

MONTSERRAT

NO. 72 OF 2007

**CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS)
REGULATIONS 2007**

REGULATIONS

1. Citation and commencement
2. Interpretation
3. Application
4. Purpose of the investigation of accidents and incidents
5. Duty to furnish information relating to accidents and incidents
6. Information on accident or incident to be published
7. Removal of damaged aircraft
8. Inspectors of Air Accidents
9. Powers of Inspectors
10. Form and conduct of investigations
11. Inspector's Report
12. Notice of Inspector's Report and Representations thereon
13. Publication of Reports
14. Safety recommendations
15. Reopening of Investigation
16. Accredited representatives
17. Obstruction of Investigation
18. Disclosure of relevant records
19. Revocation

MONTSERRAT
STATUTORY RULES AND ORDERS
NO. 72 OF 2007

CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS) REGULATIONS 2007

IN EXERCISE OF THE POWERS CONFERRED ON ME BY SECTION 75 OF THE CIVIL AVIATION ACT 1982¹ (AS EXTENDED TO THE TERRITORY BY SECTION 4 OF THE CIVIL AVIATION ACT 1982 (OVERSEAS TERRITORIES) ORDER 2001² AND PARAGRAPH 2 OF SCHEDULE 1 TO THAT ORDER), I HEREBY MAKE THE FOLLOWING REGULATIONS:

Citation and commencement

1. These Regulations may be cited as the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2007 and shall be deemed to have come into force on 13th December, 2007.

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

"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 authority" means, in relation to any aerodrome, the person by whom the aerodrome is managed;

"the Annex" means the ninth edition of Annex 13 to the Chicago Convention as amended on 1 July 2001;

¹ 1982 c.16

² SI 2001 No 1452

"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 the United Kingdom) 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 30 days of the date of the accident;

"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 below;

"investigating Inspector" means the Inspector carrying out an investigation pursuant to these Regulations;

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

"police officer" means any person who is a member of a police force and any special constable;

"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;

"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 48 hours, commencing within seven days from the date the injury was received;
- (b) results in a fracture of any bone (except simple fractures of fingers, toes, or nose);
- (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
- (d) involves injury to any internal organ;
- (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.

"Territory" means the territory of Montserrat.

(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 the Territory 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.

Application

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 this activity to apportion blame or liability.

Duty to furnish information relating to accidents and incidents

5. (1) Where an accident or a serious incident occurs in respect of which, by virtue of regulation 8(2) below, the Governor 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 authority shall forthwith give notice thereof to the Governor by the quickest means of communication available and in the case of an accident occurring in or over the Territory shall also notify forthwith the local police authorities 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 the Territory or occurring elsewhere to an aircraft registered in an Overseas Territory, 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 Montserrat but operated by an undertaking established in Montserrat that undertaking.

(3) The notice to the Governor referred to in paragraph (1) above shall contain as much of the following information as is available.

- (a) in the case of an incident, the identifying abbreviation 'ACCID' or, in the case of a serious incident '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 the Territory; or
- (b) otherwise than in or over the Territory to an aircraft registered in the Territory;

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

Information on accident or incident to be published

6. Subject to the provisions of regulations 11(5)(b) and 18 below, the Governor 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 paragraph (2) and regulation 9 below, where an accident or serious incident occurs in or over the Territory, no person other than an authorised person shall have access to the aircraft involved in the accident or serious incident and neither the aircraft nor its contents shall except under the authority of the Governor be removed or otherwise interfered with:

Provided that—

- (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 and dangerous goods carried by the aircraft,
 - (iii) preventing destruction by fire or other cause,
 - (iv) preventing any danger or obstruction to the public or to air navigation or to 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 the 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.
- (2) In this regulation the expression "authorised person" means—
 - (a) any person authorised by the Governor either generally or specially to have access to any aircraft involved in an accident or serious incident
 - (b) any police officer
 - (c) any officer of Customs and Excise Department.

Inspectors of Air Accidents

8- (1) For the purpose of carrying out investigations into accidents and incidents to which these Regulations apply, the Governor shall appoint persons as Inspectors of Air Accidents.

(2) Subject to paragraphs (4) and (5) below, the Governor shall carry out, or cause an inspector to carry out, an investigation into—

- (a) accidents and serious incidents which occur in or over the Territory;
- (b) accidents and serious incidents which occur in or over any country or territory which is not a Contracting State to aircraft registered in the Territory 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 the Territory but which are operated by an undertaking established in the Territory when such an investigation is not carried out by another State; and
- (d) accidents and serious incidents to aircraft registered in the Territory in the circumstances described in paragraph 5.3 of the Annex.

(3) Subject to paragraphs(4) and (5) below, the Governor 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 the Territory; or
- (b) otherwise than in or over the Territory to an aircraft registered in the Territory.

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

(5) Where the Governor delegates the task of carrying out an investigation pursuant to paragraph (4) above, he shall so far as he is able facilitate inquiries by the investigator appointed by the relevant State.

(6) Without prejudice to the power of an Inspector to seek such advice or assistance as he may deem necessary in making an investigation, the Governor may appoint persons to assist any 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.

(7) In any case where the Governor 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, where appropriate in co-operation with the authorities responsible for the judicial inquiry, 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 paragraph (1) above 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 paragraph (2)(a) above shall be allowed such expenses as the Governor 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 Governor taking account of the purpose described in regulation 4 above, 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 any of Her Majesty's naval military or air forces or 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 purpose of paragraph (1) above 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 paragraph.

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

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

(5) 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 Governor to the parties likely to benefit from its findings with regard to safety.

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

(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(7) above.

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 Governor's opinion, it is likely to adversely affect the reputation of any person, until the Governor 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 the Governor, at the time he proposes to serve notice pursuant to this paragraph, 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 paragraph (3) below by or on behalf of the person served with such notice.

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

(3) Any representations made pursuant to sub-paragraph (b) of paragraph (1) above shall be in writing and shall, subject to paragraph (6) below, be served on the investigating Inspector within 28 days of service of the notice referred to in sub-paragraph (a) of paragraph 1 above.

(4) A copy of the report submitted to the Governor under regulation 11(6) above shall be served by the investigating Inspector on any person who has been served with a notice pursuant to paragraph (1) above.

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

(6) The Governor shall have power to extend the period of 28 days prescribed in paragraph (3) above and this power shall be exercisable notwithstanding that that period has expired.

Publication of Reports

13. Subject to regulation 12(1) above, the Governor shall cause the report of an investigation into an accident or incident to be made public in the shortest time possible (and, if possible, within 12 months of the date of the accident or serious incident) and in such manner as he thinks fit.

Safety recommendations

14. - (1) The Governor shall cause the reports referred to in regulation 13 above 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 paragraph (1) above shall, without delay—

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

(b) send to the Governor—

(i) full details of the measures, if any, it has taken or proposes to take to implement the recommendation without delay and, in a 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 written notice to the Secretary of State if at any time any information provided to the Secretary of State in pursuance of sub-paragraph (b)(i) above 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 Governor 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 Inspector pursuant to regulation 8 above, an accredited representative appointed by—

- (a) the State of Registry;
- (b) the State of Design;
- (c) the State of Manufacture;
- (d) the State of the Operator;
- (e) a Contracting State which has, on request furnished information, facilities or experts to the 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 documents (saving all just exceptions), 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(7).

Obstruction of Investigation

17. (1) No person shall obstruct or impede an Inspector or any person acting under the authority of the Governor 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 paragraphs (2) and (4) to (6) below no relevant record shall be made available by the Governor to any person for purposes other than accident or incident investigation.

(2) Nothing in paragraph (1) above shall preclude a person 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 him for the purpose of those proceedings, or
- (b) in any other circumstances, the relevant court has ordered that the relevant record shall be made available to him for the purpose of those circumstances.

(3) In this regulation—

"judicial proceedings" includes any proceedings before any 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 court of the relevant Overseas Territory;

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

"Governor" includes any officer of his.

(4) Subject to paragraph (6) no order shall be made under paragraph (2) unless the relevant court is satisfied that 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 any future accident or incident investigation undertaken in the Territory.

(5) A relevant record or part thereof shall not be treated as having been made available contrary to paragraph (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.

(6) 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 Accidents) Regulations 1952 (S.R.O (L.I.) 18/1952 are hereby revoked. Any investigation commenced under the revoked Regulations which has not been completed shall continue as if it had been commenced under these regulations.

Made by the Governor this 13th day of December, 2007.

PETER ANDREW WATERWORTH (Sg.)
Governor

Published by exhibition at the Clerk of Councils Office, Farara Plaza, Brades, this 24th day of December, 2007.

MARJORIE SMITH (Sg.)
Clerk of Councils (Ag.)

