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Civil Aviation Act 6 of 2016

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AIR NAVIGATION SERVICES

[The amendments made by GN 89/2020 do not provide for a heading above Part 170. However, it appears from the titles of Parts 170-179 that they may have been intended to be grouped together under the heading “Air Navigation Services”. According to regulation 170.01.1, “air navigation services (ANS) Parts” means “Parts 171, 172, 173, 174, 175 and 179”.]

PART 170
AIR NAVIGATION SERVICES: GENERAL

[Part 170 is inserted by GN 89/2020.]

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SUBPART 1
GENERAL

Definitions for this Part

170.01.1 For the purpose of this Part -

“air navigation services (ANS) Parts” means Parts 171, 172, 173, 174, 175 and 179;

“air navigation services provider” (ANSP) includes the Air Navigation Services established by section 49 of the Act, and any other person, or entity established for the purpose of providing any of the following air navigation services;

- (a) an aeronautical telecommunications (ATEL) service in accordance with Part 171;
- (b) an air traffic service (ATS) in accordance with Part 172;
- (c) a flight procedure design (FPD) service in accordance with Part 173;
- (d) an aviation meteorological (A-MET) service in accordance with Part 174;
- (e) an aeronautical information service (AIS) in accordance with Part 175; and
- (f) a search and rescue (SAR) service in accordance with Part 179;

“certificate” includes any approval, certificate, designation or any other form of written authorisation issued by the Executive Director, under Part 171, 172, 173, 174, 175 or 179, to any person or entity authorising that person or entity to provide an air navigation service.

Applicability

170.01.2 (1) This Part -

- (a) prescribes the regulations and procedures governing the certification or approval of a person providing an air navigation service (ANS) within Namibia;
- (b) applies to a person who wants to provide, or is providing, one or more of the following services:
 - (i) an aeronautical telecommunications (ATEL) service in accordance with Part 171;
 - (ii) an air traffic service (ATS) in accordance with Part 172;
 - (iii) a flight procedure design (FPD) service in accordance with Part 173;
 - (iv) an aviation meteorological (A-MET) service in accordance with Part 174;
 - (v) provision of aeronautical charts service in accordance with Part 174;
 - (vi) an aeronautical information service (AIS) in accordance with Part 175; and
 - (vii) a search and rescue (SAR) service in accordance with Part 179;

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- (c) applies to the provision of air navigation services -
 - (i) in Namibia; and
 - (ii) in the airspace over the high seas or airspaces of undetermined sovereignty administered by Namibia; and
- (d) sets out certain administrative rules applying to the Executive Director in the administration of this Part.
- (2) This Part does not apply to -
 - (a) a person who is providing air navigation services to military aircraft within designated military airspaces in the course of his or her or its duties, for the Namibian Defence Force; or
 - (b) any air navigation services provided to military aircraft within designated military airspaces by the Namibian Defence Force.

Safety and regulatory compliance inspections and audits

170.01.3 (1) An ANS provider must permit an authorised officer, inspector or authorised person to carry out such safety and regulatory compliance inspections and audits, which may be necessary to verify the validity of any application made in terms of the relevant part of the ANS Parts.

(2) An ANS provider must permit an authorised officer, inspector or authorised person to carry out such safety and regulatory compliance inspections and audits, including safety inspections and audits of its partners or subcontractors, which may be necessary to determine compliance with the appropriate requirements prescribed in the relevant part of the ANS Parts.

Certification for provision of air navigations services

[The heading of this regulation may have been intended to refer to “air navigation services” (with the word “navigation” being singular rather than plural).]

170.01.4 (1) A person may not provide an air navigation service unless that person has been certificated by the Executive Director in terms of the relevant part of the ANS Parts.

(2) The issuance of certificate to provide an air navigation service is subject to compliance with the relevant requirements set out under these regulations, associated technical standards, aviation directives and any other conditions as may be specified or notified by the Executive Director.

[The word “a” appears to have been omitted before the word “certificate”.]

(3) The requirements for the issuance, renewal, amendment, suspension, imposition of condition on, or revocation of a certificate must be in compliance with the provisions of Parts 5 and 10 of the Act and these regulations.

Provision of ANS related service requiring certificate

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170.01.5 A person may not provide any ANS related service, where a certificate is required for the provision of that service, unless such certificate has been issued by the Executive Director in accordance with procedures, processes or conditions determined by the Executive Director.

SUBPART 2
CERTIFICATION OF AIR NAVIGATION SERVICE PROVIDERS

Requirements for certification of air navigation services provider

170.02.1 (1) A person may not provide air navigation service under any of the ANS Parts unless -

- (a) that person holds a certificate issued under any relevant part of the ANS Parts; and
- (b) the service is provided in accordance with -
 - (i) the requirements prescribed under this Part and the relevant part of the ANS Parts; and
 - (ii) the procedures specified in the air navigation service provider's manual of procedures required under Subpart 3.

(2) Except as provided for in Subpart 6, a person may not provide an air navigation service in those portions of airspace and the aerodromes designated by the Executive Director in terms of Part 71, except under the authority of, and in accordance with the provisions of a certificate issued under the relevant part of the ANS Parts.

Application for certification

170.02.2 An application for the issuing of a certificate to provide an air navigation service, must be -

- (a) made to the Executive Director on the appropriate form set out in the relevant part of the ANS Parts; and
- (b) accompanied by such documents, information and other matters required under the relevant part of the ANS Parts.

Grant of application and issue of certificate

170.02.3 (1) Upon receipt of an application for the certification of an ANSP, the Executive Director must consider all relevant representations, information and other documents as required under the relevant part of the ANS Parts prior to the grant of the application and issuing of the certificate.

(2) The Executive Director must grant the application and issue a certificate in the appropriate form set out in the relevant part of the ANS Parts, if the Executive Director is satisfied that -

- (a) the applicant, and the applicant's senior accountable manager and key personnel, are fit and proper persons;

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- (b) the granting of the application and issuing of the certificate is not contrary to the interests of aviation safety;
- (c) the personnel of the applicant are adequate in number and have the necessary competencies to provide the service;
- (d) the manual of procedures prepared and submitted with the application contains all the relevant information;
- (e) the facilities, services and equipment are established in accordance with the requirements prescribed in the relevant part of the ANS Parts;
- (f) the operating procedures make satisfactory provision for the safety of aircraft;
- (g) a safety management system under Part 140 acceptable to the Executive Director is in place;
- (h) a quality management system acceptable to the Executive Director is in place;
- (i) the applicant has approved procedures to meet the requirements of the applicable aviation security requirements;
- (j) the applicant has sufficient resources to provide the service; and
- (k) the applicant has applicable liability insurance for the service to be provided.

(3) The granting of an application to provide an air navigation service is subject to compliance with the relevant requirements and standards prescribed in the relevant part of the ANS Parts, and any other conditions as may be specified or notified by the Executive Director in an aviation directive issued under section 38(6) of the Act.

(4) The Executive Director may, when granting an application, include any conditions as may be considered necessary for the nature and type of air navigation service to be provided and which conditions are in the interest of aviation safety.

(5) The Executive Director may decline to grant an application, and where the Executive Director so declines, the Executive Director must notify the applicant in writing, indicating the reasons for the decline, not more than 14 days after making that decision.

(6) The Executive Director must, in the interests of aviation safety, ensure that only one certificate for the same air navigation service is issued to an ANS provider at any time.

Contents of certificate

170.02.4 The Executive Director must issue a certificate in the form set out in the relevant part of the ANS Parts, and the certificate must at least include the following information:

- (a) the holder's name, and the physical and mailing address of its principal place of business;
- (b) the type of service to be provided, and for an air traffic service, the service to be provided within a particular airspace or controlled aerodrome designated to the provider by the Executive Director;

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- (c) the location of service to be provided;
- (d) conditions of certification, as applicable; and
- (e) effective and expiry dates of the certificate.

Validity of certificate

170.02.5 (1) An ANS provider certificate is valid for a period of two years from the date of issuance or renewal.

(2) The certificate remains in force until it expires, or is surrendered, suspended or revoked in accordance with section 42 or 43 of the Act, as the case maybe, and regulation 170.02.12.

[The word “maybe” should be the two words “may be”.]

(3) The holder of an ANS provider certificate which has expired must forthwith surrender the certificate to the Executive Director, unless the service provider has applied for renewal of the certificate pursuant to regulation 170.02.7.

Amendment of certificate

170.02.6 (1) The Executive Director may amend a certificate issued under this Part upon -

- (a) application made by the holder of the certificate in the appropriate form set out in the relevant part of the ANS Parts; or
- (b) the Executive Director’s initiative, where the Executive Director considers it necessary.

(2) A holder of a certificate applying to the Executive Director for amendment of the certificate under subregulation (1)(a) must -

- (a) attach the completed application form and the proposed amendment to the certificate; and
- (b) pay such fee as may be prescribed under Part 187.

(3) Where the Executive Director initiates amendments under subregulation (1)(b), the holder of the certificate must make amendments as necessary, in its manual of procedures.

(4) The Executive Director may in accordance with section 45 of the Act -

- (a) amend the certificate in the manner applied for; or
- (b) decline the application to amend the certificate applied for.

(5) Where an application for amendment is declined under subregulation (4)(b), the Executive Director must within 14 days of making such decision, inform the applicant in writing, giving reasons for the refusal.

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(6) The Executive Director may, pursuant to section 45(2)(c) of the Act, amend an ANS provider certificate to correct any clerical error or obvious mistake on the face of the certificate and where the Executive Director requires the holder of the certificate to produce the certificate for such purpose, the holder must forthwith produce the certificate.

Renewal of certificate

170.02.7 (1) The holder of an ANS provider certificate, if it wishes to continue to provide the service, must at least 90 days immediately preceding the date on which such certificate expires, apply to the Executive Director for the renewal of the certificate.

- (2) An application for the renewal of an ANS provider certificate must be -
 - (a) made to the Executive Director in the appropriate form set out in the relevant part of the ANS Parts; and
 - (b) accompanied by -
 - (i) copy of the previous ANS provider certificate; and
 - (ii) the appropriate fee as prescribed in Part 187.

(3) The renewal of a certificate is subject to compliance with this Part, and the relevant requirements and standards prescribed under the relevant part of the ANS Parts.

Duplicate certificate

170.02.8 (1) If an ANS provider certificate is lost, stolen, damaged or destroyed, the holder thereof, may apply to the Executive Director for the issue of a duplicate certificate.

- (2) An application referred to in subregulation (1) must be -
 - (a) made in the appropriate form set out in the relevant part of the ANS Parts; and
 - (b) accompanied by the appropriate fee as prescribed in Part 187.

(3) A duplicate of the certificate is issued on the appropriate form set out in the relevant part of the ANS Parts.

Display of certificate

170.02.9 (1) A holder of an ANS provider certificate must display the certificate, or a copy of it, in a conspicuous place, generally accessible to the public at such holder's principal place of business.

(2) Where a copy of the certificate is displayed under subregulation (1), the holder of the certificate must produce the original certificate, if so requested by an authorised officer, inspector or authorised person.

Transfer of certificate

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170.02.10 Unless otherwise provided for in the relevant part of the ANS Parts, a certificate issued under this Part is not transferable.

Surrender of certificate

170.02.11 (1) Subject to subregulation (2) and any conditions as may be specified by the Executive Director when granting the application under the relevant part of the ANS Parts, a holder of an ANS provider certificate may surrender the certificate to the Executive Director at any time.

(2) A holder of an ANS provider certificate who wishes to surrender the certificate must give the Executive Director not less than 180 days' notice in writing, before the date on which the certificate is to be surrendered.

(3) Upon expiry of the period in subregulation (2), the ANS provider may not provide an air navigation service, unless specifically authorised to do so in writing by the Executive Director.

Suspension and revocation of certificate

170.02.12 (1) The Executive Director may under sections 42 and 43 of the Act, suspend or revoke an ANS provider certificate, or impose conditions in respect of any such document, if the Executive Director considers such action necessary for the provision of the air navigation service concerned or in the interests of aviation safety.

(2) Without limitation to the general powers of the Executive Director under the Act to suspend, revoke or impose conditions upon an aviation document the Executive Director may -

- (a) suspend, pending further investigation, an ANS provider certificate, if the Executive Director considers that -
 - (i) a relevant provision of the Act, these regulations or any regulations made under the Act, or a condition in the certificate, has not been or is not being complied with;
 - (ii) the privileges or duties for which the document has been granted are being utilised or carried out in a careless or incompetent manner;
 - (iii) false or materially incorrect information was given to the Executive Director in the application for the certification; or
 - (iv) it is in the public interest to do so; or
- (b) revoke a certificate or impose permanent conditions on the certificate, if after an inspection, monitoring or investigation carried out in accordance with this Part, read with Part 13, the Executive Director considers it necessary in the interests of aviation safety.

(3) A person, whose certificate is made subject to permanent conditions must immediately produce the certificate to the Executive Director for the appropriate endorsement to be made.

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(4) A holder or any person having the possession or custody of any certificate which has been suspended or revoked in accordance with this Part, must surrender the certificate to the Executive Director within seven days from the date of suspension or revocation.

(5) If an audit directed by the Executive Director finds non-compliance with regulatory requirements or safety standards, the Executive Director must formally notify the ANS provider of the areas or items of non-compliance, through a written notice, specifying a time frame within which the matter of non-compliance is to be rectified.

(6) If following the written notification, and the end of the time of the rectification period specified under subregulation (5), the non-compliances are not addressed, the failure by the holder of the certificate to comply with the relevant regulatory requirements or standards may be taken into account in determining the need for suspension or revocation of the certificate.

(7) For a certificate to be renewed after suspension or revocation, the ANS provider must satisfy the Executive Director, through an audit process, that it has rectified the matters of noncompliance.

(8) The Executive Director may, when considered necessary and in the public interest, designate an alternative service provider for a specified period to provide an air navigation service in respect of a certificate that has been suspended or revoked for the duration of the suspension or revocation in accordance with this Part.

(9) A person in respect of whom a decision is taken under this regulation may seek review of the decision in accordance with Part 13.

Register of certificates

170.02.13 (1) The Executive Director must keep and maintain or cause to be kept and maintained, a register of all ANS provider certificates referred to in regulation 71.10.1.

(2) The register must contain the following particulars:

- (a) the full name of the holder of the certificate;
- (b) the business address of the holder of the certificate;
- (c) the postal address of the holder of the certificate;
- (d) the date on which the certificate was issued or renewed;
- (e) the type or types of air navigation service in respect of which the certificate was issued;
- (f) the date on which the certificate was surrendered, amended, varied, suspended or revoked, if applicable;
- (g) the date on which the certificate expires; and
- (h) any other particulars as may be considered necessary by the Executive Director.

(3) The particulars of the certificate referred to in subregulation (2), or any changes to the particulars, must be recorded in the register in the manner set out in the registry manual.

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(4) The register must be kept in a safe place at the Civil Aviation Registry established under section 52 of the Act, and be accessible to the public in the manner as set out in regulation 3.04.6.

(5) The Executive Director must furnish a copy of the register to any person who requests the copy upon payment of the appropriate fee as prescribed in Part 187.

Notification of organisational changes

170.02.14 A holder of an ANS provider certificate must notify the Executive Director -

- (a) in writing; or
- (b) in the manner set out in Subpart 3 of Part 140,

of a change of circumstances that materially affect its capacity to provide any of its air navigation service within 14 days after the change occurs.

Change of name of holder of certificate

170.02.15 (1) A holder of an ANS provider certificate must, in the manner determined by the Executive Director, apply to the Executive Director for -

- (a) change of name on the certificate; or
- (b) an endorsement of the change of name on the certificate.

(2) When applying under subregulation (1), the holder of the certificate must submit to the Executive Director -

- (a) the original certificate or a copy thereof;
- (b) a court order or other legal document verifying the name change; and
- (c) a fee as prescribed under Part 187.

(3) The Executive Director must, where satisfied that the change may be made, re-issue or endorse the certificate with the appropriate changes applied for and provide the amended certificate to the holder of the certificate and retain a copy of the certificate.

Change of address of certificate holder

170.02.16 (1) A holder of an ANS provider certificate must notify the Executive Director of a change in the physical or mailing address of the certificate holder within 14 days of such change.

(2) A person who does not notify the Executive Director of the change in the physical or mailing address of the certificate holder within the time frame specified in subregulation (1) must not exercise the privileges of the certificate as from the date of expiry of the 14 days.

Limitations on certified ANS provider

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170.02.17 (1) An ANS provider must only provide services for which it is certified.

(2) An ANS provider may not provide a service for which it is certified, unless such holder has available sufficient resources, including facilities, equipment, tooling, technical data and qualified personnel necessary to maintain the equipment in accordance with its manual of procedures and the requirements prescribed in this Part and under the ANS Parts, as applicable.

Exemption based on certificate issued by another State

170.02.18 (1) Where an applicant for certification holds a certificate as an ANS provider issued by the appropriate authority of another State acceptable to the Executive Director, and there is a reciprocal arrangement for the mutual recognition of certificates issued by the authorities of Namibia and the other State, the Executive Director may, exempt the applicant from certain requirements of this Part or the relevant part of the ANS Parts as the Executive Director may determine.

[The comma after the word “may” is superfluous.]

(2) In making a decision regarding exemptions referred to in subregulation (1), the Executive Director may -

- (a) require the applicant to provide evidence of equivalent compliance with the requirements of this Part or the relevant part of the ANS Parts; and
- (b) contact the appropriate authority of the State that issued the certificate to validate equivalent compliance.

**SUBPART 3
REQUIREMENTS FOR MANUAL OF PROCEDURES****General**

170.03.1 (1) An ANS provider must, at all times, maintain a manual of procedures for each service that it provides and that complies with the requirements prescribed in the relevant part of the ANS Parts.

(2) The manual of procedures must be -

- (a) type written and in a format that is easy to revise;
- (b) include a list of effective pages;
- (c) organised in a manner that facilitates the evaluation and certification process taking into account the contents as prescribed in regulation 170.03.2; and
- (d) signed by the ANS provider.

(3) An ANS provider must -

- (a) submit the manual of procedures to the Executive Director for approval; and
- (b) keep at least one approved copy of the manual at its principal place of business.

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Contents of manual of procedures

170.03.2 (1) The manual of procedures must contain all information and instructions necessary to enable the personnel of the ANS provider to perform their duties.

(2) Each manual of procedures prepared under this Part must include the following particulars as appropriate to the service provided:

- (a) service to be provided, including the location of each facility and airspace covered;
- (b) the hours of service for each service provided;
- (c) the service provider's organisation structure, including the reporting lines, functions, duties and responsibilities of operational positions;
- (d) personnel requirements and their responsibilities;
- (e) the methodology for determining the number of staff;
- (f) training and performance assessment of staff and how that information is tracked;
- (g) the safety management system;
- (h) the quality management system;
- (i) contingency plans developed for part or total system failure or disruption of services;
- (j) compliance with the applicable civil aviation security requirements;
- (k) facilities and equipment and how they are maintained;
- (l) maintenance and control of documents and records;
- (m) search and rescue responsibilities and co-ordination, operations, plan and procedures, as applicable;
- (n) systems, processes and procedures in the provision of each air navigation service including, procedures for fault and defect reporting;
- (o) procedures to be followed for revising the manual of procedures; and
- (p) any other information as may be considered necessary by the ANS provider or as may be required by the Executive Director.

Amendment of manual of procedures

170.03.3 (1) For the purpose of maintaining the accuracy of the information in the manual of procedures, the -

- (a) ANS provider must whenever necessary, amend the manual of procedures; and

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- (b) Executive Director may direct an ANS provider, in writing, within a reasonable period specified in the direction, to amend its manual of procedures in a way specified in the direction.

(2) Despite subregulation (1), the holder of a certificate must submit the proposed amendment to the Executive Director for approval, before the manual is amended.

- (3) An ANS provider must -

- (a) ensure that its manual of procedures is amended, as required, so that it continues to provide a current description of the ANS provider's organisation, service and facilities;
- (b) ensure that any amendments made to its manual of procedures meet the applicable requirements of this Subpart;
- (c) comply with the applicable manual of procedures amendment procedures;
- (d) provide the Executive Director with a copy of each amendment to its manual of procedures, immediately after the amendment is incorporated into the manual of procedures; and
- (e) comply with any direction which the Executive Director may consider necessary in the interests of aviation safety.

(4) Replacement pages must be annotated with a vertical line in the outer margin to indicate the portion, which has been revised as follows:

- (a) a vertical line beside text or diagram indicates that the item has been amended;
- (b) the specific editorial or typographical changes will not otherwise be marked;
- (c) a vertical line beside a blank space in between text indicates that a previous item has been removed; and
- (d) the date of amendment will appear at the foot of the page.

(5) Urgent changes or temporary instructions must be notified by the issue of supplementary procedures, which must be regarded as forming a part of the main text until either incorporated therein by a routine amendment or cancelled.

(6) An ANS provider may not make changes to the procedures contained in the manual of procedures except by an amendment or supplementary procedure.

Formatting and administration of manual of procedures

170.03.4 (1) Each page of the manual of procedures must indicate the date of the original document or the date of any subsequent amendment and in addition, each page must indicate the following elements:

- (a) the title of the manual of procedures;
- (b) the issuing authority; and

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(c) the page number.

(2) The ANS provider must review its manual of procedures at regular intervals as specified in the manual of procedures.

Distribution and maintenance of manual of procedures

170.03.5 (1) An ANS provider must make available copies of the manual of procedures to the units providing the services.

(2) The person in charge of an ANS unit is responsible for ensuring incorporation of any amendments or supplementary procedures to the manual of procedures which may be issued from time to time.

Stand-alone documents prepared as attachments to manual of procedures

170.03.6 (1) The procedures, systems and processes required under regulation 170.03.2(2)(n) may be published as stand-alone documents, and such documents are by reference in the manual of procedures, to be considered as attachments to the manual of procedures with the appropriate cross-referencing.

(2) The procedures, systems and processes in accordance with subregulation (1) must include the procedures, systems and processes applicable to the service provided or to be provided under the relevant part of the ANS Parts.

(3) An ANS provider must publish station standing instructions (SSIs), which are applicable to individual units and which contain procedures applicable only at that unit and such SSIs are, in accordance with subregulation (1), to be considered as attachments to the manual of procedures.

SUBPART 4
COMPLIANCE WITH STANDARDS

Safety inspections and audits of air navigation facilities, equipment and documents

170.04.1 The Executive Director, or an authorised officer, inspector or authorised person, may carry out safety inspections and audits of air navigation facilities, services, documents and records of the air navigation service provider which may be necessary to determine compliance with a certificate, and the requirements and standards specified under the relevant part of the ANS Parts.

Unrestricted access to ANS facilities, equipment and documents

170.04.2 An ANS provider must, pursuant to section 48 of the Act, provide the Executive Director, or an authorised officer, inspector or authorised person unrestricted access to the facilities, installations, records and documents of the ANS provider to determine compliance with the requirements of this Part and any requirements made under the relevant part of the ANS Parts.

Resolution of safety concerns

170.04.3 (1) The holder of an ANS provider certificate must, following a regulatory inspection or audit -

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- (a) submit to the Executive Director for evaluation and acceptance, corrective action plans with timeframes to address non-conformities identified during the inspections and audits; and
- (b) ensure that the corrective actions are implemented within the time periods specified in the corrective action plans.

(2) The holder of an ANS provider certificate may, when circumstances demand, amend the timeframes specified in the corrective action plan and submit the amended corrective action plan to the Executive Director for evaluation and acceptance.

(3) An authorised officer, inspector or authorised person must carry out follow-up inspections or audits to verify that the ANS provider is implementing the corrective action plans submitted to the Executive Director to ensure that non-conformities are being addressed and closed.

[The word “an” at the beginning of subregulation (3) is repeated
in the *Government Gazette*, as reproduced above.]

(4) The holder of an ANS provider certificate must, when requested by an authorised officer, inspector or authorised person for the purpose of determining compliance with the regulations and resolution of safety concerns, produce within three days of such request, any relevant documents under the holder’s possession.

Imposition of restrictions, prohibitions or conditions

170.04.4 (1) The Executive Director may, by way of an aviation directive issued under section 38(6) of the Act, impose restrictions, prohibitions or conditions on any certificate, where recommended by an authorised officer, inspector or authorised person, if the results of an inspection or an audit has shown non-conformances with the certification requirements or in the event of any unresolved safety concerns.

(2) The Executive Director may in accordance with subregulation (1), impose restrictions, prohibitions or conditions on -

- (a) the type or coverage of the air navigation service to be provided;
- (b) the method used for delivery of the service; or
- (c) the periods during which a service is to be provided.

(3) Where a holder of an ANS provider certificate fails to address non-conformities within the time period specified in the corrective action plan, the Executive Director may carry out enforcement action in accordance with Part 13.

Establishment of facilities and equipment

170.04.5 (1) An ANS provider must establish facilities and equipment that are appropriate to the air navigation service which it provides as listed in its manual of procedures.

(2) The facilities and equipment required by subregulation (1) must be acceptable to the Executive Director.

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- (3) Despite subregulation (1), an ANS provider must -
 - (a) provide in the designated portion of airspace and at aerodromes, facilities for the provision of the air navigation service; and
 - (b) adopt and put into operation the appropriate standard systems and operational practices and rules required for the provision of the service under Part 71 and the relevant part of the ANS Parts.

Approval of facilities and equipment

170.04.6 A person may not install, maintain, contract or operate an air navigation service facility in the airspaces designated under Part 71, and at aerodromes, unless the person has obtained the prior approval of the Executive Director to do so in terms of relevant part of the ANS Parts.

Air navigation services contingency plans

170.04.7 (1) An ANS provider must develop and maintain a contingency plan required under regulation 170.03.2(2)(i) for implementation in the event of disruption or potential disruption of air navigation services in the airspace for which the holder of the certificate is responsible.

(2) An ANS provider must liaise with other air navigation service providers in adjacent or contiguous airspaces while developing contingency plans.

- (3) The contingency plan must include -
 - (a) the actions to be taken by the service provider's personnel responsible for providing the service;
 - (b) where applicable, alternative arrangements for providing the service; and
 - (c) the arrangements for resuming normal operations for the service.

(4) Despite subregulation (3), the contingency plan must be prepared in accordance with standards prescribed in the relevant part of the ANS Parts.

Safety management system

170.04.8 (1) An ANS provider must, in accordance with Part 140, establish a safety management system to ensure a systematic approach to managing safety, including policies, procedures, and practices necessary to safely provide the air navigation service covered by its certificate.

(2) The safety management system must be implemented in accordance with the applicable standards prescribed in the relevant part of the ANS Parts.

Quality management system

170.04.9 (1) An ANS provider must establish a quality management system that is acceptable to the Executive Director and which -

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- (a) focuses on the consistent delivery of each air navigation service it provides;
- (b) complies with approved quality performance standards;
- (c) includes a quality assurance system for the control, supervision and the management of the air navigation service that it provides; and
- (d) complies with standards prescribed under the relevant part of the ANS Parts.

(2) The quality management system established in accordance with subregulation (1) may be integrated with the safety management system required in 170.04.8.

Changes in quality management system

170.04.10 (1) Where an ANS provider desires to make any change in the quality management system required by regulation 170.04.9, and which is significant to the showing of compliance with the appropriate requirements prescribed in the relevant part of the ANS Parts, the ANS provider must apply to the Executive Director for the approval of such change.

(2) The Executive Director may grant an application for the approval of a change in the quality assurance system, if the ANS provider satisfies the Executive Director, upon submission of appropriate proposed changes to its manual of procedures that it will, after the implementation of such approved change, continue to meet an acceptable level of compliance with the provisions of this Part, and the applicable standards prescribed in Part 71 and the relevant part of the ANS Parts.

Internal safety inspection and audit programme

170.04.11 (1) An ANS provider must have in place, a programme for monitoring the performance of the service it provides to verify that the service provided complies with the regulatory standards and meets the air navigation services objectives.

- (2) The programme required under subregulation (1) must include -
 - (a) internal safety inspections and audits of each air navigation service facility listed in its manual of procedures; and
 - (b) testing and calibration, as applicable, of each equipment listed in its manual of procedures.
- (3) An ANS provider -
 - (a) must review its procedures and processes related to each air navigation service operation through an internal audit process using specified procedures;
 - (b) may conduct internal audits of its organisation through an entity that is external to the service provider to ensure the independence and objectivity of the audit results;
 - (c) must develop and use checklists, questionnaires and where appropriate, confidential interviews in conducting internal audit of its service.
- (4) In conducting internal safety audits and inspection of its service, an ANS provider

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must focus on any matters, including but not limited to, management functions, staffing, compliance with regulations and standards, levels of competency and training.

Security programme

170.04.12 An ANS provider must -

- (a) have, and put into effect, a security programme that is acceptable to the Executive Director and that sets out the procedures designed to protect its personnel, and any facility and equipment that it uses, in providing any of its air navigation services; and
- (b) if required to do so under section 126 of the Act, have in place an aviation security programme which complies with the requirements of Part 111.

SUBPART 5

GENERAL REQUIREMENTS FOR PROVISION OF AIR NAVIGATION SERVICES

ANS provider organisation

170.05.1 An ANS provider must, at all times, maintain an appropriate organisation with a sound and effective management structure to enable it to provide the air navigation service covered by its certificate and in accordance with requirements prescribed in this Part and the relevant part of the ANS Parts.

Personnel requirements: senior accountable manager and key personnel

170.05.2 (1) The senior accountable manager for the ANS provider, and the suitable key personnel, where relevant, designated in the manner prescribed in Subpart 3 of Part 140, must exercise the privileges under the certificate for the proper functioning and operation of the air navigation service it provides.

(2) The senior accountable manager for the ANS provider's organisation must ensure that every air navigation service listed in its manual of procedures -

- (a) can be sufficiently resourced; and
- (b) is provided in accordance with the requirements and standards prescribed in this Part and in the relevant part of the ANS Parts.

(3) The senior accountable manager must ensure that all activities listed in the manual of procedures of the ANS provider are carried out in accordance with the requirements of this Part, Part 71 and the relevant part of the ANS Parts.

(4) The senior accountable manager must -

- (a) ensure that all the air navigation service activities can be sufficiently resourced and carried out to meet applicable operational requirements;
- (b) have unrestricted access to work performed or activities undertaken by all other persons as employees of, and other persons rendering service under contract with, the ANS provider, and full rights of consultation with any of those persons in respect of compliance by each one of them;

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- (c) order cessation of any activity which the senior accountable manager considers to be unsafe to the operation or delivery of the air navigation service;
- (d) establish liaison mechanisms with the Executive Director with a view to ascertain compliance with requirements, and interpretations of such requirements, and to facilitate liaison between the Executive Director and the ANS units under the control of the ANS provider; and
- (e) report directly to the Executive Director on matters affecting operation and delivery of the air navigation service.

(5) The senior accountable manager must identify the following key personnel to assist him or her to ensure compliance with the specified requirements:

- (a) a safety manager who is responsible for safety across all of the air navigation service, and who has direct access to the accountable manager on matters affecting safety of the air navigation service; and
- (b) a quality control officer who is responsible for quality control across all the air navigation service, and who has direct access to the accountable manager on matters affecting quality of the air navigation service,

but, taking into account the size and complexity of an organisation, the safety officer and quality officer functions may be combined.

(6) An ANS provider must, in accordance with regulation 140.03.2, designate key personnel to enable it to provide the service in accordance with its manual of procedures.

(7) An ANS provider must -

- (a) ensure the competence of those personnel who are authorised by the service provider to provide the air navigation service, and training and assessment for each service, listed in the service provider's manual of procedures;
- (b) define arrangements and processes to be followed to ensure an adequate number of suitably trained and qualified staff are available in respect of each air navigation service it provides;

[The verb "are" should be "is" to be grammatically correct: "number... is...".]

- (c) establish arrangements that define the management responsibilities and processes for ensuring adequate supervision of staff;
- (d) establish procedures for assessing and maintaining the competence of personnel who are authorised to provide or supervise the air navigation service under this Part, including a mechanism for ensuring that only trained and competent staff undertake the provision of each air navigation service it provides;
- (e) maintain a record of all authorised personnel, which record must include particulars of the scope of their authorisations;
- (f) describe and provide its authorised staff with, the scope of their authorisation; and

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- (g) maintain the records required in paragraph (e) for a minimum period of five years from the date on which the personnel ceases to be an employee of the organisation.

(8) An ANS provider must provide all authorised personnel with written evidence of the scope of their authorisation including duties and responsibilities.

Accommodation of air navigation services facilities

170.05.3 An ANS provider must satisfy the Executive Director that -

- (a) it has sufficient resources for each service to be performed under its certificate;
- (b) the working environment is appropriate for each task carried out and, in particular, complies with requirements covered under its certificate;
- (c) appropriate office accommodation is provided for the administration of the services performed, including the administration of the organisation's safety, operational and planning functions and for maintenance of technical records; and
- (d) appropriate storage facilities are provided for, equipment, tools and materials required by the organisation.

Training and checking programme

170.05.4 (1) Each ANS provider must, in accordance with the requirements set out in the relevant part of the ANS Parts, implement a training and checking programme to ensure that an individual performing a function in connection with any air navigation service is competent and holds the appropriate qualification to perform the duties which he or she is assigned.

(2) An individual is considered to be competent as required by subregulation (1), if that individual is -

- (a) licensed where the function can only be performed by the holder of a licence;
- (b) certified where the function can only be performed by the holder of a certificate;
- (c) rated and validated, where the function can only be performed by the holder of an appropriate rating and validation;
- (d) endorsed, where the function can only be performed by the holder of an appropriate endorsement;
- (e) qualified, where the function can only be performed by the holder of an appropriate qualification;
- (f) appropriately trained and assessed to be proficient in the performance of their functions;
- (g) up-to-date with the current knowledge, skills and information that is or are necessary for the performance of his or her functions; and

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- (h) has knowledge and skills in emerging matters identified as essential to task performance.

(3) An ANS provider must develop a comprehensive training and checking programme to be approved by the Executive Director, that includes, initial, on-job-training, currency and recurrency, specialised and management training to ensure that each member of the technical personnel maintain the appropriate level of qualification.

- (4) An ANS provider must -

- (a) carry out training needs assessment to determine individual training needs;
- (b) develop periodic training plans for each technical personnel providing an air navigation service at each ANS unit based on the training programme; and
- (c) maintain training records for each technical personnel providing an air navigation service at each ANS unit, including records of trainings attended and the dates of training.

- (5) In developing training programmes and plans, an ANS provider must consider -

- (a) the human factors and human performance requirements for the provision of each air navigation service;
- (b) skills, knowledge and attitudes requirements for each air navigation position; and
- (c) competency requirements for each air navigation position.

Documents and records

- 170.05.5** (1) An ANS provider must -

- (a) establish a system for records which covers identification, collection, indexing, storage, security, maintenance, access and disposal of records necessary for the provision of the air navigation services it provides;
- (b) ensure availability of documents and records, including facility manuals, technical standards, manual of procedures, charts and any other documentation, to the ANS units personnel as necessary for the provision of the air navigation service listed in its certificate; and
- (c) ensure availability of documents and records relating to inspections and audits, including records of identified deficiencies and actions taken to resolve such deficiencies.

(2) The records system required by subregulation (1)(a) must provide an accurate chronicle of activities for the purpose of reconstruction of events for investigation, and for safety system analysis.

(3) An ANS provider must, at the request of the Executive Director or of an authorised officer, inspector or authorised person, make the documents and records, or copies, or extracts from them, available for inspection.

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Use and retention of documents and records

170.05.6 (1) A person may not -

- (a) use a certificate which has been forged, altered, revoked, or suspended, or to which he or she is not entitled;
- (b) forge or alter any certificate issued or required by or under a relevant part of the ANS Parts;
- (c) lend any certificate or exemption issued or required by or under a relevant part of the ANS Parts to any other person;
- (d) make any false representation for the purpose of procuring for himself or herself or any other person the grant, issue, renewal or variation of any such certificate or exemption; or
- (e) mutilate, alter, render illegible or destroy any records, or any entry made therein, by an ANS provider, or knowingly make, or procure or assist in the making of, any false entry in any such record, or intentionally omit to make a material entry in such record.

(2) All documents and records required to be maintained by or under this Part, Part 71 or any relevant part of the ANS Parts must be -

- (a) kept in a permanent and indelible material;
- (b) stored so that they can be retrieved if needed for an aviation safety investigation; and
- (c) retained for five years, unless a different period is otherwise provided for in the relevant part of the ANS Parts.

Control of documents and records

170.05.7 (1) An ANS provider must establish and put into effect -

- (a) a system for controlling documents and records which cover the authorisation, standardisation, publication, distribution and amendment of all documentation issued by the organisation, or required by the organisation for the air navigation service it provides; and
- (b) a procedure to identify, collect, index, store, maintain and dispose of the records that are necessary for, or a result of the provision of an air navigation service.

(2) The document control system established by an ANS provider must ensure that -

- (a) documentation is reviewed and authorisation of documents and records is made by the appropriate authority designated by the ANS provider to the provider's management and safety accountability structures;
- (b) that the currency of documents can be readily determined and that only current versions are available for operational use;

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- (c) current issues of relevant documentation are available to personnel at all locations where they need access to such documentation for the provision of the air navigation service;
- (d) operationally obsolete documentation is promptly removed from all points of issue or use;
- (e) changes to documentation are reviewed and approved by appropriate personnel;
- (f) a master copy of relevant documents and records is securely held;
- (g) the current version of each item of documentation can be identified to preclude the use of out-of-date editions; and
- (h) documents and records are archived where they have been superseded.

(3) An ANS provider must ensure that all documents that are related to and referenced in the manual of procedures are indexed in that manual.

Reports of violations

170.05.8 (1) Any person who knows of a violation of any regulations or directives issued under this Part, must report it to the Executive Director in the form and manner determined by the Executive Director.

(2) The Executive Director may determine the nature and type of investigation or enforcement action that need to be taken in the event of a reported violation in accordance with the provisions of the Act and Parts 13 and 185.

(3) If the person referred to in subregulation (1) is a participant in the Namibia civil aviation system, and that person refuses, fails or neglects to comply with that subregulation, the Executive Director may invoke the provisions of -

- (a) sections 42 or 43 of the Act regarding suspension or revocation of aviation documents or the imposition of conditions on those documents; or
- (b) Subpart 3 of Part 13 and 185 of these regulations regarding the imposition of administrative fines,

in order to ensure that the person complies with that subregulation.

Failure to comply with directive

170.05.9 (1) The Executive Director may authorise an inspection or investigation, as the case may be, into any allegation of non-compliance with an aviation directive or conditions of a certificate in respect of an ANS provider in accordance with Parts 13 and 185.

(2) A person who fails to comply with an aviation directive or conditions of a certificate in respect of an ANS provider in accordance with Part 13 of the Act commits an offence and is liable to the penalties specified in that Part or to any administrative penalties prescribed in Part 185.

Exemptions from air navigation services requirements

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170.05.10 (1) A certified air navigations service provider may apply to be exempted from any particular provision set out in Part 71 or in any part of the ANS Parts in accordance with section 46 of the Act and Part 3.

(2) The Executive Director may in accordance with section 46 of the Act and Part 3, grant an exemption from any of the provisions of this Part, Part 71 or any part of the ANS Parts, taking into account all safety-related aspects of the air navigation service provided.

(3) Where an exemption is granted in accordance with subregulation (2), the Executive Director may determine the conditions necessary to ensure an equivalent level of safety is established, and such conditions must be set out in an endorsement in the ANS provider's manual of operations.

(4) An ANS provider must comply with any conditions specified by the Executive Director under of subregulation (3).

Discontinuation or disruption of air navigation service

170.05.11 (1) A holder of an ANS provider certificate may not temporarily or otherwise, discontinue or disrupt the provision of an air navigation service for which it has been certified, unless it has given the Executive Director at least 180 days' written notice of the discontinuance or disruption.

- (2) Subregulation (1) does not apply if, having regard to the provider's circumstances -
 - (a) it was not reasonably possible for the provider to give at least 180 days' notice; and
 - (b) the provider gives the notice as soon as reasonably possible.

SUBPART 6
TRANSITIONAL PROVISIONS

Transitional provisions

170.06.1 (1) Where, before the commencement of this Part, an applicant for a certificate required under this Part was already lawfully providing an air navigation service whether in terms of any repealed law or not, the applicant may be exempted from certain requirements of this Part for a specified period as may be determined by the Executive Director.

(2) The Executive Director may, pursuant to section 67(3) of the Act, in the circumstances mentioned in subregulation (1), issue a transitional certificate in writing to the ANS provider to continue providing the services for a specified period which period may not exceed 18 months until a certificate is issued by the Executive Director.

- (3) A transitional certificate issued under this Subpart expires -
 - (a) on the date on which a certificate is issued under Subpart 2;
 - (b) on the expiry date specified by the Executive Director in the transitional certificate; or
 - (c) upon withdrawal of the transitional certificate in accordance with subregulation (6),

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whichever is the earlier.

(4) The requirements of this Part, apply, subject to changes required by the context to a transitional certificate issued by the Executive Director under this Subpart.

(5) The Executive Director may at any time, withdraw any transitional certificate issued under this Subpart upon recommendation by an authorised officer, inspector or authorised person, where a serious non-compliance which compromises safety is identified, and the air navigation service provider must immediately cease operations.

(6) The holder of a transitional certificate which has been withdrawn by the Executive Director in accordance with subregulation (5) may apply for re-issue of the transitional certificate as soon as the identified non-compliances have been resolved.