

**REGULATIONS
Civil Aviation Act 6 of 2016**

Namibian Civil Aviation Regulations, 2001

**PART 3
REGULATIONS MAKING, ISSUING OF TECHNICAL STANDARDS, EXEMPTIONS,
DIRECTIVES, FILING OF DIFFERENCES AND OTHER PROCEDURES**

[Part 3 is inserted by GN 293/2018.]

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SUBPART 1
PROCEDURES FOR MAKING REGULATIONS

Applicability

3.01.1 (1) This Part is applicable to the making, amendment and revocation of regulations (hereafter collectively referred to as “the making of regulations”).

(2) The Authority may amend these procedures, and similarly, any other regulations, after conducting a regulation-making procedure after the date of coming into force of these regulations.

(3) The documentation required under these regulations and any other Part, whether in physical or electronic form, must be registered with the CAR in accordance with the procedures set out in the registry manual approved by the Executive Director.

Submission of documents

3.01.2 (1) In these regulations where a person is required to submit a document “in writing to the Authority”, he or she must submit that document either -

- (a) physically by hand to the head offices of the Authority, for the time being at the c/o No 12 Rudolf Hertzog Street, Windhoek;
- (b) by post to the head offices of the Authority, namely, Private Bag 12003 Ausspannplatz, Windhoek;
- (c) by electronic mail, to the following address: legal@ncaa.com.na, and any other address as indicated by the Authority for the purpose of emailing;
- (d) by facsimile to the facsimile number as indicated by the Authority; or
- (e) in any other manner approved in writing by the Authority.

(2) The Authority may set out alternative addresses in the “Notice of Intention to Make Regulations”.

Regulations-making procedure: notice

3.01.3 (1) The Authority must initiate a regulations-making process to make regulations required to be prescribed by the Act.

(2) The regulations process under subregulation (1) comprises the procedures set out in this Part to make regulations in a manner that is compliant with the Act, and necessary or expedient in order to implement the provisions of the Act.

(3) A regulations-making procedure under subregulation (1) must be initiated by the Authority by the publication of a “Notice of Intention to Make Regulations” uploaded to the website and intranet of the Authority, and in at least two newspapers circulating nationally in Namibia, or in the *Gazette*, as the Authority may consider appropriate.

- (4) The “Notice of Intention to Make Regulations” -

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- (a) must include a concise statement of the purpose and reason for the proposed regulations;
- (b) must, if not included in the publication mentioned in subregulation (3), indicate how a draft of the proposed regulations can be obtained; and
- (c) may, as part of subregulation (3), include a reference to an explanatory memorandum or other document, providing background information, defining issues or setting out the Authority's preliminary views.

(5) A "Notice of Intention to Make Regulations" must be registered with the CAR in the manner provided for in the registry manual and be available for scrutiny at the head offices of the Authority during normal business hours.

(6) Copies of the notice referred to in subregulation (5) may be made available to the public on payment of a prescribed fee determined in Part 187 or by way of download from the Authority's website or intranet, free of charge.

Proposals to initiate regulation-making process: notice

3.01.4 (1) Any person may submit a proposed regulation in writing to the Authority and request the Authority to initiate the regulation-making process in accordance with the notice issued under regulation 3.01.3(3).

(2) The notice referred to in subregulation (1) must include a "Proposal to Initiate a Regulation" in the format acceptable to the Executive Director and must contain at least the following information:

- (a) the name and contact details of the person making the submission and the name and contact details of the person for whom the submission is made, if different;
- (b) explain the interests of the proposer;
- (c) state the contents of the regulation or the amendment proposed or specify the regulation which the proposer wishes to be withdrawn; and
- (d) a clear and concise statement setting out the purpose and reasons for the proposed regulation.

(3) If, in the opinion of the Authority, the submitted proposed regulation provide sufficient reasons for initiating a regulation-making process, the Authority must initiate the regulation-making process.

**[The verb "provide" should be "provides" to be grammatically correct.
Alternatively, "regulation" should be the plural "regulations"]**

- (4) If, in the opinion of the Authority, the submitted proposed regulations -
 - (a) do not provide sufficient reasons for initiating regulation-making process;
 - (b) is frivolous or vexatious or malicious; or

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- (c) will compromise civil civil aviation safety and security, the Authority must decline the request and notify the person who submitted the request in writing, stating the particular reasons the request is declined.

[The word “the” appears to have been omitted before “regulation-making process” in paragraph (a). The verb “is” in paragraph (b) should be “are” to be grammatically correct. The word “civil” in paragraph (c) is repeated in the *Government Gazette* as reproduced above.]

Written submissions

3.01.5 (1) After the Authority publishes a “Notice of Intention to Make Regulations”, any person or group of persons may in writing submit comments to the Authority within the time set out in the “Notice of Intention to Make Regulations”, which time may not be less than 30 days from the date of publication the notice.

(2) For public consultations during the regulations-making process, and when considered appropriate, the Authority must also provide the opportunity for the submission of a reply to comments by the proposer of the regulation in a “Notice of Intention to Make Regulations”.

(3) Reply comments must be submitted in writing to the Authority within the time established by the Authority, which time may not be less than 14 days from the submission of written comments.

(4) The times for the submission of comments are to be determined by the Authority in light of the nature of the proposed regulation.

(5) The Authority may consider written submissions not timely filed if, in its opinion, it is practicable to do so.

(6) The Authority may request further written submissions to secure further information or clarification, which submissions must be provided to the Authority in the manner set out by the Authority.

(7) All written submissions must -

- (a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different;
- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority as set out in the “Notice of Intention to Make Regulations” or, if applicable, the relevant *Gazette* notice.

Oral hearings

3.01.6 (1) Despite the provisions on public meetings of the Board contemplated by section 17(8) to (11) of the Act, if the Authority considers it appropriate, it may also hear oral submissions after compliance with regulations 3.01.3, 3.01.4 and 3.01.5.

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(2) The Authority may invite members of the public to make oral submissions either in the “Notice of Intention to Make Regulations” or subsequently by notice at least once in two English language newspapers circulating nationally in Namibia or uploaded to the website or intranet of the Authority, provided that members of the public must be given at least 21 days’ notice prior to the scheduled date of the hearing.

(3) Unless otherwise specified by the Authority, hearings are open to the public.

(4) The format and agenda of the hearing is at the discretion of the Authority, depending on the nature of the regulation-making process, except that the hearing may take on the character of a workshop or conference.

(5) All oral submissions must -

- (a) include a statement of the name and contact details of the person making the oral submission and the name and contact details of the person for whom the oral submission is made, if different;
- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority as set out in the “Notice of Intention to Make Regulations”.

(6) The Authority may request further oral or written submissions to secure further information or clarification, which submissions must be provided to the Authority in the manner set out by the Authority.

(7) At the conclusion of the hearing, the secretariat referred to in regulation 3.01.11 must prepare a concise report summarising the oral submissions which report must be placed in the relevant regulation making file in the CAR in the manner set out in the registry manual.

[The term “regulation making” should be hyphenated as “regulation-making”.]

Confidential information

3.01.7 (1) A person making written submissions may designate information as confidential, but, if the Authority is of the opinion that the information is not confidential, it must inform the person that it may withdraw the information from the regulation-making process or agree with the person that the information will be treated as confidential.

(2) A person making oral submissions may request a closed hearing on the grounds that the submissions are confidential, and a closed hearing must be treated as a confidential meeting.

Record of minutes

3.01.8 (1) All documents considered relevant by the Authority to a regulation-making process, including “Proposals to Initiate a Regulation Making Process”, “Notices of Intention to Make Regulations”, written submissions, petitions for reconsideration and reports of oral hearings, and the Authority must maintain reports of confidential meetings in a regulation making file kept separately for each regulation-making process, physically at the CAR and where appropriate, electronically, for download from the Authority’s website or intranet.

[The term “Regulation Making” should be written as “Regulation-making”.]

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(2) Except for confidential information, any person may examine a regulation making file at the CAR for scrutiny at the head offices of the Authority during normal business hours.

[The term “regulation making” should be hyphenated as “regulation-making”.]

(3) Copies of the file referred to subregulation (2) may be made available to the public on payment of a fee determined by the Authority under Part 187, and from the website or intranet of the Authority, where copies may be downloaded free of charge.

Publication of regulations

3.01.9 (1) After considering all written submissions recorded as filed and oral recordings, if any, the Executive Director must submit the draft regulations for consideration by the Board, in compliance with a consultation procedure or its recommendation, as the case may be, and thereafter, to the Minister for approval and issue of the regulations in the *Gazette*, with or without changes to the draft regulations.

(2) The Authority must maintain copies and the originals, and a register, of regulations made or deemed to have been made under the Act, and physically at or in the database of the CAR for scrutiny in the manner provided for in the registry manual.

- (3) Any person may examine the register of regulations and copies of regulations either -
- (a) at the CAR at the head offices of the Authority during normal business hours or copies may be made on payment of a fee determined by the Authority under Part 187; or
 - (b) by download from the Authority’s website or intranet, free of charge.

Reconsideration

3.01.10 (1) The Authority may reconsider any regulations made in terms of the regulation-making procedures, within a period of 12 months after publication of the regulations.

(2) Any person (the “requesting party”) may submit a request in writing to the Authority to reconsider any regulation made or any technical standard or aviation directive issued, in terms of the regulation-making procedures, within 12 months of the publication of the final regulations in the *Gazette* or the publication of the technical standard or aviation directive, and the Authority must reconsider such regulation, technical standard or aviation directive within a period of 90 days from the date of receipt of the request.

(3) The requesting party must submit the request on a “Reconsideration Form” uploaded by the Authority and made available for download from the Authority’s website.

(4) The requesting party must indicate in the “Reconsideration Form” his or her direct or substantial interest in the matter and the safety and security considerations that form the basis for the request.

(5) If the Authority is satisfied that there are sufficient reasons to reconsider the regulations, it may grant the request and authorise a hearing on the reconsideration in the manner set out in regulation 3.01.6.

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(6) The Authority must communicate to the requesting party its decision within 30 days of the filing of the request for reconsideration and the reasons for the decision.

(7) The Executive Director may decline the request for reconsideration on the same grounds as provided for in regulation 3.01.4(4).

Administration

3.01.11 Any administrative work as well as secretarial work, in connection with the making of regulations must be carried out by staff members of the Authority designated for such purpose by the Executive Director.

Civil aviation regulations technical advisory panel

3.01.12 The Civil Aviation Regulations Technical Advisory Panel which the Executive Director may establish for each or any regulation-making procedure in terms of Part 11 is responsible for the related actions and procedures set out in this Part.

Subscriber notification service

3.01.13 To facilitate the consultation process in the process of making regulations the Executive Director may make available on the website or intranet of the Authority, a subscriber notification service to which interested persons may subscribe and unsubscribe at no cost and by which every subscriber must be notified by e-mail, of any proposal to amend any regulation by way of insertion, substitution, repeal, deletion or any other manner.

SUBPART 2
ISSUING OF TECHNICAL STANDARDS

Procedure

3.02.1 The procedure for making regulations in this Part applies, subject to necessary changes and modifications that may be required by the context, to the making of technical standards in the manner contemplated by section 227 of the Act.

Publication

3.02.2 A technical standard must be published by upload on the website and intranet of the Authority for free downloading, but a person may also order the technical standard from the Authority in either hard copy or electronic format at a fee as may be determined by the Authority under Part 187.

Keeping and inspection of technical standards

3.02.3 The Authority must keep originals and copies of published technical standards issued under these regulations and must register the standards with the CAR in the manner provided in the registry manual and make them available for inspection by any person.

SUBPART 3
PROCEDURE FOR GRANTING EXEMPTIONS AND ACCEPTANCE OF
ALTERNATIVE METHODS OF COMPLIANCE

Applicability

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3.03.1 The Executive Director may exempt an applicant from the requirements of these regulations or any other regulations made under sections 54 to 58 of the Act after having regard to either -

- (a) the requirement that has been substantially complied with and that further compliance is unnecessary;
- (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement;

[The word “as” appears to have omitted after the phrase “as effective”.]

- (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 civil aviation safety and security is not or is not likely to be significantly increased by the granting of the exemption.

[The word “that” is superfluous both times that it appears in paragraph (a), and also in the closing phrase.]

Application for exemption

3.03.2 (1) An application for an exemption must be made in writing to the Executive Director and must -

- (a) state the name, street and postal address of the applicant;
- (b) state the requirement from which exemption is requested;
- (c) explain the interests of the applicant in the exemption requested, including the nature and extent of the exemption requested and a description of each person or thing to be covered by the exemption;
- (d) contain any information, views or arguments supporting the application;
- (e) explain why the applicant believes that the exemption should be granted, including the reasons why it would not be possible or desirable to comply with the requirement which is the subject of the application, as well as the extent to which the exemption may affect civil aviation safety and security; and
- (f) include a summary of the application which summary must contain a reference to the requirement from which exemption is requested and a brief description of the general nature of the exemption requested.

(2) An application for an exemption must be accompanied by the appropriate fee prescribed in Part 187 and -

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- (a) must be submitted at least 60 days or such shorter period as the Executive Director may allow on good cause shown, before the proposed effective date of the exemption; or
- (b) in the case of an urgent exemption, must be submitted five working days before the proposed effective date of the exemption or such shorter period as the Executive Director may allow on good cause shown.

(3) In cases where an application for exemption cannot be processed within the periods referred to in subregulation (2), the Executive Director must notify the applicant and in the case of urgent exemptions adjust the prescribed applicable fee to the amount as prescribed in Part 187.

Processing of application for exemption

3.03.3 The Executive Director may, before deciding whether to grant or refuse an exemption, afford the applicant an opportunity to make representations either in writing or in person, regarding the exemption.

Granting or refusal of exemption

3.03.4 (1) The Executive Director may in the manner contemplated in section 46 of the Act -

- (a) grant an exemption, subject to such conditions and for such period which the Executive Director may determine, which may not exceed 180 days; or
 - (b) refuse an exemption.
- (2) The Executive Director must give written notice to the applicant of -
- (a) the Executive Director's decision; and
 - (b) if the decision was to refuse to grant the exemption or to impose a condition not sought by the applicant, the reasons for the decision.

(3) The Executive Director must within five working days from the date from which any exemption has been granted, and in such manner as decided by the Executive Director, publish the full particulars thereof for download from the Authority website or intranet.

Application for extension of exemption

3.03.5 (1) The Executive Director may not grant an exemption under this Part to a person in the same or similar terms as an exemption previously granted under this Part to the person unless that person -

- (a) applies, in accordance with regulation 3.03.2, for the new exemption; and
- (b) includes with the application a statement of the additional reasons why the exemption is necessary or the reasons why the continuation of the exemption is necessary.

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(2) The Executive Director may grant an extension to an exemption under such conditions and for such period which the Executive Director may determine, which may not exceed 180 days.

(3) An application for the extension of exemption must be accompanied by the fees prescribed in Part 187.

(4) The provisions of regulations 3.03.3 and 3.03.4 apply with the necessary changes in relation to the consideration of an application mentioned in subregulation (1).

Acceptance of alternative method of compliance

3.03.6 (1) The Executive Director may, on good cause shown by an applicant, approve an alternative method of compliance, if the Executive Director is satisfied that civil aviation safety and security is not or is not likely to be compromised.

(2) An application for acceptance of an alternative method of compliance must be in the format, and dealt with in the same manner, as prescribed in regulations 3.03.2, 3.03.3 and 3.03.4.

SUBPART 4

**PUBLICATION OF AERONAUTICAL INFORMATION CIRCULARS,
AVIATION DIRECTIVES, AVIATION NOTICES, TECHNICAL
GUIDANCE MATERIAL AND PAMPHLETS**

Publication of aeronautical information circulars

3.04.1 Subject to the securing of services as contemplated in section 10(6) of the Act, and the information services requirements contemplated in section 53 of the Act, and in compliance with Part 174 (Aeronautical Information Services), the Head of Air Navigation Services may publish aeronautical information circulars, containing information on -

- (a) technical standards, practices or procedures including methods that, for purposes of provision of air navigation services, are found to be acceptable for compliance with the associated regulations on air navigation services;
- (b) the differences to be notified in terms of Subpart 5, but with the approval of the Executive Director; and
- (c) issues that can properly and effectively be distributed to interested parties by any means whatsoever.

Directives: aviation and airworthiness

3.04.2 (1) Whenever the Executive Director from time to time issues any aviation directive as contemplated in section 38(6) of the Act, the objective of the applicable regulatory requirement to be met thereby, and any change or amendment to the directive, if any, must be indicated in the relevant aviation directive.

(2) As a general requirement the aviation directive must explain that it -

- (a) is remedial and desirable in the context of the aviation activity in question;

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(b) does not conflict with matters already authorised, prohibited or otherwise contemplated elsewhere in the Act or these regulations; and

(c) does not or is not likely to compromise civil aviation safety and security.

(3) An aviation directive must be of general application, or may be directed at a particular group of affected persons, and not be limited in its application to an individual civil aviation participant.

(4) The Executive Director must forthwith upload an airworthiness directive issued under section 38(3) of the Act or an aviation directive issued under section 38(6) of the Act, as the case may be, on the website or intranet of the Authority and, where appropriate, in such other place or manner as will, in the Executive Director's opinion, most effectively inform the public and those directly affected by the issue of the directive.

(5) An airworthiness directive or aviation directive must be registered with the CAR in the manner set out in the registry manual.

Issue and publication of aviation notices

3.04.3 (1) The Executive Director may, in accordance with subregulation (2), issue civil aviation notices regarding any matter which the Executive Director may consider necessary or expedient to publish in order that the objects of the Act and these regulations may be achieved.

(2) Subject to subregulation (3), the Executive Director must upload notices referred to in subregulation (1) to the website or intranet of the Authority, and where appropriate publish it in such other place or manner as will, in the opinion of the Executive Director, most effectively inform the public and those affected by that notice.

(3) Where the Executive Director determines that the interests of aviation safety or security require immediate action, he or she may forego publication of an aviation notice under subregulations (1) and (2) but he or she must, to the extent practicable, advise affected persons of the issue of the notice.

Issue and publication of technical guidance material, advisory pamphlets and other information

3.04.4 (1) The Executive Director may issue technical guidance material, advisory pamphlets containing information, other guidance and training material to assist authorised officers, inspectors or authorised persons, in the implementation and continued compliance with the Act, these regulations and technical standards pursuant to section 10(1)(l) and (m) of the Act.

(2) The Head of Air Navigation Services may, pursuant to regulation 3.04.1 but subject to Part 174, publish an advisory pamphlet in an Aeronautical Information Circular or in such other manner as will, in his or her opinion, most effectively inform the public and those affected on air navigation services.

Amendment, suspension or withdrawal of aviation directives, aviation notices or advisory pamphlets

3.04.5 The Executive Director or the Head Air Navigation Services, as the case may be, may at any time amend, suspend or withdraw any directive, notice or advisory pamphlet issued

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under this Part and must upload notification of any such amendment, suspension or withdrawal to the website or intranet of the Authority.

Maintenance of documents in CAR and related matters

3.04.6 (1) With a view to the establishment of the CAR pursuant to section 52 of the Act, and for matters in relation to its administration, the Executive Director must designate a staff member of the Authority as head of the CAR who must at the same time be the designated person responsible for compliance with the provisions of sections 61(4) and 227(4), as the case may be, of the Act.

(2) The designated head of the CAR must keep the registry manual providing for the procedures for channelling, lodging and securing or archiving of the prescribed documents and issued out to the public, in the manner as set out in regulation 3.01.1.

(3) The designated head of the CAR must ensure the review, and monitor compliance with the registry manual, by the staff members of the Authority.

(4) The designated head of the CAR, must on behalf of the Executive Director, ensure the establishment and maintenance of the register of inspectors, authorised officers and authorised persons as designated in the manner contemplated in section 37 of the Act, to ensure compliance with section 36(d) of the Act.

(5) The head of the CAR must, on behalf of the Executive Director, issue any required measures on public access, copying, audit and inspection of such documents, and related matters in the manner contemplated in section 52(3) and (4) of the Act.

SUBPART 5
PROCEDURES FOR THE IDENTIFICATION
AND NOTIFICATION OF DIFFERENCES

General

3.05.1 (1) The Authority must develop and implement procedures for the review of regulatory requirements to ensure the regulations or practices are in full accord, where practicable, with any established international standards or, where necessary, recommended practices, and in accordance with its prescribed procedures.

(2) If the Authority finds it impracticable to comply in all respects with any international standard or procedure or to bring its own regulations or practices into full accord with any international standards or procedures after amendment of the standards or procedures, a notification of difference may be filed in accordance with regulation 3.05.3.

(3) The responsibility under the Chicago Convention for the identification and notification of differences rests with the Authority.

(4) In the course of discharging the responsibility to notify, the Authority must, when necessary, liaise with other relevant agencies of the Government of Namibia on the identification and the notification functions set out in this Subpart.

(5) In the case of amendments to international standards, if the Authority does not make the appropriate amendments to its own regulations or practices, notice must be given to the ICAO

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within 60 days for the adoption of the amendment to the international standard or an indication of the action which the Authority proposes to take.

(6) If the Authority considers it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, it must give immediate notification to the ICAO of the differences between its own practice and that established by the international standard.

Identification of differences

3.05.2 The following differences may, without limitation, be identified by the Authority:

- (a) a category A identification: when a provision of these regulations is more stringent than the corresponding Standard and Recommended Practice (SARP) or imposes an obligation within the scope of the Annex which is not covered by an SARP;
- (b) a category B identification: when a provision of these regulations is different in character from the corresponding ICAO SARP or when the regulation differs in principle, type or system from the corresponding SARP, without necessarily imposing an additional obligation; and
- (c) a category C identification: when a provision of these regulations is less protective than the corresponding SARP or when no regulation has been promulgated to address the corresponding SARP, in whole or in part.

Notification of differences

3.05.3 (1) The notification of differences must be in the format as may be determined by the ICAO and, without limitation, must be notified by the Executive Director, in the following manner:

- (a) reference - the number of the paragraph or subparagraph in an Annex as amended which contains the Standard or Recommended Practice to which the difference relates;
- (b) category - indicate the category of the difference as mentioned in regulation 3.05.2;
- (c) description of the difference - clearly and concisely describe the difference and its effect;
- (d) remarks - indicate reasons for the difference and intentions including any planned date for implementation by Namibia.

(2) The notification of differences referred to in subregulation (1) must be submitted within the timelines indicated by ICAO, unless it is found to be impracticable due to circumstances as reported to or by and condoned by the Minister in terms of section 4(2) of the Act.

(3) The Executive Director must ensure that all identified differences are promptly recorded and notified -

- (a) by means of the ICAO on-line system for the electronic filing of differences; and

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- (b) by the creation and maintenance of a printed register of differences within the CAR on the record to be designated as the “Register of Namibian Notification of Differences from ICAO Standards and Recommended Practices”.

(4) The Executive Director must, in accordance with the provisions of sections 52(4) and 53 of the Act, provide access to, and permit the copying of, documentation and information relating to the notification of differences by Namibia under the Chicago Convention.

Publication of differences

3.05.4 (1) The Authority must publish in the Aeronautical Information Publication a list of significant differences between the national regulations and practices and the related ICAO Standards, Recommended Practices and Procedures, given in a form that would enable a user to differentiate readily between the requirements of Namibia and the related ICAO provisions -

- (a) by means of the ICAO on-line system for the electronic filing of differences; and
- (b) by the creation and maintenance of a printed register of differences within the CAR on the record to be designated as the “Register of Namibian Notification of Differences from ICAO Standards and Recommended Practices”.

(2) The Executive Director must, in accordance with the provisions of section 52(4) of the Act, provide access to, and permit the copying of, documentation and information relating to the notification of differences by Namibia under the Chicago Convention.