

CIVIL AVIATION ACT
(Cap. 71:01)

EN ROUTE NAVIGATION CHARGES REGULATIONS, 1999
(Published on 1st April, 1999)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. En route charge
4. Persons liable for the charge
5. Notice of the charge
6. Mode of payment
7. Exemption from payment
8. Detention for failure to pay
9. Extent of detention
10. Restriction on detention
11. Sale of the aircraft
12. Restriction on sale
13. Proceeds of sale

SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Works, Transport and Communications by section 16(2)(w) of the Civil Aviation Act, the following Regulations are hereby made —

1. These Regulations may be cited as the En Route Navigation Charges Regulations, 1999. Citation

2. In these Regulations, unless the context otherwise requires — Interpretation
“aeronautical information publication” means a document entitled ‘Aeronautical Information Publication’ in force at the date of the making of these Regulations, published and updated from time to time by the Department of Civil Aviation;

“approach control services” means those services provided for arriving or departing controlled flights, including services provided in a terminal control area;

“charge” means en route navigation charge;

“en route navigation services” means those services, except approach control services, provided to aircraft proceeding through the Gaborone Flight Information Region;

“flight information region” means an airspace of defined dimension within which flight information service and alerting service are provided;

“maximum take off weight” means the maximum take off weight of an aircraft as stated in its certificate of airworthiness, expressed in kilograms; and

“services” includes but is not limited to, air traffic services, aeronautical telecommunications services, meteorological services, search and rescue services and aeronautical information services.

Charge	3. An aircraft flying over Botswana whether under instrument or visual flight rules, shall be charged a fee calculated in accordance with the First Schedule, payable to the Director for en route navigation services provided by the Gaborone Flight Information Region.
Persons liable for the charge	4. (1) The operator of an aircraft shall primarily be responsible for the charge incurred in accordance with regulation 3. (2) Where the Director is unable to ascertain who the operator is, he shall charge the owner of the aircraft which owner shall be liable for the charge until such time as the operator is known to the Director.
Notice of the charge	5. The Director shall within a reasonable time, send a notice to a person liable for the charge in accordance with regulation 4.
Mode of payment	6. The charge levied in accordance with regulation 3 shall be paid in Botswana Pula or in any other convertible currency at such place and time as may be approved by the Director.
Exemption from charges	7. (1) The following flights shall be exempt from charges under these regulations — (a) flights made by the Botswana Defence Force aircraft; (b) flights for the purposes of search and rescue operations; (c) flights carried out using gliders, power gliders and an ultra light aircraft; (d) flights made by an aircraft which is the property of the Government of Botswana including customs and police and which are not made for commercial purposes; (e) flights made exclusively for the purpose of checking or testing equipment used as an aid to air navigation; (f) flights arranged by the Department exclusively for the purpose of instruction or testing of flight crew; (g) flights made for the purpose of enabling an aircraft to qualify for the issue, renewal, modification or validation of a certificate of airworthiness; (h) flights made for training purposes, terminating at the aerodrome from which the aircraft takes off; (i) flights that take the following routes — (i) FBSK - FAJS; (ii) FBFT - FVBU; (iii) FBTL - FAJS; (iv) FBKE - LIVINSTONE; (v) FBKE - VICTORIA FALLS; and (j) flights operated within the Gaborone Flight Information Region consisting of a distance of less than 50 nautical miles. (2) The Minister may by Notice in the Gazette, exempt the application of these regulations to any other flight in the public interest.
Detention for failure to pay	8. (1) The Director may, where a default is made in the payment of a charge under these regulations, detain an aircraft pending payment. (2) The Director may detain an aircraft in accordance with sub regulation (1) at any time when the aircraft is on any aerodrome in Botswana. (3) A detention in accordance with sub regulation (1) may be made in respect of — (a) an aircraft in respect of which the charges were incurred, whether incurred by the person who is the operator of the aircraft at the time of the detention; or

(b) any other aircraft operated by the person in default at the time of the detention.	
(4) For purposes of this regulation, a person shall be in default if an invoice or any part thereof issued in accordance with regulation 5 remains unpaid for a period of ninety days from the date of issue.	
9. The power of detention and sale conferred by these regulations in respect of an aircraft, extends —	Extent of detention
(a) to the equipment of the aircraft and any stores for use in connection with its operation, carried in the aircraft, whether or not the equipment or stores is the property of the operator; and	
(b) to any aircraft documents carried in it, and any such documents may, if the aircraft is sold, be transferred by the Director to the purchaser.	
10. The Director shall not detain an aircraft under these Regulations if the operator of the aircraft or a person claiming an interest therein—	Restriction on detention
(a) disputes that the charges are due;	
(b) disputes that the charges in question were incurred in respect of that aircraft; and	
(c) gives to the Director pending the determination of the case, security sufficient to cover the payment of the charges which are due.	
11. The Director may, where the charge remains unpaid for a period of 60 days from the date of the detention, commence proceedings to sell the aircraft as set out in the Second Schedule.	Sale of the aircraft
12. The Director shall not sell an aircraft under these regulations without leave of the court.	Restriction on sale
13. (1) The proceeds of sale of an aircraft under these regulations shall be applied in the following order —	Proceeds of sale of aircraft
(a) in payment of customs duty as a result of the aircraft having been brought into Botswana;	
(b) in payment of expenses incurred by the Director in detaining and selling the aircraft, including expenses in connection with the application to court;	
(c) in payment of charges in respect of an aircraft which the court has found to be due from the operator by virtue of these or any other regulations under the Civil Aviation Act;	
(d) in payment of airport charges incurred in respect of the aircraft which are due from the operator of the aircraft to the person owning or managing the aerodrome at which the aircraft was detained under these regulations; and	
(e) the surplus if any shall be paid to or among the persons whose interests in the aircraft have been divested by reason of the sale.	

FIRST SCHEDULE
(Regulation 3)
CALCULATION OF CHARGE

charge 1. A charge under these Regulations shall be calculated in accordance with the maximum take off weight of an aircraft.

5700+ 2. For aircraft exceeding 5700 kilograms in weight, the charge shall be calculated in accordance with the following formula —

$$\text{Charge} = P \times D \times W$$

where P is the service unit rate which shall be a flat rate of P100.00;
where D is the distance factor which shall be the number of nautical miles between —

(a) the aerodrome of first departure within the Gaborone Flight Information Region; and

(b) the aerodrome of first destination within the Gaborone Flight Information Region,

or where there is no aerodrome under either sub regulation 2 (a) or

(b), the point representing the intersection of the centre line of the appropriate airway or upper air traffic service route with the boundary of the Gaborone Flight Information Region as described in the Air Traffic Rules and Services section of the Botswana Aeronautical Information Publication,

divided by 100 and carried to two decimal places. Provided that if the operation of an aircraft involves the use of approach control services, the total measure of nautical miles shall be reduced by 25 nautical miles for each arrival or departure from an aerodrome; and

where W is the weight factor which shall be equal to the square root of the quotient calculated by dividing the maximum take off weight by 20 000 and shall be carried to two decimal places.

2501 - 5700 3. For aircraft weighing 2501 up to 5700 kilograms, the charge shall be a flat rate of P100.00

2500 4. For aircraft weighing 2500 kilograms or less, the charge shall be a flat rate of P75.00.

Power to amend Schedule 5. The Director may from time to time, by notice in the Gazette, amend the Schedule.

SECOND SCHEDULE
(Regulation 11)
PROCEEDINGS TO SELL AIRCRAFT

1. The Director shall inform the Aeronautical Authorities of the State of Registry about the detention and possible sale of an aircraft.

Notice of
detention

2. (1) The Attorney General on receipt of an application from the Director under these regulations, shall bring the proposed application to the notice of persons whose interests may be affected by the determination of the court and for affording to any such person, an opportunity of becoming a party to the proceedings.

Notice to
other
interested
parties

(2) The Attorney General shall, within 21 days before applying to the court, publish in the Gazette and in at least one local newspaper, a notice in accordance with regulation 3, and shall as far as is practical, serve such a notice on each of the following persons-

- (a) a person under whose name the aircraft is registered;
- (b) a person if any, who appears to the Director to be the owner of the aircraft;
- (c) a person who appears to the Director to be a charterer of the aircraft whether or not by demise;
- (d) a person who appears to the Director to be the operator of the aircraft;
- (e) a person who is registered as a mortgagee of the aircraft under the laws of Botswana or who appears to the Director to be a mortgagee of the aircraft under the law of any country other than Botswana; and
- (f) any other person who appears to the Director to have a proprietary or financial interest in the aircraft.

(3) If a person has been served with a notice in accordance with sub regulation 2, and the person informs the Attorney General in writing within 14 days of the service of the notice of his intention to be a party to the proceedings, the Attorney General shall cite the person as a defendant in the application.

3. A notice served in accordance with regulation 2 shall —

Content of
notice

- (a) state the nationality and registration marks on the aircraft;
- (b) state the type of aircraft;
- (c) state that by reason of default in the payment of a sum due to the Director for charges imposed by these regulations, the Director, on a specified date, detained the aircraft under these regulations and unless payment of the sum so due is made within a period of 60 days from the date when the detention began, or within 21 days of the date of service of the notice, whichever is the later, will apply to the court for leave to sell the aircraft; and
- (d) invite the person to whom the notice is given to inform the Attorney General within 14 days of the service of the notice if he wishes to become a party to the proceedings on the application.

MADE this 19th day of March , 1999.

D.N. MAGANG,
*Minister of Works, Transport and
Communications.*