

VIRGIN ISLANDS

CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS) REGULATIONS, 2018

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2018 NO. 65

**CIVIL AVIATION ACT 1982
(U.K. ACT 1982 c.16)**

**Civil Aviation (Investigation of Air Accidents and Incidents)
Regulations, 2018**

[Gazetted 21st December, 2018]

The Governor, in exercise of the powers conferred by section 75 of the Civil Aviation Act 1982 (U.K. Act 1982 c. 16) as extended to the Virgin Islands by section 4 of the Civil Aviation Act 1982 (Overseas Territories) Order 2001 (U.K.S.I. 2001 No. 1452), makes the following Regulations:

Citation and commencement.

1. These Regulations may be cited as the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2018 and shall come into force upon publication in the *Gazette*.

Interpretation.

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

"accident" means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft takes place between the time a person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which

- (a) a person is fatally or seriously injured as a result of
 - (i) being in the aircraft, or
 - (ii) in direct contact with any part of the aircraft including parts which have become detached from the aircraft, or
 - (iii) direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or were 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
 - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
 - (ii) would normally require major repair or replacement of the affected component,

except for engine failure or damage when damage is limited to a single engine (including its cowlings or accessories), to propellers, wing tips, antennas, probes, tyres, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes) or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome); or

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

"accident investigation authority" means the authority designated by a Contracting State as responsible for aircraft accident and incident investigation within the context of Annex 13 to the Chicago Convention;

"accredited representative" means a person designated by a Contracting State (which person would normally be from that State's accident investigation authority) on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another Contracting State;

"adviser" means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation;

"aerodrome authority" means, in relation to an aerodrome, the person by whom the aerodrome is operated or managed;

"aircraft" means any machine that can derive support in the atmosphere from the

reactions of the air other than the reactions of the air against the earth's surface;

"Air Accidents Investigation Branch (AAIB)" means that part of the United Kingdom Department for Transport known by that name;

"Annex 13" means Annex 13 (Aircraft Accident and Incident Investigation) to the Chicago Convention as that Annex has effect from time to time;

"authorised person" means a person authorised by the Chief Inspector or the Investigator in Charge either generally or in relation to a particular investigation;

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

"Chicago Convention" means the Convention on International Civil Aviation which was, on 7th December 1944, signed in Chicago on behalf of the Government of the United Kingdom;

"Chief Inspector" means the AAIB's Chief Inspector of Air Accidents;

"Contracting State" means any State which is party to the Chicago Convention;

"contributing factors" means actions, omissions, events, conditions, or a combination thereof, which, if eliminated, avoided or absent, would have reduced the probability of the accident or incident occurring, or mitigated the severity of the consequences of the accident or incident;

"crew" includes every person employed or engaged by the operator in an aircraft in flight in relation to the operation of the aircraft including, where the operator and the pilot in command are the same person, the pilot in command;

"dangerous goods" means articles or substances which are capable of posing a risk to health, safety, property or the environment when carried on board an aircraft;

"expert" means a person appointed by a Contracting State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens;

"fatal injury" means an injury which is sustained by a person in an accident and which results in his or her death within 30 days of the date of the accident;

"flight recorder" means any type of recorder installed in an aircraft for the purpose of complementing accident or incident investigation;

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

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

"Investigator" means a person appointed as such under regulation 8;

"Investigator in Charge" means a person charged, on the basis of his or her qualifications, with responsibility for the organisation, conduct and control of an investigation conducted pursuant to these Regulations;

"maximum mass" means certificated maximum take-off mass of an aircraft;

"military aerodrome" means any aerodrome in the Territory that is under the control of Her Majesty's naval, military or air forces or of any visiting force;

"operator" means a person, organisation or enterprise engaged in, or offering to engage in the operation of an aircraft, whether for valuable consideration or otherwise;

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

"person involved" means the operator, and any member of the crew, of the aircraft involved in an accident or serious incident; any person involved in the maintenance of that aircraft or in the training of its crew; any person involved in the provision of an air traffic control, flight information or aerodrome service who has provided services to that aircraft; members of staff of the designated authority responsible for civil aviation;

"pilot in command" means the pilot designated by the operator as being in command of an aircraft and charged with the safe conduct of its flight or, if

no such designation has been made, the person who for the time being is in charge of piloting the aircraft without being under the direction of any other pilot in the aircraft;

"preliminary report" means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

"safety investigation" means a process conducted by the AAIB for the purposes of accident and incident prevention, which includes the gathering and analysis of information, the drawing of conclusions (including determination of causes and contributing factors) and, when appropriate, the making of safety recommendations;

"safety recommendation" means a proposal of an accident investigation authority, based on information derived from an investigation, made with the intention of preventing accidents or incidents and which in no case has the purpose of creating a presumption of blame or liability for an accident or incident;

"serious incident" means an incident involving circumstances indicating that there was a high probability of an accident and is associated with the operation of an aircraft which, in the case of a manned aircraft takes place between the time a person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down; and

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

- (a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received; or
- (b) results in a fracture of a bone, excluding 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 an internal organ; or

- (e) involves second or third-degree burns, or any burns affecting more than 5 per cent of the body surface; or
- (f) involves verified exposure to infectious substances or harmful radiation;

and references to "seriously injured" shall be construed accordingly;

"State of Design" means the State having jurisdiction over the organisation responsible for the type design of an aircraft or aircraft engine;

"State of Manufacture" means the State having jurisdiction over the organisation responsible for the final assembly of an aircraft, aircraft engine, or major components of the aircraft;

"State of Occurrence" means the State in the territory of which an accident or serious incident occurs;

"State of the Operator" means the State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence;

"State of Registry" means the State on whose register an aircraft is entered;

"State Safety Programme (SSP)" means an integrated set of regulations and activities aimed at improving aviation safety.

3. These Regulations apply only to accidents and incidents involving aircraft engaged in civil aviation in the circumstances detailed in regulation 8 subregulations (3) and (4) or otherwise in the circumstances detailed in subregulation (5). Application.

4. The sole objective of an investigation of an accident or incident under these Regulations is the prevention of accidents and incidents; and it is not the purpose of this activity to apportion blame or liability. Purpose of the investigation of accidents and incidents.

5. (1) Where an accident or a serious incident occurs any person involved shall Duty to furnish information relating to accidents and serious incidents.

- (a) give notice of the accident or incident to the Governor, the Chief Inspector and to the designated authority for civil aviation regulation in the Territory by the quickest means of communication available; and
- (b) where an accident occurs in or over the Territory, immediately notify the Commissioner of Police of the accident and of the place where it occurred.

(2) The Chief Inspector shall forward a notification (containing the information detailed in subregulation (4) to this regulation) of an accident, a serious incident, or an incident to be investigated within the context of Annex 13, with the minimum of delay and by the most suitable and quickest means available to

- (a) the State of Registry;
- (b) the State of the Operator;
- (c) the State of Design;
- (d) the State of Manufacture; and
- (e) ICAO, when the aircraft involved is of a maximum mass of over 2,250kg or is a turbo-jet powered aircraft.

(3) The notice referred to in subregulation (2) shall contain, to the extent it is available

- (a) in the case of an accident, the identifying abbreviation 'ACCID' or, in the case of a serious incident or incident, 'INCID';
- (b) the manufacturer, model, nationality and registration marks, and serial number of the aircraft;
- (c) the name of the owner, operator and hirer or lessee, if any, of the aircraft;
- (d) the qualifications of the pilot in command, and the nationality of the crew and passengers;

- (e) the date and time (local time or UTC) of the accident or serious incident;
- (f) the last point of departure and the point of intended landing of the aircraft;
- (g) the position of the aircraft with 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 crew 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 passengers killed or seriously injured as a result of the accident; and
 - (iii) in the case of an accident, other persons killed or seriously injured as a result of the accident;
- (i) a description of the accident or serious incident and the extent of the damage to the aircraft as far as is known as well as an indication of access difficulties or special requirements to reach the site; and
- (j) the presence and description of any dangerous goods or cargo on board the aircraft.

(4) As soon as it is possible to do so, the Chief Inspector shall send any details omitted from the above notification as well as any other relevant information.

(5) Any person having knowledge of an accident or serious incident shall, if so required by notice in writing given to such person by the Chief Inspector, send to the Chief Inspector such information as is in their possession or control, in

such form and at such times as may be specified in the notice.

(6) Upon receipt of notification of an accident or a serious incident occurring outside the Territory involving an aircraft registered in the Territory or of which the Territory is the State of the Operator, the operator of the aircraft shall, as soon as possible and by the most suitable and quickest means available, provide the authorities of the State conducting the investigation with any relevant information available regarding the aircraft and flight crew involved in the accident or serious incident, and provide a copy of the passenger manifest and details of any dangerous goods or cargo on board the aircraft.

(7) The Chief Inspector shall inform the authorities of the State conducting an investigation whether the AAIB intends to appoint an accredited representative.

Preliminary report on accident or incident to be published.

6. Subject to regulations 11(2), 12 and 18, the Chief Inspector may at any time publish, or cause to be published, a preliminary report or bulletin relating to an accident or serious incident.

Protection of evidence and removal of damaged aircraft.

7. (1) Subject to subregulations (2) and (3) to this regulation and to regulation 9, where an accident or serious incident occurs in or over the Territory

- (a) no person other than an authorised person shall have access to the aircraft involved in the accident or serious incident; and
- (b) neither the aircraft nor its contents shall, except under the authority of the Investigator in Charge, be removed or otherwise interfered with; and
- (c) the Investigator in Charge, or authorised persons, and any person involved shall take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft, its contents and records and all air traffic services communication recordings and documents associated with the flight for such a period as may be necessary for the purposes of an investigation;
- (d) the Investigator in Charge or authorised person shall

take all necessary steps to ensure that the aircraft, its contents, and any other evidence remain; undisturbed pending inspection by an accredited representative, pursuant to a request, from the State of Registry, State of Design, State of Manufacture or State of the Operator, so far as this is reasonably practicable and compatible with the proper conduct of the investigation and provided that it does not result in undue delay in returning the aircraft to service where this is practicable.

- (2) Notwithstanding subregulation (1)
 - (a) the aircraft may be accessed, moved or interfered with to the extent necessary to
 - (i) extricate persons, animals, mail and valuables;
 - (ii) prevent destruction by fire or other causes;
 - (iii) eliminate any danger or obstruction to air navigation, to other transport or to the public; or
 - (iv) remove other property from the aircraft under the supervision of an Inspector or with the agreement of an Inspector or a police officer; and
 - (b) where an aircraft is in water, the aircraft or any of its contents may be removed to such extent as may be necessary for bringing the aircraft or the contents to a place of safety.

(3) The Chief Inspector or the Investigator in Charge shall facilitate access to and (subject to the provisions of regulation 19) release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required in the investigation to the owner of the aircraft, or any person or persons nominated by them or duly designated by the State of

Registry or the State of the Operator as applicable.

- (4) In this regulation the expression "authorised person" means
 - (a) the Chief Inspector, the Investigator in Charge or a person authorised by either of them;
 - (b) a police officer; or
 - (c) an officer of the Customs and Excise Department.

Air Accident
Investigations.

8. (1) The Air Accidents Investigation Branch (AAIB) is the accident investigation authority for the Territory for the purpose of carrying out investigations into accidents and incidents to which these Regulations apply.

(2) The Chief Inspector of the AAIB will appoint Inspectors of Air Accidents to be Investigators, one of whom shall be appointed as the Investigator in Charge.

(3) Subject to subregulations (6) and (7), the Chief Inspector shall carry out, or cause an investigation to be carried out into

- (a) accidents and serious incidents which occur in or over the Territory;
- (b) accidents and serious incidents which occur to aircraft registered in the Territory in or over a country or territory which is not a Contracting State or when the location of the accident or serious incident cannot definitely be established as being in the territory of any State.

(4) The Chief Inspector may, where the Chief Inspector expects to draw air safety lessons from it, carry out or cause an investigation to be carried out into an incident, other than a serious incident, which occurs

- (a) in or over the Territory; or
- (b) otherwise than in or over the Territory to an aircraft

registered in the Territory.

(5) The Chief Inspector may cause a safety investigation to be conducted in accordance with these regulations where

- (a) an accident, a serious incident or any other incident occurs in or over the Territory or to an aircraft registered in the Territory;
- (b) that accident, serious incident or incident involves any aircraft engaged in military, customs, police or similar services; and
- (c) The Chief Inspector expects to draw safety lessons for civil aviation from the safety investigation.

(6) Save for any investigation to be undertaken under subregulation (5), the Chief Inspector may delegate the whole or any part of an investigation into an accident or incident to another State or a regional accident investigation organization by mutual arrangement and consent.

(7) Where the Chief Inspector delegates the task of carrying out an investigation pursuant to subregulation (6), the Chief Inspector shall to the extent possible facilitate inquiries by the Investigator in Charge appointed by the relevant State.

(8) The Chief inspector shall not appoint a person as the Investigator in Charge of an investigation where the investigation has been delegated under subregulation (6).

(9) Without prejudice to the power of an Investigator to seek such advice or assistance as the Investigator may deem necessary in undertaking an investigation, the Chief Inspector may invite the aviation authorities and suitably qualified persons from the Territory and other Contracting States to assist an Investigator in a particular investigation, so far as this is compatible with the proper conduct of the investigation.

(10) Suitably qualified persons or organisations in the Territory shall be nominated by the Territory to facilitate the securing and preservation of evidence under instructions from the Investigator in Charge.

(11) If, in the course of an investigation, it becomes known or it is suspected that an act of unlawful interference was involved in the cause of the accident or serious incident the Investigator in Charge shall immediately initiate action to ensure that the aviation security authorities of the Territory are informed.

(12) For the purposes of subregulation (11), "an act of unlawful interference" means any act which constitutes an offence under the Aviation Security and Piracy (Overseas Territories) Order 2000 (as amended).

(13) There shall be established by the Territory a comprehensive system for providing assistance to aircraft accident victims and their families.

9. (1) For the purpose of enabling an investigation to be carried out into an accident or incident in the most efficient way and within the shortest time, an Investigator is authorised to

- (a) have unrestricted and unhampered access to and control over the site of the accident or incident, the aircraft, its contents or its wreckage, and all relevant material or evidence including the protection of the aircraft, debris or components for examination or analysis purposes;
- (b) gather, record and analyse all relevant information on that accident or incident;
- (c) ensure an immediate listing of evidence and controlled removal of debris, or components, for examination or analysis purposes;
- (d) recover and have immediate access to and use of the contents of the flight recorders and any other recordings and air traffic service records;
- (e) arrange for the read out of the flight recorders without delay;

Powers and
duties of
Investigators.

- (f) require an expeditious autopsy or medical examination of the crew, passengers and other persons and have immediate access to the results of examination of the bodies of victims or of tests made on samples taken from the bodies of victims;
 - (g) 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;
 - (h) call and examine witnesses and to require them to produce information or evidence relevant to the investigation; and
 - (i) 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, air navigation services or airport operations.
- (2) For the purposes of subregulation (1), an Investigator has power
- (a) by written summons, to examine all persons as the Investigator thinks fit, require persons to answer questions or furnish information or produce books, papers, documents and articles which the Investigator 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 persons as the Investigator thinks fit and to require any person to make and sign a declaration of the truth of the statement made by him;
 - (c) on production of the Investigator's credentials, where these are required, to enter and inspect any place, building or aircraft the entry or inspection whereof appears to the Investigator to be requisite for the purposes of the investigation;

- (d) on production of the Investigator's credentials, where these are required, 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 Investigator requisite for the purposes of the investigation; and
- (e) to take such measures for the preservation of evidence as the Investigator considers appropriate.

(3) A person summoned by an Investigator under subregulation (2)(a) shall be allowed such expenses as the Chief Inspector may determine.

Form and
conduct of
investigations.

10. (1) The AAIB shall have independence in the conduct of an investigation and have unrestricted authority over the extent and conduct of an investigation; and the procedure to be followed in carrying out investigations required or authorised under these Regulations.

(2) The conduct of an investigation under these Regulations shall be

- (a) wholly independent of, and separate from, any judicial or administrative proceedings to apportion blame or liability;
- (b) coordinated with any notified investigation conducted or to be conducted by the judicial authorities of the Territory for the purpose of, and to the extent necessary for, ensuring the traceability and retention of custody of the flight recorders and other physical evidence and for the prompt examination and analysis of such evidence;
- (c) determined by the Chief Inspector, taking account of the purpose described in regulation 4 and the lessons the Chief Inspector expects to draw from the accident or incident for the improvement of aviation safety.

Investigation
report.

11. (1) On completion of an investigation into an accident or

incident, the Investigator in Charge shall prepare a Final Report of the investigation, appropriate to the type and seriousness of the accident or incident.

(2) On completion of an investigation, the Investigator in Charge shall send a copy of the draft Final Report to the following States, inviting their significant and substantiated comments on the report as soon as possible

- (a) the State of Registry;
- (b) the State of the Operator;
- (c) the State of Design;
- (d) the State of Manufacture; and
- (e) any other State that participated in the investigation,

and shall take account of such comments received within 28 days on technical aspects of the report and either amend the report to include the substance of the comments or, at the request of the State that provided the comments, append to the Final Report the comments upon which no agreement could be reached.

(3) The report of an investigation into an accident or incident shall state the sole objective of the investigation as described in regulation 4 and, where appropriate, contain a list of findings, cause(s), causal factors and/or contributing factors and safety recommendations.

(4) The Chief Inspector shall submit a copy of every report prepared pursuant to subregulation (1) to the Governor without delay.

12. (1) Where the Investigator in Charge considers a safety investigation report (required by regulation 13 to be published) is likely to adversely affect the reputation of any person, the Final report shall not be published until the Investigator in Charge has

Notice of safety investigation report and representations.

- (a) where it appears practicable to do so, served a notice on the person or, where the person is deceased, on the person who appears to the Investigator in Charge to best represent the interests of the deceased; and

- (b) made such changes to the report as the Investigator in Charge thinks fit following consideration of any representations made in accordance with subregulation (3) by or on behalf of the person served with the notice under sub-subregulation (a).

(2) The notice referred to in sub-subregulation (a) of subregulation (1) must include particulars of any proposed analysis of facts and conclusions as to the circumstances and causes of the accident or incident which could affect the person concerned.

(3) Subject to subregulation (5), representations made pursuant to sub-subregulation (b) of subregulation (1) shall be in writing and provided to the Investigator in Charge within 28 days of service of the notice or such longer period as the Chief Inspector may allow.

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

(5) A person who contravenes or fails to comply with subregulation (4) commits an offence.

13. (1) The Chief Inspector shall cause the Final Report of an investigation into an accident or incident to be made public

- (a) in the shortest time possible;
- (b) where possible, within 12 months of the date of the accident or incident; and
- (c) in such a manner as the Chief Inspector thinks fit.

(2) Notwithstanding the provisions of regulation 6, if the Final Report cannot be made publicly available within twelve months, the Chief Inspector shall make an interim statement publicly available on each anniversary of the occurrence/detailing the progress of the investigation and any safety issues raised.

Publication of reports.

- (3) The Chief Inspector shall send a copy of the Final Report to
 - (a) the parties listed in regulations 11(2) and 12, and
 - (b) any State that provided relevant information, significant facilities or experts, and
 - (c) ICAO when the investigation involved an aircraft of a maximum mass of over 5,700 kg, and
 - (d) the Governor.

14. (1) The Chief Inspector shall cause the report referred to in regulation 13, and the safety recommendations contained in it, to be communicated to ICAO and to all the relevant undertakings or aviation authorities concerned in the Territory and in the States referred to in regulation 11(2). Safety recommendations.

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

(3) Without prejudice to the investigation or publication of the Final Report, at any stage of an investigation of an accident or incident, the Chief Inspector may recommend in a dated transmittal communication to the appropriate authorities, including those in other States and where appropriate ICAO, any preventative action that the Chief Inspector considers necessary to be taken promptly to enhance aviation safety and shall record the responses.

(4) The addressee of a safety recommendation pursuant to subregulations (1) and (3) shall

- (a) acknowledge receipt of the transmittal communication;
- (b) consider the safety recommendation and, where it considers it to be appropriate, act upon it; and
- (c) send to the Chief Inspector within 90 days of the

letter of transmittal one of the following:

- (i) full details of the measures, if any, it has taken or proposes to take to implement the recommendation without delay and, 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; and
- (d) give written notice to the Chief Inspector where at any time information provided to him pursuant to sub-subregulation (c)(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) If after an investigation has been closed new and significant evidence becomes available, or if the Chief Inspector considers it appropriate, the Chief Inspector may cause the investigation of an accident or incident to be reopened.

(2) An investigation that is reopened shall be subject to and conducted in accordance with these Regulations.

Participation in an investigation - accredited representatives, advisers and experts.

16. (1) When an investigation of an accident or serious incident is being carried out by an Investigator under regulation 8, accredited representatives may be appointed by

- (a) the State of Registry;
- (b) the State of Design;
- (c) the State of Manufacture;
- (d) the State of the Operator; and

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

(2) Where an investigation of an accident or serious incident is being carried out pursuant to regulation 8, an 'expert' may be appointed by a State which has a special interest in the accident by virtue of fatalities or serious injuries to its citizens.

(3) When an investigation is being carried under regulation 8 the Chief Inspector shall invite to participate in the investigation

- (a) the air operator, when neither the State of Registry nor the State of the Operator appoints an accredited representative;
- (b) the organisations responsible for the type design and final assembly of the aircraft, when neither the State of Design nor the State of Manufacture appoints accredited representatives.

(4) Accredited representatives may participate in the investigation and be permitted to

- (a) visit the scene of the accident;
- (b) examine the wreckage;
- (c) obtain witness information and suggest areas of questioning;
- (d) receive copies of all pertinent documents, saving all just exceptions;
- (e) have full access to all relevant evidence as soon as possible;
- (f) participate in read outs of recorded media;
- (g) participate in off-scene investigative activities such

as component examinations, technical briefings, tests and simulations;

- (h) participate in investigation progress meetings, including deliberations related to analysis, findings, causes and safety recommendations;
- (i) make submissions in respect of the various elements of the investigation; and
- (j) appoint advisers to assist the accredited representative.

(5) Accredited representatives and their advisers

- (a) shall provide the Investigator in Charge conducting the investigation with all relevant information available to them; and
- (b) shall not divulge information on the progress and findings of the investigation without the express consent of the Investigator in Charge conducting the investigation.

(6) An 'expert' representative appointed under subregulation (2) may be permitted to

- (a) visit the scene of the accident; and
- (b) have access to the relevant factual information which is approved for public release and information on the progress of the investigation; and
- (c) receive a copy of the Final Report; and
- (d) assist in the identification of victims and in meetings with survivors from their State.

Contraventions and penalties.

17. (1) No person shall, without reasonable excuse, obstruct or impede an Inspector or any person acting under the authority of the Chief

Inspector 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 they are entitled under these Regulations tendered to them) to comply with any witness summons of an Investigator holding an investigation.

(3) No person who receives information from an Investigator, shall cause or permit that information or any part of it to be disclosed, without the prior written consent of the Chief Inspector, to any other person, body or organisation before it is made publicly available by the Chief Inspector (on publication of the final investigation report or otherwise).

(4) Any person who knowingly provides false or misleading information to an Investigator in connection with an investigation contravenes these Regulations.

(5) No person shall circulate, publish or give access to a draft report or any part thereof, or any documents obtained during an investigation of an accident or incident conducted by another State without the consent of that State, unless such reports or documents have been released by that State.

(6) Any person involved who

(a) has knowledge of the occurrence of an accident or serious incident in or over the Territory, and

(b) fails, without reasonable excuse, to notify it without delay in accordance with regulation 5(1),

contravenes these Regulations.

(7) If any person contravenes, or fails to comply with, any of the provisions of these Regulations that person commits an offence and shall be liable to a penalty as prescribed by section 75(5) to the Civil Aviation Act 1982.

18. (1) Subject to subregulations (3), (4), (5) and (6), no relevant record shall be made available by the AAIB or any member of its staff to any person for purposes other than an accident or incident investigation

Non-Disclosure
of relevant
records.

conducted under these Regulations.

(2) The records listed in subregulation (8) shall be included in the Final Report or its appendices only when pertinent to the analysis of the accident or incident and parts of the records not relevant to the analysis shall not be disclosed.

(3) The names of persons involved in an accident or incident shall not be disclosed to the public by the AAIB.

(4) Nothing in subregulation (1) shall preclude the Chief Inspector making a relevant record available to any other person where

- (a) in a case where the other person is a party to or otherwise entitled to appear at judicial proceedings, the relevant court has ordered that the relevant record shall be made available to that person for the purpose of those proceedings; or
- (b) in any other circumstances when the relevant court has ordered that the relevant record shall be made available for any other purpose.

(5) Subject to subregulation (6), no order shall be made under subregulation (4) unless the relevant court is satisfied that on balance the interests of justice in the circumstances in question outweigh the adverse domestic and international impact which disclosure may have on the investigation into the accident or incident to which the record relates or on any future accident or incident investigation.

(6) A relevant record or part thereof shall not be treated as having been made available contrary to subregulation (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 included in a notice served under regulation 12.

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

(8) In this regulation

"airborne image recording" means any image recording on a device fitted to an aircraft for the purposes of accident and incident investigation;

"judicial proceedings" includes any proceedings before a court, tribunal or person having by law power to hear, receive and examine evidence on oath;

"relevant court" in the case of judicial proceedings or an application for disclosure means the [Supreme/High or whichever court is appropriate] Court of the Territory; and

"relevant record" means cockpit voice recordings and airborne image recordings, and any transcripts from such recordings, and those other records in the possession, custody or power of the Chief Inspector being

- (a) all statements taken from persons by an Inspector or supplied to an Inspector in the course of the investigation, together with any notes or recordings of interviews;
- (b) all communications between persons having been involved in the operation of the aircraft;
- (c) medical or private information regarding persons involved in the accident or incident;
- (d) recordings and transcriptions of recordings from air traffic control units;
- (e) analysis of and opinions expressed about information, including flight recorder information, made by the accident investigation authority and accredited

representatives in the investigation in relation to the accident or incident; and

- (f) the draft final report, except as mentioned in regulation 11(1).

Release of evidence to owner.

19. (1) This regulation applies where an aircraft, its contents or wreckage ("property") is held by the AAIB in a hanger or other facility which is being used by the AAIB for the purposes of an investigation.

(2) Subject to subregulation (5), where any such property is no longer required for the purposes of the investigation the Chief Inspector shall inform the owner of the property, by notice in writing, that it will be released to the owner at the place and on the date specified in the notice and in accordance with any other arrangements specified in the notice.

(3) An owner on whom such a notice has been served, or the owner's representatives, must collect the property in accordance with the arrangements specified in the notice (or in accordance with alternative arrangements that the owner has agreed in writing with the Chief Inspector), failing which

- (a) the Chief Inspector may make arrangements for the destruction or disposal of the property; and
- (b) the reasonable costs of such destruction or disposal shall be recoverable from the owner.

(4) A notice served under subregulation (2)

- (a) must not specify a date for collection of the property earlier than one month beginning with the date upon which the notice was served; and
- (b) must include a warning that failure by the owner to collect the property by the date specified in the notice (or such other date that the owner agrees in writing with the Chief Inspector) will entitle the Chief Inspector to arrange for the destruction or disposal of the property and the reasonable costs of such destruction or disposal will be recoverable from the owner.

(5) Where any property referred to in subregulation (1) is no longer required for the purposes of an investigation and the Chief Inspector is satisfied that a person, body or authority (other than the owner) is entitled (under statutory or common law powers that apply in the Territory) to collect that property for the purposes of another investigation and has confirmed their intention to do so

- (a) subregulation (2) does not apply to that property; and
- (b) the Chief Inspector must release it to that person, body or authority and inform the owner of the property, by notice in writing, that it has been so released.

(6) In this regulation "owner" means, in relation to an aircraft which is registered, the registered owner of the aircraft or, if the owner is deceased, the owner's personal representatives.

20. (1) Any notice or other document required or authorised by these Regulations to be served on any person may be served by

Service of notices and other documents.

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address; or
- (c) sending it by post or by electronic means to that person's proper address.

(2) In the case of a body corporate, any such notice or document may be served on a director of that body or on any other office or employee of that body ("authorised person") who is authorised to accept service of such notices or documents on its behalf.

(3) For the purposes of this regulation, "proper address" means

- (a) in the case of a body corporate or its director or authorised person
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the secretary or clerk of that body, the director or the authorised person;
- (b) in any other case a person's last known address,

which includes an email address.

Revocation.
S.I. 2004 No. 70

21. (1) The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2004 are hereby revoked.

(2) Any investigation commenced under the Regulations revoked by subregulation (1), which has not been completed, shall continue as if it had been commenced under these Regulations.

Dated this 18th day of December, 2018.

(Sgd.) Augustus J. U. Jaspert,
Governor.