

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE**



**AIR ACCIDENTS INVESTIGATION
BRANCH**

AND THE



ROYAL GIBRALTAR POLICE

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SECTION 1 - FRAMEWORK OF UNDERSTANDING

1.1 Introduction

1.1.1 This Memorandum of Understanding (MOU), on the subject of the investigation of Gibraltar air accidents, is established between the Chief Inspector, Air Accidents Investigation Branch (AAIB), and the Commissioner, Royal Gibraltar Police (RGP) (the Participants).

The MoU is produced as part of the specific “advance arrangements” to be introduced under the requirements of Article 12 of Retained EU Regulation 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation, as it applies in Gibraltar (the Retained EU Regulation), and the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018 (LN 2018/187) (the 2018 Gibraltar Regulations).

1.1.2 The objective of this MOU is to provide guidance, to facilitate cooperation (while respecting the independence of both organisations) and to set out the respective roles and responsibilities of the Participants. The Participants will ensure that all staff in their respective organisations are familiar with this MoU.

1.1.3 This MOU is not legally binding. The specific legal regime applicable to the Participants’ respective investigations must still be respected.

1.1.4 The underlying principles of this MOU are:

- AAIB and RGP investigations will be independent, but can also proceed in parallel;
- there will be early contact and close co-operation between the AAIB Investigator-in-Charge (IIC) and the RGP Senior Investigating Officer (SIO);
- insofar as legislation permits, there should be an exchange of factual information as both investigations proceed.

SECTION 2 - PARTICIPANTS TO THE MOU

2.1 The Air Accidents Investigation Branch

2.1.1 The AAIB is the designated safety investigation authority for the purposes of the 2018 Gibraltar Regulations, the Retained EU Regulation and Annex 13 to the Convention

on International Civil Aviation. The sole objective of an AAIB safety investigation is the prevention of accidents and incidents, without the apportionment of blame or liability. Each investigation aims to determine the circumstances and causes of an accident or incident, promote safety action and make safety recommendations to prevent a reoccurrence. The AAIB may conduct safety investigations including in circumstances involving criminal activity, to ensure that aviation safety and survivability lessons can be learned.

- 2.1.2 The AAIB is an independent body and separate from the Government of Gibraltar, the Director of Civil Aviation and other aviation regulators.
- 2.1.3 The AAIB investigates civil aircraft accidents and incidents that occur in Gibraltar. It also participates in accident investigations worldwide where there is a specific Gibraltar interest.
- 2.1.4 The AAIB conducts investigations into civil aviation accidents and incidents in accordance with the 2018 Regulations and the Retained EU Regulation. This legislation takes account of international standards and recommended practices for this activity described in Annex 13, as that Annex has effect .
- 2.1.5 The AAIB will normally appoint a team of investigators headed by an IIC. The team will usually consist of Inspectors of Air Accidents who, with their specialist knowledge, investigate the operations, human factors, engineering, and recorded data aspects of an occurrence. AAIB support personnel assist Inspectors throughout all stages of the investigation as necessary.

2.2 Royal Gibraltar Police

- 2.2.1 The RGP is the established policing service with responsibility in and throughout Gibraltar for the preservation of the peace, the maintenance of law and order, the prevention and detection of crime, the apprehension and guarding of offenders and the protection of property; policing is enacted in accordance with the requirements of the Police Act 2006 and the Criminal Procedure and Evidence Act 2011.

SECTION 3 - INVESTIGATIONS

3.1 Air Accidents Investigation Branch Safety Investigations

- 3.1.1 AAIB Inspectors are accorded a wide range of statutory powers to have free and immediate access to the accident site; the aircraft, its contents or its wreckage and access to and control over flight recorders, their contents and other recordings. They are accorded unhampered access to witnesses; the results of examination of bodies; the results of examinations or tests made on samples from persons involved in the

aircraft's operation and relevant information or records. They have the power to control the removal of debris or components; examine all persons as they think fit; take statements; enter any place, building or aircraft; remove and test components as necessary and take measures for the preservation of evidence.

- 3.1.2 The 2018 Regulations provide that material covered by Article 14 (Protection of Sensitive Safety Information) of the Retained EU Regulation cannot be disclosed in the absence of an order by the Supreme Court. The Court must not make an order unless it is satisfied that the benefits of the disclosure of the record concerned outweigh the adverse domestic and international impact which the disclosure might have on the safety investigation to which the record relates or any future safety investigation. Protected material (refer to Annex B) includes records revealing the identities of persons who have given evidence to the AAIB, witness statements, expert reports, sensitive personal information such as medical records, drafts of reports, cockpit voice and image recordings and their transcripts and flight data recordings. However, the police are not prevented from sharing witness statements and other information with the AAIB.
- 3.1.3 In addition to the protection under Article 14 of the EU Regulation, standard 5.12.5 of Annex 13 requires that the audio content of cockpit voice recordings as well as image and audio content of airborne image recordings must not be disclosed to the public.

3.2 RGP investigations

- 3.2.1 The RGP's responsibility is to protect life and property, prevent and investigate offences, and prosecute offenders. They also have an immediate role at the scene of an incident to maintain public order and restore normality as soon as practicable, to secure and preserve evidence, and identify victims. Their activities when fulfilling these duties can provide valuable assistance to the safety investigation. The police also conduct enquiries on behalf of, and as directed by, the Coroner.
- 3.2.2 Police powers are extensive and are contained in a number of Acts and secondary legislation. Where injury or serious damage has occurred, the police usually attend the scene of the incident and commence preliminary enquiries. Where criminal offences are suspected, a more thorough police investigation will ensue. When there has been a fatality, it is most likely that the police will carry out a major investigation, supervised by an SIO.

3.3 Parallel Investigations

- 3.3.1 AAIB safety investigations and RGP criminal investigations can proceed in parallel. One of the aims of this MOU is to ensure that both investigations can progress effectively and independently, while promoting cooperation where permitted.

- 3.3.2 The public interest requires that safety considerations are of paramount importance. This means that the interests of an AAIB investigation (including consideration of possible effects on future safety investigations) are likely to take precedence over a criminal investigation. The ability of witnesses to talk openly and without delay to an accident investigator is fundamental to the operation of the AAIB, as is the protection of sensitive material from disclosure.
- 3.3.3 Usually RGP will secure the site and will preserve evidence under the applicable regulations. Evidence for the AAIB safety investigation will normally be recovered to an appropriate facility on Gibraltar. It may then be subsequently transported to the AAIB's facilities in Farnborough. The AAIB may also take evidence to dedicated facilities for specific testing and analysis.
- 3.3.4 An aircraft accident or incident may result from technical malfunctions, human error or failures in procedure, and it may not be clear at the outset whether the accident or incident has involved criminal activity. Consequently, RGP will also have access to the site should they wish to conduct their own investigation in parallel.
- 3.3.5 If it is evident that serious criminality was the cause of the event, it is likely to be agreed that the RGP investigation will take precedence. In such cases, while RGP will deploy appropriate resources to conduct the investigation and to recover evidence, the AAIB will still have immediate and unhampered access to the accident site and evidence as necessary for it to identify whether a safety investigation may benefit aviation safety. The AAIB may, on request, offer guidance and advice on recovery and investigation techniques.
- 3.3.6 Victim identification and recovery will be coordinated with the relevant RGP SIO and the AAIB IIC to ensure each investigation's objectives are met.
- 3.3.7 To establish the cause(s) of an accident, the AAIB may need to undertake tests that will modify the condition, dismantle or possibly destroy all or part of the physical evidence. The AAIB will liaise with the police concerning the actions to be taken. In recognition of the interest that the Director of Public Prosecutions may have in the handling of evidence, this MOU sets out the principles that will apply to such actions in Annex A.

3.4 Coordination and Cooperation

- 3.4.1 The AAIB and the RGP should establish and maintain liaison and cooperation throughout their respective safety and criminal investigations, so that both investigations can proceed in parallel without obstruction. The following areas of potential mutual interest have been identified:

- The notification of incidents and accidents.
- The collection and, where permissible, the sharing of evidence.
- The conduct of forensic examinations.
- The operation, removal and interpretation of recorders and recorded information, including data, voice and image recorders.
- The maintenance of an effective dialogue with families.
- The release to the media of information obtained in the course of the investigations.
- The processes to be followed in the event of a major accident.
- The timing of AAIB investigation report publication in the event of possible prosecutions and the timing of any such criminal proceedings.

3.4.2 Accordingly, each organisation will:

- establish contact between the AAIB IIC and the RGP SIO as soon as is practicable after an occurrence has been reported.
- ensure the other has immediate and unrestricted access to the site of an accident.
- maintain effective co-operation between the AAIB IIC and the RGP SIO throughout the conduct of their respective investigations.
- where permissible exchange factual information and facilitate access to evidence that is considered important to either investigation.
- notify each other of any intention to carry out investigative actions that may alter evidence.
- invite the other to attend investigative activities such as operational trials, metallurgical tests and forensic examinations (refer to Annex A).
- obtain agreement from each other before returning any evidence to its owner.
- keep the other informed of the proposed timings of report publications and criminal proceedings.

3.5 AAIB ACCESS TO WITNESSES

3.5.1 The AAIB must carry out their own separate interviews. The AAIB will normally interview persons before the police and early access to witnesses for the AAIB should therefore be facilitated. The ability of witnesses to talk openly and without delay to an accident investigator is fundamental to the effectiveness of the AAIB safety investigation.

3.5.2 A witness cannot provide their AAIB statement to the police (subject to order of the Supreme Court).

3.6 STATEMENT BY AAIB INSPECTORS

3.6.1 If requested, AAIB inspectors will produce factual statements to describe their activities, such as regarding investigation progress, continuity of evidence and the timing and


content of tests they have conducted where they have had the effect of altering the state of evidence. This description of procedural steps will not include any opinion or analysis. AAIB inspectors are prohibited from including any opinion or analysis in such a statement (subject to order of the Supreme Court).

SECTION 4 - CORONERS

- 4.1 The AAIB will make early contact with the Coroner and will inform the Coroner about investigation progress through the Coroner's officer. On completion of its investigation, the AAIB will make the investigation report available to the Coroner. If requested to do so, the AAIB will assist the Coroner in understanding the contents of its report.
- 4.2 Usually it is desirable for the Coroner's inquest to take place after the AAIB has published its investigation report.

SECTION 5 - MONITORING OF THE MOU

- 5.1 The working of this MOU, and the need for changes to the text, will be reviewed at least every five years, or as circumstances dictate, by both participants. Any amendments will be approved by both the AAIB and RGP.
- 5.2 For the purposes of monitoring and updating the MOU, a single point of contact has been identified within each participant's organisation. At the AAIB, this point of contact is the Deputy Chief Inspector. At the RGP, this contact is the RGP -Assistant Commissioner. Any issues or problems arising with the implementation of this MOU during the conduct of investigations will be resolved by the Deputy Chief Inspector at the AAIB, and the Assistant Commissioner at the RGP.

<p>Done</p>  <p>Commissioner, Royal Gibraltar Police</p> <p>Date 4 October 2021</p>	<p>Done</p>  <p>Chief Inspector, Air Accidents Investigation Branch</p> <p>Date 24 September 2021</p>
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AAIB GENERAL ENQUIRIES

Air Accidents Investigation Branch,
Farnborough House, Berkshire Copse Road, Aldershot, Hampshire, GU11 2HH
Accident Reporting Line (24 hr) 01252 512299
General Use: 01252 510300
DfT Duty Office (out of hours) 020 7944 5999
Email: enquiries@aaib.gov.uk (monitored 0830-1700 hrs Mon to Fri)
Website: www.aaib.gov.uk

RGP GENERAL ENQUIRIES

Royal Gibraltar Police,
Police Headquarters, New Mole House Police Headquarters, Rosia Road, PO BOX 47, Gibraltar
General enquiries – (+350) 200 72500
Email - pacompol@royalgib.police
Website - www.police.gi

Testing of evidence

A1. To establish the cause(s) of an accident, the AAIB and other investigating bodies may need to undertake tests that will modify the condition of, dismantle or possibly destroy all or part of the physical evidence. However, a criminal investigator has a statutory duty to present to a court the best evidence available. Sometimes this may be the physical evidence in the state in which it was recovered from the site of the accident.

A2. Therefore, if notified of the other body's interest, the RGP or the AAIB (depending on which body holds the evidence and which is intending to undertake testing) will make every effort to consider the other body's needs before undertaking any destructive testing of evidence. This will include:

- giving notice before commencing any destructive testing;
- considering representations each party makes (if any) as to the impact such testing may have on their own investigation;
- coordinating the testing with the aim of reaching a mutual understanding on:
 - what testing is to be done;
 - in what sequence it will be carried out;
 - who will undertake the testing;
 - where and when it will be carried out;
 - who will be present at the testing;
 - how it will be recorded, and by whom;
 - the need for each party to have its own expert present, where consistent with the protections required by the relevant regulations;
 - how, in the event that a party cannot be represented at the testing, its needs will be taken into account;
 - the steps that will be taken to address disagreements about any aspect of the testing before it proceeds (while acknowledging that indefinite delay will not be an option and the regulations permit AAIB testing to commence if no representations have been made within two weeks of the initial notification);
 - the reports that will be produced, by which body, for what purpose and any restrictions or prohibitions that will apply to sharing them (note that it is not usually possible for such a report produced for the AAIB to be passed to any other party);
 - the need for the respective parties to discuss, and endeavour to reach agreement on, the outcome from the testing; and
 - the arrangements to be applied once testing has been completed, for example whether the evidence is transferred (and if so, to whom) and how it will be preserved.

AAIB limitations on disclosure

This Annex summarises some of the key provisions of the AAIB's legal regime in respect of their relevance to the RGP. It focuses on some key items of "protected material"; that is material which cannot be disclosed without an order of the Supreme Court. It also identifies some areas of AAIB discretionary disclosure. The relevant legislation is listed at the end of the Annex.

General Data/Factual Material/Electronic Data

The Annex does not set out the full detail of legal requirements or exemptions, and endeavours to summarise a complex set of provisions. Reference should always be made to the relevant regulations if a more comprehensive understanding of their provisions is required.

Protected material

- Statements.
- Identities of witnesses to the event.
- Medical records.
- Draft reports.
- Records revealing the identity of persons who have given evidence in the context of the safety investigation including third party experts.
- Cockpit video and image recordings and transcripts, air traffic control recordings, flight data recorders.
- All communications between persons having been involved in the operation of the aircraft.
- Information collected by the AAIB which is of a particularly sensitive or personal nature.

(Article 14(1) and (2) of EU 996/2010; Chapter 5.12 of Annex 13)

Discretionary disclosure

Factual material which does not fall under Article 14 of the EU Regulations and proceedings of the investigation may be disclosed, provided that their disclosure does not compromise the objectives of the investigation.

(Article 15(4) EU 996/2010; article 26 SD 2019/0267)

Expert reports/inspector opinions and notes

Protected material

In some cases, expert reports are specifically protected, but where that is not the case, there may be limitations on disclosure where they contain protected material.

- Material subsequently produced during the course of the investigation, including:
 - notes, drafts and opinions written by AAIB Inspectors;
 - opinions expressed in the analysis of information, including flight recorder information.

(Article 14(1)(d) EU 996/2010)

Information provided by individuals/bodies from other countries

AAIB only – Protected material

Information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their safety investigation authority.

(Article 14(1)(e) EU 996/2010)