



REPUBLIC OF BOTSWANA

GOVERNMENT GAZETTE EXTRAORDINARY

Vol. LX, No. 141

GABORONE

14th November, 2022

CONTENTS

Page

Supplement C – Civil Aviation (Advance Passenger Information and Passenger Name Record) Regulations, 2022 – S.I. No. 150 of 2022.....	C. 2597 – 2610
--	----------------

The Botswana Government *Gazette* is printed by Department of Government Printing and Publishing Services,
Private Bag 0081, GABORONE, Republic of Botswana. Annual subscription rates are P700,00 post free surface
mail, SADC Countries airmail P1,500,00, Rest of Africa airmail P1,500,00, Europe and USA airmail P1,850,00.
The price for this issue of the *Gazette* is P5.00.

Statutory Instrument No. 150 of 2022

CIVIL AVIATION ACT
(Cap. 71:04)

**CIVIL AVIATION (ADVANCE PASSENGER INFORMATION AND
PASSENGER NAME RECORD) REGULATIONS, 2022**
(Published on 14th November, 2022)

ARRANGEMENT OF REGULATIONS

REGULATION

PART I — *Preliminary*

1. Citation
2. Interpretation
3. Scope of Regulations

PART II — *Establishment of Passenger Data Information Unit*

4. Establishment of Passenger Data Information Unit
5. Functions of Passenger Information Unit
6. Responsibilities of Passenger Information Unit
7. Processing of passenger data
8. Verification of data
9. Operation of Passenger Information Unit
10. Access to advance passenger information and passenger name record data

PART III — *Transfer of data to receiving States*

11. Transfer of data to receiving States
12. Data cross-checking against INTERPOL and other databases
13. Transmission of Advance Passenger Information
14. Transmission of passenger name record data
15. Purpose limitation
16. Data retention period
17. Sensitive data
18. Protection of data
19. Complaints
20. Automated processing
21. Data protection representative

PART IV — *Offences and Penalties*

22. Offences and penalties
- SCHEDULES

IN EXERCISE of the powers conferred on the Minister of Transport and Public Works by section 89 of the Civil Aviation Act, and on the recommendation of the Civil Aviation Authority of Botswana, the following Regulations are hereby made —

PART I — *Preliminary*

Citation	1. These Regulations may be cited as the Civil Aviation (Advance Passenger Information and Passenger Name Record) Regulations, 2022.
Interpretation	2. In these Regulations, unless the context otherwise requires —
Cap. 08:08	<p>“act of terrorism” has the same meaning assigned to the term under the Counter-Terrorism Act;</p> <p>“Advance Passenger Information” means a set of data consisting of the details of the flight by the aircraft operators and the biographic data of a passenger or crew member available on his or her travel document and the list of advance passenger information data elements as set out in Schedule 1;</p> <p>“Advance Passenger Information data transfer” means the transfer of advance passenger information data, from an aircraft operator’s system, to a State requiring such data in UN EDIFACT or PAXLST data format or another standardised message format authorised or approved by ICAO;</p>
Cap. 71:04 (Sub. Leg.)	<p>“aircraft operator” has the same meaning assigned to the term under the Aviation Security Regulations;</p> <p>“airline” has the same meaning assigned to the term under the Aviation Security Regulations;</p> <p>“crew member” has the same meaning assigned to the term under the Aviation Security Regulations;</p>
Cap. 24:06	<p>“Counter-Terrorism Analysis and Fusion Division” means an agency established under the Counter-Terrorist Act;</p> <p>“data processing” means any operation or set of operations performed on advance passenger information and passenger name record such as collection, recording, authorisation, storage, adaptation or alteration, calling up, retrieval, consultation, use, transfer, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data;</p> <p>“depersonalisation of passenger name record data” means masking of information which enables direct identification of an individual, without hindering law enforcement use of passenger name record data;</p> <p>“ICAO” means the International Civil Aviation Organisation;</p> <p>“passenger data” means the list of advance passenger information and passenger name record data set out in Schedules 1 and 2;</p> <p>“passenger data single window” means a facility that allows an aircraft operator to transmit passenger information through a single data entry point, to fulfill all regulatory requirements relating to the entry and exit of a passenger, that may be imposed by various national agencies;</p> <p>“Passenger Information Unit” means the authority responsible for collection, storing, processing, transferring and protecting advance passenger information and passenger name record, or the data processing results, established under regulation 4;</p>

“passenger name record ” means a record created by an aircraft operator and an authorised agent for the booked journey by a passenger or by an aircraft operator on behalf of a passenger for commercial and operational purposes, for purposes of providing air transport services and the list of passenger name record as set out in Schedule 2;

“passenger name record data transfer” means transfer of passenger name record data to a State requiring such data in PNRGOV format or by another authorised message format approved by ICAO;

“personal data” has the same meaning assigned to the term under the Data Protection Act; Act No. 32 of 2018

“PNRGOV” means a standard electronic message developed specifically to handle passenger name record to manifest electronic transmission;

“push method” means an electronic method by which an aircraft operator transmits the passenger name record data elements collected in its database into the database of the recipient State;

“sensitive personal data” has the same meaning assigned to the term under the Data Protection Act; and

“serious crime related activity” has the same meaning assigned to the term under the Proceeds and Instruments of Crime Act.

Cap. 08:03

Scope of Regulations

3. (1) These Regulations shall provide for the obligation of an aircraft operator to transfer advance passenger information and passenger name record data to Botswana for the flights to, from or in transit through the airports of the national territory.

(2) The obligation of an aircraft operator to transfer passenger data shall, where the flight is code-shared between one or more aircraft operators, be on the aircraft operator that operates the flight.

PART II — *Establishment of Passenger Data Information Unit*

4. (1) The Authority shall establish a Unit within the Counter-Terrorism Analysis and Fusion Division to be known as the Passenger Information Unit.

Establishment of Passenger Data Information Unit

(2) The Passenger Information Unit shall be independent from the Information and Data Protection Commission and shall be led by the Counter-Terrorism Analysis and Fusion Division referred to under subregulation (1).

(3) The Passenger Information Unit shall consist of experts and analysts seconded from the following agencies, specifically devoted to the operation of the Passenger Information Unit from —

- (a) the Counter-Terrorism Analysis and Fusion Division;
- (b) the Department responsible for immigration, visa and citizenship established under Immigration Act;
- (c) the Authority;
- (d) Data Protection Agency established under the Data Protection Act;
- (e) Botswana Communications Regulatory Authority established under the Communications Regulatory Authority Act;
- (f) The Botswana Police Service as appointed under the Police Act;
- (g) Directorate of Intelligence Security as established under the Intelligence and Security Service Act; and
- (h) the office of Ombudsman as established under the Ombudsman Act.

Cap. 25:01

Cap. 72:03

Cap. 21:01

Cap. 23:02

Cap. 02:12

C.2600

	<p>(4) A staff member of a Passenger Information Unit and a representative of the agencies referred to under subregulation (4) shall be trained specifically to carry out the operation of the Passenger Information Unit and the list of such staff members and the representative of such agencies shall be made in accordance with the procedures established under these Regulations.</p> <p>(5) Subject to regulation 10, access to advance passenger information and passenger name record data shall be limited to the Passenger Information Unit experts and analysts.</p>
Functions of Passenger Information Unit	<p>5. (1) The Authority shall establish a passenger data single window to allow for the transmission of advance Passenger Information and passenger name record by an aircraft operator to the Passenger Information Unit, through a single data entry point.</p> <p>(2) An aircraft operator shall transmit advance Passenger Information and Passenger name record data to the Passenger Information Unit in accordance with the procedures and technical guidelines established under these Regulations.</p> <p>(3) The technical and operational procedure related to the passenger data single window shall be in a separate technical guidelines.</p>
Responsibilities of Passenger Information Unit	<p>6. The Passenger Information Unit shall be responsible for —</p> <ul style="list-style-type: none">(a) collecting, storing, processing, transferring and protecting advance passenger information and passenger name record data;(b) transferring advance passenger information to the passport or immigration agency to support immigration procedures;(c) exchanging advance passenger information and passenger name record data, or the data processing results, with other States;(d) checking passenger data against INTERPOL and other databases, such as relevant police databases; and(e) carrying out its activities in a manner consistent with the protection of personal data.
Processing of passenger data	<p>7. The Passenger Information Unit shall, in processing advance passenger information and passenger name record —</p> <ul style="list-style-type: none">(a) assess a passenger data prior to his or her scheduled arrival in or departure from the national territory, to identify a person who requires further examination by a competent authority as specified under regulation 10 (3), to determine whether such person is involved in an act of terrorism or serious crime related activity; or(b) analyse advance passenger information and passenger name record for the purpose of updating or creating a new criteria to be used in the assessment of data in order to identify whether a person is involved in an act of terrorism or serious crime related activity.
Verification of data	<p>8. The Passenger Information Unit shall individually review any positive match resulting from the automated processing of advance passenger information and passenger name record data by a non-automated means to verify whether the representatives of the agencies referred to, under regulation 10(3), have processed data in accordance with the provisions of the Data Protection Act.</p>
Operation of Passenger Information Unit	<p>9. The Passenger Information Unit shall operate on a 24 hours basis a week, in accordance with procedures in place to minimise disruption in the event of a system outage or failure.</p>

10. (1) Any person who wants to request access of advance passenger information and passenger name record from the Passenger Information Unit shall —

Access to
advance
passenger
information
and passenger
name record
data

- (a) be a staff member of the agencies specified under subregulation (3); and
- (b) submit a motivational request to the Passenger Information Unit to access the advance passenger information and passenger name record, or the data processing results, for the purposes specified in regulation 15 (1).

(2) The Passenger Information Unit shall access the requests received on a case-by-case basis in accordance with the procedures and criteria specified in the technical guidelines.

(3) The Minister shall designate the following as agencies —

- (a) the Department responsible for immigration, visa and citizenship established under the Immigration Act;
- (b) the Counter-Terrorism Analysis and Fusion Division established under the Counter-Terrorism Act;
- (c) the Authority;
- (d) the Botswana Communications Regulatory Authority established under the Communications Regulatory Act;
- (e) the Botswana Police Service established under the Police Act;
- (f) the Botswana Defence Force established under the Defence Force Act; and
- (g) the Directorate of Intelligence and Security Services established under Intelligence and Security Services Act.

(4) A competent authority referred under subregulation (3) shall —

- (a) be entitled to access advance passenger information and passenger name record, or the data processing results, in accordance with the requirements under subregulation (1);
- (b) manage advance passenger information and passenger name record data adequately and provide an appropriate or sufficient level of protection of the data; and
- (c) not take any decision that produces an adverse legal effect on a person or significantly affects a person by reason of the automated processing of his or her data.

(5) The Commissioner of Information and Data Protection Commission shall not make a decision under these Regulations that would prejudice or discriminate a person on the basis of his or her race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation and shall be made in accordance with the provisions of the Data Protection Act.

PART III — *Transfer of data to receiving States*

11. (1) The Passenger Information Unit may transfer advance passenger information and passenger name record to the Passenger Information Unit or to the designated competent authority of the receiving State in accordance with the Data Protection Act.

Transfer of data
to receiving
States

(2) The sending State shall transfer data to a recipient State, if the recipient State ensures that, the level of protection of data is in accordance with the provisions of the Data Protection Act principles and standards.

C.2602

- (3) In the event of conflict or inconsistency between the provisions of these Regulations and those of the legislation of the recipient State, the conflict shall be resolved prior to the transfer of data as specified in subregulation (1).
- 12.** The Passenger Information Unit shall, for the purposes of processing data under these Regulations, check the —
- (a)* passenger data against the relevant international, regional and national databases, including the nominal database; and
- (b)* travel documents associated with notice database and the stolen and lost travel documents database of INTERPOL.
- 13.** (1) An aircraft operator shall transfer advance passenger information to the recipient State using the “UN/EDIFACT PAXLST” message format or another standardised message format approved or authorised by ICAO.
- (2) An aircraft operator shall transfer advance passenger information according to the following time frame —
- (a)* in relation to a passenger —
- (i)* once, 30 minutes prior to a scheduled time of departure for a specific flight, and
- (ii)* once, immediately after flight closure, once the passengers have boarded the aircraft in preparation for departure and it is no longer possible to board or leave the aircraft; and
- (b)* in relation to a crew member, once immediately after flight closure, once the passengers have boarded the aircraft in preparation for departure and it is no longer possible to board or leave the aircraft.
- (3) An aircraft operator shall transmit data by any other means, such as the electronic format to ensure the responsible and appropriate level of data security in the event of technical failure.
- 14.** (1) An aircraft operator shall transfer a passenger name record to the recipient State using the push method and the PNRGOV message format or by another standardised message format approved or authorised by ICAO.
- (2) Without prejudice to subregulation (1), an aircraft operator shall be entitled, in exceptional cases, to use alternative means to the push method for the transfer of passenger name record, where the latter is not feasible.
- (3) An aircraft operator shall transfer a passenger name record in accordance with the following time frame —
- (a)* 24 hours to 48 hours before the scheduled time of departure;
- (b)* one hour to two hours before the scheduled time of departure; and
- (c)* immediately after flight closure, once the passengers have boarded the aircraft in preparation for departure and it is no longer possible to board or leave the aircraft.
- (4) An aircraft operator may be required to provide a passenger names record prior to, in between, or after the scheduled transfer in subregulation (3), when there is a suspicion of a threat related to purposes referred to in regulation 15 (1).
- (5) An aircraft operator may be required to provide the list of passenger name record for purposes of transmission of data as set out in Schedule 1.
- (6) Notwithstanding subregulation (5), an aircraft operator shall not be required to collect and transfer passenger name record which he or she has not collected in the course of his or her normal operating hours.
- (7) An aircraft operator shall not be required to filter passenger name record prior to transmit to the recipient State.

Data cross-checking against INTERPOL and other databases

Transmission of Advance Passenger Information

Transmission of passenger name record data

15. (1) The passenger data collected in accordance with these Regulations shall be processed for the purposes of preventing, detecting, investigating and prosecuting acts of terrorism and serious crime related activity and for purposes of border security.

Purpose
limitation

(2) The passenger name record may be processed, in exceptional cases, when there is a risk of death, serious injury or threat to health, to protect the vital interests of an individual.

16. (1) An advance passenger information and passenger name record, shall be stored for a maximum period of five years, after being transmitted to the State by aircraft operators.

Data retention
period

(2) An advance passenger information and passenger name record shall be deleted from the State's databases, upon the expiration of the data storage period provided in subregulation(1), except when needed in relation to a specific case, threat or risk related to a purpose referred to in regulation 15 (1).

(3) Without prejudice to subregulations (1) and (2), a passenger name record shall be depersonalised within a short period of six months or a maximum period of two years, after being transmitted to the State by aircraft operators, except when needed in relation to a specific case, threat or risk related to purposes provided in regulation 15 (1).

17. (1) Any person shall have the same right accorded to the protection against discrimination, when collecting and processing a passenger name record and where the passenger name record reveals a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation, this sensitive data shall not be processed.

Sensitive data

(2) The Passenger Information Unit shall, in consultation with the Information and Data Protection Commission, delete the passenger name record containing sensitive personal information received by Botswana in accordance with the Data Protection Act, as soon as practicable.

(3) Without prejudice to subregulation (1), the processing of sensitive data may be allowed in exceptional and immediate circumstances to protect the vital interests of an individual, in accordance with the Data Protection Act.

18. (1) Any person shall have the same right to the protection of data accorded in terms of the provisions of the Data Protection Act.

Protection of
data

(2) An aircraft operator shall inform a passenger that data may be collected, processed and transferred to Botswana for the purposes referred to under regulations 15 (1) and 16 (1) and the said information provided to the passenger, shall also state the passenger's rights in relation to the protection of his or her personal data.

(3) Any person may request access to his or her personal data and seek correction or notations, where the data is incorrect or outdated, in accordance with the applicable procedures provided under the Data Protection Act.

(4) Any person shall have the right to lodge a complaint before the Information and Data Protection Commission if he or she considers that the processing of his or her personal data contravenes the provisions of the Data Protection Act.

(5) Any person shall have the same right to the administrative or judicial redress, as provided for in the Data Protection Act, if he or she considers that the provisions of these Regulations has been violated during the collection, storing, processing, or transfer of his or her personal data.

C.2604

- Cap. 08:06 (6) A person who accesses or discloses or misuses passenger data without authority commits an offence and shall be penalised in accordance with the provisions of the Data Protection Act and the Cybercrime and Computer Related Crimes Act.
- Complaints **19.** Any complaint made under these Regulations, shall be referred to the Information and Data Protection Commission.
- Automated processing **20.** (1) The automated processing of passenger data shall be based on objective, precise and reliable criteria without discrimination against any person.
- (2) The automated processing of passenger name record shall not be discriminatory and shall be complemented with the use of non-automated means, when needed.
- (3) A decision made by the Commissioner of Information and Data Protection Commission in accordance with the Data Protection Act, shall not produce a significant adverse action on a person, affecting his or her legal interests, rights or other legal entitlements and shall not be made on the basis of the automated processing of passenger data.
- Data Protection representative **21.** (1) The Passenger Information Unit and the designated competent authorities referred to in regulation 10 (3), shall appoint a data protection representative from the Information and Data Protection Commission, in consultation with the Commission, to —
- (a) monitor the processing of advance passenger information and passenger name record; and
- (b) implement the safeguard of personal data security.
- (2) The data protection representative appointed under the Data Protection Act, shall have the same power to perform his or her duties as provided under the Act.

PART IV — *Offences and penalties*

- Offences and penalties **22.** (1) An aircraft operator who operates a flight which enters, departs or transit through an airport situated in the national territory, shall comply with the provisions of these Regulations.
- (2) An aircraft operator who contravenes the provisions of these Regulations shall be liable to penalties imposed, when he or she has failed to meet the following requirements, as to —
- (a) provide for a reasonable and timely justification as to the non-compliance with the stipulated obligations under these Regulations; and
- (b) rectify or remedy the situation within a reasonable period of time.
- (3) The following penalties may be imposed on an aircraft operator upon completion of the requirements referred to under subregulation (2), in the form of a written notice indicating the nature of the infringement that an aircraft operator who —
- (a) fails to transmit advance passenger information, passenger name record, or both types of data, to the receiving State may be subject to a fine up to P 5 000 000.00;
- (b) fails to transmit advance passenger information, passenger name record, or both types of data, in the required format, as provided for under these Regulations may be subject to a fine up to P 5 000 000.00;
- (c) fails to transmit advance passenger information, passenger name record, or both types of data, within the required time frame, as provided for under these Regulations may be subject to a fine up to P 2 500 000.00; and

- (d) infringes the obligation of information towards a passenger, as stipulated under these Regulations may be subject to a fine up to P 3 000 000.00.
- (4) An aircraft operator shall not be penalised or held responsible for the technical errors resulting from a failure of the system.
- (5) In the event of any conflict or inconsistency between the provisions of these Regulations and those of another State, regarding the transmission of passenger data by an aircraft operator, the penalties provided for, under these Regulations shall be suspended so long as the competent authorities of the two States are able to prove that, the conflict has been resolved.

C.2606

SCHEDULES
SCHEDULE 1

(regs. 2 and 14 (5))

LIST OF API DATA ELEMENTS

1. DATA RELATING TO THE FLIGHT:	full details of a flight
(a) Flight Identification - (IATA Airline code and flight number) - scheduled departure time	
(b) (date of scheduled departure of aircraft (based on local time of departure location) - scheduled departure time	
(c) (time of scheduled departure of aircraft (based on local time of departure location)) - scheduled arrival date	
(d) (date of scheduled arrival of aircraft (based on local time of arrival location)) - scheduled arrival time	
(e) (time of scheduled arrival of aircraft (based on local time of arrival location)) - last place or port of call of aircraft	
(f) (aircraft departed from this last foreign place or port of call to go to "place or port of aircraft initial arrival") - place or port of aircraft initial arrival	
(g) (place or port in the country of destination where the aircraft arrives from the "last place or port of call of aircraft") - subsequent place or port of call within the country	
(h) (subsequent place or port of call within the country) - number of passengers	
(i) (total number of passengers on the flight)	

2. DATA RELATING TO EACH INDIVIDUAL PASSENGER:

2. data relating to each individual passenger:	details of passenger
(a) core data elements as may be found in the machine-readable zone of the official travel document:	
- official travel document number (b) (passport or other official travel document number)	
- issuing State or organisation of the official travel document (c) (name of the State or organisation responsible for the issuance of the official travel document)	
- official travel document type (d) (indicator to identify type of official travel document)	
- expiration date of official travel document (e) (expiration date of the official travel document)	
- surname or given name(s) (f) (family name and given name(s) of the holder as it appears on the official travel document)	
- nationality (g) (nationality of the holder)	
- date of birth (h) (date of birth of the holder)	
- gender (i) (gender of the holder)	
(3). additional data elements normally found in airline systems:	
- seating information (a) (specific seat assigned to the passenger for this flight)	
- baggage information (b) (number of checked bags, and where required, the baggage tag numbers and total weight)	
- travel status (c) (passenger, crew, in-transit) - place or port of original embarkation (d) (place or port where traveler originates foreign travel)	

C.2608

<p>- place or port of clearance (e) (place or port where the traveler is cleared by the Border Control Agencies)</p>	
<p>- place or port of onward foreign destination (f) (foreign place or port where traveler is transiting to) - passenger name record locator number (or unique identifier)</p>	

(As available in the traveler's Passenger Name Record in the carrier's airline reservation system)

SCHEDULE 2
(reg. 2)

LIST OF PNR DATA ELEMENTS

DATA GROUPS OF CATEGORIES	COMPONENT DATA ELEMENTS
1. PNR name details	component data elements Passenger name, family name, Given name or initial, other names on PNR
2. Address details	contact address, billing address, emergency contact, email address, mailing address, home address, intended address [in State requiring PNR data transfer]
3. Contact telephone number(s)	[Telephone details]
4. Any collected API data	refer to Schedule I paragraph I
5. Frequent flyer information	information frequent flyer account number and elite level status
6. PNR locator code	file locator number, booking reference and reservation tracking number
7. Number of passenger on PNR	[Number]
8. Passenger travel status	Standby information
9. All date information	PNR creation date, booking date, reservation date, departure date, arrival date, PNR first travel date, PNR last modification date, ticket issue date, "first intended" travel date, date of first arrival [in State requiring PNR data transfer], late booking date for flight.
10. Split/divided PNR information	multiple passengers on PNR, other passengers on PNR, other PNR on single passenger booking.
11. All ticketing field information	date of ticket issue or purchase, selling class of travel, issue city, ticket number, one-way ticket, ticket issue city, automatic fare quote (ATFQ) fields.

C.2610

12. All travel itinerary for PNR	PNR flight itinerary segments or ports, itinerary history, origin city or board point, destination city, active itinerary segments, cancelled segments, layover days, flown segments, flight information, flight departure date, board point, arrival port, open segments, alternate routing unknown (ARNK) segments, non-air segments, inbound flight connection details, on-carriage information, confirmation status.
13. Form of payment (FOP) information	All FOP (cash, electronic, credit card number and expiry date, prepaid ticket advice (PTA), exchange), details of person or agency paying for ticket, staff, rebate codes.
14. All check-in information	generally available only after flight close-out: check-in security number, check-in agent Identification, check-in time, check-in status, confirmation status, boarding number, boarding indicator, check-in order
15. All seat information	seats requested in advance; actual seats only after flight close-out
16. All baggage information*	generally available from DCS only after flight closeout: number of bags, bag tag numbers, weight of bags, all pooled baggage information, head of pool, number of bags in pool, bag carrier code, bag status, bag destination or offload point.
17. Travel agent information	travel agency details, name, address, contact details, IATA code.
18. Received-from information	name of person making the booking
19. Go-show information*	generally available only after check-in and flight close-out: go-show identifier
20. No-show information*	only available after flight close-out: no-show history
21. General remarks. All information in general remarks section Free text/code fields in OSI, SSR, SSI, remarks/history codes	All IATA codes

MADE this 10th day of November, 2022.

ERIC MOTHIBI MOLALE,
Minister of Transport and Public Works.