



REPUBLIC OF KENYA
MINISTRY OF ROADS AND TRANSPORT

REGULATORY IMPACT ASSESSMENT
FOR THE

**CIVIL AVIATION (CERTIFICATION, LICENSING AND REGISTRATION OF
AERODROMES) 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 Act empowers the Cabinet Secretary, at the time being in Charge of 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 is more specific and provides that Without prejudice to the generality of Section 82(1), the regulations developed are for providing 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, Cap 2A (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:

- (i) a statement of the objectives of the proposed legislation and the reasons for them.
- (ii) 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
- (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;
- (v) the reasons why the other means are not appropriate;
- (vi) any other matters specified by the guidelines;
- (vii) 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

The Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2024 (the proposed regulations) are applicable to all aerodromes in Kenya except where otherwise specified.

2.2 Objects of the proposed Regulations

The general objective of the proposed Regulations is to provide requirements for licensing, certification, registration and surveillance of aerodromes. The specific objectives include, to:

- (a) establish the requirements for certification and licensing of aerodromes and heliports;
- (b) provide for the requirements for registration and operations of category E aerodromes;
- (c) establish the requirements and general for the aerodrome and heliport manual; and
- (d) detail the preliminary provisions and provide for the offenses, penalties and transitional provisions;

2.3 An Overview of the Regulations

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.

The structure of the Proposed Regulations is as follows:

- Part I—Preliminary Provisions
- Part II—Requirements for Aerodrome Certification
- Part III—Licensing of Aerodromes
- Part IV—Licensing of Heliports
- Part V— Registration and Operation of Category E Aerodromes
- Part VI—Aerodrome Manual
- Part VII —Heliport Manual
- Part VIII—Offences, Penalties & Transition
- Schedules

CHAPTER THREE: BACKGROUND AND CONTEXT

3.1 Policy Background

3.1.1 International

(a) Sustainable Development Goals

The Sustainable Development Goals (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) The 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 proposed Regulations correspond to the SARPs issued by ICAO as Annex 14 Volume I and II 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

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

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 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 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.

(c) 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 proposed Regulations have been developed under section 82 of the Civil Aviation Act.

(d) 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 (Certification, Licensing and Registration of Aerodromes) 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 requires 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 proposed Regulations 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 proposed Regulations 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 proposed Regulations were published under Legal Notice No. 129 of 2018 and made reference to non-existent Regulations. This has necessitated amendments to enhance clarity and to align it with the Civil Aviation (Aerodrome Design and Operations) and (Heliports) Regulation.

The proposed regulations seek to address the following gaps.

(a) Unclear categorization of the Aerodromes

The Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2018 had provided for categorization of aerodromes but did not consider the requirements of certification of heliports used for international helicopter operations. Additionally, the categorization of Category B and C were not clear which occasioned to confusion among the aerodrome operator and the same could not be differentiated with category E aerodromes. Therefore, the regulations as promulgated could not sufficiently regulate certification of heliports and differentiate different categories of aerodromes.

This has affected the implementation of the Civil Aviation Act, 2013 as amended in 2016 with aerodrome operators applying for licensing or registration while falling in different categories and subsequently affecting compliance with international instruments ratified by Kenya.

(b) Inadequate enforceability of the Regulation following non-publication of the Aerodromes Design & Operations and Heliports Regulations 2018.

The Civil Aviation (Aerodromes) Regulations 2013 was divided into three Regulations in 2018 to cater for the industry need and to provide for uniformity with the East Africa Community States under the Civil Aviation Safety and Security Oversight Agency (CASSOA) as a Regional Safety Oversight Organisations (RSOOs). However, only the (Certification, Licensing and Registration of Aerodromes) Regulations, 2018 was published and largely referred to the other two Regulations to give effect to its requirements. Therefore, the Regulations in absence of the associated Aerodromes and Heliports Regulations could not be enforced appropriately which resulted to the Authority reverting to the Aerodrome Regulations 2013 which was deficient in nature due to its inadequacy in capturing all the Standards and relevant recommended practices detailed in Annex 14 Volume I and II of the convention to the International Civil Aviation and subsequent amendments. This has a direct implication on enforcement of this regulations and thus required amendment to align it with the associated aerodromes design & operations and heliport Regulations.

(c) Reference to non-existent Regulations

The lack supporting Regulations referred in the Civil Aviation (Certification, Licensing and Registration of Aerodromes Regulations was causing confusion to the aviation industry leading to misleading Regulatory regime and complaints from the industry. There was thus a need to review the Regulations and ensure alignment with other Regulations.

(d) Missing Regulatory requirements for certification and licensing

The Regulations had missing requirements in the aerodrome manual which were already being practiced and needed to align the Regulations with the best practice. Additionally, some new definitions were added following the amendments of Annex 14 Volume I and II.

(e) Lack of clarity in some provisions in the Regulations

Several provisions lacked clarity due to usage of words which would be construed to have different meaning from the requirements. Additionally, grammatical issues and wording that impacted on the flow of the Regulations. Therefore, the Regulations were reworded, arranged and organized without changing the requirements to provide clarity and for ease of reference and understanding.

(f) Sustainability of Civil Aviation System

(i) International Obligation

Articles 15, 28, and 37 of the Convention on International Civil Aviation requires each contracting state to 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. This is achieved through Standards and recommended practices which are amended from time to time in which Signatory States are mandated to adopt into National Regulations. The Regulations underpinning the usage of this Regulation are either outdated due to lack of incorporation of two editions of Annex 14 Volume 1, and non-adoption of Annex 14 Volume II exposing the State to non-compliance with its obligations.

(ii) Aviation Safety

Annex 14, Volume I and II, requires States to certify aerodromes used for international operations and those that are open to public use in accordance with the specifications of Annex 14 Volume I and II, other relevant ICAO specifications through an appropriate regulatory framework.

The regulatory framework needs to include the establishment of criteria and procedures for the certification of aerodromes which are highlighted in the Proposed Regulations. However, due to outdated Aerodromes Regulations, 2013 and non-existent heliports Regulations, the State is exposed as assurances of Safety cannot be demonstrated without adequate regulatory regime.

(g) Operational rights to other jurisdictions

The aircraft operators and other users of the aerodrome/heliports 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/heliport operations be reduced to a minimum. Further, there should be synergy between aerodrome/heliport development and other forms of development to enhance safety and compatibility. Lack of adequate regulatory regime compromises the rights of

aircraft/aerodrome/ helipad operators as their interests may not be protected by the action of third parties in absence of a regulatory framework.

(h) Reduction of Cost of Doing Business

Certification, licencing and registration requirements ensures that aerodromes and heliports comply with the International Standards and builds the confidence of aerodrome users to commit their resources in Air Transport due to assurances of safety of operations. This enhances usage of air as the preferred mode of transport, reduces the premiums for insurance into authorized aerodromes and thus enables ease of doing business, and contribution to the Gross Domestic Product of the State. Inadequate Regulatory framework erodes all these benefits.

CHAPTER FIVE: PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATION

Public Participation refers to the process by which citizens, as individuals, groups, or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives. It is a constitutional requirement that policy and law-making should be done openly and transparently, with appropriate procedures for effective and timely input from professionals and persons affected by the policy instruments.

5.1 Legal requirements relating to public participation and consultation

Participation of the people, inclusivity, transparency, and accountability are constitutional requirements whenever a State organ, public officer or other person applies or interprets the Constitution, enacts or applies to any law, or makes or implements a public policy decision. This requirement is premised on the sovereignty principle⁴ which vests all sovereign power to the people of Kenya. This power entitles the people to unfettered access to the process of making public decisions through their involvement. Transparency of public finances and performance is ensured through rules, mechanisms, and capacities for sharing information on government programs, budgets, expenditures, and results with citizens. Participation mechanisms enable citizens to participate in setting budget priorities and monitor expenditures and assess service delivery performance. They also include feedback systems, which give citizens the opportunity to provide comments and grievances.

Accountability mechanisms include both direct and indirect relationships, where service providers are sanctioned if they fail to meet an established standard.

5.2 The Process of Public Consultation

Pursuant to section 5 of the Statutory Instruments Act, the Authority identified specific stakeholders whom it engaged in a consultative process. These include the main professional and specialist institutions and individuals who will be directly or indirectly affected by the proposed statutory instrument.

5.3 Public Notice and awareness

All stakeholders' engagement fora were advertised at least 21 days (about 3 weeks) before being held in at least major local daily in accordance with applicable requirements for stakeholder engagement. Additionally, formal notice of the same was posted on the KCAA official website. All sets of regulations to be discussed during the public participation fora were well spelt out in the adverts. An online registration form was provided on the website and a form to collect stakeholder comments uploaded alongside the regulations on the KCAA website, www.kcaa.or.ke. Additionally, notices were made to the public through the MyGov Newspaper informing them of the planned Stakeholder Engagement exercise.

5.4 Public participation forum

The first of a series of stakeholder meetings was physically held at the Ole Sereni Hotel in Nairobi on 30th April 2019. The second Stakeholders meeting was hybrid (both physically at Four Points Hotel and virtually) between 14th – 18th June 2021. The third public engagement was a physical meeting with stakeholders held at the Emara Ole Sereni Hotel between 14th and 15th February 2022.

In each of the engagements, comments and input from stakeholders were taken and incorporated into the regulations as appropriate and the outcome presented in the succeeding engagement forum. To conclude stakeholder engagement, the Authority organized for a final Regulations validation workshop at the Panari Hotel in Nairobi between 6th and 8th May 2024 to allow stakeholders to confirm that the Authority had considered and incorporated their comments and input in the final drafts of the regulations. This was the final activity that paved way for the regulation review to proceed to the next stage.

5.5 Analysis and Feedback

The Authority received many memoranda from the industry and general public using the forms provided to collect stakeholder feedback. Some memoranda were delivered physically, in writing or through email. Memoranda received before stakeholder meetings were analyzed, the Authority's response documented in a matrix and the same presented during the physical or virtual stakeholder engagement sessions.

Every additional effort was made to analyze each comment and give feedback to every input received from stakeholders initially on the floor of the physical or virtual engagement during question-and-answer sessions which came immediately after regulation presentations, or in writing where stakeholder input and comments were received in writing or after the engagement sessions.

For stakeholder input and comments requiring substantial analysis and amendment to draft regulations, the stakeholders were invited to shed more light on their comments and requests through physical/virtual meetings, in writing or email. Their input was then discussed and analyzed together with the regulation drafters and when consensus had been reached, the regulations were either redrafted to incorporate their input or retained as were where taking the industry comments in full would make the State to contravene ICAO standards to ensure that the State didn't contravene international standards and practices.

At all stages of regulation making, the Authority kept contact lines with stakeholders open to ensure that as important players they were fully involved and that they felt part of the process.

CHAPTER SIX: COST BENEFIT ANALYSIS

6.1 Cost

The analysis of the expected costs and benefits of the proposed regulation seeks to evaluate whether the benefits justify the costs. This would enable the Authority to estimate the total expected cost and benefit of every aspect of the regulation and in turn inform the decision makers in justification of the cost of government action by its benefits before implementation.

Given the nature of the aviation industry, and the need for exacting standards of safety, uniformity and regularity, the cost will largely be qualitative rather than quantitative. The estimate may include the following costs;

- (a) cost of new certification, licensing and registration fee and renewal;
- (b) cost of documentation for compliance;
- (c) training cost to comply with the regulation;
- (d) maintenance costs of certification, licensing, and registration of aerodromes

The enactment of the Civil Aviation Act, 2013, necessitated prescription of fees payable by the aerodrome/helicopter providers. It is worth noting that certification, licensing, and registration of aerodromes shall be borne by the operators on a cost recovery basis.

The projected player in the industry at the time of implementing the regulation will be as follows;

- (a) Kenya Airports Authority
- (b) Kenya Wildlife Services
- (c) Government agencies operating aerodromes
- (d) Aerial masts and other structures operators
- (e) Telecommunication companies
- (f) Private heliport operators
- (g) Hospital helipad operators

The projected cost for the initial Certification, licensing and registration of aerodromes and renewals besides construction costs varies from approximately Kshs 50,000 to 1,100,000 valid for a period of two years for certification and Licensing and three years for Registration of Aerodromes, respectively.

The Authority shall allocate in the Annual budget approximately Kshs 8.5 million to sustain the certification and continuous surveillance expenses to ensure safety and compliance of aerodromes and heliports.

6.2 Benefits

The adoption and implementation of the proposed regulations will lead to the following benefits to the aviation industry. It shall:

- (a) improved aerodromes and heliport facilities, equipment and procedures;
- (b) promote the participation of Kenyan citizens in the air transport.

- (c) provide compliance and enforcement mechanisms in the provision of aerodrome facilities;
- (d) reduce instances of non-compliance with national and international standards;
- (e) ensure certification, licensing and registration of aerodromes/heliports does not exclude any category of the aerodrome;
- (f) enhance the quality of air transport services, appropriate modal split and institutional regulatory capacity;
- (g) ensure reduced continued loss of revenue because of unauthorized aerodromes;
- (h) provide platform for redressing customer enquiries and complaints;
- (i) promote investment in the aviation industry by both private and public sector;
- (j) create awareness of the opportunities available in the aviation sector;
- (k) provide adequate implementation and enforcement mechanisms for the safety standards for aerodrome and heliport services providers; and
- (l) create an adequate regulatory framework for air transport;

Table 1: Benefits and Costs of the proposed Civil Aviation proposed Regulations.

Problem	Proposed reform	Benefit	Cost (Kshs)
Unclear categorization of the Aerodromes	Review the aerodrome categories to address ambiguity in description	2.3.1.1.1 Clarity in distinct categories of aerodromes and requirements. 2.3.1.1.2 Application of correct requirements for aerodromes. 2.3.1.1.3 Address restrictive requirements for small aerodromes leading to improved licensing and registration of aerodromes. 2.3.1.1.4 Improved safety and quality standards. 2.3.1.1.5 Enhance oversight and surveillance coverage as many aerodrome operators are willing to be licensed and registered.	NIL
Inadequate enforceability of the Regulation following non-publication of the	Align all the regulations related to Annex 14 Volume I and II	(a) Clarity in design, certification, licensing and registration of	NIL

Problem	Proposed reform	Benefit	Cost (Kshs)
Aerodromes Design & Operations and Heliports Regulations 2018.		aerodromes requirements. (b) Compliant aerodromes and heliports (c) Ease of certification and licensing	
Reference to non-existent Regulations	Review the Regulation to provide the correct references	(a) Enhance certification, surveillance and resolution of safety issues obligations of the state. (b) Ensure compliance with the International Regulations. (c) Facilitate Enforcement of certification requirements	Nil
Missing Regulatory requirements for certification and licensing	- Include the missing Regulatory details regarding the aerodrome manual requirements.	(a) To facilitate compliance on requirement of aerodrome manual for category A-D aerodromes	NIL
Lack of clarity in some provisions in the Regulations	Regulations re-worded, re-arranged and organized without changing the requirements to provide clarity and for ease of reference and understanding.	(a) Clear Regulatory provisions for Certification, Licensing and certification of aerodromes. (b) Efficiency in oversight obligations.	NIL

6.3 Consideration of Alternatives to the proposed Regulations

Table 2: Regulatory and non-regulatory options

Option	Impact
Option One: Maintenance of the Status Quo	Maintaining the status quo would continue exposing the state to significant safety concerns as a result of non-compliance with the international obligations ratified by the State. Additionally, the State would continue losing revenue resulting from certification and licensing

Option	Impact
	fees as a result of ambiguous categorization of aerodromes. Further, lack of clarity in the regulatory regime may create confusion which would expose the authority to Regulatory liabilities.
Option Two: Administrative measures 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 Aeronautical Information Circulars (AIC), Advisory circulars or direct usage of ICAO standards and Recommended Practices.	Whereas directives and circulars would offer an alternative, their usage may not be feasible for the long term and thus can only be used as a stopgap measure. The administrative measures would be less exacting than the requirements in the harmonized international obligations ratified by the State. Challenges in compliance and enforcement of aerodromes and helipads as a result of failures of the operator to comply with the directives and circulars of the Authority exposes the Authority to Regulatory liabilities in the event of any incidents which may lead to litigation. Additionally, administrative measures cannot be applied in perpetuity and may lead to non-uniform application of the requirements as not everyone may be willing to comply as required with what the Authority cannot enforce.
Option Three: Promulgating the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2024	The promulgation of Civil Aviation (Certification, licensing and registration of aerodromes) Regulations 2024 requires Stakeholders participations which leads to creation of awareness and buy in and when these Regulations are well understood. Standardization and uniformity can be applied across board which makes it easier to enhance compliance and enforcement of the Regulations due to the force of law. Promulgation allows the anchoring of the directives of the Authority to be anchored in law and thus meeting the constitutional requirements.

Option	Impact
	Additionally, it ensures that subjectivity in issuing directives on grey areas has clear provisions to avoid subjectivity on the part of the Authority and enhance objectivity in the performance of regulatory function.

6.4 Impact analysis of the Options

Table 3: Summary of the Impact Analysis of the Options

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2024
Personnel	Unclear regulatory framework due to inadequate certification, licensing and registration of aerodromes standards.	Poor compliance due to lack of enforceability, hence poor safety standards.	Well designed and operated heliports with enhanced safety in operation.
Air Operator	The aircraft operator will be exposed to risks of landing in poorly categorized aerodrome leading to incidences which attract liability to the Authority	Administrative actions would require defining provisions that had not been promulgated but to have effect on these regulations and thus cumbersome and lacking in force of law.	Well defined certification, licensing and registration of aerodrome requirements would remove ambiguities and enhance compliance to aerodromes safety standards.
ANSP	Exposure to risks due to ambiguity in certification requirements which would make coordination between aerodrome/heliport operators and Air Navigation Service providers.	Poor compliance due to lack of enforceability, hence poor safety standards which would introduce risks to other aviation operations.	Certified, licensed and registered aerodromes will have coordination procedures with ANSP which will enhance safety.
Aerodrome/heliports Operators	Ambiguity in certification, licensing and registration requirements exposes the process to risk.	Poor compliance with the required standards due to lack of enforceability, hence poor safety standards. Litigation during enforcement of	Clarity in Regulatory requirements facilitating ease of certification, licensing, and registration.

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2024
		requirements that are not anchored in law.	
Aviation Service Consumer	Inadequate assurance of safety standards due to ambiguity in Regulation and thus exposure to risks	Challenges in enforceability of requirements not anchored in law	Assurance of safety following certification process with clear regulatory requirements.
The State	Exposure to audit findings by international organizations including significant safety concerns for failing to meet international obligation following ratification of the Convention for international Civil Aviation.	Directives and Circulars issued by the State are inadequate to cover the liability towards the State with non-compliant standards. Additionally, the directives will not have a force of law and thus continued exposure to audit findings and safety concerns.	Compliance with the International standards regarding safety, efficiency and regularity of civil aviation leads to better performance and increased ease of doing business due to high assurance of safety.
The Authority	Inability of the Authority to meet its regulatory mandate leading to liabilities in the event of exposure to safety risks because of inadequate authorizations, surveillance, resolution of safety issues and enforcement.	An inadequate legislative framework to support the directives of the Authority leading to poor enforceability of the required standards.	Enhanced oversight capabilities and ease of resolution of safety issues and enforcement.

6.5 Preferred Option

Based on the analysis, Option 3 (Promulgation of the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2024) was adopted as the preferred option. The benefits and impact of promulgating these Regulations clearly outweigh the cost of implementation. The other two options have negative impacts in addressing the problem.

CHAPTER SEVEN: COMPLIANCE AND IMPLEMENTATION

The Cabinet Secretary has the responsibility of developing civil aviation regulations while Kenya Civil Aviation Authority implements and enforces the developed civil aviation regulations to promote safe aviation systems in Kenya; and

Section 5 requires that a regulation making authority conduct public consultations and to drawing on the knowledge of persons having expertise 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 of the draft Civil Aviation (Certification, Licensing and Registration of Aerodromes) 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 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 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 have been fully met. Additionally, public consultation requirements in respect of the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations have been fully adhered to.

- (c) Other legal frameworks: The draft Civil Aviation (Certification, Licensing and Registration of Aerodromes) 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 (Certification, Licensing and Registration of Aerodromes) 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 (Certification, Licensing and Registration of Aerodromes) Regulations 2024 be adopted.

ANNEXURES

- (a) The Draft Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2024
- (b) Matrix for stakeholder consultations