L.N. 135 of 2002

CIVIL AVIATION ACT
(Cap. 232)

The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2002

In exercise of the powers conferred by article 4 of the Civil Aviation Act, the Minister for Transport and Communications, has made the following regulations:-

1. (1) The title of these regulations is the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2002. Citation and commencement

(2) These regulations shall come into force on such a date as the Minister responsible for civil aviation may by notice in the Gazzette appoint.

2. (1) In these Regulations, unless the context otherwise requires - Interpretation

"accident" means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which -

(a) a person suffers a fatal or serious injury as a result of -

- being in or upon the aircraft,

- direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or

- direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew, or

(b) the aircraft sustains damage or structural failure which -

- adversely affects the structural strength, performance or flight characteristics of the aircraft, and

- would normally require major repair or replacement of the affected component.

except for engine failure or damage, when the damage is limited to the engine, its cowlings or accessories; or for damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin; or

(c) the aircraft is missing or is completely inaccessible;

"aerodrome operator" means the person by whom the aerodrome is managed;

"the Annex" means Annex 13 to the Chicago Convention;

"causes" means actions, omissions, events or conditions, or a combination thereof, which led to the accident or incident;

"Chief Inspector" means the Chief Inspector of Air Accidents appointed under regulation 8;

"commander" in relation to an aircraft means the member of the flight crew designated as commander of that aircraft by the operator thereof, or failing such a person, the person who is for the time being the pilot in command of the aircraft;

"Contracting State" means any State (including Malta) which is party to the Chicago Convention;

"crew" includes every person employed or engaged in an aircraft in flight on the business of the aircraft;

"fatal injury" means an injury which is sustained by a person in an accident and which results in his death within thirty days of the date of the accident;

"flight recorder" means any type of recorder installed in the aircraft for the purpose of facilitating accident/incident investigations;

"incident" means an occurrence, other than an accident, associated with the operation of an aircraft which affects or would affect the safety of operation;

"inspector" means a person appointed as an Inspector of Air Accidents under regulation 8;

"investigating inspector" means an inspector carrying out an

investigation pursuant to these regulations;

"investigation" means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of the cause and, or, causes and, when appropriate, the making of safety recommendations;

"Minister" means the Minister responsible for civil aviation and, to the extent of the authority given, any person authorised in that behalf by such Minister;

"operator" means any person, body or undertaking operating or proposing to operate one or more aircraft.

"owner", where an aircraft is registered, means the registered owner;

"pilot in command" in relation to an aircraft means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"relevant record" means any item in the possession, custody or power of the Minister which is of a kind referred to in sub-paragraphs (a) to (e) of paragraph 5.12 of the Annex;

"safety recommendation" means any proposal by the investigating inspector conducting the technical investigation, based on information derived from that investigation, made with the intention of preventing accidents and incidents;

"serious incident" means an incident involving circumstances indicating that an accident nearly occurred;

"serious injury" means an injury which is sustained by a person in an accident and which -

(a) requires hospitalisation for more than forty-eight hours, commencing within seven days from the date the injury was received; or

(b) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); or

(c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or

(d) involves injury to any internal organ; or

(e) involves second or third degree burns, or any burns affecting more than five per cent of the body surface; or

(f) involves verified exposure to infectious substances or harmful radiation;

"undertaking" means any natural person, any legal person, whether profit-making or not, or any official body whether having its own legal personality or not.

(2) Any notice or other document required or authorised by any provision of these regulations to be served on or given to any person may be served or given -

(a) by delivering it to that person;

(b) by leaving it at his usual or last-known residence or place of business, whether in Malta or elsewhere;

(c) by sending it to him by post at that address; or

(d) by sending it to him at that address by telex, by facsimile transmission or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as served when it is received.

Applicability

3. These regulations apply only to civil aviation accidents and incidents.

Purpose of the investigation of accidents and incidents

4. The sole objective of the investigation of an accident or incident under these regulations shall be the prevention of accidents and incidents. It shall not be the purpose of such an investigation to apportion blame or liability.

Duty to furnish information relating to accidents and incidents

5. (1) Where an accident or serious incident occurs in respect of which, by virtue of regulation 8(3), the Chief Inspector is required to carry out, or to cause an inspector to carry out, an investigation, the relevant person and, in the case of an accident or a serious incident occurring on or adjacent to an aerodrome, the aerodrome operator shall forthwith give notice thereof to the Chief Inspector by the quickest means of communication available and, in the case of an accident occurring in or over Malta, shall also notify forthwith a police officer for the area where the accident occurred of the accident and of the place where it occurred.

(2) In this regulation the expression "relevant person" means -

(a) in the case of an accident or serious incident occurring in or over Malta or occurring elsewhere to an aircraft registered in Malta, the commander of the aircraft involved at the time of the accident or serious incident or, if he be killed or incapacitated, the operator of the aircraft: and

(b) in the case of a serious incident occurring in or over any country or territory other than a Contracting State to an aircraft registered elsewhere than in Malta but operated by an undertaking established in Malta, that undertaking.

(3) The notice to the Chief Inspector referred to in sub-regulation (1) shall contain as much of the following information as is available:

(a) in the case of an accident, the identifying abbreviation "ACCID" or, in the case of a serious incident, the identifying abbreviation "INCID";

(b) the type, model and the nationality and registration marks of the aircraft;

(c) the name of the owner, operator and hirer (if any) of the aircraft;

(d) the name of the commander of the aircraft;

(e) the date and Co-ordinated Universal Time of the accident or serious incident;

(f) the last point of departure and the next point of intended landing of the aircraft;

(g) the position of the aircraft by reference to some easily defined geographical point and latitude and longitude:

(h) the number of -

(i) crew on board the aircraft at the time of the accident or serious incident and, in the case of an accident, the number of them killed or seriously injured as a result of the accident;

(ii) passengers on board the aircraft at the time of the accident or serious incident and, in the case of an accident, the number of them killed or seriously injured as a result of the accident:

(iii) in the case of an accident, other persons killed or seriously injured as a result of the accident;

(iv) the nature of the accident or serious incident and the extent of the damage to the aircraft as far as is known.

(4) Where an incident, other than a serious incident, takes place -

(a) in or over Malta, or

(b) otherwise than in or over Malta to an aircraft registered in Malta,

the owner, operator, commander or hirer of the aircraft shall, if so required by notice given to him by the Chief Inspector, send to the Chief Inspector such information as is in his possession or control with respect to the incident in such times as may be specified in the notice.

Publication of information

6. Subject to the provisions of regulations 11(4)(b) and 18, the Chief Inspector may at any time publish, or cause to be published, information relating to an accident or incident whether or not such accident or incident is the subject of an investigation by an inspector.

Removal of damaged aircraft

7. (1) Subject to sub-regulation (2) and regulation 9, where an accident, or a serious incident which results in the withdrawal from service of an aircraft, occurs in or over Malta no person other than an authorised person shall have access to the aircraft involved and neither the aircraft nor its contents shall, except under the authority of the Minister, be removed or otherwise interfered with.

(2) (a) The aircraft may be removed or interfered with so far as may be necessary for the purpose of -

(i) extricating persons or animals;

(ii) removing any mail, valuables or dangerous goods carried by the aircraft;

(iii) preventing destruction by fire or other cause;

(iv) preventing any danger or obstruction to the public, air navigation or other transport;

(v) removing any other property from the aircraft under the supervision of an inspector or with the

agreement of an inspector or of a police officer.

(b) If an aircraft is wrecked on water, the aircraft or any of its contents may be removed to such extent as may be necessary for bringing it or them to a place of safety.

(3) In this regulation the expression "authorised person" means -

(a) any person authorised by the Minister either generally or specially to have access to any aircraft involved in an accident or serious incident;

(b) any officer of police;

(c) any Customs officer.

Inspectors of Air Accidents.

8. (1) For the purpose of carrying out investigations into accidents and incidents to which these regulations apply, the Minister shall appoint persons as Inspectors of Air Accidents, one of whom shall be appointed by the Minister as Chief Inspector of Air Accidents.

(2) Subject to sub-regulations (4) and (5), the Chief Inspector shall carry out, or cause an inspector to carry out, an investigation into -

(a) accidents and serious incidents which occur in or over Malta;

(b) accidents and serious incidents which occur in or over any country or territory which is not a Contracting State to aircraft registered in Malta when such an investigation is not carried out by another State;

(c) serious incidents which occur in or over any country or territory which is not a Contracting State to aircraft which are registered elsewhere than in Malta but which are operated by an undertaking established in Malta when such an investigation is not carried out by another State; and

(d) accidents and serious incidents to aircraft registered in Malta in the circumstances described in paragraph 5.3 of the Annex.

(3) Subject to paragraphs (4) and (5), the Chief Inspector may, when he expects to draw air safety lessons from it, carry out, or cause an inspector to carry out, an investigation into an incident, other than

a serious incident, which occurs -

(a) in or over Malta; or

(b) otherwise than in or over Malta to an aircraft registered in Malta.

(4) The Chief Inspector may delegate the task of carrying out an investigation into an accident or an incident to another Contracting State in accordance with paragraphs 5.1. 5.1.1 or 5.3 of the Annex.

(5) Where the Chief Inspector delegates the task of carrying out an investigation pursuant to sub-regulation (4), he shall so far as he is able facilitate inquiries by the investigator appointed by the relevant State.

(6) The Chief Inspector may carry out, or cause an inspector to carry out, an investigation into an accident or incident where the task of carrying out the investigation has been delegated to Malta by another Contracting State in accordance with paragraphs 5.1, 5.1.1 or 5.3 of the Annex.

(7) Without prejudice to the power of an inspector to seek such advice or assistance as he may deem necessary in making an investigation, the Minister may at the request of the Chief Inspector appoint persons to assist an inspector in a particular investigation and such persons shall for the purpose of so doing have such of the powers of an inspector under these regulations as may be specified in their appointment.

(8) The Chief Inspector may arrange for any of his powers and obligations under these regulations to be performed on his behalf by an inspector designated by him to be his deputy.

(9) In any case where the Chief Inspector causes more than one inspector to carry out an investigation he shall nominate one of them to be in overall charge of the investigation.

Powers of inspectors.

9. (1) For the purpose of enabling him to carry out an investigation into an accident or incident in the most efficient way and within the shortest time, an investigating inspector is hereby authorised to -

(a) have free access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;

(b) ensure an immediate listing of evidence and controlled removal of debris, or components for examination or

analysis purposes;

(c) have immediate access to and use of the contents of the flight recorders and any other recordings;

(d) have access to the results of examination of the bodies of victims or of tests made on samples taken from the bodies of victims;

(e) have immediate access to the results of examinations of the people involved in the operation of the aircraft or of tests made on samples taken from such people;

(f) examine witnesses; and

(g) have free access to any relevant information or records held by the owner, the operator or the manufacturer of the aircraft and by the authorities responsible for civil aviation or airport operation.

(2) For the purpose of sub-regulation (1) an investigating inspector shall have power -

(a) by summons under his hand to call before him and examine all such persons as he thinks fit, to require such persons to answer any question or furnish any information or produce any books, papers, documents and articles which the investigating inspector may consider relevant and to retain any such books, papers, documents and articles until the completion of the investigation;

(b) to take statements from all such persons as he thinks fit and to require any such person to make and sign a declaration of the truth of the statement made by him;

(c) on production if required of his credentials, to enter and inspect any place, building or aircraft the entry or inspection whereof appears to the investigating inspector to be requisite for the purposes of the investigation;

(d) on production if required of his credentials, to remove, test, take measures for the preservation of or otherwise deal with any aircraft other than an aircraft involved in the accident or incident where it appears to the investigating inspector requisite for the purposes of the investigation, and

(e) to take such measures for the preservation of evidence as he considers appropriate.

(3) Every person summoned by an investigating inspector under sub-regulation (2)(a) shall be allowed such expenses as the Minister may determine.

Form and conduct of investigations.

10. The extent of investigations and the procedure to be followed in carrying out investigations required or authorised under these regulations shall be determined by the Chief Inspector taking account of the purpose described in regulation 4 and the lessons he expects to draw from the accident or incident for the improvement of safety.

Inspector's report.

11. (1) On completion of an investigation into an accident or incident, the investigating inspector shall prepare a report of the investigation in a form appropriate to the type and seriousness of the accident or incident.

(2) If it appears to the investigating inspector that the investigation of any accident or incident -

(a) involving a collision between a civil aircraft and a military aircraft, or

(b) occurring while a civil aircraft was on, or in the course of taking off from or landing on, an aerodrome controlled by the naval, military or air forces of any country,

has been completed but for the investigation of matters affecting the discipline or internal administration of any of those forces which are more appropriate for the investigation by some other person or body, the investigation may be treated for the purposes of sub-regulation (1) as if it had been completed without such matters being investigated under these regulations. In such a case the report of the investigation into the accident or incident shall state those matters to which the investigation has not extended by reason of this sub-regulation.

(3) The report of an investigation into an accident shall state the sole objective of the investigation as described in regulation 4 and, where appropriate, contain safety recommendations.

(4) The report of an investigation into an incident shall -

(a) where appropriate, contain relevant safety recommendations;

(b) protect the anonymity of the persons involved in the incident; and

(c) be circulated by the investigating inspector to the

parties likely to benefit from its findings with regard to safety.

(5) A safety recommendation shall in no case create a presumption of blame or liability for an accident or incident.

(6) The Chief Inspector shall submit a copy of every report prepared pursuant to sub-regulation (1) to the Minister without delay.

(7) In this regulation the expression "investigating inspector" in a case where more than one inspector is carrying out the task of investigation means the inspector nominated under regulation 8(9).

Notice of inspector's report and representations thereon

12. (1) No report which is required by regulation 13 to be published shall be so published if, in the investigating inspector's opinion, it is likely to affect adversely the reputation of any person, until the investigating inspector has -

(a) where it appears to him to be practicable so to do, served a notice under this regulation upon that person, or if that person is a deceased individual, upon the person who appears to him, at the time he proposes to serve notice pursuant to this sub-regulation, to represent best the interest of the deceased in the matter; and

(b) made such changes to the report as he thinks fit following his consideration of any representations which may be made to him in accordance with sub-regulation (3) by or on behalf of the person served with such notice.

(2) The notice referred to in sub-regulation (1)(a) shall include particulars of any proposed analysis of facts and conclusions as to the cause or causes of the accident or incident which may effect the person on whom or in respect of whom the notice is served.

(3) Any representations made pursuant to sub-regulation (1)(b) shall be in writing and shall, subject to sub-regulation (6), be served on the investigating inspector within twenty-eight days of service of the notice referred to in sub-regulation (1)(a).

(4) A copy of the report submitted to the Minister under regulation 11(6) shall be served by the investigating inspector on any person who has been served with a notice pursuant to sub-regulation (1).

(5) No person shall disclose or permit to be disclosed any information contained in a notice or report served on him pursuant to sub-regulations (1) or (4) to any other person without the prior consent in writing of the Chief Inspector.

(6) The Chief Inspector shall have power to extend the period of twenty-eight days prescribed in sub-regulation (3) and this power shall be exercisable notwithstanding that that period has expired.

(7) In this regulation the expression "investigating inspector" in a case where more than one inspector is carrying out the task of investigation means the inspector nominated under regulation 8(9).

Publication of reports.

13. Subject to regulation 12(1), the Chief Inspector shall cause the report of an investigation into an accident or incident, other than an incident the investigation of which has been delegated to Malta by another State, to be made public in the shortest time possible (and, if possible, within twelve months of the date of the accident or serious incident) and in such manner as he thinks fit.

Safety recommendations

14. (1) The Chief Inspector shall cause the reports referred to in regulation 13, including those not required to be published and including the safety recommendations contained therein, to be communicated to the undertakings or national aviation authorities concerned.

(2) Any undertaking or authority to which a safety recommendation is communicated pursuant to sub-regulation (1) shall, without delay -

(a) take that recommendation into consideration and, where appropriate, act upon it;

(b) send to the Minister -

(i) full details of the measures, if any, it has taken or proposes to take to implement the recommendation and, in case where it proposes to implement measures, the timetable for securing that implementation; or

(ii) a full explanation as to why the recommendation is not to be the subject of measures to be taken to implement it;

(c) give notice to the Minister if at any time any information provided to the Minister in pursuance of paragraph (b)(i) concerning the measures it proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.

Reopening of investigation.

15. (1) The Chief Inspector may cause the investigation of any accident or incident to be reopened and shall do so -

(a) if, after the completion of the investigation, evidence has been disclosed which is in his opinion both new and important; or

(b) if for any other reason there is in his opinion ground for suspecting that the reputation of any person has been unfairly and adversely affected.

(2) Any investigation reopened shall be subject to and conducted in accordance with the provisions of these regulations.

Accredited representatives.

16. (1) Where an investigation of an accident or serious incident is being carried out by an investigating inspector pursuant to regulation 8, an accredited representative appointed by -

(a) the State of registry;

(b) the State of design;

(c) the State of the manufacturer;

(d) the State of the operator;

(e) a Contracting State which has, on request, furnished information, facilities or experts to the investigating inspector in connection with the accident or serious incident,

may take part in the investigation, that is to say, he shall be permitted to visit the scene of the accident, examine the wreckage, question witnesses, receive copies of all pertinent document (saving all such just exceptions as may be determined by the investigating inspector), have access to all relevant evidence and make submissions; and he may be accompanied by such technical and other advisers as may be considered necessary by the authorities of the country or territory by which he is appointed.

(2) In this regulation the expressions "accredited representative", "State of registry", "State of design", "State of manufacture" and "State of the operator" have the meanings given to them by Chapter 1 of the Annex and the expression "investigating inspector" in a case where more than one inspector is carrying out the task of investigation means the inspector nominated under regulation 8(9).

Obstruction of investigation.

17. (1) No person shall obstruct or impede an inspector or any person acting under the authority of the Minister in the exercise of any powers or duties under these regulations.

(2) No person shall without reasonable excuse fail, after having had the expenses (if any) to which he is entitled under these regulations tendered to him, to comply with any summons of an inspector holding an investigation.

Disclosure of relevant records

18. (1) Subject to sub-regulations (2), (4), (5) and (6), no relevant record shall be made available by the Minister to any person for purposes other than accident or incident investigation.

(2) Nothing in sub-regulation (1) shall preclude the Minister making a relevant record available to any person where in a case where that person is a party to or otherwise entitled to appear at judicial proceedings, the court has ordered that the relevant record shall be made available to him for the purpose of those proceedings.

(3) Subject to sub-regulation (5) no order shall be made under sub-regulation (2) unless the court is satisfied that the interests of justice in the judicial proceedings in question outweigh any adverse domestic and international impact which disclosure may have on the investigation into the accident or incident to which the record relates or any future accident or incident investigation undertaken in Malta.

(4) A relevant record or part thereof shall not be treated as having been made available contrary to sub-regulation (1) in any case where that record or part is included in the final report (or the appendices to the final report) of the accident or incident.

(5) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any relevant record or part thereof on the ground that the disclosure of it would be injurious to the public interest.

Revocation

19. The Civil Aviation (Investigation of Air Accidents) Regulations 1956 are hereby revoked. Any investigation commenced under those Regulations which, in the case of a field investigation has not been completed or, in the case of a formal investigation has not been the subject of a report submitted to the Minister, shall continue as if it had been commenced under these Regulations.

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