



**REPUBLIC OF KENYA**

**MINISTRY OF ROADS AND TRANSPORT**

**REGULATORY IMPACT ASSESSMENT**

**FOR THE CIVIL AVIATION (AERODROME DESIGN AND OPERATIONS)  
REGULATIONS 2024**

**NOVEMBER, 2024**

*This Regulatory Impact Assessment (RIA) has been prepared by the Cabinet Secretary - Ministry  
of Roads and Transport in accordance with  
Section 6 and 7 of the Statutory Instruments Act, Cap 2A*

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## **CHAPTER ONE: INTRODUCTION**

### **1.1 Regulatory Authority and the Legal Mandate**

Kenya Civil Aviation Authority is established under the Kenya Civil Aviation Act, Cap 394 (the Act) with the primary functions being Regulation and Oversight of Aviation Safety and Security; Economic Regulation of air services and development of Civil Aviation; Provision of Air Navigation Services; and Training of aviation personnel as guided under the provisions of the Convention on International Civil Aviation, related ICAO Standards and Recommended Practices (SARPs), the Act, and the Civil Aviation Regulations.

The object and purpose for which the Authority was established are, to economically and efficiently plan, develop and manage civil aviation, regulate, and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act. Section 82 (1) of the Civil Aviation Act, 2013 empowers the Cabinet Secretary, at the time responsible for Transport, to make Regulations to give effect to and for the better carrying out of the objects and purposes of the Act, and to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

Further, Section 82(2) of the Act specifically provides that without prejudice to the generality of Section 82(1), the Cabinet Secretary may develop regulations for the licensing, inspection and regulation of aerodromes, access to places where aircraft, have landed or may land.

### **1.2 Requirements of the Statutory Instruments Act**

The Statutory Instruments Act, No. 23 of 2013 (SIA) is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the Regulation-Making Authority (RMA) shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument. SIA further sets out certain key elements that must be contained in the RIA namely:

- (a) a statement of the objectives of the proposed legislation and the reasons for them
- (b) a statement explaining the effect of the proposed legislation including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (e) the reasons why the other means are not appropriate; and
- (f) any other matters specified by the guidelines.

A draft copy of the proposed statutory rule. Section 5 of SIA requires an RMA to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

### **1.3 What is a Regulatory Impact Assessment (RIA)?**

RIA is a systemic approach of critically assessing the positive and negative effects of proposed or existing regulations and non-regulatory alternatives. It is an analytical report to assist decision makers to arrive at an informed policy decision. As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory option provides the greatest net public benefit.

Typically, the structure of a RIA should contain the following elements: title of the proposal, the objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts distribution, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

RIA promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee. From a societal viewpoint, RIA confirms whether a proposed regulation is welfare enhancing, in that, the benefits will surpass costs.

RIA therefore has an overall objective of not only improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, but also integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental Authority.

## **CHAPTER TWO: PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS**

### **2.1 Scope of the proposed regulations**

These regulations shall apply to all aerodromes in Kenya except where otherwise specified by the Authority.

### **2.2 Objective of the proposed regulations**

To general objective of the proposed regulations is to provide for the requirements of design and operations of aerodromes in Kenya. Specifically, the regulations seek to:

- (a) Establish requirements for application and issuance of an aerodrome construction permit;
- (b) Determine requirements for aerodrome design and specific procedures for aerodrome operations;
- (c) Define aerodrome operator obligations including compliance with these regulations;
- (d) Determine compliance with reporting procedure of aerodrome-related aeronautical data in accordance with the accuracy and integrity requirements as provided for in the Civil Aviation (Aeronautical Information Services) Regulations;
- (e) Set out procedures for Conditions for operating an aerodrome;
- (f) Establish obstacle limitation surfaces and align the surfaces with runway classifications requirements; and
- (g) Establish criteria for authorization to construct and erect structures and removal of obstacles that impact on safe operations of aircraft within the vicinity of aerodromes.

### **2.3 An Overview of the Proposed Regulations: Salient Features**

This overview aims to evaluate the clarity, consistency, comprehensibility, and comprehensiveness of the proposed Regulations in relation to the identified issue. It is essential that the rules are easily understood by those who may be impacted. To achieve this, the Kenya Civil Aviation Authority has implemented measures to enhance the clarity of both the text and structure of the proposed Regulation.

- Part I—Preliminary Provisions
- Part II—Construction Of Aerodromes
- Part III—Obligations Of Aerodrome Operator
- Part IV—Aerodrome Data
- Part V—Aerodrome Physical Characteristics
- Part VI—Obstacle Restrictions And Removal
- Part VII—Visual Aids For Navigation
- Part VIII—Visual Aids For Denoting Obstacles
- Part IX—Visual Aids For Denoting Restricted Use Areas
- Part X—Electrical Systems
- Part XI—Aerodrome Operational Services, Equipment, Installations And Facilities
- Part XII—Aerodrome Maintenance
- Part XIII—Information To Be Reported To Aeronautical Information Services
- Part XIV—General Provisions

Part XV—Offences, Penalties & Transition Provisions

**First Schedule:** Part 1: Methodology for Determining Aerodromes to be Registered as Category E aerodromes and Part 2: Self reporting form for Category E aerodromes

**Second Schedule:** Figures and Tables

**Third Schedule:** Safety management system at aerodromes

**Fourth Schedule:** Reporting format using Standard Runway Condition Report

**Fifth Schedule:** Runway surface friction characteristics of an aerodrome

**Sixth Schedule:** Obstacle Restriction and Removal - Obstacle Free Surfaces (OFS) and Obstacle Evaluation Surfaces (OES)

**Seventh Schedule:** Shielding of Obstacles

**Eighth Schedule:** Colours of Aeronautical Ground Lights, Markings, Signs and Panels

**Ninth Schedule:** Aeronautical ground light characteristics

**Tenth Schedule:** Requirements Concerning Design of Taxiing Guidance signs

**Eleventh Schedule:** Location of Lights on Obstacles

**Twelfth Schedule:** Mandatory Instruction Markings and Information Signs

**Thirteenth Schedule:** Penalties

## **CHAPTER THREE: BACKGROUND AND CONTEXT**

### **3.1 Policy Background**

#### **3.1.1 International**

##### **(a) The Sustainable Development Goals (SDGs)**

The SDGs also known as the Global Goals, were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. Goal 9 of the SDGs advocates for building resilient infrastructure, promoting inclusive and sustainable industrialization and fostering innovation. Kenya intends to provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport by 2030.

##### **(b) Convention of International Civil Aviation (Chicago Convention)**

Kenya, by virtue of Articles 2 (5) and (6) of the Constitution has ratified and become part of the international participants in the aviation space. The International Civil Aviation Authority (ICAO) was established as a specialized United Nations (UN) agency under the Convention of International Civil Aviation (Chicago Convention) which helps 193 countries to cooperate and share their skies to their mutual benefit. To achieve this, ICAO has provided for the establishment of international Standards and Recommended Practices (SARPs) the uniform application of which is necessary in order to achieve the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

The draft Civil Aviation (Aerodrome Design and Operations) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 14 Volume I to the Convention on international civil aviation. Kenya as a contracting state has an obligation under Article 37 to the Convention on international civil aviation to domesticate the SARPs into legally enforceable legislative material. These regulations thus are issued in fulfilment of Kenya's international obligations as an ICAO contracting state and to ensure the safety, security, regularity and economic viability of global air transport system.

#### **3.1.2 Regional Legislative initiatives**

Regionally, Kenya is a member of the African Civil Aviation Commission (AFCAC) which is a specialized body of the African Union (AU) whose mandate is to create a safe, secure, efficient, and sustainable civil aviation industry across Africa that propels development through furthering connectivity.

Further, under the East African Community, Kenya is a member of Civil Aviation Safety and Security Oversight Agency(CASSOA) which is established under Article 92 of the EAC Treaty which in summary states that the Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

Under commitments under these regional arrangements and the aspiration to ensure that the regional air transport industry is appropriately managed, Kenya is obliged to issue these

regulations to fulfill the regional obligations to a safe, secure and economically viable air transport system.

### **3.1.3 Domestic**

#### **(a) Kenya Vision 2030**

The Vision 2030 is a nationwide multi-sectorial document that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement. The 2030 Vision aspires for a country firmly interconnected through a network of roads, railways, ports, air, water and sanitation facilities, and telecommunications. The expansion, modernization and management of the aviation sector continues to enhance air transport safety, security, and connectivity across the country and beyond. Civil aviation is a critical catalyst for global and national development. Air transport in Kenya has continued to grow and has contributed to job creation and increased interaction and trade with other countries. As part of the implantation of the Vision 2030, the Kenya Kwanza administration adopted the Bottom-Up Economic Transformation Agenda (BETA) that will be implemented over the next five years. The agenda is built on six main pillars, to be being implemented through five (5) MTP IV sectors that include Infrastructure. One of the aims under infrastructure sector is to enhance transport connectivity and the provisions of the regulations are meant to institutionalize a civil aviation regulatory and oversight framework that promotes a sustainable safe and secure air transport system in Kenya.

#### **(b) Constitution of Kenya 2010**

The Constitution recognizes civil aviation as one of the functions under the National Government in the fourth schedule. Chapter 4 of the Constitution provides for the Bill of Rights. Article 46 provides for consumer protection where it applies to goods and services offered by public entities or private persons. Aviation Consumers have rights for services of reasonable quality; information necessary for them to get full benefit from the services; and protection of their economic interests. Chapter 6 of the Constitution provides for leadership and integrity including the conduct of state officers and public officers. Employees and officers of the Authority are public officers hence they are bound by the principles of Chapter 6 of the Constitution. The regulations have largely provided for standardized ways of provision of quality services, information to be used by its consumers for protection of their economic interest, data protection issues, access to information while maintaining technical infrastructure within the aviation sector. Article 94 (6) of the Constitution gives parliament the power to delegate its legislative authority to a State organ, State officer or person to make provision having the force of law in Kenya.

#### **(c) Kenya Aviation Policy**

The Policy aims to foster the growth of aviation business in Kenya to support job creation by positioning Kenya as a recognized regional leader in aviation; maximize the contribution of the aviation sector to Kenya's economic growth and development; and enhance Kenya's connectivity at a national and international level by ensuring safe, secure and competitive access which is responsive to the needs of businesses, tourism and the population. The Policy covers the entire aviation sector in Kenya including key air transport challenges related to regulatory framework, safety, security, environmental aspects, economic regulation, institutional framework, air transport

market and stakeholders, air transport infrastructure including planning, development, operation, and management, air transport personnel, and air transport statistics.

**(d) The Kenya Airspace Master Plan**

The Plan outlines the evolution and associated investments to be made by the Kenya Civil Aviation Authority (KCAA) in Air Navigation Services (ANS) over the next 15 years. The objectives of the Plan include global and regional consistency, legal and regulatory considerations, and stakeholder expectations. The plan covers operational evolutions, technical improvements, and human resources development.

**(e) The National Aviation Safety Plan (NASP)**

The Plan is aligned with the International Civil Aviation Organization's (ICAO) Global Aviation Safety Plan (GASP), the NASP outlines objectives, strategic priorities, and safety actions to be taken over three years (2023 to 2025). The Plan includes key elements such as identification of national safety issues, setting aviation safety goals and targets, implementing safety enhancement initiatives (SEIs), and collaborating with industry stakeholders and agencies responsible for safety oversight. The NASP complements Kenya's State Safety Programme (SSP) Document.

**(f) Civil Aviation Act**

The Civil Aviation Act CAP 394 was enacted to provide for the control, regulation and orderly development of civil aviation in Kenya; and for connected purposes. Section 4 of the Act provides that the provisions of the Act and regulations made thereunder unless expressly excluded shall apply to: aerodromes used for civil aviation in Kenya; air services established or operating in Kenya; any aircraft registered by the Authority; any foreign aircraft within the Kenya territory; aviation personnel and training schools certified by the Authority; enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft and aircraft parts or components; and air navigation facilities and services in Kenya. Section 82 provides for the Regulations that can be made by the Cabinet Secretary responsible for aviation matters to give effect to the Act and for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention on aviation ratified by Kenya. The draft Civil Aviation (Aerodrome Design and Operations) Regulations, 2024 have been developed under section 82 of the Civil Aviation Act.

**(g) Statutory Instruments Act CAP 2A**

This Act provides rules for the making and revocation of Statutory Instruments made directly or indirectly under any Act of Parliament or other written legislation. The object of this Act is to provide a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments by:

- (a) requiring regulation-making authorities to undertake appropriate consultation before making Statutory Instruments;
- (b) requiring high standards in the drafting of Statutory Instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;
- (c) improving public access to Statutory Instruments;

- (d) establishing improved mechanisms for parliamentary scrutiny of Statutory Instruments; and
- (e) establishing mechanisms to ensure that Statutory Instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed.

The Act also makes provision for the making of regulatory impact statements under section 6 as well as contents of the regulatory impact statement under section 7.

### **3.2 International Context**

The Convention on International Civil Aviation, which, has been ratified by Kenya established the International Civil Aviation Organization (ICAO) with a mandate to support, coordinate and help countries to diplomatically and technically realize a uniquely rapid and dependable network of global air mobility, connecting families, cultures, and businesses all over the world, and promoting sustainable growth and socio-economic prosperity wherever aircraft fly. As a global forum of States for international civil aviation. ICAO develops policies and Standards, undertakes compliance audits, performs studies and analyses, helps and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.

Article 37 of the Convention on International Civil Aviation provides for Adoption of international standards and procedures requiring each contracting State undertaking to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

The International Civil Aviation Organization adopts and amends international standards and recommended practices and procedures dealing with various aspects of air navigation and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Further, Article 12 of the Convention requires that each contracting State undertakes to adopt measures to ensure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable.

Internationally, each of the 193 contracting States has, in compliance with their national commitments and obligations under the Convention, established national civil aviation regulations with the objective of governing the aviation industry in their jurisdiction.

Article 12 of the Convention relating to scheduled air services provides that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

The lack of an appropriate set of regulations in one contracting state jeopardizes the safety, security and economic status of international air navigation. The Civil Aviation (Aerodrome Design and Operations) Regulations 2024 are therefore proposed to ensure fulfilment of state obligation and alignment of the Kenyan aviation system with international requirements and allow Kenya effectively to explore the potential economic and geopolitical benefits of participating in international air navigation.

### **3.3 Domestic Context**

The Kenya Civil Aviation Authority is established under the Civil Aviation Act with the object and purpose for which the Authority as established shall be, to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act. Further The Civil Aviation Act require that the Cabinet Secretary shall make regulations to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

The Civil Aviation (Aerodrome Design and Operations) Regulations 2024 enable KCAA to effectively discharge its mandate by establishing operational standards that ensure that the aviation system in Kenya is aligned to the standards established internationally and applicable globally. The Civil Aviation (Aerodrome Design and Operations) Regulations 2024 therefore are issued in fulfilment of the obligations set forth in the Civil Aviation Act and in support of the mandate of KCAA.

## **CHAPTER FOUR: EVALUATION OF THE PROBLEM**

The current Civil Aviation (Aerodromes) Regulations, 2013 were gazetted vide a Legal Notice number 84 of 2013 (Kenya Gazette Supplement Number 72). These Regulations have been in force since 2013. The International Civil Aviation Organization (ICAO) adopts and amends international standards and recommended practices dealing with various aspects of air navigation and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate and Kenya being a signatory to the Chicago Convention, is obligated to comply with ICAO SARPS through adopting amendments to ICAO annex 14 Volume 1 as appropriate. Unless the Regulations are revised, there is the risk of implementing outdated standards and difficulties in adapting to rapid technological advancements.

In 2013, the Civil Aviation (Aerodromes) Regulations, 2013 were reviewed to include amendments to ICAO Annex 14 Volume 1 to ensure their sufficiency in covering all aerodrome audit areas. The Regulations have further been revised and renamed Civil Aviation (Aerodrome Design and Operations) Regulations to reflect their scope and incorporate all ICAO requirements that have been amended since 2013. The proposed regulations seek to address the following:

### **(a) Compliance with International Obligation**

Kenya as a contracting State undertake to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. To this end Kenya Civil Aviation Authority, shall adopt from time to time, as may be necessary, the International Civil Aviation Organization Standard and recommended Practice through continuous development, review and implementation of Civil Aviation Regulations to ensure consistency and compliance with:

- (a) Communications systems and air navigation aids, including ground marking;
- (b) Characteristics of airports and landing areas; and
- (c) Certification, licensing and registration of aerodromes.

### **(b) Aviation Safety**

To ensure safe operation of aerodromes, there is need to adopt and domestic all relevant and applicable to Kenya ICAO SARPS. This will ensure that all inclusive and comprehensive civil aviation (Aerodrome design and Operation) regulations are promulgated and implemented from time to time. The inadequacy of aerodrome regulations has made aerodrome safety oversight a nightmare for the Authority.

### **(c) Operational rights to other jurisdictions**

Kenya's airports open to public use by her national aircraft shall likewise, subject to the provisions of Article 68, be open under uniform conditions to aircraft of all other contracting States. The uniform conditions shall apply to the use, by aircraft of every contracting State, of all air navigation facilities, including radio and meteorological services, which may be provided for public use for the safety and expedition of air navigation. Equally, the aircraft operators and other users of the aerodrome including the travelling public have a right to safety. Additionally, rights of persons within or in the vicinity of aerodromes should have assurances of protection from harm and the

negative impacts of aerodrome operations be reduced to a minimum. However, inadequate aerodromes regulations regime compromises the rights of aircraft and aerodrome operators as their interests may not be protected by the action of third parties as a result of inadequate regulations.

**(d) Reduction of Cost of Doing Business**

The sustainability of the civil aviation system is dependent on elaborate civil aviation regulations and willingness of the aviation players to implementing for compliance the ICAO SARPS. Civil aviation is a cost intensive venture requiring huge sums of money to procure aviation systems, establish the requisite infrastructure, training and retention of aviation experts just to mention a few. A well regulated aviation industry fosters confidence in the to be investors who in turn commit their resources in the industry due to assurance of safe operations within the aerodromes. This goes along the way in promoting the development of both national and local economy and interconnectivity. On the other hand, a poorly regulated aviation industry as a result of inadequate civil aviation regulations will not attract investors and only associated with high cost of doing business, high insurance premiums.

## **CHAPTER FIVE: STAKEHOLDER CONSULTATION**

### **5.1 Legal requirements relating to public participation and consultation**

Public participation plays a crucial role in democratic governance by ensuring transparency, inclusivity, and accountability in decision-making processes. The Constitution of Kenya 2010, places emphasis on public participation as a fundamental principle of governance. Article 10 of the Kenya Constitution outlines the values and principles of governance, including public participation, which is crucial for achieving accountability, transparency, and public involvement in decision-making processes. In addition, Article 118 of the constitution establishes the right to public participation in legislative and other processes of the State, ensuring that the public has an opportunity to participate in matters that affect them directly.

The requirement for public participation applies to regulation making too. As such, before the draft regulations would be forwarded for promulgation, a series of stakeholder/public engagement was conducted.

### **5.2 The Process of Public Consultation**

The Public Participation process involved notice to the public through the MyGov Newspaper of 21st May 2024 informing them of planned Stakeholder Engagement exercise. The same information was shared with the public through the official KCAA website ([www.kcaa.or.ke](http://www.kcaa.or.ke)) and social media handles. The first of a series of stakeholder meeting was held physically on 30th April 2019 covering a set of eleven (11) Civil Aviation regulations.

### **5.3 Public Notice and awareness**

The stakeholders' engagement forum was advertised in the MyGov Newspaper of 21<sup>st</sup> May 2024 in accordance with applicable requirements for stakeholder engagement. The draft Regulation, Matrix of changes and a form to collect stakeholder comments were uploaded on the KCAA website [www.kcaa.or.ke](http://www.kcaa.or.ke)

The advert also highlighted how prospective participants would register for the public forum.

### **5.4 Public participation forum**

A physical stakeholder engagement was conducted at the Ole Sereni Hotel in Nairobi on 30th April 2019 and attended by 102 participants. Another physical engagement was conducted at the Panari Hotel along Mombasa Road in Nairobi on 12th to 14th June 2024. The Stakeholder engagement report, approval memo and copy of signed attendance list are annexures to this report.

### **5.5 Analysis and Feedback**

The matrix of comments received from stakeholders via email submission and during the public participation forums is included as an annexure to this report.

## CHAPTER SIX: COST BENEFIT ANALYSIS

### 6.1 Costs and Benefits

The development and promulgation of Civil Aviation (Aerodrome Design and Operations) regulations will ensure order and safety within civil aviation industry and in Kenya as a whole. These regulations will ensure that aerodromes including facilities, equipment and personnel meet minimum standards and recommended practices as stipulated in ICAO SARPS. Here are some of the accruing benefits of developing the draft regulation:

- (a) Civil Aviation (Aerodrome Design and Operations) Regulations will help improve the level of safety within civil aviation in Kenya. By establishing minimum ICAO SARPS standards, it will ensure that aerodrome facilities and equipment reliable and available when required, skilled and qualified personnel perform operations of the aerodrome. This would enhance quality of aviation services offered in Kenya, leading to better outcomes for operators and improved reputation for the industry.
- (b) A well-regulated civil aviation industry can contribute significantly to economic growth especially for its ability to promote the development of both national and local economy, including employment opportunities, industrial upgrading, and social welfare improvement and interconnectivity. Additionally, a thriving civil aviation industry can also stimulate other sectors such as manufacturing, tourism, and marketing, further contributing to economic development
- (c) A well-regulated civil aviation industry will help Kenya as a state to be recognized by International communities as one of the safest civil aviation industries in the world. This recognition can lead to increased collaboration between contracting states and working towards realization of the ICAO No Country is Left Behind (NCLB) initiative whose main objective is to help ensure that SARP implementation is better harmonized globally.

The Cost of these regulations involves an examination of the financial implications associated with implementation of the same. The aerodrome operator will incur the following cost once these regulations are promulgated and fully implemented:

### 6.2 Cost benefit Analysis for the proposed Regulations

| Problem                               | Proposed reform                                                                                                                                                                                                                            | Benefit                                                                                                                                                | Cost (Kshs) |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Inadequate civil aviation regulations | Review regulations to include all ICAO Annex 14 Volume 1 SARPS editions and amendment to the annex since 2013 (6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> and 9 <sup>th</sup> Editions of 2013, 2016, 2018 and 2022 respectively) | (a) Comprehensive aerodrome safety oversight.<br><br>(b) Safer aviation system as a result of improved and comprehensive and all-inclusive regulations | Nil         |

| <b>Problem</b>                                                                                                                                                                   | <b>Proposed reform</b>                                                                                                                                                                                                                                                                            | <b>Benefit</b>                                                                                                                                                                                                                       | <b>Cost (Kshs)</b>                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Use of administrative measures, undomesticated ICAO annexes and Documents though they do not have the force of law (Enforcement)                                                 | Review regulations to include all ICAO Annex 14 Volume 1 SARPS editions and amendment to the annex since 2013. (6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> and 9 <sup>th</sup> Editions of 2013, 2016, 2018 and 2022 respectively)                                                       | (a) Ease of aerodrome safety oversight through making reference to relevant regulations                                                                                                                                              | Nil                                                                                                                              |
| Inadequate safety oversight of aerodrome conducting commercial air transport yet, they have not established ARFFS commensurate with critical aircraft operating in the aerodrome | Review regulations to include all ICAO amendments to Annex 14 Volume 1 that require aerodrome operators of this category to establish ARFFS. The ICAO editions include 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> and 9 <sup>th</sup> Editions of 2013, 2016, 2018 and 2022 respectively | (a) Safer aviation system<br>(b) Assurance of passenger safety in case of fire emergency                                                                                                                                             | Cost associated with acquisition of fire vehicles, building of fire station, recruitment and training of additional firefighters |
| Inability to conduct safety oversight on runway surface conditions                                                                                                               | Review to include global reporting format (GRF) on runway surface conditions. The ICAO editions include 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> and 9 <sup>th</sup> Editions of 2013, 2016, 2018 and 2022 respectively                                                                | (a) Sharing of information on runway surface conditions with pilots, ATC, aerodrome and AIS<br>(b) Safer runways devoid of excursions<br>(c) Reduced cost of aircraft maintenance as a result of properly maintained runway surfaces | Cost associated with acquisition of tools and equipment for measuring runway surface conditions.                                 |

### 6.3 Consideration of Alternatives to the proposed Regulations

Table 2: Regulatory and non- regulatory options

| Option                                                                                                                                                                                                                                                                                             | Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Option One: Maintenance of the Status Quo</b>                                                                                                                                                                                                                                                   | <ol style="list-style-type: none"> <li>1) Maintaining the status quo means that no regulations are developed, thus the challenges of currency and keeping up with the international obligations and requirements will not be addressed.</li> <li>2) Kenya won't be complying with terms of the Convention to which it is a signatory and hence will attract ICAO Universal Safety Oversight – continuous Monitoring Approach (USOAP-CMA) Audit findings.</li> <li>3) Lack of regulations that are current will place Kenya behind other States with more current and robust regulations thereby denying the State the much-desired investment in the aviation industry.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Option Two: Administrative measures</b><br><br>Issuance of directives and circulars to the various entities and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law. These include advisory circulars, orders etc. | <ol style="list-style-type: none"> <li>1) Issuance of directives and circulars to various aerodrome operators and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law.</li> <li>2) administrative measures cannot be applied in perpetuity leading to non-uniform application of the requirements as not everyone may be willing to comply as required with what the Authority cannot enforce.</li> <li>3) The issuance of such measures is not only cheap but also time saving. However, the implementation of administrative measures is dependent on good will of the aerodrome operator and may not be sustainable since they do not have the force of law.</li> <li>4) This presents a major risk in terms of enforcement and the possibility of not getting implemented at all.</li> <li>5) The non-binding nature of administrative measures suggests that it cannot be a reliable avenue to give full effect to the salient provisions contained in the draft Civil Aviation (Aerodrome Design and Operations) Regulations, 2024.</li> </ol> |
| <b>Option Three: Promulgating the Civil Aviation (Aerodrome Design and Operations) Regulations 2024</b>                                                                                                                                                                                            | Promulgation of the Civil Aviation (Aerodrome Design and Operations) Regulations 2024 will enhance safety by ensuring that Kenya;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

| Option | Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | <p>(a) Secures the highest practical degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation</p> <p>(b) Achieves a high effective implementation of standards and recommended practices by ensuring that there is compliance with ICAO standards</p> <p>(c) Can effectively regulate and oversight aerodrome operators' compliance with the regulations</p> |

#### 6.4 Impact analysis of the Options

Table 2: Impact analysis of Aerodrome Design and Operations regulations options

| Aviation Sector    | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                              | Option two: Administrative measures                                                        | Option three: Promulgating the Civil Aviation (Aerodrome Design and Operations) Regulations 2024                                                                                                                                              |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Personnel          | <p>a) Degraded safety in operation due to lack of appropriate standards</p> <p>b) Deployment of inadequate, unskilled and unqualified to conduct activities of aerodrome operations and maintenance</p> <p>c) Poorly maintained aerodrome facilities and equipment</p> | Poor compliance as a result of lack of enforcement mechanisms                              | <p>a) Adherence to safety procedure due to availability of standards</p> <p>b) Motivated workforce as a result of the training received</p> <p>c) Reduced accident/incident rate resulting from availability and reliability of equipment</p> |
| Aerodrome Operator | Failure to comply due to inadequate aerodrome Regulations                                                                                                                                                                                                              | a) lack of enforcement as a result of administrative measures are not anchored in law, the | c) Ensure adherence to his/her obligation of providing safe aviation systems                                                                                                                                                                  |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                                                                                                                                                                                                                           | Option two: Administrative measures                                                                                                                                                                                  | Option three: Promulgating the Civil Aviation (Aerodrome Design and Operations) Regulations 2024                                                                                                                               |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>aerodrome operator continues to operate unsafely</p> <p>b) accident/ incident that can lead to loss of lives and damage to infrastructure as a result of poorly maintained aerodrome facilities and equipment</p> | <p>within the aerodromes</p> <p>d) Safe work procedure</p> <p>e) Deployment of skilled and qualified workforce as a result of training received</p>                                                                            |
| The State       | <p>a) Due to non-compliance with ICAO SARPS as a result of inadequacy in regulation, Kenya might attract Significant Safety Concern (SSC) with respect to the inability of Kenya to properly oversee airports; under her jurisdiction.</p> <p>b) Globally Kenya will have lost her reputation as a safe civil aviation provider</p> <p>c) Consequently, there will be loss of revenue due to restricted movements of aircraft across borders (No international air operations).</p> |                                                                                                                                                                                                                      | <p>a) fair competition with other aviation industry globally</p> <p>b) fostering of safe aviation system through effective implementation of the promulgated Civil Aviation (Aerodrome Design and Operations) Regulations.</p> |
| The Authority   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 1) inability to conduct comprehensive safety oversight as a result of inadequate regulations                                                                                                                         | 1) Effective safety oversight of aerodromes                                                                                                                                                                                    |

| Aviation Sector           | Option one: Maintenance of the Status Quo                                                          | Option two: Administrative measures                                                                   | Option three: Promulgating the Civil Aviation (Aerodrome Design and Operations) Regulations 2024 |
|---------------------------|----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
|                           |                                                                                                    | 2) Administrative measures are not enforceable by law making it difficult to conduct safety oversight | 2) Promotion of uniformity across the aviation sectors                                           |
| Aviation Service Consumer | Exposure to risk due to non-compliance with standards as a result of inadequacy of the regulations | Challenges in enforceability of requirements not anchored in law                                      | Assurance of safety following promulgation of the regulations                                    |

### 6.5 Preferred Option

Based on the above analysis option three (**Promulgation of the Civil Aviation (Aerodrome Design and Operations) Regulations 2024**) is the preferred option. It is clear that the benefits and impact of promulgating these regulations by far outweigh any estimated cost of its implementation. The other two options have negative impact in addressing the problem.

## **CHAPTER SEVEN: COMPLIANCE AND IMPLEMENTATION**

Regulatory-Making Authority and the legal mandate: The Cabinet Secretary has the responsibility of developing civil aviation regulations while Kenya Civil Aviation Authority implements and enforces the developed civil aviation regulations in order to promote safe aviation systems in Kenya; and

Requirements of the Statutory Instruments Act: Section 5 requires that a regulation making authority conduct public consultations and to drawing on the knowledge of persons having expertise in aviation and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

## CHAPTER EIGHT: CONCLUSIONS AND RECOMMENDATIONS

### 8.1 Conclusions

Based on the above analysis, the following conclusions are drawn in respect to Civil Aviation (Aerodrome Design and Operations) Regulations, 2024.

- (a) **Regulations making mandate:** Section 82 of the Civil Aviation Act empowers the Cabinet Secretary in Consultation to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.
- (b) **Provisions of the Statutory Instruments Act:** Section 5 requires that a regulation making authority to conduct public consultations and drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that a RIA be prepared where a statutory instrument is likely to impose significant costs on the community. This RIA thus contains certain the following key elements:
  - (i) a statement of the objectives of the proposed legislation and the reasons.
  - (ii) a statement explaining the effect of the proposed legislation.
  - (iii) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options.
  - (iv) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
  - (v) the reasons why the other means are not appropriate.

The RIA structure and content requirements established in the Statutory Instruments Act requirements have been fully met. Additionally, public consultation requirements in respect of the Civil Aviation (Aerodrome Design and Operations) Regulations have been fully adhered to.

- (c) **Other legal frameworks:** The draft Civil Aviation (Aerodrome Design and Operations) Regulations 2024 proposes to publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.
- (d) **The draft:** The draft Civil Aviation (Aerodrome Design and Operations) Regulations 2024 as drafted are clear, consistent, comprehensible and comprehensive enough to cover all matters and meet the established drafting standards.

### 8.2 Recommendations

In view of the above conclusions, it is recommended that the draft Civil Aviation (Aerodrome Design and Operations) Regulations, 2024 be adopted

## **ANNEXURES**

The Draft Civil Aviation (Aerodrome Design and Operations) Regulations 2024

Matrix for stakeholder consultations