 18J(1) of this Act as if the Minister's intention to make an amendment or to decline to adopt an amendment was an intention to make an ordinary Rule and after giving due regard to any written submissions from persons notified or entitled to notification, shall, if appropriate, issue and notify a revised Rule Adoption Statement and Rule Interpretation Statement. Upon such issue and notification the Minister's determination shall take effect accordingly.

#### **18N. 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) of this section, 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) of this section, 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) of this section, 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) of this section, by notice in the Gazette, renew the Rule in accordance with subsection (7) of this section for a further period not exceeding 180 days from the date of the notification.

(7) Before renewing an emergency Rule under subsection (6) of this section, 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 or repugnant to any ordinary Rule made under this Act, the emergency Rule shall prevail.

#### **180. 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) of this section 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) of this section, 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) of this section shall take effect.

(4) All material incorporated by reference under subsection (1) or subsection (2) of this section 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 Tuvalu 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 Tuvalu 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.

### **18P. 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 section 18B, section 18C, section 18F or section 18K of this Act.

(2) Before granting an exemption under subsection (1) of this section, 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) of this section 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.”

### **13. General Safety Powers and Functions**

Section 21 of the principal Act is repealed.

### **14. Power to prescribe fees – Section 52 of the principal Act is amended by designating the existing words in s 52 as subsection (1) and adding subsection (2) as follows:**

“(2) The power in subsection (1) includes the power of the Minister to prescribe a passenger safety and security levy to fund the responsibility of the Minister and the Director for safety and security oversight of the Tuvalu civil aviation system.”

### **15. Repeals**

(1) The Air Navigation (Overseas Territories) Order 1977 is revoked.

(2) The Air Navigation (General) Regulations is revoked.

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**SCHEDULES****SCHEDULE 1: ENACTMENTS REPEALED**

Enactments repealed

Civil Aviation Act 1990

Aircraft Offences Act

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**SCHEDULE 2: ENACTMENTS AMENDED**

Enactments amended

*Pursuant to section 18K of the Civil Aviation Act I, Honourable [full name],  
Minister responsible for Aviation, hereby give notice of the making of  
Ordinary Civil Aviation Rules by adoption.*

**TUVALU CIVIL AVIATION RULE PART [ ]**

[name]

**Adoption Statement**

The Rule Part, which shall be cited as Tuvalu Civil Aviation Rule Part [ ], comprises an adoption of the Rules contained in New Zealand Civil Aviation Rules Part [ ] as modified hereunder and shall be read subject to the following Interpretation Statement.

**Interpretation Statement****(i) Words and numbers to be substituted:****Throughout***[list of words or phrases that may appear in several rules]***Rule [ ] [name]***[sections or sub-sections that are to be inserted into the stated rule]***(ii) Any subpart, rule or appendix of the adopted Rule Part which shall not apply in Tuvalu.***[text]***(iii) Any general exemptions which will apply in Tuvalu***[text]*

- (iv) **Any additional provisions or requirements not found in the New Zealand Rule Part but which will apply in Tuvalu**  
[*text*]
- (v) **Any direction as to the application or non application to Tuvalu of any amendment or repeal of an adopted Rule Part by its country of origin**  
[*text to include:*  
“This Rule Part shall adopt all New Zealand amendments unless otherwise stated.”]
- (vi) **Any other matter which would assist in the practical, clear and unambiguous interpretation and application of the adopted Rule Part in Tuvalu**  
[*text to include:*  
“Unless the Director issues specific acceptable means of compliance for this Tuvalu Rule Part, the standards, practices and procedures that the Director has found to be acceptable are those published in the associated Advisory Circulars issued by the Civil Aviation Authority of New Zealand. Interpretative or explanatory material for this Rule Part may also be found in the New Zealand Advisory Circulars.”  
*or, where Advisory Circulars are not published by CAA NZ in respect of the rule:*  
“If further guidance regarding acceptable means of compliance for this Tonga Rule Part is required, the Director shall issue such guidance on request.”  
“This Rule Part, as modified above, comes into force on [*date*]”]

**Dated this [ ] date of [*month*] [*year*]**