

REGULATIONS
Civil Aviation Act 6 of 2016
Namibian Civil Aviation Regulations, 2001

PART 185
OFFENCES, FINES AND RELATED MATTERS

[Part 185 is substituted by GN 293/2018.]

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SUBPART 1
OFFENCES

Presumptions and evidence

185.01.1 In criminal proceedings under the Act and these regulations the evidence on documentation must, in addition to the law regulating procedure and the admissibility of evidence in criminal matters, be dealt with subject to necessary changes required by the context as set out in regulation 13.02.02.

Offences

185.01.2 (1) A person commits an offence if that person -

- (a) hinders or obstructs an authorised officer, inspector or authorised person or an aviation medical examiner (AME) in the exercise of his or her powers or the performance of his or her duties;
- (b) when called upon by an authorised officer, inspector or authorised person to do so, refuses or fails to give his or her name and address or gives a false name or address;
- (c) obstructs or impedes any other person acting in the exercising or performance of any privileges, powers or duties conferred on such other person by or under the regulations;
- (d) makes or causes to be made, either orally or in writing -
 - (i) any fraudulent, misleading or false statement for the purpose of obtaining any licence, rating, certificate, permit, approval, authorisation, exemption or other document in terms of these regulations;
 - (ii) any fraudulent, misleading or false entry in any logbook, record or report which is required to be kept, maintained, made or used to show compliance with any provision of these regulations;
- (e) falsifies, counterfeits, alters, defaces or mutilates or adds anything to, any licence, rating, certificate, permit, approval, authorisation, exemption or other document issued in terms of these regulations;
- (f) does or causes, or permits to be done or caused, any act contrary to, or who fails to comply with any provision of these regulations or a direction given or a prohibition made or a condition imposed or a rule, an order or a directive made in terms thereof;
- (g) exercises a privilege granted by, or uses any, licence, rating, certificate, permit, approval, authorisation, exemption or other document issued under these regulations, of which he, she or it is not the holder;
- (h) unless otherwise authorised by these regulations, permits a licence, rating, certificate, permit, approval, authorisation, exemption or other document issued under these regulations, of which he, she or it is the holder, to be used, or a privilege granted thereby, to be exercised, by any other person;

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- (i) operates or attempts to operate any aircraft in respect of which no valid certificate of registration or a valid certificate of airworthiness have been issued;
- (j) commits any act, whether by interference with any flight crew member, air traffic service (ATS) personnel member or by tampering with any aircraft or any part thereof or by disorderly conduct or otherwise, which is likely to endanger the safety of any aircraft or its occupants;
- (k) without the permission of an aerodrome or heliport operator, enters any place within the boundaries of a certified or licensed aerodrome or heliport or other aerodrome regulated under Part 139, which has been closed to the public; or
- (l) gives false information pertaining to the investigation of any aviation accident or incident.

(2) Any person who is convicted of an offence in terms of subregulation (1) is liable the penalties stipulated in section 54(2)(c)(ii) of the Act.

SUBPART 2
ADMINISTRATIVE FINES

Applicability

185.02.1 (1) The offences set out in regulation 185.01.2 are applicable for purposes of this Subpart as if it is a violation of these regulations subject to the threshold amounts for administrative fines as set out in this Subpart.

(2) The offences in Parts 13, 14, 15 and 16 of the Act are applicable for purposes of this Subpart as if it is a violation of these regulations subject to the threshold amounts for administrative fines as set out in this Subpart.

Threshold amounts and conditions

185.02.2 (1) For the purposes of regulation 185.02.1, the maximum administrative fine that may be imposed by the Authority under these regulations is N\$200 000, but subject to compliance with the administrative fine notice requirements provided for in regulation 13.03.3.

(2) In addition to the requirements of regulation 13.04.1 on the resolution of an internal review, the Executive Director may impose administrative daily fines not exceeding N\$2000 for each day of non-compliance which amount may not exceed the threshold set out in subregulation (1) in respect of each case of a violation.

- (3) The administrative fine amounts imposed in terms of this Subpart may -
 - (a) be suspended by the Executive Director wholly or in part;
 - (b) be imposed to run concurrently with another administrative fine already imposed by the Executive Director; or
 - (c) run consecutively with an administrative fine imposed for another violation of these regulations before or after the administrative fine imposed on the current matter or be separated from it, at the discretion of the Executive Director,

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and subject to any conditions as determined by the Executive Director in each instance.

(3) If any person fails to pay an administrative fine imposed on that person in terms of these regulations within the specified period, the Executive Director may recover such administrative fine from that person in the manner contemplated in section 65 of the Act.

[There are no subregulations numbered (4) or (5) in the *Government Gazette*.]

(6) In the event that the holder or participant seeks the review of a decision taken by the Executive Director to impose an administrative fine in terms of Subpart 4 of Part 13 or by way of appeal to the High Court, the Executive Director may not implement or enforce that decision until the appeal or review process is concluded and must waive the administrative fine amount during the review process.

(7) An administrative fine already paid may be refunded, if so recommended as a result of an investigation conducted pursuant to section 41 of the Act or upon reversal of the Executive Director's decision by a competent court.

Criteria and determinations for imposition of administrative fines

185.02.3 (1) The Executive Director may consider any or all of the following criteria and determinations when appraising or taking a decision to impose an administrative fine on holders or participants, inclusive of a decision on an aviation document, as the case may be:

- (a) nature of the violation;
- (b) the extent to which the violation was intentional, deliberate or negligent;
- (c) the seriousness or severity of the violation;
- (d) whether the violation has the potential of hindering the Executive Director or an authorised officer, inspector or authorised person from ensuring civil civil aviation safety and security;

[The word "civil" is repeated in the *Government Gazette*, as reproduced above.]

- (e) the duration and frequency of the violation;
- (f) the behaviour of the holder or participant after the violation;
- (g) whether the holder or participant brought the violation to the attention of the Authority, the Executive Director, an inspector authorised officer or authorised person or any law enforcement agency;

[A comma appears to be missing between the word "inspector" and the term "authorised officer".]

- (h) whether the holder or participant has taken reasonable steps to put in place effective remedial steps or corrective action, to discontinue the violation;
- (i) if prior actions taken by the Authority in the form of an infringement notice, warning, meeting or order, proved ineffective to deter the violation;

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- (j) previous records and compliance history of the holder or participant, or his or her predecessor in title in its operations within the 12 months period immediately before the violation;
- (k) whether the holder or participant derived any economic benefit from the violation or had safety and economic impact on any other third party;
- (l) the general status of the holder or participant regarding operations or ability to comply with the aviation document at the time of the imposition of the administrative fine or during any on-site or off-site investigation; and
- (m) whether the violation will or has the potential of introducing any risks in the relevant holder's or participant's operational manual or any other manual required under the aviation document.

(2) The Executive Director may consider any other criteria or determination not listed under subregulation (1), if it is considered material and appropriate when appraising or taking a decision to impose an administrative fine.

(3) The criteria and determinations referred to in subregulations (1) and (2) and coupled with the mitigating factors with various weights assigned to each criteria and determination and factor and summarised in Appendix 1 must be applied using the format set out therein to determine the appropriate assessed amount for payment of the administrative fine.

(4) The appropriate administrative fine amount is outlined in Appendix 2 and is dependent on the score obtained from Appendix 1.

(5) In determining the violation and the appropriate administrative fine to be imposed, it must be presumed that each violation relying on the same or similar facts, or intent, constitutes a single violation such that only a single administrative fine amount as specified in regulation 185.02.2 may be imposed for such violation.

**[Regulation 187.00.23 is substituted by GN 210/2018.
The substituted regulation includes the following two appendices.]**

APPENDIX 1

ASSESSMENT DETERMINATIONS MATRIX
(Regulation 185.02.3(3))

[A] Assessment determination	0	1	2	3	4	5	Weight [A]+[B] 1	Severity score	Value (Weight x severity)
[B] Severity levels of violation	None	Low level	Medium- low level	Medium (moder- ate) level	High- medium level	High level			
Intent	None	Should have known	-	Non- malicious intent		Deliber- ate	5		
Likelihood of recurrence	None	Unlikely		Likely		Signifi- cant like- lihood	5		

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Hindrance	None	Low impact	Medium to low impact	Medium (moderate impact)	High-medium impact	High impact	4		
Duration (after notification)	Zero/immediate	2 weeks	One month	6 weeks	Two months	10 weeks	4		
Frequency	Zero	One violation	-	Two violations		Several violations	4		
Previous records / compliance history	None	Prior cautionary advices	Prior warning for similar violation	Minor case of prior warning for similar violation	Investigation launched for violation	Adverse finding on investigation outcome	3		
Continuation after notification/warning	No notification/warning received	Ceased immediately	Ceased within one weeks	Ceased within 2 weeks		Ceased within 3 weeks	4		
Informed NCAA about compliance delay	Immediately	Less than 24 hours	Less than two days	Not later than one week	Not later than two weeks	Not later than three weeks	4		
Cooperation with NCAA	Full timely cooperation & corrective action	Acceptable cooperation		Significant cooperation	Insignificant cooperation	Unacceptable cooperation	4		
Benefits derived	None	Minimum benefit to participant	-	Moderate benefit		Significant benefit	3		
Level of negligence	Oblivious			Ignorant	Deviant	Negligent	4		
History of previous fines	None	Prior cautionary advices	Prior warning for similar violations		More than two prior warnings for similar violation	More than three violations	3		
Operations & documents usage abilities	Documentation inadequate	Documentation not available		Documentation defaced or breached		No reporting on documentation lost/misplaced/no reporting	3		
Voluntary information to NCAA	Contravention observed / detected by NCAA	Contravention reported by 3 rd party		Delay in reporting violation		Comprehensively informed NCAA; full facts disclosed	-3		
Corrective actions/ plans	None	Submitted one week beyond required deadline	Submitted two weeks beyond required deadline	Submitted two weeks late and incomplete	Not submitted within extended deadline period	Failure to submit despite warning issued to submit	-4		

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Compliance program levels	None	Supportive information lacking	Supportive information provided	Manuals in some respects complied with.	Manuals in many respects complied with	Manuals fully complied with	-5		
TOTALS									

Assessment total score

TOTAL	
Divided by 4	
Grand total	

APPENDIX 2

ADMINISTRATIVE FINEA AMOUNTS
[The word “FINE” is misspelt in the *Government Gazette*.]
(Regulation 185.02.3(4))

Violations severity Points lower bound	Violations severity Points upper bound	Admin fine lower bound Max N\$	Admin fine upper bound Max N\$	Recommended administrative fine N\$
1-11	12-20	2001	20000	
21-41	42-60	20001	80000	
61-71	72-80	80001	100000	
81-91	82-90	100001	150000	
91-95	96-100	150001	200000	

Recommended

Date

Designated inspector/authorised officer /authorised person

Approved

Date

EXECUTIVE DIRECTOR

[Government Notice 89/2020 amends the regulations globally to substitute the expression “authorised officer, inspector or authorised person” for the expression “designated inspector, authorised officer or authorised person”. No change has been made here to the phrase “Designated inspector/authorised officer /authorised person” which appears above the signature, but the intention may have been for this term to be substituted by the term “Authorised officer /inspector/authorised person”.]