



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Tuesday, 10th October, 2006

1. The Senate met at 10:30 a.m. The Senate President read Prayers.
2. **Votes and Proceedings:**
The Senate President announced that he had examined the Votes and Proceedings of Thursday, 5th October, 2006 and approved same.

By unanimous consent, the Votes and Proceedings were adopted.
3. **Message from Mr. President:**
The Senate President announced that he had received a letter from Mr. President, Commander-in-Chief which he read as follows:



PRES/134

6 October, 2006

*Senator Ken Nnamani,
President of the Senate,
Senate of the Federal Republic of Nigeria,
National Assembly Complex,
Three-Arms Zone,
Abuja*

Dear President of the Senate,

2007 Budget

I do crave the indulgence of the National Assembly to grant me the slot of Wednesday, October 11, 2006, at 12:00 noon to formally address the Joint Session of the National Assembly on Budget 2007.

While I thank you for your cooperation and understanding, please accept, Mr Senate President, the assurances of my highest consideration.

*Yours Sincerely,
Signed:
OLUSEGUN OBASANJO*

4. **Closed Session:**

Motion made and Question Proposed: That the Senate do resolve into a Closed Session to deliberate on matters relevant to the workings of the Senate (*Senate Majority Leader*).

Question put and agreed to.

Senate in Closed Session — 10: 45 a .m.

Senate in Open Session — 11.25 a. m.

The Senate President reported that the Senate in Closed Session deliberated on the fumigation of Apo Legislative Quarters in view of the prevalence of reptiles within the premises.

5. **Joint Session of the National Assembly:**

Motion made and Question Proposed: That the Senate do sit with the House of Representatives in a Joint Session on Wednesday, 11th October, 2006 at 12:00 noon to receive an address by Mr President, Commander-in-Chief of the Federal Republic of Nigeria, on the 2007 Appropriation Bill (*Senate Majority Leader*).

Question put and agreed to

Resolved:

That the Senate do sit with the House of Representatives in a Joint Session on Wednesday, 11th October, 2006 at 12:00 noon to receive an address by Mr President, Commander-in-Chief of the Federal Republic of Nigeria, on the 2007 Appropriation Bill (*S.Res/070/06*).

6. **Committee on Aviation:**

Motion made and Question Proposed: That the Senate do resume consideration on the Report of the Committee on Aviation on the Civil Aviation Act (Amendment) Bill 2006 (*Adjourned Debate, Thursday, 5th October, 2006*) (*Senator Mohammed Ibrahim*).

Question put and agreed to.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Majority Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

AN ACT TO PROVIDE FOR THE REGULATION OF AIR NAVIGATION, ESTABLISHMENT OF THE NIGERIAN CIVIL AVIATION AUTHORITY AND FOR OTHER PURPOSES CONNECTED THEREWITH

CIVIL AVIATION ACT (REPEAL AND RE-ENACTMENT) BILL 2006

Committee's Recommendation:

Insert a New Clause 70 as follows:

"Clause 70: Regional Cooperative Aviation Safety Agreements:

- (1) The Authority shall encourage regional cooperation in the regulation and administration of aviation safety.
- (2) The Authority may, pursuant to subsection (1) of this section, enter into agreements for cooperative endeavours in aviation safety with other regional contracting States to the Convention on International Civil Aviation. The Authority in conjunction with the Ministry in charge of civil aviation shall negotiate, agree to and manage such regional cooperative agreements.
- (3) The Authority may in the interest of public safety and the safety of civil aviation, delegate certain aviation safety tasks under the cooperative agreement to citizens of Nigeria and/or citizens of the other state party to the agreement (*Senator Mohammed Ibrahim*) — *Agreed to.*

Question that Clause 70 do stand part of the Bill, put and agreed to.

Clause 71:

Aviation Safeguards:

- (1) The Authority, subject to the approval of the Minister may, by regulation make such provisions as it deems necessary, to prohibit and or discourage anti-competitive practices.
- (2) Without prejudice to the generality of sub-section (1) of this section, such practices may include:
 - (a) charging fares and rates on routes at levels which are in aggregate, insufficient to cover the costs of providing the services to which they relate;
 - (b) the addition of excessive capacity or frequency of service;
 - (c) practices which have a serious negative economic effect on, or cause significant damage to, another airline;
 - (d) practices which reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline or allied aviation service provider from the market; and
 - (e) any behaviour indicating an abuse of dominant position on a route or routes or in respect of any allied service.

Committee's Recommendation:

That the provisions in Clause 71 be retained (*Senator Mohammed Ibrahim*) — *Agreed to.*

Question that Clause 71 do stand part of the Bill, put and agreed to.

Clause 72:

Compensation schemes for passengers relating to grievances like denied boarding etc:

- (1) The Authority may formulate schemes for payment of suitable compensation by carriers to passengers who are denied boarding, in specified circumstances, on flights from Nigeria to any point outside Nigeria, or on flights within Nigeria, for which they have confirmed reservations, or for any other kind of passenger grievances which in the opinion of the Authority have assumed significant level of public dissatisfaction.

Committee's Recommendation:

Leave out the provision in Subclause 72(1) and *insert* a new Subclause 72(1) as follows:

- (1) The Authority may formulate schemes for compensation of passengers and other aviation and allied service consumers different forms of grievances (*Senator Mohammed Ibrahim*).

Amendment Proposed:

Leave out the Committee's Recommendation and *insert* the provision of the Principal Act (*Senator Patrick Osakwe*).

Another Amendment Proposed:

Leave out the word "may" in the Principal Act and *insert* the word "shall" instead thereof (*Senator Umaru Dahiru*).

Question that the amendment be made put and agreed to.

- (2) The compensation schemes under sub-section (1) of this section shall be formulated after holding consultations with the carriers and be notified in the official gazette before implementation.

Committee's Recommendation:

Leave out the provision in Subclause 72(2) and insert a new Subclause 72(2) as follows:

- (2) The regulations under sub-section (1) of this section shall be formulated after holding consultations with air carriers and other stake holders (*Senator Mohammed Ibrahim*).

Question that Clause 72 as amended do stand part of the Bill, put and agreed to.

Clause 73:**Regulation of Sale, Distribution and Provision of Allied Services:**

- (1) All persons engaged in the sale, distribution and provision of allied services shall obtain such licence, permit or authorisation from the Authority as may be specified.
- (2) The Authority may make rules in this behalf, which may, inter alia, include:
- (a) the categories including (but not limited) to aircraft equipment sale or leasing operations, in-flight catering services, ground handling, amongst others in which the licence may be granted;
 - (b) the information to be furnished by an applicant for the licence;
 - (c) the terms and conditions subject to which the licence may be granted; and
 - (d) the circumstances under which the licence may be suspended or revoked.

Committee's Recommendation:

That the provisions in Clause 73 be retained (*Senator Mohammed Ibrahim*) — *Agreed to.*

Question that Clause 73 do stand part of the Bill, put and agreed to.

Clause 74:**Application of certain Conventions:**

- (1) The provisions of the Convention on the International Recognition of Rights In Aircraft (Geneva Convention), 1948 set out in Schedule IV to this Act, and as amended from time to time, shall from the commencement of this Act have the force of law in Nigeria subject to subsection (2) of this section.
- (2) The provisions of the Convention on International Interests in Mobile Equipment 2001 and the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to aircraft equipment 2001 (The Cape Town Convention and Protocol) set out in Schedule V (a&b) respectively, shall from the date of the coming into force of the said Protocol specific to aircraft equipment or from the commencement of this Act, whichever is later, have the force of law in Nigeria subject to the Declarations made by Nigeria at the time of ratification which Declarations are further annexed as Schedule V(c), or such other declarations for the time being made by Nigeria.

Committee's Recommendation:

Immediately after the word "Nigeria" in line 9, *insert* the following words "Provided however, that the Minister of Aviation shall have power to from time to time make Declarations required or permitted to be made under the Convention and Protocol" (*Senator Mohammed Ibrahim*) — *Agreed to.*

- (3) The provisions of the Protocol relating to an amendment to the Convention on International Civil Aviation (Article 83 bis) signed at Montreal on 6th October, 1980, set out in Schedule VI shall from the commencement of this Act have effect in Nigeria.

Committee's Recommendation:

Leave out the provision in Subclause 74(3) (Senator Mohammed Ibrahim) —Agreed to.

Question that Clause 74 do stand part of the Bill, put and agreed to.

Clause 75:**Arbitration:**

- (1) There shall be inserted in every contract of carriage of passengers or cargo by air a term that in the event of a dispute arising out of or in relation to the contract of carriage which cannot be amicably resolved, the same shall be referred to a sole arbitrator or to 3 (Three) arbitrators (herein after referred to as "the arbitral tribunal") to be appointed by the Chief Judge of the Federal High Court for adjudication.
- (2) The arbitration clause to be inserted in all such contracts shall be in the terms set out in Schedule VIII hereto and the said arbitration clause as set out in the said Schedule shall be deemed to be inserted in every contract of carriage of passengers or cargo by air, irrespective of the omission or exclusion of it from the actual text of any such contract.
- (3) Whenever there is a dispute arising from the carriage of persons or cargo by air, which cannot be amicably resolved, any party to the dispute may apply to the Chief Judge of the Federal High Court to constitute an arbitral tribunal to hear and determine the dispute.
- (4) The Chief Judge shall, within 21 (Twenty One) days of such application, name 1 (One) arbitrator or 3 (Three) arbitrators to hear and determine the dispute.
- (5) The arbitral tribunal shall apply the rules of procedure set out in the Arbitration and Conciliation Act in determining the dispute. The decision of the tribunal shall be given not later than 6 (Six) months from the date the tribunal is constituted. (Cap 19 LFN 1990)
- (6) The remuneration of the arbitrators and the other associated costs of the arbitration shall be borne by the parties to the arbitration, subject to the power of the arbitral tribunal where it deems fit to order one party to refund such part of the remuneration of the arbitrators and costs of the arbitration already advanced by the other party to such other party, if the decision of the arbitral tribunal is in favour of that other party.
- (7) In respect of air accident cases involving death and or injury to passengers and other persons, the Chief Judge of the Federal High Court may, upon the application of at least three claimants, claiming in respect of the death or injury of three different passengers, direct that all or such number of claims arising from the accident which cannot be amicably resolved be heard and determined together by one or more arbitral tribunals in a consolidated manner.
- (8) In respect of such claims described in subsection 7 of this section, the Minister may direct, notwithstanding the provisions of subsection 6 of this Section, that the remuneration of the arbitrators be paid out of the funds accruing from the Air Ticket and Cargo Sales Charge imposed in section 11 of this Act or from such other funds as are, for the time being, within the control of the Minister.

Committee's Recommendation:

That the provisions in Clause 75 be retained (Senator Mohammed Ibrahim) — Agreed to.

Question that Clause 75 do stand part of the Bill, put and agreed to.

Clause 76:**Insurance:**

- (1) Any carrier operating air transport services to, from or within Nigeria, or aerodrome operator, aviation fuel supplier, or any provider of ground handling services, meteorological services, air traffic control services, aircraft maintenance services, or provider of such other class of allied service as the Authority may from time to time determine in writing shall maintain adequate insurance covering its liability under this Act and also its liability towards compensation for damages that may be sustained by third parties for an amount to be specified in regulations made by the Authority.
- (2) Absence of such insurance shall be sufficient reason for refusal, suspension or revocation of the permission to operate the air transport service or services in question.
- (3) Any person having a duty to maintain adequate insurance pursuant to the provision of subsection (1) of this section shall make quarterly returns to the Authority evidencing that such adequate insurance is maintained and that all conditions necessary to create an obligation on the insurer to provide indemnity in the event of a loss have for the time being been fulfilled.
- (4) If an air carrier operates an aircraft without adequate insurance coverage, the operator shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than 2 years or to a fine of not less than one hundred thousand dollars or both.

Committee's Recommendation:

Leave out the provision in Subclause 76(4) and insert the following instead thereof:

- “(4) Any Carrier operating air transport services to, from or within Nigeria, or aerodrome operator, aviation fuel supplier, or any provider of ground services, air traffic control services, aircraft maintenance services, who contravenes the provisions of subsections (1) and (3) of this section, shall be guilty of an offence and liable on conviction to a fine of not less than Ten million Naira and its Principal Officers shall be liable to imprisonment for a term of not less than two years (*Senator Mohammed Ibrahim*) — *Agreed to.*

Question that Clause 76 do stand part of the Bill, put and agreed to.

Committee's Recommendation:

Insert a new Clause 77 as follows:

“Clause 77:**Air Services Agreement:**

All funds accruing from or as a result of air services agreements entered into by Nigeria whether multilateral or bilateral shall be paid to the Authority and maintained in a separate account and shall in line with Article 15 of the Chicago Convention be used solely for the development of Civil Aviation in Nigeria in accordance with regulations made by the Authority (*Senator Mohammed Ibrahim*) — *Agreed to.*

Question that Clause 77 do stand part of the Bill, put and agreed to.

Clause 78:**Periodic Publication of Aviation Policy:**

- (1) The Minister may publish from time to time a statement of the policies of the Government of the Federal Republic of Nigeria on civil aviation.
- (2) If the Minister considers it appropriate to do so, he may by notice in writing, require the Authority to publish a statement of the policy it intends to adopt with respect to any particular matter in exercising the powers and performing the functions conferred upon it under this Act and it shall be the duty of the Authority to publish the statement required by such a notice.
- (3) Before publishing any statement under this section, the Authority shall consult such persons as appear to it to be representative respectively-
 - (a) of the civil aviation industry of Nigeria; and

(b) of users of air transport services.

- (4) The manner of publication of any statement under this section shall be as the Authority may determine.

Committee's Recommendation:

That the provisions in Clause 78 be retained (*Senator Mohammed Ibrahim*) — *Agreed to.*

Question that Clause 78 do stand part of the Bill, put and agreed to.

Clause 79:

Other Aviation Parastatals:

- (1) The Federal Airports Authority of Nigeria established by the Federal Airports Authority of Nigeria Act No. 9 of 1996 or any enactment thereof shall be responsible for the management and maintenance of all aerodromes and ancillary facilities thereto established and maintained by the Minister of Aviation pursuant to section 6 of the Civil Aviation Act 1964.
- (2) The Nigerian Meteorological Agency established by the Nigerian Meteorological Agency (Establishment) Act or any re-enactment thereof shall be responsible for ascertaining and prescribing the weather requirements for safe aviation activities including the issue of weather forecast and such other functions conferred on it by the said Act or any other enactment. (2003 No. 9)
- (3) The Nigerian Airspace Management Agency established by the Nigerian Airspace Management Agency (Establishment) Act No. 48 or any re-enactment thereof shall be responsible for the provision of air traffic control services, aeronautical telecommunication services and such other functions conferred on it by the said Act or any other enactment. (1999 No. 48)
- (4) The Nigerian Civil Aviation Training Centre established by the Nigerian Civil Aviation Training Centre Act, or any re-enactment thereof, shall be responsible for the provision of civil aviation courses and training and other functions conferred on it by the said Act or any other enactment. (Cap 298 LFN 1990)

Committee's Recommendation:

Leave out the provision in Clause 79 (*Senator Mohammed Ibrahim*) — *Agreed to.*

Clause 80:

Repeals and Savings Provisions:

- (1) Subject to the provisions of subsection (2) of this section, the following enactments are hereby repealed:
 - (a) Carriage By Air (Colonies, Territories and other Trust Territories) Colonial Order 1953;
 - (b) Civil Aviation Act, Cap 51 LFN 1990;
 - (c) Civil Aviation (Amendment) Act, 1999 and
 - (d) Nigerian Civil Aviation Authority (Establishment) Act, No. 49 1999.
- (2) All regulations, bye-laws, orders and subsidiary legislation made under the Civil Aviation Act 1964 (cap. 51 LFN 1990) shall continue to be in force until new regulations, bye-laws, orders and subsidiary legislation are made pursuant to this Act.

Committee's Recommendation:

That the provisions in Clause 80 be retained (*Senator Mohammed Ibrahim*) — *Agreed to.*

Question that Clause 80 do stand part of the Bill, put and agreed to.

Clause 81:

Interpretation:

Committee's Recommendation:

Leave out the word "Interpretation" and insert the word "Definitions" instead thereof (Senator Mohammed Ibrahim) — Agreed to.

(1) In this Act, unless the context otherwise requires-

"Aerodrome" means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically;

Committee's Recommendation:

Leave out the provision in "Aerodrome" and insert the following instead thereof:

"Aerodrome" means a defined area of land on land or water (including any buildings, installations, and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft (Senator Mohammed Ibrahim) —Agreed to.

Question, That the word "Aerodrome" be as defined in the Interpretation to this Act, put and agreed to.

"Aircraft" means any machine that can derive support in the atmosphere from reactions of the air other than reactions of the air against the earth's surface;

Question, That the word "Aircraft" be as defined in the Interpretation to this Act, put and agreed to.

"Air navigation services" includes information, direction and other facilities furnished, issued or provided in connection with the navigation or movement of aircraft and the control of movement of vehicles in any part of an aerodrome used for the movement of aircraft;

Question, That the words "Air navigation services" be as defined in the Interpretation to this Act, put and agreed to.

"Allied Aviation Services" means services rendered in support of the operators of aircraft, aerodromes and such ancilliary services that facilitate the business of air transportation;

Committee's Recommendation:

Leave out the provision in "Aerodrome" and insert the following instead thereof:

"Allied Aviation Business" includes aircraft equipment sale or leasing operations, in-flight catering services, ground handling operations and other businesses connected with or ancillary to civil aviation (Senator Mohammed Ibrahim) — Agreed to.

Question, That the words "Allied Aviation Services" be as defined in the Interpretation to this Act, put and agreed to.

"Authority" means the Nigerian Civil Aviation Authority constituted in section 2(1) of the Act;

Question, That the word "Authority" be as defined in the Interpretation to this Act, put and agreed to.

"Cargo" includes mail;

Committee's Recommendation:

Leave out the provision in "Cargo" and *insert* the following instead thereof:

"Cargo" means any property carried on an aircraft other than mail stores and accompanied or mishandled baggage; (Senator Mohammed Ibrahim) — *Agreed to.*

Question, That the word "Cargo" be as defined in the Interpretation to this Act, put and agreed to.

"Chicago Convention" means the Convention on International Civil Aviation concluded at Chicago on the 7th December 1944, any Annex which relates to international standards and recommended practices and is adopted in accordance with the Convention and any amendment of the Convention or of such Annex which is made in accordance with the Convention;

Question, That the words "Chicago Convention" be as defined in the Interpretation to this Act, put and agreed to.

"Operator" in relation to aircraft means the person for the time being having the management of the aircraft;

"Operator" in relation to aerodrome means the person or entity for the time being having the management of the aerodrome;

Committee's Recommendation:

Leave out the word "Operator" and the provision therein and *insert* the following instead thereof:

"Civil Aviation Operations includes Ground Handling operations, air operations, aerodrome operations, Meteorological Services, Air traffic control and provision of Navigational Aids, Catering and allied services" (Senator Mohammed Ibrahim) — *Agreed to.*

Question, That the word "Civil Aviation Operations" be as defined in the Interpretation to this Act, put and agreed to.

"Director-General" means the Director General of the Authority;

Question, That the words "Director-General" be as defined in the Interpretation to this Act, put and agreed to.

"Flight" means a journey by air beginning when the first person boards the aircraft in question with intent to fly and ending when the last person disembarks;

Committee's Recommendation:

Leave out the provision "Flight" and *insert* the following instead thereof:

"Flight" means a journey by air beginning from the moment when all the external doors of an aircraft are closed following embarkation until the moment when any such doors are opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board (Senator Mohammed Ibrahim) — *Agreed to.*

Question, That the word "Flight" be as defined in the Interpretation to this Act, put and agreed to.

"Foreign Aircraft" means an aircraft other than a Nigerian registered aircraft;

Question, That the words "Foreign Aircraft" be as defined in the Interpretation to this Act, put and agreed to.

Amendment Proposed:

Leave out the provisions in the Schedules (I)- (VIII) and insert comprehensive Schedules to the Bill (Senator Umaru Dahiru).

Question that the amendment be made put and agreed to.

That the Comprehensive Schedules be highlighted in the clean copy of the Bill.

Chairman to report Bill.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Aviation on the Civil Aviation Act (Amendment) Bill 2006 and approved as follows:

Clauses 70 — 71	—	As Recommended
Clause 72	—	As Amended
Clauses 73 — 82	—	As Recommended
Schedules	—	As Amended
Title	—	As Recommended

Question; That the Report of the Committee of the Whole be approved — Resolved in the Affirmative.

Motion made and Question Proposed: That the Bill be now read the Third Time (Senate Majority Leader).

Question put and agreed to.

Bill accordingly read the Third Time and Passed.

7. Privileges of the Floor:

Admission of the Special Assistant to the President on National Assembly Matters:

Motion made and Question proposed: That the Senate do invoke Rule 17 to admit Senator (Mrs) Florence Ita-Giwa, the Special Assistant to the President on National Assembly Matters to the floor of the Senate (Senate Majority Leader).

Question put and agreed to.

Admission of the Chairman, Independent National Electoral Commission (INEC):

Motion made and Question proposed: That the Senate do suspend Rule 17 to admit Professor Maurice Iwu, Chairman, Independent National Electoral Commission (INEC), to the floor of the Senate (Senate Majority Leader).

Question put and agreed to.

Motion made and Question proposed: That the Senate do resolve into the Committee of the Whole to receive briefing by Professor Maurice Iwu, Chairman, Independent National Electoral Commission (INEC) (Senate Majority Leader).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

Briefing by the Chairman, Independent National Electoral Commission (INEC), Professor Maurice Iwu.

Chairman to report progress.

(SENATE IN PLENARY)

The Senate in the Committee of the Whole was briefed by the Chairman, Independent National Electoral Commission (INEC), Professor Maurice Iwu, on the preparedness of the Commission on Voters' Registration and the 2007 General Elections. The Chairman demonstrated the use of Electronic Equipment for the registration exercise, took and answered questions from distinguished Senators.

10. Adjournment:

Motion made and Question Proposed: That the Senate do adjourn till Wednesday, 11th October, 2006 at 10.00 a.m. (*Senate Majority Leader*).

Adjourned accordingly at 1.55 p.m.

Ken Nnamani
President of the Senate