

CIVIL AVIATION ACT (U.K. 1982)
CIVIL AVIATION ACT 1982 (OVERSEAS TERRITORIES) ORDER 2001

CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS AND INCIDENTS)
REGULATIONS, 2019

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ST HELENA



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Her Excellency the Governor in Council, in exercise of the powers conferred by section 75 of the Civil Aviation Act 1982, as extended to St Helena by Article 4 of the Civil Aviation Act 1982 (Overseas Territories) Order 2001 and in accordance with Schedule 1 to that Order, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2019, and come into force upon publication in the Gazette.

Interpretation

2. In these Regulations, unless the context otherwise requires—
- “**AAIB**” means that part of the United Kingdom Department for Transport known as the Air Accidents Investigation Branch;
- “**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 injured or seriously injured as a result of—
 - (i) being in the aircraft,
 - (ii) direct contact with any part of the aircraft including parts which have become detached from the aircraft,
 - (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;

“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;

“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, and references to **“fatally injured”** must be construed accordingly;

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

“ICAO” means the specialised agency of the United Nations known as the International Civil Aviation Organisation;

“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;

“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”, in relation to an accident or serious incident, means—

- (a) the operator, and any member of the crew, of the aircraft involved in the accident or serious incident;
- (b) any person involved in the maintenance of that aircraft or in the training of its crew;
or
- (c) any person involved in the provision of an air traffic control, flight information or aerodrome service who has provided services to that aircraft;

“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 under regulation 8(5) for the purposes of accident and incident prevention, which includes the gathering and analysis of information, the drawing of conclusions (including the 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;

“**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 7 days from the date the injury was received;
 - (b) results in a fracture of a bone, excluding simple fractures of fingers, toes or nose;
 - (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
 - (d) involves injury to an internal organ;
 - (e) involves second-degree or third-degree burns, or any burns affecting more than 5 per cent of the body surface;
 - (f) involves verified exposure to infectious substances or harmful radiation;
- and references to “seriously injured” must 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.

Application

3. These Regulations apply only to—

- (a) the investigation of accidents and incidents involving aircraft engaged in civil aviation in the circumstances detailed in regulation 8(3) and (4);
- (b) the safety investigation of accidents and incidents in the circumstances detailed in regulation 8(5).

Purpose of investigation of accidents and incidents

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.

Duty to furnish information relating to accidents and serious incidents

5. (1) Where an accident or a serious incident occurs, any person involved who has personal knowledge of the accident or incident must—

- (a) give notice of the accident or incident to the Governor, the Chief Inspector and to the designated authority for civil aviation regulation in St Helena by the quickest means of communication available; and

- (b) where an accident occurs in or over St Helena, immediately notify the Chief Inspector of the accident and of the place where it occurred.

(2) The Chief Inspector must forward a notification (containing the information detailed in paragraph (3)) 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 paragraph (2) must 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 must 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 must, 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 St Helena involving an aircraft registered in St Helena or of which St Helena is the State of the Operator, the operator of the aircraft must, 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 must 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 paragraphs (2) and (3) to this regulation and to regulation 9, where an accident or serious incident occurs in or over St Helena—

- (a) no person other than an authorised person may have access to the aircraft involved in the accident or serious incident;
- (b) neither the aircraft nor its contents may, except under the authority of the Investigator in Charge, be removed or otherwise interfered with;
- (c) the Investigator in Charge, or authorised persons, and any person involved must take all reasonable measures to protect the evidence within their custody or control 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; and
- (d) the Investigator in Charge or authorised person must 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 paragraph (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 Investigator or with the agreement of an Investigator 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 must 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 the owner 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) a customs officer.

Air Accident Investigations

8. (1) The AAIB is the accident investigation authority for St Helena 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 must be appointed as the Investigator in Charge.

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

- (a) accidents and serious incidents which occur in or over St Helena;
- (b) accidents and serious incidents which occur to aircraft registered in St Helena—
 - (i) in or over a country or territory which is not a Contracting State, or
 - (ii) 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 St Helena; or
- (b) otherwise than in or over St Helena to an aircraft registered in St Helena.

(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 St Helena or to an aircraft registered in St Helena;
- (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 paragraph (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 paragraph (6), the Chief Inspector must to the extent possible facilitate inquiries by the Investigator in Charge appointed by the relevant State.

(8) The Chief Inspector must not appoint a person as the Investigator in Charge of an investigation where the investigation has been delegated under paragraph (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 St Helena 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 St Helena must be nominated by St Helena 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 must immediately initiate action to ensure that the aviation security authorities of St Helena are informed.

(12) For the purposes of paragraph (11), “an act of unlawful interference” means any act which constitutes an offence under the Aviation Security and Piracy (Overseas Territories) Order 2000 (SI 2000/3059), as amended.

(13) There must be established by St Helena Government a comprehensive system for providing assistance to aircraft accident victims and their families.

Powers and duties of Investigators

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;

- (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 paragraph (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 or her;
- (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 paragraph (2)(a) is allowed such expenses as the Chief Inspector may determine.

Form and conduct of investigations

10. (1) The AAIB will 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 must 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 St Helena 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 must 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 must 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 must 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 must 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 contributing factors, and safety recommendations.

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

Notice of safety investigation report and representations

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

- (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 paragraph (3) by or on behalf of the person served with the notice under sub-paragraph (a).

(2) The notice referred to in paragraph (1)(a) 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 paragraph (5), representations made pursuant to paragraph (1)(b) must 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 may disclose or permit to be disclosed any information contained in a notice or report served on such person pursuant to paragraphs (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 paragraph (4) commits an offence.

Publication of reports

13. (1) The Chief Inspector must 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 twelve 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 12 months, the Chief Inspector must make an interim statement publicly available on each anniversary of the occurrence, detailing the progress of the investigation and any safety issues raised.

(3) The Chief Inspector must 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.

Safety recommendations

14. (1) The Chief Inspector must 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 St Helena and in the States referred to in regulation 11(2).

(2) A safety recommendation does 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 must record the responses.

- (4) The addressee of a safety recommendation pursuant to paragraphs (1) and (3) must—
- (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-paragraph (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 must 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 Contracting 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 must 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) must provide the Investigator in Charge conducting the investigation with all relevant information available to them; and
 - (b) may 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 appointed under paragraph (2) may be permitted to—

 - (a) visit the scene of the accident;
 - (b) have access to the relevant factual information which is approved for public release and information on the progress of the investigation;
 - (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

17. (1) No person may, without reasonable excuse, obstruct or impede an Investigator 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 may, 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, may 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 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 may 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 St Helena; and
 - (b) fails, without reasonable excuse, to notify it without delay in accordance with regulation 5(1),contravenes these Regulations.

Non-Disclosure of relevant records

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

(2) The records listed in paragraph (8) must 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 must not be disclosed.

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

(4) Nothing in paragraph (1) precludes 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 must 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 must be made available for any other purpose.

(5) Subject to paragraph (6), no order may be made under paragraph (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 must 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 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 Court of St Helena; 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 Investigator or supplied to an Investigator 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(2).

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 paragraph (5), where any such property is no longer required for the purposes of the investigation the Chief Inspector must 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 are recoverable from the owner.

(4) A notice served under paragraph (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 paragraph (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 St Helena) to collect that property for the purposes of another investigation and has confirmed their intention to do so—

- (a) paragraph (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.

Service of notices and other documents

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

- (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

21. (1) The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2016, are revoked.

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

Made by the Governor in Council this 7th day of October 2019.

Anita R. Legg
Acting Clerk of Councils

EXPLANATORY NOTE

(This note is not part of the Regulations)

Many of the revisions are designed/intended to comply with changes introduced by Annex 13 (11th Edition, July 2016) and ICAO State Letter dated 1 April 2018 that proposes further amendments to take effect from November 2018. Since the last ICAO audit of the UK in 2009 a significant number of amendments have been made to Annex 13 and the revised 11th edition was published by ICAO in July 2016. This edition is to be further amended in November 2018 in accordance with the ICAO State Letter dated 1 April 2018, which detailed the proposed amendments and the reasons therefor.

Furthermore, since the ICAO audit of 2009, there have been significant developments within the UK and its Overseas Territories (OT). At the time of that audit the UK Air Accident Investigation Branch (AAIB) had a number of Memorandums of Agreements with some, but not all, of the OT Governors, under which the AAIB agreed to provide assistance in connection with an investigation. However, the AAIB did not consider that it was under any obligation to carry out an investigation in an OT or in relation to an OT-registered aircraft.

Prior to the 2009 audit arrangements were made for the Governor of each OT to issue a letter of appointment to the Chief Inspector of the AAIB appointing him as the Investigator for that OT. Whilst this arrangement satisfied the auditors it would not be sufficient to satisfy ICAO now that it is compliant with Annex 13, as amended and revised. In addition, it has now been formally recognised by the UK that the AAIB is the “accident investigation authority” for the OTs, as required by Standard 3.2 to Annex 13.

The level of effective compliance by a State with its obligations under the Convention and the Annexes thereto is measured to a certain extent by the answers to a series of ICAO Protocol Questions (PQ) which are raised against each aviation activity undertaken or conducted by a State. The 2017 edition of the PQs, which the UK is in the process of answering under the

As the AAIB is now formally recognised as the accident investigation authority for the Overseas Territories, the amendments also take account (so far as is considered necessary) of the UK Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018 (SI 2018 No. 321) – which, inter alia, adopt EU Regulation 996/2010; the provisions of which have not been taken into account.

The following revisions should be noted in particular:

1. Regulation 5(2) and 8(4) provide for the AAIB to investigate an incident other than a serious incident where the AAIB expects to draw safety lessons from it in the interests of accident and incident prevention. This is to satisfy the proposed Amendment to Standard 4.1 to Annex 13.

2. In addition regulation 8(5) provides for the AAIB to investigate an accident occurring in an OT to an aircraft involved in military, customs, police or similar activities. This corresponds with a similar provision in the UK Regulations.

3. Regulation 8(1) provides for the designation of the AAIB as the accident investigation authority as required by Standard 3.2 to Annex 13.

4. Bearing in mind the remoteness of the AAIB from the site of any accident occurring in an OT, regulation 8(10) makes provision for the nomination in each OT of some person or body to facilitate the securing the wreckage and other evidence pending the arrival on site of an AAIB Investigator.

5. Regulation 8(13) provides for the authorities in an OT to render assistance to aircraft accident victims and families as required in answer to Protocol Question 6.383 and ICAO Manual on Assistance to Aircraft Accident Victims and their Families (Doc 9973). In practice - in the UK in accordance with Article 21 to EU Regulation 996/210 and also in the US and elsewhere - this obligation is placed primarily on the operator of a Commercial Air Transport aircraft.

6. Regulation 10 provides that the AAIB must have independence in, and unrestricted authority over, the conduct of an investigation as required by Standard 5.4 to Annex 13; but is required to coordinate any investigation, to the extent necessary, with any investigation conducted by the judicial authorities, as required by Standard 5.10 to Annex 13.

7. Regulation 13(2) relating to delay in publication of the final report of an accident is intended to satisfy Standard 6.6 to Annex 13.

8. Regulation 17 collects together offences and contraventions of the Regulations for which the penalty is prescribed by section 75(5) of the Civil Aviation Act 1982, as extended to the Territories by the Civil Aviation Act 1982 (Overseas Territories) Order 2001 (SI 2001 No. 1452).

9. Regulation 19 makes provision for release, or disposal, of the aircraft, its wreckage and contents to the owner of the aircraft on completion of an investigation; and for recovery of the costs of such release or disposal from the owner.