



## **REGULATORY IMPACT ASSESSMENT**

**For the Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations, 2024**

**November 2024**

This Regulatory Impact Assessment (RIA) has been prepared by the Cabinet Secretary - Ministry of Roads and Transport pursuant to Section 6 and 7 of the Statutory Instruments Act CAP 2A

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## **1.0 CHAPTER ONE – INTRODUCTION**

### **1.1 Regulatory-Making 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 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, the regulations developed are for-

- 1.1.1 regulating, by establishing licensing authorities and a system of licensing and otherwise, the use of aircraft for commercial transport and aerial work;
- 1.1.2 providing for the conditions under which passenger and cargo may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- 1.1.3 generally securing the safety, efficiency, and regularity of air navigation and safety of aircraft and of persons and cargo carried therein, and for preventing aircraft endangering other persons
- 1.1.4 exempting any aircraft or persons or classes of aircraft or persons from the provisions of any regulations made under this Act
- 1.1.5 requiring any person who owns an aircraft or who carries on the business of operating aircraft for hire or reward to furnish to such authorities as may be prescribed such information relating to the aircraft and the use thereof, the crew, the mail, the passengers and the cargo carried, as may be prescribed.

We now undertake public and stakeholder consultations and present this RIA in partial fulfillment of the requirements of the Statutory Instruments Act.

### **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:

- 1.1.6 a statement of the objectives of the proposed legislation and the reasons for them
- 1.1.7 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
- 1.1.8 a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- 1.1.9 an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- 1.1.10 the reasons why the other means are not appropriate;
- 1.1.11 any other matters specified by the guidelines;
- 1.1.12 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.

## **1.2 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.



## **2.0 CHAPTER TWO – PURPOSE AND OBJECTIVES OF THE CIVIL AVIATION (SAFE TRANSPORT OF DANGEROUS GOODS BY AIR) REGULATIONS 2024**

### **2.1 Scope and application**

Civil Aviation (Safe transport of dangerous goods) Regulations seek to ensure safe handling, packaging, documentation and transport of dangerous goods. The cover the following areas:

- a) Classification of dangerous goods based on their hazardous properties.
- b) Packaging requirements to prevent leakage or reaction during transport.
- c) Labeling and marking requirements.
- d) Documentation including shipper's declaration of dangerous goods including the nature nature of the goods, quantity, packaging and emergency contact information.
- e) Handling and storage
- f) Security provisions
- g) Emergency response and incident reporting
- h) Compliance with international standards

1.1.13 The Civil Aviation (Safe Transport of Dangerous goods by Air) Regulations shall apply to all domestic and international civil aircraft operations including:

- 1.1.13.1 any aircraft used for the transportation of dangerous goods;
- 1.1.13.2 aircraft involved in commercial air ambulance operations;
- 1.1.13.3 unmanned aircraft operations.
- 1.1.13.4 any person who:
  - (a) offers dangerous goods for transportation by air;
  - (b) conveys dangerous goods by air; or
  - (c) accepts dangerous goods for transportation by air; and
- 1.1.13.5 (e) any passenger or crew member on board or to be taken on board an aircraft

1.1.14 The Authority may grant an approval to transport dangerous goods by air provided that an overall level of safety in transport of dangerous goods is equivalent to the level of safety provided for in the technical instructions

1.1.15 The Authority may grant an exemption from the provisions of the Technical Instructions provided that in such instances, every effort is made to achieve an overall level of safety in transport of dangerous goods which is equivalent to the level of safety provided for in the Technical Instructions in the following instances:

- 1.1.15.1 of extreme urgency; or
- 1.1.15.2 when other forms of transport are inappropriate; or
- 1.1.15.3 when full compliance with the prescribed requirements is contrary to the public interest.

- 1.1.16 For purposes of overflight, where none of the criteria for granting an exemption are relevant, the Authority may grant an exemption based solely on evidence that an equivalent level of safety in air transport of dangerous goods has been achieved.

## **1.2 Objective**

- 1.2.1 To economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya.
- 1.2.2 The objective of the Civil aviation (Safe transport of dangerous goods by air) Regulations, 2024 is to ensure the safe handling, transportation and storage of hazardous materials with the aim to protect public health, safety and the environment.

## **1.3 Specific objectives**

The specific objectives of the Civil Aviation (Safe transport of dangerous goods by Air) Regulations, 2024 are to: -

- 1.3.1 Safety Assurance: Enhance aviation safety through defined standards for operator qualifications, safety procedures, and maintenance protocols.
- 1.3.2 Prevention of Accidents: reducing the risks of spills, leakage or explosions during transport or storage.
- 1.3.3 Ensuring Proper Labeling and Packaging: Mandating specific labeling and packaging requirements to clearly identify hazards.
- 1.3.4 Promoting Emergency Preparedness: Establishing protocols for emergency response in case of incidents involving dangerous goods
- 1.3.5 Compliance Monitoring: Provision for regular inspections and strict record-keeping requirements, ensuring operator accountability.
- 1.3.6 International Alignment: Align with international aviation standards and recommended practices in the transportation of dangerous goods by Air and harmonization of local and global practices.
- 1.3.7 Protecting Workers: Safeguarding individuals who handle or are exposed to hazardous materials.
- 1.3.8 Regulatory Compliance: Ensuring that companies adhere to legal requirements, promoting accountability in the handling of dangerous goods.

## **1.4 An Overview of the Proposed the Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations, 2024: Salient Features**

This overview aims to evaluate the clarity, consistency, comprehensibility, and comprehensiveness of the proposed Regulation 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 Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations, 2024 is as follows:

- 1.4.1 Part I— Preliminary
- 1.4.2 Part II— Applicability
- 1.4.3 Part III— Classification
- 1.4.4 Part IV— Limitations on the transport of dangerous goods by air
- 1.4.5 Part V— Packing
- 1.4.6 Part VI— Labelling and Marking
- 1.4.7 Part VII—Shipper's responsibility.
- 1.4.8 Part VIII— Operator's responsibilities
- 1.4.9 Part IX— Provision of information
- 1.4.10 Part X— Training Programmes
- 1.4.11 Part XI— Compliance
- 1.4.12 Part XII – Dangerous goods accident and incident reporting
- 1.4.13 Part XIII - Dangerous goods security provisions
- 1.4.14 Part X – Offences and Penalties.
- 1.4.15 First Schedule –Dangerous goods Manual
- 1.4.16 Second Schedule - Penalties

### **3.0 CHAPTER THREE – BACKGROUND AND CONTEXT**

#### **3.1 Policy Background**

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.

**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.

**Bottom-Up Economic Transformation Agenda (BETA):** The Bottom-Up Economic Transformation Plan 2022-2027 is the manifesto of the Kenya Kwanza administration 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.

**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.

**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.

**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/regulatory considerations, and stakeholder expectations. The plan covers operational evolutions, technical improvements, and human resources development.

**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.

**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.

## **1.5 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 (Safe Transport of Dangerous Goods by Air) 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 (Safe Transport of Dangerous Goods by Air) 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.

### **3.3 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 maneuvering 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 maneuver 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 (Safe Transport of Dangerous Goods by Air) 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.

#### **4.0 CHAPTER FOUR – EVALUATION OF THE PROBLEM**

##### **4.1 Currency of the Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations, 2024.**

1.5.1 The Civil Aviation (Fatigue Management) Regulations, 2024 are new and the civil aviation sector has undergone significant changes, driven by advancements in technology, evolving safety practices, and updates to international standards and recommended practices that address the increasing complexity of international aviation regulations. The International Civil Aviation Organization (ICAO) has continued to update its standards and recommended practices to keep pace with these developments, enhancing global safety, operational efficiency, and environmental sustainability across civil aviation systems. The revised regulations are designed to address areas that have become increasingly critical for air operators, including robust safety procedures, updated maintenance protocols, and advanced compliance monitoring tools. By adopting these new standards, Kenya not only fulfills its obligations as an ICAO member state but also reinforces the country's commitment to an efficient and safe aviation system, which is vital for passenger confidence, economic sustainability, and international trust. The new regulation will enable Kenya to effectively respond to emerging risks and adopt best practices that strengthen the oversight, certification, and operational management of air operators in Kenya in Safe Transport of Dangerous Goods by Air) Regulations.

##### **4.2 Sustainability of Civil Aviation System:**

The Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations, 2024 aims to build a foundation for long-term sustainability in Kenya's aviation sector, focusing on operational, economic, and environmental resilience.

1.5.2 Operational and Environmental Sustainability. As air travel grows, the need for a sustainable aviation system that balances safety, operational efficiency, and environmental responsibility also grows.

The Civil Aviation (Safe transport of Dangerous Goods by Air) Regulations, 2024 introduces enhanced safety protocols, more rigorous maintenance standards, and clear operational guidelines, ensuring that air operators can maintain consistent and safe services in the transport of dangerous goods by Air.

These measures reduce risks that may lead to operational downtime, enhancing the stability of the sector. Additionally, by mandating efficient maintenance and flight operations practices, the regulations support efforts to minimize emissions and reduce the overall environmental impact of aviation in Kenya.

1.5.3 Economic Impact. The updated regulations also focus on the financial sustainability of air operators. By streamlining certification and renewal processes, they aim to reduce unnecessary administrative burdens and operational delays. This approach allows operators to focus more resources on

core operations, while still adhering to strict safety and compliance standards. As a result, operators may experience reduced compliance costs, which can improve financial resilience across the sector. In turn, this bolsters Kenya's aviation industry, making it more attractive for both local and international investment and enhancing the sector's overall economic viability.

- 1.5.4 Capacity for Future Growth.** Kenya's aviation sector continues to expand, with new entrants and increased demands for domestic and international air travel. The 2024 regulations lay a strong foundation for this anticipated growth by providing clear, consistent standards that guide air operators through certification, compliance, and operational requirements. This structured approach supports long-term sectoral growth by reducing barriers for new operators while ensuring that high safety and performance standards are maintained. By building a robust regulatory environment that aligns with international standards, the updated regulations position Kenya to sustainably expand its aviation system and cater to future demands, both in passenger and cargo transport.

## **5.0 CHAPTER FIVE – LEGAL FRAMEWORK FOR THE PROPOSED CIVIL AVIATION (SAFE TRANSPORT OF DANGEROUS GOODS BY AIR) REGULATIONS, 2024**

### **5.1 The 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 (Safe Transport of Dangerous Goods by Air) Regulations, 2024 have been developed under section 82 of the Civil Aviation Act.

### **5.2 International and Regional Legislation**

#### **5.3 International Standards**

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 (Safe Transport of Dangerous Goods by Air) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 18 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

#### **5.4 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.

#### **5.6 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:

- 1.5.5 requiring regulation-making authorities to undertake appropriate consultation before making Statutory Instruments;
- 1.5.6 requiring high standards in the drafting of Statutory Instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;
- 1.5.7 improving public access to Statutory Instruments;
- 1.5.8 establishing improved mechanisms for parliamentary scrutiny of Statutory Instruments; and
- 1.5.9 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.

## 6.0 **CHAPTER SIX – STAKEHOLDER CONSULTATION**

### 6.1 Legal requirements relating to public participation and consultation *Statutory Instruments Act*

The need to Develop the Civil Aviation (Safe Transport of Dangerous goods by Air) Regulations, 2024 was necessitated by the need of the state to comply with Annex 18 Safe Transport of Dangerous Goods by Air. Kenya as a contracting State was therefore required to bring its regulations into uniformity with the adopted and amended SARPS.

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.

### 6.2 The Process of Public Consultation

The first of a series of stakeholder meeting was held physically on 30th April 2019 covering a set of eleven (11) civil aviation regulations.

### 6.3 Public Notice and awareness

The stakeholders' engagement forum was advertised in one of the major local dailies in accordance with applicable requirements for stakeholder engagement. The sets of regulations that were to be discussed during the public participation forum were well spelt out in the advert. A form to collect stakeholder comments was uploaded with the regulations 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.

### 6.4 Public participation forums

A physical stakeholder engagement was conducted at the Panari Hotel in Nairobi on 14<sup>th</sup> of June 2024. The Stakeholder engagement report, approval MEMO and copy of signed attendance list are annexures to this report.

6.5 Analysis and Feedback  
*Refer to Matrices*

6.6 Credibility and integrity of the Process

1.5.10 To ensure that the process of public participation was credible and pass the integrity test, KCAA did:

1.5.10.1 not engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or discrimination and avoid relationships or actions, which could be legitimately interpreted as a conflict of interest; and,

1.5.10.2 took into consideration the social and economic status, religious beliefs, ethnicity, and other social diversities of those engaging in public participation.

1.5.11 Complaints arising from the public participation process if any were referred to the Director General through and resolved as appropriate including provision of additional time and contact to address any stakeholders' concerns.

## 7.0 CHAPTER SEVEN – COST BENEFIT ANALYSIS

The cost-benefit analysis of the Civil Aviation (Safe Transport of Dangerous goods by Air) Regulations, 2024, indicates that while there are upfront costs associated with compliance and implementation, the long-term benefits, particularly in safety, operational efficiency, and economic growth far outweigh these initial investments. By fostering a safer and more competitive aviation environment, the regulations are positioned to deliver substantial value to operators, passengers, and the broader economy. The net positive impact supports the case for modernizing the regulatory framework to meet contemporary challenges in the aviation sector.

### 7.1 Consideration of Regulatory and non Regulatory Alternatives

| Option                                                                                                                                                                                                                                                               | Impact                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Option One: Maintenance of the Status Quo</b>                                                                                                                                                                                                                     | The current Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations, last revised in 2018, are outdated and no longer fully align with latest ICAO standards and recommended practices, Annex 18, posing challenges to maintaining safety, operational efficiency, environmental responsibility, and long-term sustainability in The Safe transport of dangerous goods by Air and Kenya's rapidly evolving aviation sector |
| <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 a court of law. These include | The use of administrative measures, such as the issuance of directives and aeronautical information circulars to various entities, relies on voluntary compliance and lacks the legal authority to ensure mandatory enforcement. As these measures do not carry the force of law, they may be subject to legal challenges, limiting their effectiveness in achieving consistent implementation across the sector.                        |
| <b>Option Three: Promulgating the Civil Aviation (Safe Transport of dangerous goods by Air) Regulations 2024</b>                                                                                                                                                     | It will strengthen Kenya's civil aviation system by ensuring alignment with current ICAO standards, enhancing safety, operational efficiency, and environmental responsibility. These regulations will provide a clear and enforceable framework that supports sustainable growth, fosters international trust, and safeguards the long-term resilience of Kenya's aviation sector                                                       |

### 7.2 Costs and Benefits Generally

The CBA for the Civil Aviation (Safe Transport of Dangerous goods by Air) Regulations, 2024, provides valuable insights into the implications for flight operations.

By carefully weighing the costs against the anticipated benefits such as improved safety, enhanced operational efficiency, and economic growth, stakeholders can make informed decisions that support a sustainable and thriving aviation sector.

| Option                                                                                                                                                                                                                                                                  | Costs                                                                                                                                                                                                                         | Benefits                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Option One: Maintenance of the Status Quo</b>                                                                                                                                                                                                                        | Risk of incidents<br>Environmental degradation<br>Economic inefficiency<br>Lack of standardization and global consistency<br>Market suspicion<br>Risk of loss of reputation                                                   | None                                                                                                                                                           |
| <b>Option Two: Administrative measures</b><br><br>Issuance of directives and circulars to the various entities and hoping that they will be implemented.<br>Administrative measures do not have the force of law and may be challenged in a court of law. These include | Difficulties in implementation and enforcement<br>Risk of incidents<br>Environmental degradation<br>Economic inefficiency<br>Lack of standardization and global consistency<br>Market suspicion<br>Risk of loss of reputation | None                                                                                                                                                           |
| <b>Option Three: Promulgating the Civil Aviation (Safe Transport of dangerous goods by Air) Regulations 2024</b>                                                                                                                                                        | Training employers<br>Compliance costs<br>Inspection and audit costs<br>Penalties<br>Operational adjustments<br>Regulatory oversight costs<br>Accident response costs<br>Delays                                               | Minimized incidents<br>Environmental protection<br>Economic efficiency<br>Standardization and global consistency<br>Market confidence<br>Reputation management |

**Table 1: Cost benefits analysis**

| Problem                                                | Proposed          | Benefits                                                     | Cost |
|--------------------------------------------------------|-------------------|--------------------------------------------------------------|------|
| The Civil Aviation (Safe Transport of Dangerous goods) | To Align with the | The Regulations will be aligned with international standards | Nil  |

| Problem                                                                                                   | Proposed                                                                                                                                                                                                         | Benefits                                                                                                                                                                          | Cost                                                 |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| by Air)) Regulations 2018 (Part VII) Does not align with Annex 18                                         | requirements of Annex 18.                                                                                                                                                                                        |                                                                                                                                                                                   |                                                      |
| Lack of Competency based training in dangerous Goods                                                      | Introduction of Dangerous goods Competency-based training.                                                                                                                                                       | Enhanced Safety: Implementing safe transport regulations can significantly reduce the likelihood of accidents involving dangerous goods, leading to fewer injuries and fatalities | Costs of staff Training and assessment.              |
| Lack of coordination by relevant Authorities and the KCAA on the safe Transport of Dangerous Goods by Air | Compliance with the Dangerous goods regulations will enhance the need to acquire relevant approvals from the Kenya Nuclear Authority which is the responsible Authority in the Transport of Radioactive Material | Public Confidence through Increased safety measures in the handling and transport of radioactive Materials.                                                                       | Specific approval costs from the relevant Authority. |

## 1.6 Consideration of Alternatives to the Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations 2024

### 7.3 Impact analysis of the Options

**Table 3. Impact analysis of the options**

| Aviation Sector       | Option one: Maintenance of the Status Quo                                                                                                                                                                                 | Option two: Administrative measures                                                                                                                                                                                                                                     | Option three: Promulgating the Civil Aviation (Safe Transport of Dangerous goods by Air) Regulations 2024                                                                                                                                                                                                                                                                                                  |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Personnel             | <p>The Regulations will be outdated and not aligned with the latest ICAO standards and recommended practices. Annex 18, Fourth Edition of July 2011.</p> <p>There will be a skills Gap as the industry evolves</p>        | <p>The use of administrative measures relies on voluntary compliance and lacks the legal authority to ensure mandatory enforcement. This may be subject to legal challenges, limiting their effectiveness in achieving consistent implementation across the sector.</p> | <p>New roles and responsibilities may arise, requiring recruitment and training, thus creating new employment opportunities.</p> <p>The Regulations update is essential for addressing the regulatory lag to enable Kenya to effectively respond to emerging risks and adopt best practices that strengthen the oversight, and operational management in the safe transport of dangerous goods by Air.</p> |
| Training Organisation | <p>No changes to training curricula.</p> <ul style="list-style-type: none"> <li>- Risk of outdated training practices and methodologies</li> </ul>                                                                        | <p>Introduction of updated training programs.</p> <ul style="list-style-type: none"> <li>- Greater emphasis on safety and regulatory compliance.</li> <li>- Implementation of Dangerous goods training and assessment</li> </ul>                                        | <p>Comprehensive revision of training standards to meet dangerous goods competency-based training as required by the ICAO.</p> <ul style="list-style-type: none"> <li>- Focus on innovative practices and technologies</li> <li>- Enhanced focus on safety and compliance.</li> </ul>                                                                                                                      |
| Air Operator          | <p>Safety standards may be outdated, increasing the likelihood of accidents and incidents due to inadequate maintenance practices.</p> <p>Air operators, passengers and industry partners, may lose confidence in the</p> |                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                            |

| Aviation Sector           | Option one: Maintenance of the Status Quo                                                                           | Option two: Administrative measures                                                             | Option three: Promulgating the Civil Aviation (Safe Transport of Dangerous goods by Air) Regulations 2024                                                                                                            |
|---------------------------|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | safety and reliability of air transport services.<br><br>Legal challenges and increased liability to the operators. |                                                                                                 |                                                                                                                                                                                                                      |
| Aviation Service Consumer |                                                                                                                     |                                                                                                 |                                                                                                                                                                                                                      |
| The State                 | No change in regulatory framework.<br>- Risks of non-compliance with ICAO Annex 18                                  | Improved monitoring of aviation operations.<br>-Better alignment with international regulations | Strengthened compliance with international aviation standards; enhanced safety and security for the state that is enhanced global reputation for safety and compliance.                                              |
| The Authority             | Limited ability to enforce outdated regulations.<br>- Challenges in maintaining safety standards.                   | More proactive role in oversight.<br>- Increased resources for enforcement and compliance       | Clear regulatory framework and guidelines.<br>Effective Oversight of Air Operators, Training entities, Handling agents and other dangerous goods entities<br><br>- Authority gains stronger enforcement capabilities |

#### 7.4 Preferred Option

Based on the above analysis option three (promulgation of the Civil Aviation (Safe transport of Dangerous Goods by Air) 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 a negative impact in addressing the problem.

## **8.0 CHAPTER EIGHT – COMPLIANCE AND IMPLEMENTATION**

As different aspects of the proposed Regulations are evaluated and analyzed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the Regulator to assess the adequacy of the institutional framework and other incentives through which the Regulations will take effect, and design responsive implementation strategies that make the best use of them. In an ideal situation an institution responsible for enforcement of the Regulations should have the capacity of co-ordination of institutional frameworks from a whole-of-government perspective, independent and sufficient authority, political support at a high political level, and integration into a broad concept of reform.

KCAA has been implementing the current Regulations for over 5 years now and has demonstrated capacity to implement the proposed Regulations and has indeed put in place a plan as outlined in the Strategic Plan 2023-2028 of strengthening its institutional capacity to enable it to enforce full compliance with the proposed Regulations.

## **9.0 CHAPTER NINE – CONCLUSIONS & RECOMMENDATIONS**

### **9.1 Conclusions**

1.6.1 Based on the above analysis, the following conclusions are drawn in respect of the draft Civil Aviation(Safe Transport of Dangerous Goods by Air)Regulations, 2024:

1.6.2 Regulations making mandate: 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. Subsequently, 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.

1.6.3 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:

1.6.3.1 a statement of the objectives of the proposed legislation and the reasons.

- 1.6.3.2 a statement explaining the effect of the proposed legislation.
  - 1.6.3.3 a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options.
  - 1.6.3.4 an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
  - 1.6.3.5 the reasons why the other means are not appropriate.
- 1.6.4 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 (Safe Transport of Dangerous Goods by Air) Regulations have been (will be) fully adhered to.
- 1.6.5 Other legal frameworks: The draft Civil Aviation (Safe Transport of Dangerous goods by Air) Regulations 2024 proposes to publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.
- 1.6.6 The draft: The draft Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations 2024 as drafted are clear, consistent, comprehensible and comprehensive enough to cover all matters and meet the established drafting standards.

## **9.2 Recommendations**

- 1.6.7 In view of the above conclusions, it is recommended that the draft Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations, 2024 be adopted.

### **9.3 Annexures**

The Draft Civil Aviation (Safe Transport of Dangerous Goods by Air) Regulations 2024  
Matrix for stakeholder consultations