



REPUBLIC OF KENYA

MINISTRY OF ROADS AND TRANSPORT

REGULATORY IMPACT ASSESSMENT

FOR THE

**CIVIL AVIATION (RESTRICTION OF BUILDING IN DECLARED AREAS) ORDER,
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 being 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 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, 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;
- (f) any other matters specified by the guidelines;
- (g) 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 PROPOSED ORDER

2.1 Scope of the proposed order

The Restriction of building in declared areas order applies to persons undertaking developments in declared areas

2.2 Objective of the proposed order

The general objective of the proposed order is to regulate developments in declared areas. Specifically, the order seeks to:

- (a) enhance clarity of the requirements of the Civil Aviation (Aerodrome Design and Operations) and Heliports Regulations with regard to obstacle control;
- (b) provide a safeguard criteria when assessing proposals for development in declared areas;
- (c) highlight the developments that require height approvals from the Authority before commencement of construction;
- (d) establish the criteria for determining applicable safety height limits of developments

2.3 An Overview of the Proposed order: Salient Features

This overview aims to evaluate the clarity, consistency, comprehensibility, and comprehensiveness of the proposed order 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 order.

The structure of the Proposed order on restriction of building in declared areas is as follows:

- (a) Citation
- (b) Interpretation
- (c) application
- (d) objective
- (e) Safeguard criteria
- (f) Developments that require height approvals
- (g) Height limitations of developments
- (h) obligation of the operator
- (i) 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) 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 Restriction of building in declared areas order, 2024 correspond to the SARPs issued by ICAO as Annex ... 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 Regulations and any pertinent orders to fulfill the regional obligations to a safe, secure and economically viable air transport system.

3.1.3 Domestic

(i) Kenya Vision 2030

Kenya 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.

(ii) 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.

(iii) Civil Aviation Act

The Civil Aviation Act No. 21 of 2013 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 Restriction of building in declared areas order, 2024 have been developed under section 82 of the Civil Aviation Act.

(iv) 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 Restriction of building in declared areas order 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 restriction of building in declared areas order 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 restriction of building in declared areas order 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

This is a new order necessitate by the Kenya Civil Aviation Authority, being a signatory to the Chicago Convention, complying with the Standards and Recommended practices detailed in the Chicago Convention of the International Civil Aviation Organization, Annex 14 Volume I and II. The non adoption of this order resulted in inadequacy in safeguarding of the airspace around aerodromes to be maintained free from obstacles to permit the intended aircraft operations to be conducted safely and to prevent the aerodromes from becoming unusable by the growth of proposed developments around the aerodromes. As a result of this inadequacy, the Authority resorted to provisions of Chapter 4 of the Manual of Aerodrome Standards and Manual of Heliport Standards respectively which are not enforceable by law. Therefore, the order being published will provide a clear roadmap to regulating proposed developments within restricted areas.

The order seeks to address the following:

(a) Lack of knowledge among stakeholders on obstacle control requirements

Part IV of the proposed Civil Aviation (Aerodrome Design and Operations) Regulations provides the requirements for obstacles restriction and removal to ensure aerodromes do not become unusable due to growth of obstacles which would significantly affect aircraft operations. However, the interpretation of the requirements has been a challenge to non-aviation Stakeholders who are involved in development control due to the technical nature of the Regulations.

Therefore, there has been several requests from the industry regarding applicable heights in different sectors of the aerodrome. The challenges in the interpretation of the Obstacle requirements affects the implementation of Sections 56 and 57 of the Civil Aviation Act, 2013 as amended in 2016 and subsequently compliance with international Standards ratified by Kenya.

(b) Application of a case-by-case scenario in height analysis determination of obstacle limitation surfaces.

The control of development around aerodromes requires different criteria to safeguard aircraft operations when approaching to land, after take-off, for training purposes, aligning for landing when in the aerodrome visual circling areas, protection of navigation aids and visual aids for navigation including, approach lights, Instrument landing systems (ILS), terminal and en-route Very High Frequency Omni-directional Radio-Range (VOR) among others. Therefore, to protect these critical sections of aircraft operations, different criteria are used. However, the non-aviation stakeholders expect a one-fit-it-all criteria which would make it easier to issue developmental control approvals without delays occasioned by coordination between different stakeholders by having clear requirements which are easily understood. In absence of clear published roadmap on the criteria used by the Authority, there has been significant infringements and penetration of obstacles in the protected surfaces due to lack of clear guidance. This has a direct impact on safety of aircraft operations and has necessitated closure of various aerodromes due to encroachment.

(c) Extent of aerodrome obstacle protection areas

The control of obstacles for goes beyond the boundaries of the aerodrome and limits the height and the designs of buildings to ensure the safety and security of aircraft operations. However, the extent of obstacle control is not well understood by proponents of development and there are various government agencies involved in development approval whose mandate are established under Acts of Parliament such as Physical and Land Use Planning Act, 2019. This has consequently led to approvals issued which infringes on the Civil Aviation Act and thus exposing aircraft operation to safety and security risk due to such infringements. Additionally, applications have been made for developments on a case by case with some referred to the Authority for height approval and others exempted from the requirements of the Civil Aviation Act and the Civil Aviation (Aerodromes) Regulations, 2013. The extent of the areas covered by the Civil Aviation Act herein referred to as the declared areas need to be provided in a way that is understood by the general public.

(d) Sustainability of Civil Aviation System

(i) International Obligation

Article 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. The International Civil Aviation Organization adopts and amends from time to time as may be necessary, the international standards and recommended practices and procedures dealing with the characteristics of airports and landing areas and such other matters concerning with the safety, regularity and efficiency of air navigation as may from time to time appear appropriate. Any misunderstanding of the requirements renders Kenya to be non-compliant with the as detailed in Annex 14 Volume I and II of the Convention of the Civil Aviation which has been ratified by the State.

(ii) Aviation Safety

Annex 14, Volume I and II, contains Standards and Recommended Practices (specifications) that details the requirements for obstacle control and removal to be provided for safety, efficiency and regularity of aircraft operations into and out of aerodromes/heliport and ensure they do not become unusable due to penetration of obstacles. In absence of a clear criteria, aviation safety will be compromised and may lead to accidents and incidents.

(iii) Operational rights to other jurisdictions

The aerodrome operators have a right to have the aerodrome safeguarded from developments that infringes on the obstacle limitation surfaces in the interest of safety and security. Additionally, the developers have right to their properties which should be protected by ensuring that they have the pertinent information regarding restrictions of developments in declared area in the interest of National safety and security.

Absence of such information infringes on the operational rights to other jurisdictions. The proposed order ensures that the rights of all stakeholders are not protected.

(iv) Reduction of Cost of Doing Business

Provisions of clear requirements regarding aerodrome obstacle control within the State of Kenya is an enabler towards decision making. Clarity of requirements allows the aerodrome operator to evaluate the airspace around the aerodrome and ensures there are no operating restrictions resulting from erection of obstacles. The proponents of developments in the vicinity of the aerodrome or in areas where the characteristics of the objects would significantly impact on aviation safety, the presence of clear guidelines enhances decision making in terms of land acquisitions, planning, architectural and structural designs whose effect have a bearing on finances. Clarity enhances ease of doing business while delays may lead to unnecessary cost. Absence of Regulations and the proposed order increases the regulatory, coordination and developmental costs due to lack of information.

CHAPTER FIVE: 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 in an open and transparent manner, 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 provide citizens with 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.

The stakeholders identified for purposes of developing the proposed Regulations included:

- a) Aerodrome Operators
- b) Telecommunication Operators
- c) Kenya Association of Airline Operators
- d) Airlines
- e) Aviation Safety Groups
- f) Ministry of Transport

5.3 Public Notice and awareness

The Authority will adopt the following methodology for purposes of public participation and inclusivity:

- (a) The Draft Order and the Regulatory Impact Statement will be posted onto KCAA website inviting representations generally and specifically from the identified stakeholders;
- (b) The stakeholders shall be notified of the Regulation-making process and invited to give submissions on the draft order within a specified reasonable period;
- (c) A Gazette notice and a newspaper advert were published inviting all persons to submit their views; and
- (d) Physical and virtual meetings with select stakeholders will be held to discuss the drafts.

5.4 Public participation forum

The Authority will conduct public participation forums

5.5 Analysis and Feedback

The comments from stakeholders will be analyzed in the matrix and the proposal made adopted or rejected. In both cases, the reasons will be given in the matrix and the new text inserted for further review.

CHAPTER SIX: COST BENEFIT ANALYSIS

6.1 Costs

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 high 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 height approvals for obstacles.
- (b) cost of aeronautical studies.

The enactment of the Civil Aviation Act, 2013, necessitated prescription of fees payable by proponents of development around aerodromes.

The projected players in the industry at the time of implementing the order will be as follows;

- (a) Aerial masts for Telecommunication and network companies
- (b) Developers of buildings and other structures
- (c) Power lines owners
- (d) Solar farm developers
- (e) Wind turbine owners
- (f) Floodlight masts owners

The projected cost for the approval of structures shall be approximately Kshs 15,000 and Kshs. 40,000, within and outside Nairobi respectively per structure. Other costs shall include; -

(a) Continuous surveillance Charges on masts payable per annum

No	Number of Masts	Cost
1.	1-100	75,000
2.	101-500	250,000
3.	501-1000	350,000
4.	Over 1000	400,000

(b) Inspection and Approval of wind turbines

No	Number of Wind turbines	Cost
1.	1-20	50,000
2.	21-50	75,000
3.	51-100	200,000
4.	Over 100	400,000

- (c) Continuous surveillance charges on wind farms per annum 75,000

The Authority shall allocate in the Annual budget approximately Kshs 2.5 million to sustain the continuous surveillance expenses to ensure safety and compliance with aerodromes.

6.2 Benefits

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

- (a) Safe and usable aerodromes free of infringements in the protected surfaces;
- (b) Synergy between airport development and urban and other forms of development.
- (c) Clear coordination mechanisms between stakeholders and developers.
- (d) Provide compliance and enforcement mechanisms in the in-obstacle control and removal;
- (e) reduce instances of non-compliance with national and international standards;
- (f) Manage the encroachment of the aerodromes by obstacles infringing on safety and security of the travelling public;
- (g) Reduced non-compliance with Aerodromes Regulations and other relevant laws;
- (h) create awareness of the need to safeguard aerodromes among all the stakeholders and proponents of development; and
- (i) create an adequate regulatory framework for air transport;

6.3 Costs and Benefits analysis of the proposed order

Table 1: Benefits and Costs of the proposed Restriction of building in declared areas order, 2024

Problem	Proposed reform	Benefit	Cost (Kshs)
Lack of knowledge among stakeholders on obstacle control requirements	Develop an order to clarify on the need to establish obstacle limitation surfaces and requirements to control the surfaces	1) Defining airspace that must be kept obstacle free around aerodrome prevents the aerodromes from becoming unusable due to overcrowding of obstacles within 2) Reduced aircraft to obstacle collisions	Nil

Problem	Proposed reform	Benefit	Cost (Kshs)
		(Safer aircraft operations) 3) Build confidence among the travelling public on safety status of our aerodromes	
Application of a case-by-case scenario in height analysis determination on Object Limitation Surfaces (OLS) as a result of runway classification requirements	Develop an order to include runway requirements including classification, codes and allowable height and requirements in determining allowable height	Public/ stakeholder understanding why there is no uniform application in determining allowable heights in different protection surfaces (OLS)	Nil
Extent of aerodrome obstacle protection areas and multiple stakeholders in developmental control with different Regulatory frameworks	Develop an order to clarify the extent of declared area Develop a coordination mechanism between government agencies on synergy in developmental controls	1) Reduced obstacles within the vicinity of aerodromes 2) Useable and safer aerodromes 3) Reduction of approval cost due to availability of requirements	Nil

6.4 Consideration of alternatives to the proposed order

Table 2: Regulatory and non-regulatory options

Option	Impact
Option One: Maintenance of the Status Quo	1) Maintaining the status quo means that no order is developed, thus the challenges of obstacle control and keeping up with the international obligations and requirements will not be addressed.

Option	Impact
	2) Aerodromes as a result of mushrooming developments and structures, will be rendered unusable and unsafe
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 advisory circulars, orders etc.	1) 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. 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. 3) 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.
Option Three: Promulgating the Order (Restriction of Building in Declared Areas Order), 2024	Promulgation of the Order will enhance safety by ensuring that Kenyan (a) Airspace and aerodromes are safe and free of obstacles.

6.5 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 Restriction of building in declared areas order 2024
Personnel	Degraded safety in operations due to penetration of obstacles in the protected surfaces	Poor compliance due to lack of enforceability hence poor safety standards.	Synergy between airport and other forms of development enhancing compatibility and safety.
Air Operator	The aircraft operator will be exposed to risks	Poor compliance due to lack of enforceability	Well designed and airspaces around

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Restriction of building in declared areas order 2024
	of collisions with obstacles during various operational maneuvers	hence encroachment into the aerodrome protected surfaces	aerodromes enhance operational efficiency, regularity and safety.
ANSP	Exposure to risks due to challenges of obstacles in the approach and take-off paths and visual cycling areas for training flights. Collision of aircraft with obstacles	Poor compliance changes to flight procedures to accommodate penetrating obstacles and poor enforceability of administrative measures. Very steep approach and departure profiles introducing safety risks.	Ease of air traffic control and reduced risks of collision.
Aerodrome/heliports Operator	Degraded safety standards and inadequate guidance due to poor safety standards and possible collisions with obstacles. Risk of rendering the aerodromes unusable due to uncontrolled growth of obstacles in the protected surfaces.	Poor compliance with the required standards due to lack of enforceability hence poor safety standards.	Synergy of airport and other forms of development enhancing safety and compatible land use.
Aviation Service Consumer	Inadequate safety is due to the risk of collisions with passenger aircraft with obstacles. Penalties in passenger, mail and cargo to facilitate operations from encroached	Exposure to safety risks due to inadequate enforceability of requirements exposing travelling public to risks and loss of property by the developers and aircraft owners in the event of collisions	Assurance of safety as a result of enhanced compliance and advantage of legislative protection of the aviation service consumers.

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Restriction of building in declared areas order 2024
	airports leading to restrictions in aerodrome and aircraft operating capacities		
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. And Additionally, the directives will be enforceable and thus exposure to audit findings and safety concerns.	Compliance with the International standards with regard to safety, efficiency and regularity of civil aviation leading 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 accidents and incidents related to the aircraft and obstacles.	An inadequate legislative framework to support the directives of the Authority leading to poor enforceability of the required standards.	Enhanced oversight with compatible land use practices and assurance of safety.

6.6 Preferred Option

Based on the analysis, Option 3 (Promulgation of the Restriction of building in declared areas order, 2024) was adopted as the preferred option. It is clear that the benefits and impact of promulgating the Order by far outweighs the cost of implementation. The other two options have negative impacts 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 draw 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 Restriction of building in declared areas order, 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 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 Restriction of building in declared areas order have been (will be) fully adhered to.

- (c) Other legal frameworks:** The draft Restriction of building in declared areas order 2024 proposes to publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.

The draft Restriction of building in declared areas order 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 Restriction of building in declared areas order 2024 be adopted.

ANNEXURES

The Draft of the proposed Restriction of building in declared areas order 2024

Attached as Annex I to this Report.

Matrix for stakeholder consultations

The matrix for stakeholders' consultation attached as Annex II to this Report.