

THE AIRPORTS (ECONOMIC REGULATION) ACT

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AIRPORTS (ECONOMIC REGULATION)

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THE AIRPORTS (ECONOMIC REGULATION) ACT

Act
6 of 2002.

[31st December, 2002.]

1. This Act may be cited as the Airports (Economic Regulation) Act. Short title.

PART I. *Preliminary*

2.—(1) In this Act—

Interpre-
tation.

“aircraft operator” means the person who, at the relevant time, has the management of the aircraft;

“airport charges”, in relation to an airport, means charges levied—

(a) on an aircraft operator in connection with the landing, parking or taking off of aircraft at the airport (including charges that are to any extent determined by reference to the number of passengers on board the aircraft but excluding charges payable in respect of air navigation services);

(b) on aircraft passengers in connection with their arrival at or departure by air from an airport but excluding—

(i) departure tax;

(ii) the airport improvement fee; and

(iii) any other fee or charge payable in respect of an airport pursuant to any enactment for the time being in force and which forms part of the general revenues of Jamaica;

“airport improvement fee” means the fee imposed pursuant to section 6;

AIRPORTS (ECONOMIC REGULATION)

“Airports Authority” means the Airports Authority of Jamaica established under the Airports Authority Act;

“appointed day” means the 31st day of December, 2002;

“approved airport operator” means the Airports Authority or any other person approved by the Minister to operate an airport or any part thereof under section 4;

“Authority” means the Civil Aviation Authority established under the Civil Aviation Act;

“international air transport” means air transport between a place in Jamaica and a place outside Jamaica;

“operational activities” means activities—

- (a) that are carried out wholly or mainly for the benefit of users of an airport; and
- (b) the revenues from which are wholly or mainly attributable to payments by those users;

“relevant activities”, in relation to an airport, means the provision of services or facilities at that airport for the purposes of—

- (a) the landing, parking or taking off of aircraft at the airport;
- (b) the servicing of aircraft at the airport (including the supply of fuel); or
- (c) subject to subsection (2), the handling of passengers or their baggage or of cargo at all stages while on the airport premises (including the transfer of passengers and their baggage or of cargo to or from an aircraft).

(2) The facilities referred to in paragraph (c) of the definition of “relevant activities” in subsection (1) do not include—

- (a) the parking of motor vehicles;
- (b) the refreshment of passengers; or
- (c) the supply of consumer goods or services.

(3) The Minister may, by order, make such modifications to the definition of “operational activities” as he thinks necessary or expedient having regard to Jamaica’s international obligations.

3.—(1) The Authority shall perform its functions under this Act in such manner as it considers best calculated to—

- (a) further the reasonable interests of users of airports within Jamaica and to provide economical and reliable services to those users by establishing a system for the regulation of airports that takes account of those interests;
- (b) promote the efficient, economic and profitable operation of airports;
- (c) ensure compliance with such international obligations of Jamaica as may be notified to the Authority by the Minister;
- (d) create an enabling environment for potential investors in airports;
- (e) encourage investment in new facilities at airports in time to satisfy demands by users of the airports;
- (f) impose such restrictions on the airport operator as are consistent with the performance by the Authority of its functions;
- (g) further such vital public interests as may be notified to the Authority by the Minister from time to time; and

Perform-
ance of
functions of
Authority
under this
Act.

(h) ensure that the airport is operated in accordance with performance standards and service levels consistent with best industry practices.

(2) In making a decision in the exercise of its functions under this Act, the Authority shall observe reasonable standards of procedural fairness, act in a timely fashion and observe the rules of natural justice, and, without prejudice to the generality of the foregoing, the Authority shall—

(a) consult with persons who are or are likely to be affected by the decision;

(b) give to such persons an opportunity to make submissions and to be heard by the Authority;

(c) have regard to the evidence adduced at any such hearing and to the matters contained in any such submission;

(d) give reasons in writing for each decision;

(e) give notice of each decision in the prescribed manner.

Airports
subject to
economic
regulation.
Schedule.

4.—(1) The airports specified in the Schedule shall be subject to economic regulation under this Act.

(2) The Minister may amend the Schedule by order subject to affirmative resolution.

(3) Where an airport is the subject of economic regulation under this Act, the provisions of section 24 of the Airports Authority Act (Power of Minister to reassign Authority's functions) shall not apply to that airport and the Minister may authorize the Airports Authority to enter into arrangements for the airport or parts thereof to be operated by an approved airport operator on such terms and conditions as the Minister may approve.

(4) The terms and conditions referred to in subsection (3) shall not affect the exercise by the Authority of its regulatory powers under this Act.

(5) Where the Minister approves arrangements under subsection (3) he may, by order, provide for the transfer from the Airports Authority to the approved airport operator, of such of its assets and liabilities and on such terms and conditions as may be specified in the order.

(6) The Minister may by order designate a person to operate an airport or parts thereof as an approved airport operator for the purposes of this Act.

5.—(1) The Minister responsible for national security may give to any approved airport operator or operators generally, such directions of a general character as appear to the Minister to be necessary or expedient in the interests of national security, including a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction, if the Minister considers such a direction necessary or expedient in the interests of national security.

Directions
to airport
operator in
interests of
national
security.

(2) The Minister may give to—

- (a) any approved airport operator such directions of a general character as appear to the Minister to be necessary or expedient in the interests of relations with a country or territory outside of Jamaica;
- (b) an approved airport operator or any company which is an associate of that operator, a direction, in relation to any airport, requiring that operator or company (according to the circumstances of the case)—
 - (i) to do, or not to do, in connection with any operational activities relating to the airport, a particular thing specified in the direction;
 - or

- (ii) to ensure that a particular thing specified in the direction is done or not done in connection with any such activities,

if the Minister considers such a direction necessary or expedient in order to discharge or facilitate the discharge of any international obligation of Jamaica.

(3) In so far as any direction applying to an approved airport operator by virtue of subsection (1) or (2) conflicts with the requirements of any other enactment or instrument having effect in relation to him as an airport operator, those requirements shall be disregarded; and it is hereby declared that nothing in this Act shall be construed as prejudicing the generality of subsection (2).

(4) The Minister shall cause a copy of every direction given under this section to be laid on the Table of the House of Representatives and of the Senate, unless he is of the opinion that disclosure of the direction is against—

- (a) the interests of national security or of relations with a country or territory outside of Jamaica; or
- (b) the commercial interests of any person.

(5) A person shall not disclose, or be required by virtue of an enactment or otherwise to disclose, any direction given or other thing done by virtue of this section if the Minister has notified him that, in the Minister's opinion, disclosure of that direction or thing is against the interests specified in subsection (4) (a) and (b).

(6) The Minister responsible for national security or the Minister, shall, before giving a direction under subsection (1) or (2)—

- (a) to a particular person, consult that person;

(b) to approved airport operators generally, consult such of the following persons as he considers appropriate, namely—

- (i) approved airport operators who appear to him to be likely to be affected by the directions; and
- (ii) organizations representing approved airport operators.

(7) Any person who contravenes subsection (5) shall be guilty of an offence and liable on summary conviction before a Resident Magistrate, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years.

PART II. *Airport Improvement Fee*

6.—(1) The Minister may, by order subject to affirmative resolution, impose an airport improvement fee to be paid by each passenger using an airport for the purpose of travel from Jamaica.

Airport
improvement
fee

(2) The airport improvement fee shall not be payable by such categories of passengers as may be prescribed.

(3) The Minister may, upon application made by or on behalf of any person who has paid or is liable for payment of the airport improvement fee under this Act, waive, remit or refund such fee in whole or in part if, in the circumstances of the case, he deems it expedient to do so and any such waiver, remission or refund may be subject to such special conditions as the Minister may impose.

(4) An order under subsection (1) shall provide for the payment and collection of the airport improvement fee.

Schedule. (5) Moneys collected by way of airport improvement fee shall be paid into a special fund which shall be established for that purpose and be applied to purposes conducive to capital improvements at airports specified in the Schedule, on such terms and conditions as are specified in regulations under section 21.

(6) The Minister shall authorize all expenditure from the fund referred to in subsection (5).

PART III *Airport Charges*

Requirement for permission to levy charges. 7.—(1) No airport charges shall be levied at a scheduled airport unless—

- (a) they are levied by the approved airport operator; and
- (b) the Authority has granted permission for and has approved the levying of such charges.

(2) Where any person levies any airport charges in contravention of subsection (1) he shall not be guilty of an offence by reason only of that contravention but any airport charges so levied shall not be recoverable by him and in so far as they have been paid to him, shall be recoverable from him.

Grant or refusal of permission to levy charges. 8.—(1) An approved airport operator may apply to the Authority for permission to levy airport charges.

(2) An application under subsection (1) shall—

- (a) contain such particulars with respect to such matters as the Authority may specify in a notice published in the prescribed manner; and
- (b) be accompanied by the prescribed fee.

(3) Where an application is made under subsection (1), then, as from the date of the application or the date when the airport becomes a scheduled airport under this Act (whichever is the later) there shall, by virtue of this subsection, be deemed for all purposes to be a permission in force under this Act in respect of any existing airport charges levied at that airport until—

- (a) the Authority grants permission in relation to the application; or
- (b) the application is withdrawn or the Authority notifies the applicant in writing that the permission is refused.

(4) Any permission granted under this section in relation to an airport shall come into force on the later of the following dates, namely—

- (a) the date on which it is granted; or
- (b) the date on which the airport becomes a scheduled airport under this Act,

and such permission shall remain in force until it is revoked pursuant to section 17.

(5) Where the Authority grants permission to an approved airport operator to levy any airport charges, that approved airport operator shall, before levying such charges—

- (a) consult with such categories of persons as may be prescribed; and
- (b) obtain the approval of the Authority for the levying of such charges.

(6) In determining whether to approve airport charges the Authority shall take into account—

- (a) the objectives referred to in section 3;
- (b) the efficiency of the operations;
- (c) compliance with quality and performance standards;
- (d) performance by the operator in terms of commitments undertaken under the conditions by which he was approved as an airport operator;
- (e) whether the proposed charges would be reasonable in light of the services provided;

(f) whether the proposed charges can be justified taking into account revenues from the operations of the airport from all sources including aeronautical and so much of the non-aeronautical revenues as the Authority deems appropriate.

(7) A permission granted under this section shall remain in force notwithstanding any change in the approved airport operator.

PART IV. *Conditions*

Conditions. **9.—(1)** Every approved airport operator to whom permission is granted under this Act shall comply with such conditions as are imposed by the Authority in relation to the grant of such permission.

(2) The Authority shall impose such conditions as it considers necessary for the proper performance of its functions under this Act.

Mandatory conditions for scheduled airports. **10.—(1)** Where an airport becomes a scheduled airport for the purposes of this Act, the Authority shall, at the time when it grants permission under section 8(3), impose any conditions as to the accounts and airport charges in relation to the airport within the period of nine months beginning with the date on which the airport becomes a scheduled airport.

(2) The conditions as to accounts referred to in subsection (1) are—

(a) such conditions as the Authority considers appropriate to ensure that the approved airport operator's accounts disclose—

- (i) any subsidy given (whether by the making of loans on non-commercial terms or otherwise) by any person or authority to the approved airport operator in connection with his business consisting of the carrying on of operational activities relating to the airport and the identity of any such person or authority;
 - (ii) any subsidy so given to that business by the approved airport operator out of funds attributable to any other activities carried on by him;
 - (iii) the approved airport operator's aggregate income and expenditure attributable to the levying by him of airport charges at the airport;
 - (iv) the approved airport operator's aggregate income and expenditure attributable to operational activities relating to the airport (whether carried on by that airport operator or any other person) being income and expenditure which are taken into account by him in fixing airport charges; and
 - (v) where the approved airport operator has for the time being the management of two or more airports, the airport operator's aggregate income and expenditure attributable to the business carried on by him at each of those airports; and
- (b) where the approved airport operator's accounts are not required to be delivered to the Registrar of Companies in accordance with the Companies Act, such conditions as the Authority considers appropriate with respect to the publication of those accounts.

AIRPORTS (ECONOMIC REGULATION)

(3) The approved airport operator shall deliver to the Authority copies of accounts delivered to the Registrar of Companies in accordance with that Act or published in accordance with subsection (2) (b).

(4) The conditions as to airport charges referred to in subsection (1) are such conditions as the Authority considers appropriate for regulating the maximum amounts that may be levied by the approved airport operator by way of airport charges at the airport during the period of five years beginning with such date as may be specified by the Authority when imposing the conditions, being not later than the end of the period of twelve months after the date on which the conditions are imposed.

(5) Subject to subsection (11), the Authority shall—

(a) at the end of the period of five years specified in subsection (4); and

(b) at the end of each succeeding period of five years, make such modifications in the conditions imposed pursuant to subsection (4) as it thinks appropriate for regulating during the succeeding period of five years, the maximum amounts that may be levied by the approved airport operator by way of airport charges at the airport.

(6) Notwithstanding the provisions of subsection (5), the period of review referred to therein may be modified to take into account any agreement between the approved airport operator and the Airports Authority which has been approved by the Government and notified to the Civil Aviation Authority by the Minister.

(7) Any reference in this Part to the making of modifications in any such conditions includes a reference to the making of a modification the effect of which is merely to extend the application of a particular condition or conditions for a further period of five years.

(8) Without prejudice to the generality of subsections (4) and (5), conditions imposed or modified pursuant to those subsections may—

(a) provide for—

- (i) an overall limit on the amount that may be levied by the approved airport operator by way of airport charges at the airport;
- (ii) limits to apply to particular categories of charges; or
- (iii) a combination of any such limits;

(b) operate to restrict increases in any such charges or to require reductions in them, whether by reference to any formula or otherwise;

(c) provide for different limits to apply in relation to different periods of time within the period of five years for which the conditions are in force.

(9) Notwithstanding the foregoing provisions of this section, if exceptional circumstances arise during a five-year period which may justify reconsideration of airport charges, the approved airport operator may submit an application to the Authority which shall, after conducting an investigation under section 11, consider that application, taking into account the provisions under section 8(5) and (6).

(10) The Authority may, if it thinks fit and after consultation with the approved airport operator concerned, determine, at any time during the period of five years for which conditions under subsection (4) are in force, that such period shall be extended by such period (not exceeding twelve months) as may be specified; and accordingly, any reference in this Part to that period shall be construed as a reference to the period as extended pursuant to this subsection.

(11) Where the Authority makes any such determination in the case of conditions providing for different limits to apply in relation to different periods of time, any limit applying to the last of those periods shall apply also in relation to the additional period referred to in subsection (10) unless the Authority and the approved airport operator agree that some other limit shall apply instead.

(12) Before imposing any conditions pursuant to subsection (4) or making any modifications pursuant to subsection (5) in relation to an airport, the Authority shall act in accordance with section 11 unless the Minister otherwise directs.

Investigations
by Authority.

11.—(1) For the purposes of section 10 (12), the Authority shall investigate—

(a) the question as to what are the maximum amounts that should be capable of being levied by the approved airport operator by way of airport charges at the airport during such period of five years as the Authority may determine; and

(b) the matters specified in subsection (2).

(2) The matters referred to in subsection (1) (b) are—

(a) whether the approved airport operator has, at any time during the period determined by the Authority, pursued a course of conduct which might be expected to operate against the public interest, in relation to—

(i) any airport charges levied by him at the airport;

(ii) any operational activities carried on by him and relating to the airport; or

(iii) the granting of a right by virtue of which any such operational activities may be carried on by any other person; and

- (b) whether the effects adverse to the public interest which that course of conduct has had or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any conditions already in force in relation to that airport.

(3) In determining whether any particular matter has operated or might be expected to operate, against the public interest, in the case of a matter relating to the granting of a right by virtue of which any operational activities may be carried on by any person, the Authority shall have regard to the objective of furthering the reasonable interests of persons granted such rights.

12.—(1) The Authority shall submit to the Minister, a report of its findings in respect of an investigation under section 11 and shall give a copy thereof to the approved airport operator concerned. Report of Authority.

(2) In making a report in relation to an investigation the Authority—

(a) shall include definite conclusions on the matters specified in section 11 (1) together with an account of the reasons for those conclusions as, in the Authority's opinion, is expedient for facilitating proper understanding of those matters and of the conclusions;

(b) where the Authority concludes—

(i) that any course of conduct specified has operated or might be expected to operate, against the public interest, it shall specify the effects adverse to the public interest which that course of conduct has had or might be expected to have; and

- (ii) that any such adverse effects could be remedied or prevented by the imposition of any conditions in relation to the airport in question or by the modification of any existing conditions,

it shall specify the conditions that should be imposed or modified, as the case may be.

(3) The Authority shall, subject to subsection (4), publish the report in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected thereby.

(4) If it appears to the Minister that the publication of any matter in such a report would be against the public interest or the commercial interest of any person, he may, within twenty-one days after receiving a copy of the report, direct the Authority to exclude that matter from the report as published under subsection (3).

Obligation for
secrecy.

13.—(1) Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential all information relating to applicants and applications for permission under this Act and the management and operation of approved airport operators; and
- (b) upon assuming such duty or employment, make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person referred to in subsection (1) having possession of or control over any documents, information or records, who at any time communicates or attempts to communicate anything contained in such documents or records or any such information to any person—

- (a) other than the Authority, or any other person to whom he is authorized by the Minister or the Authority to communicate it;
- (b) without the written consent of the applicant or the approved airport operator; or
- (c) otherwise than pursuant to a court order or for the purposes of this Act,

shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(3) Any person to whom information is communicated pursuant to subsection (2) shall regard and deal with such information as secret and confidential and shall make and subscribe a declaration to that effect before a Justice of the Peace.

(4) A person referred to in subsection (3) who at any time communicates or attempts to communicate any information referred to in that subsection to any person otherwise than for the purposes of this Act, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

14.—(1) Where, at the time of granting a permission under section 8 in respect of an airport or at any other time while such permission is in force, it appears to the Authority that the approved airport operator is pursuing a course of conduct specified in subsection (2), the Authority may, if it thinks fit, impose in relation to the airport such conditions as it considers appropriate for the purpose of remedying or preventing what it considers are the adverse effects of that course of conduct.

Discretion-
ary condi-
tions.

(2) The courses of conduct referred to in subsection (1) are—

(a) the adoption by the approved airport operator, in relation to any relevant activities carried on by him at the airport, of any trade practice or pricing policy which—

- (i) unreasonably discriminates against any class of users of the airport or any particular user; or
- (ii) unfairly exploits his bargaining position relative to users of the airport generally;

(b) the adoption by the approved airport operator, in relation to the granting of rights by virtue of which relevant activities may be carried on at the airport by any other person, of any practice which—

- (i) unreasonably discriminates against persons granted any class of such rights or any particular grantee of such a right or unfairly exploits his bargaining position relative to the grantees of such rights generally; or
- (ii) unreasonably discriminates against any class of persons applying for such rights or any particular applicant, or unreasonably limits the number of such rights that are granted in the case of any particular services or facilities,

or which has resulted in the adoption by any other person of a practice that does any of those things;

(c) the fixing by the approved airport operator of any charges levied by him at the airport in relation to any relevant activities carried on by him there at levels which—

- (i) are insufficient (after taking into account such other revenues (if any) as are relevant to the fixing of such charges) to cover the costs of providing the services or facilities to which the charges relate or are, in the Authority's opinion, artificially low; and
- (ii) materially harm (or are intended to materially harm) the business carried on by an approved airport operator at any other airport.

(3) In subsection (2) (c) (i) the reference to the levels at which charges are fixed being artificially low is a reference to such levels being significantly lower than they would otherwise have been—

- (a) by reason of any subsidy as described in section 10 (2) (a) (i) and (ii); or
- (b) where the approved airport operator is a company, by reason of any conduct by the company which, in the Authority's opinion, has resulted or is likely to result in a failure by the company—
 - (i) to achieve a reasonable return on the capital employed by it in carrying on operational activities relating to the airport; or
 - (ii) to distribute to members of the company a reasonable proportion of the profits available for distribution; or
 - (iii) to reach a level of borrowing which is appropriate having regard to its share capital.

(4) In determining for the purposes of subsection (3) (b) what is reasonable or appropriate, as the case may be, the Authority shall—

- (a) disregard the fact that the relevant conduct by the company was in conformity with any policy for the time being of a person having control of the company;
- (b) have regard to any circumstances which, in its opinion, would affect any company carrying on the business of operating the airport as a commercial undertaking.

(5) Before imposing any conditions under subsection (1), the Authority shall notify in writing the approved airport operator concerned of the course of conduct specified in subsection (2) which it appears to the Authority that he is pursuing and of the conditions which the Authority intends to impose.

(6) For the purposes of this section the Authority shall investigate whether—

- (a) any course of conduct referred to in subsection (2) has operated or might be expected to operate against the public interest; and
- (b) the effects adverse to the public interest which that course of conduct has had or might be expected to have, could be remedied or prevented by the imposition of any conditions in relation to the airport or by the modification of any existing conditions.

Provisions
supplemen-
tary to section
14.

15.—(1) Nothing in section 14 (1) shall be construed as authorizing the Authority to impose a condition—

- (a) providing for any such overall limit as is mentioned in section 10 (8) (a) (i) (limit on airport charges); or
- (b) regulating the maximum amount that may be levied by an approved airport operator by means of any particular category of charges levied by him at an airport if the same category of charges is for the time being subject to any limit or limits imposed pursuant to section 10 (8) (a) (i) or (iii).

(2) In determining whether—

(a) an approved airport operator is pursuing a course of conduct falling within section 14 (2) (a); or

(b) conditions should be imposed by it under section 14 (1) in relation to the airport in question,

the Authority shall take into account any advice given by the Minister for the purposes of this subsection as to practices currently adopted at airports outside Jamaica.

(3) Where an aircraft operator whose principal place of business is outside Jamaica makes representations to the Authority to the effect that the Authority's powers under section 14 (1) appear to be exercisable in relation to an airport on the ground that the approved airport operator is pursuing a course of conduct within section 14 (2) (a), the Authority shall notify the Minister of those representations for the purpose of enabling the Minister to determine whether to give any advice to the Authority for the purposes of subsection (2) of this section.

16.—(1) Where—

(a) a complaint is made to the Authority that an approved airport operator is in contravention of any condition imposed by the Authority in relation to any airport; and

(b) such complaint is made—

(i) by any person on whom any airport charges have been levied by the approved airport operator at the airport (whether or not actually paid by the person); or

(ii) by any other approved airport operator who claims that the business carried on by him at another airport in Jamaica has been or is being materially harmed by the alleged contravention,

the Authority shall investigate that complaint, unless it considers it to be frivolous.

Enforce-
ment of
conditions
other than
accounts
conditions.

(2) Where any such complaint is made to the Authority by a person not falling within subsection (1) (b), the Authority may investigate the complaint if it thinks fit.

(3) This section shall not apply to a condition to which section 18 applies (breach of accounts conditions).

(4) Where, upon an investigation the Authority is satisfied that an approved airport operator has contravened the condition in question the Authority shall—

(a) by order (hereinafter referred to as a compliance order) provide such measures as it considers appropriate for the purpose of securing compliance with that condition and for remedying any loss or damage or injury suffered by any person in consequence of the contravention; or

(b) subject to subsection (5), modify the condition in such manner as it considers appropriate in the circumstances.

(5) A compliance order under subsection (4) (a)—

(a) shall require the approved airport operator concerned to do or to refrain from doing, such things as are specified in the order; and

(b) shall, as respects any such requirement, take effect upon service of a copy on the approved airport operator or at such later time as may be specified by the Authority;

(c) may be revoked by the Authority at any time.

Validity and
effect of
compliance
order.

17.—(1) An approved airport operator who is aggrieved by any compliance order applying to him may, within thirty days of the service of a copy of the order on him, make an application to the Court under this section on the ground that the order is not within the powers of section 16.

(2) On any such application the Court may quash the compliance order or any part thereof if the Court is satisfied that the order is not within the powers conferred by section 16.

(3) No criminal proceedings shall, by virtue of the making of a compliance order, lie against any person on the ground that he has committed or aided, abetted, counselled or procured the commission of any contravention of the order.

(4) The obligation to comply with a compliance order is a duty owed to any person who may be affected by a contravention of it and accordingly—

(a) any breach of the duty which causes that person to sustain loss or damage; and

(b) any act which, by inducing a breach of that duty or interfering with its performance, causes that person to sustain loss or damage and that is done wholly or partly for the purpose of achieving that result,

shall be actionable at the suit or instance of that person.

(5) In any proceedings brought against any person pursuant to subsection (4) (a), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(6) Without prejudice to any right which any person may have by virtue of subsection (4) (a) to bring civil proceedings in respect of any contravention of a compliance order, the Authority may enforce compliance with any such order by proceedings for an injunction or any other appropriate relief.

(7) Where it appears to the Authority that an approved airport operator has contravened a compliance order and is unlikely to comply with it in the immediate future, the Authority may, instead of proceeding under subsection (6), revoke the permission for the time being in force under this Part in respect of the airport to which the contravention relates.

(8) Where any such permission is revoked pursuant to subsection (7), a permission shall not again be granted under this Part in respect of the airport in question so long as that person remains the approved airport operator unless the Authority is satisfied as mentioned in subsection (9).

(9) Permission may be granted in respect of the airport referred to in subsection (8) if it appears to the Authority that, if it were to impose any condition corresponding to the one the breach of which gave rise to the making of the compliance order, the approved airport operator would comply with that condition.

Breach of
accounts
conditions and
penalties.

18.—(1) An approved airport operator who fails to comply with any condition imposed pursuant to section 10 (2) (a) shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars.

(2) Where an approved airport operator has failed to comply with a condition referred to in subsection (1), then, whether or not proceedings are brought under that subsection in respect of that contravention, the Authority may impose, in relation to the airport to which the contravention relates, such conditions as it considers appropriate with respect to the publication of any matter to which the contravention relates.

(3) An approved airport operator who fails to comply with any condition imposed pursuant to subsection (2) before the end of the period allowed for such compliance, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding five million dollars.

(4) In any proceedings for an offence under this section it shall be a defence for the person charged to show—

(a) in the case of an offence under subsection (1), that he took all reasonable steps for securing compliance with the relevant condition; or

- (b) in the case of an offence under subsection (3), that he took all reasonable steps for securing compliance with the relevant condition before the end of the period allowed for such compliance.

19.—(1) Any condition imposed by the Authority under this Part otherwise than pursuant to section 10 (4), shall remain in force for a particular period or without limit of time, as the Authority may determine, and, in imposing the condition, the Authority shall specify—

Supplemen-
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- (a) the period that it is to remain in force; or
(b) that the duration thereof is unlimited.

(2) Where the Authority specifies a period under subsection (1) (a), it may, if it thinks fit, determine that the period shall be extended by such further period as may be specified in the determination.

(3) The Authority may at any time revoke or modify any conditions in force in relation to a scheduled airport pursuant to section 10 (2).

(4) Where any conditions referred to in section 14 (1) are in force in relation to a scheduled airport, the Authority may at any time revoke or modify those conditions.

(5) Before making any modification under subsection (4) for the more effective securing of the purpose for which the relevant conditions were imposed, the Authority shall in writing notify the approved airport concerned of the course of conduct within section 14 (2) which it appears to the Authority he is pursuing and of the modifications which it proposes to make.

(6) The Authority shall, in the prescribed manner, notify the relevant approved airport operator of any condition imposed, revoked or modified pursuant to this Part or of any extension of the period of operation of any such condition.

(7) An approved airport operator shall, on the request of any person and on payment by that person of such reasonable fee as the operator may determine, provide that person with a copy of the permission granted under this Act in respect of the relevant scheduled airport and of any conditions in force in relation to that airport.

PART V. *General*

Regulatory
fee.

20.—(1) The Authority may impose an annual regulatory fee in accordance with this section in relation to all approved airport operators.

(2) The amount of the regulatory fee shall be such sum as, in the opinion of the Authority, is a reasonable estimate of the costs which will be incurred by the Authority in relation to its functions under this Act (hereinafter in this section referred to as “regulation costs”).

(3) In determining the amount of the regulatory fee payable by an airport operator, the Authority shall apportion regulation costs reasonably and equitably among airport operators.

(4) Where an airport operator fails to pay the amount of the regulatory fee within the time required by the Authority for such payment, the operator shall be liable to such amount by way of surcharge as the Authority may determine, not exceeding twenty-five per cent of the amount unpaid.

(5) An appeal shall lie to the Court of Appeal against a decision of the Authority to impose an annual regulatory fee, on a ground of appeal which involves a question of law alone.

Regulations.

21.—(1) The Minister may make regulations generally for giving effect to the provisions and purposes of this Act.

(2) Regulations made under this section shall be subject to affirmative resolution.

SCHEDULE

(Section 4)

Airports Subject to Economic Regulation

1. The Norman Manley International Airport.
2. The Sangster International Airport.