



**REGULATORY IMPACT ASSESSMENT
For the Civil Aviation (Safety Management) Regulations 2024**

October 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

Table of Content

Table of Content	2
1.0CHAPTER ONE – INTRODUCTION	4
1.1Regulatory Authority and the Legal Mandate.....	4
1.2Requirements of the Statutory Instruments Act.....	4
1.3What is a Regulatory Impact Assessment (RIA)?	5
2.0CHAPTER TWO – PURPOSE AND OBJECTS OF THE CIVIL AVIATION (SAFETY MANAGEMENT) REGULATIONS 2024	5
2.1 Scope and application.....	5
2.2 Objective	6
2.3 Specific objectives	6
1.2 An Overview of the Proposed the Civil Aviation (Safety Management)Regulations 2024: Salient Features	6
2.0CHAPTER THREE – BACKGROUND AND CONTEXT	7
2.1 Policy Background	7
2.2 Domestic Context	8
2.3 International Context	9
4.0CHAPTER FOUR – EVALUATION OF THE PROBLEM	10
4.1Currency of the Civil Aviation (Safety Management) Regulations 2024.....	10
4.2Applicability of Safety Management Systems (SMS)	10
4.3Sustainability of Civil Aviation System.....	11
5.0 CHAPTER FIVE – LEGAL FRAMEWORK FOR THE PROPOSED CIVIL AVIATION (SAFETY MANAGEMENT) REGULATIONS 2024	12
5.1 The Civil Aviation Act.....	12
5.2International and Regional Legislation	12
5.3 International Standards	12
5.4Regional Legislative initiatives.....	13
5.5Statutory Instruments Act CAP 2A.....	13
6.0CHAPTER SIX – STAKEHOLDER CONSULTATION	14
6.1Legal requirements relating to public participation and consultation	14
6.2The Process of Public Consultation	14
6.3Public Notice and awareness	14
6.4Public participation forum	14

6.5 Analysis and Feedback.....	14
6.6Credibility and integrity of the Process.....	15
7.0CHAPTER SEVEN – COST BENEFIT ANALYSIS	15
7.2Costs and Benefits Generally	16
7.3 Preferred Option	27
8.0CHAPTER EIGHT – COMPLIANCE AND IMPLEMENTATION	27
9.0CHAPTER NINE – CONCLUSIONS & RECOMMENDATIONS	28
9.1 Conclusions	28
9.2 Recommendations	29
2.0 Annexures	29
2.1 The Draft Civil Aviation (Safety Management)Regulations 2024	29
2.2 Matrix for stakeholder consultations.....	29

1.0 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 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 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.

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, 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:

- 1.1.1 a statement of the objectives of the proposed legislation and the reasons for them;
- 1.1.2 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;
- 1.1.3 a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- 1.1.4 an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- 1.1.5 the reasons why the other means are not appropriate;
- 1.1.6 any other matters specified by the guidelines;

- 1.1.7 a draft copy of the proposed statutory rule. Section 5 of SIA requires KCAA 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.

2.0 CHAPTER TWO – PURPOSE AND OBJECTS OF THE CIVIL AVIATION (SAFETY MANAGEMENT) REGULATIONS 2024

2.1 Scope and application

The proposed Regulations relate to

- a) Safety management system frameworks
- b) Standards for protection of passengers, crew and cargo.
- c) Safety risk Management.
- d) Prevention of unlawful interference including hijacking, terrorism and smuggling
- e) Mitigation of environmental impact of aviation including noise, pollution, emission of greenhouse gases and air quality.
- f) Safety assurance.
- g) Hazard reporting and investigation.

They apply to service providers including air operators, approved training organizations, approved maintenance organizations, air navigation service providers and aerodrome operators.

2.2 Objective

Civil Aviation (Safety Management) Regulations provide requirements for management of safety risks. Given the increasing complexity of the global air transportation system and its interrelated aviation activities required to assure the safe operation of aircraft, these regulations support the continued evolution of a proactive strategy to improve aviation safety performance.

2.3 Specific objectives

Specifically, the proposed regulations seek to:

- a) provide for the establishment of the State Safety Programme;
- b) guide on the components and elements of Kenya's State Safety Programme;
- c) guide on the service providers who are required to establish a Safety Management System (SMS);
- d) provide requirements for establishment of safety data collection and processing system;
- e) set timelines for notification of accidents and incidents;
- f) provide requirements for voluntary safety reporting;
- g) provide mechanisms for safety data and information sharing, exchange and protection.

1.2 An Overview of the Proposed the Civil Aviation (Safety Management) Regulations 2024: Salient Features

The regulations support the establishment of a State Safety Programme (SSP) that is commensurate with the size and complexity of Kenya's civil aviation system. At the service provider level, these regulations provide a framework for establishment of Safety Management Systems (SMS) for management of safety risks.

The structure of the Civil Aviation (Safety Management) Regulations 2024 is as follows:

Part I — Preliminary

Part II — State safety management responsibilities

part III — Safety management systems

part IV — Safety data and safety information collection, analysis, protection, sharing and exchange

part V — General provisions

First schedule: State safety oversight (SSO) system critical elements

Second schedule: Framework for a safety management system (SMS)

Third schedule: Principles for the protection of safety data, safety information and related sources

2.0 CHAPTER THREE – BACKGROUND AND CONTEXT

2.1 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 being implemented through five (5) MTP IV sectors that include Infrastructure. One of the aims under infrastructure sector is to enhance transport connectivity and the provisions of the regulations are meant to institutionalize a civil aviation regulatory and oversight framework that promotes a sustainable safe and secure air transport system in Kenya.

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 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.

2.2 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 (Safety Management) 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 (Safety Management) 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.

2.3 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 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 therein 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 (Safety Management) 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 (Safety Management) Regulations 2024

The Civil Aviation (Safety Management) Regulations 2018 are in operation and are aligned to the current ICAO annex 19 – Safety Management. However, there were gaps identified in the implementation of the regulations as enumerated below that necessitated the review of these regulations to address the challenges.

4.2 Applicability of Safety Management Systems (SMS)

- a) The current regulations provide for implementation of Safety Management Systems by international commercial operators. However, there is no limitation to domestic operation in the air operator certification process, thus all commercial operators in Kenya are already complying with the requirement.
- b) The current regulations had omitted the inclusion of approved training organization (ATO) aircraft in the category of approved maintenance organizations that require to implement an SMS. This omission is weighty since training aircraft form a significant percentage of traffic in Kenya's airspace, while also contributing to the number of aircraft accidents and incidents. They were therefore included in the proposed regulations to ensure that maintenance organizations handling training aircraft manage the inherent safety risks.
- c) The current regulations require certified aerodromes which are used for international air travel to implement an SMS. Kenya has three certified aerodromes out of a total of over 400 spread across the country. Furthermore, analysis of accident and incident data indicates that safety occurrences have taken place outside the three certified aerodromes. Therefore, to mitigate the risks associated with operation into other busy domestic airports, the proposed

regulations specify that category “A” and “B” aerodromes should implement an SMS.

1.2.1 Safety data and information protection for service providers

The current regulations provide for protection of safety data and information by the Civil Aviation Authority. However, as espoused by ICAO, aviation safety is a shared responsibility to which all stakeholders should contribute by, among other things, providing relevant data and information through safety reports.

The objective of protecting safety data, safety information and their related sources is to ensure their continued availability, with a view to using it for maintaining or improving aviation safety, while encouraging individuals and organizations to report safety data and safety information.

The proposed regulations therefore include service providers in the requirement to protect safety data and will be subject to the principles of protection provided in the third schedule.

1.2.2 Requirements for appointment of safety manager.

Service providers are required to appoint key management personnel including a safety manager. There was lack of guidance on the minimum requirements for the position, thus there was need to include the technical and operational qualifications and the competencies.

1.2.3 Clarity of definitions and rewording

Following a review of the current regulations, clarity of definitions and rewording of the text was necessitated to align with other ICAO annex amendments that are relevant to safety management.

4.3 Sustainability of Civil Aviation System

1.2.4 Aviation Safety

The State has the responsibility to regulate and supervise all aviation activities within Kenya to ensure the safe, efficient and regular operation of air services. Management of safety risks is a foundational component of international aviation, as it ensures the well-being of passengers, crew, and infrastructure. The International Civil Aviation Organization (ICAO) has set global safety standards to support a systematic approach to managing risks, fostering collaboration among airlines, airports, manufacturers, and regulatory bodies.

To achieve effective compliance with ICAO, State regulations should be comprehensive, clear, consistent and up to date. The regulations should conform with the Annexes to the Convention. As such, for KCAA to effectively oversight aviation activities in Kenya, it must be supported with a robust and up to date safety management regulations.

1.2.5 Operational rights to other jurisdictions

Aviation safety management plays a pivotal role in determining and maintaining operational rights for airlines to access foreign jurisdictions. Safety is a fundamental aspect of bilateral and multilateral agreements that allow airlines to operate internationally. Countries and regulatory bodies set stringent safety standards that airlines must meet to be granted operational rights, ensuring that air travel remains secure, reliable, and aligned with global safety expectations. To ensure that Kenya maintains access to other jurisdictions, aviation regulations in Kenya must be aligned to the international standards to achieve uniformity.

1.2.6 Reduction of Cost of Doing Business

Civil aviation is a cost intensive venture requiring huge sums of money to procure aviation systems, establish the requisite infrastructure, purchase aircraft and run an airline to name a few. A poorly regulated industry may never thrive owing to the negative perception associated with it, the associated high cost of doing business, high insurance premiums and the losses resulting from doing business in such an environment.

Aviation safety management plays a crucial role in reducing the overall cost of doing business by preventing accidents, improving efficiency, and enhancing reliability across the industry. Implementing effective safety practices not only minimizes risks but also generates substantial cost savings for airlines, airports, manufacturers, and other stakeholders.

5.0 CHAPTER FIVE – LEGAL FRAMEWORK FOR THE PROPOSED CIVIL AVIATION (SAFETY MANAGEMENT) 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 (Safety Management) 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 (Safety Management) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 19 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.

5.5 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.

6.0 CHAPTER SIX – STAKEHOLDER CONSULTATION

6.1 Legal requirements relating to public participation and consultation

Public participation plays a crucial role in democratic governance by ensuring transparency, inclusivity, and accountability in decision-making processes. The Constitution of Kenya 2010, places emphasis on public participation as a fundamental principle of governance. Article 10 of the Kenya Constitution outlines the values and principles of governance, including public participation, which is crucial for achieving accountability, transparency, and public involvement in decision-making processes.

In addition, Article 118 of the constitution establishes the right to public participation in legislative and other processes of the State, ensuring that the public has an opportunity to participate in matters that affect them directly.

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

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.

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

6.4 Public participation forum

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

6.5 Analysis and Feedback

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

6.6 Credibility and integrity of the Process

- 1.2.7 To ensure that the process of public participation was credible and pass the integrity test, KCAA did:
 - 1.2.7.1 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,
 - 1.2.7.2 took into consideration the social and economic status, religious beliefs, ethnicity, and other social diversities of those engaging in public participation.
- 1.2.8 Complaints arising from 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

7.1 Consideration of Regulatory and non regulatory Alternatives

Option	Impact
Option One: Maintenance of the Status Quo	a) Increase of accidents and incidents in Kenya that negatively affect the safety rating of the State. b) Imposition of operating ban to airlines
Option Two: Administrative measures Issuance of directives and circulars to the various entities and hoping that they will be implemented. These include Aeronautical information Circulars (AICs), etc	It is impossible to enforce administrative measures which do not have the force of law and may be challenged in court of law.
Option Three: Promulgating the Civil Aviation (Safety Management) Regulations 2024	a) Effective safety management systems (SMS) and rigorous safety protocols prevent costly accidents, which can result in significant financial liabilities, legal expenses, and compensation payouts. Avoiding these incidents saves costs associated with aircraft repairs, investigations, insurance claims, and fines. b) Safety systems that include predictive maintenance practices help identify and address potential technical issues before they escalate,

Option	Impact
	avoiding costly breakdowns and reducing unscheduled maintenance costs. Regular inspections and proactive maintenance also extend aircraft lifespan and optimize performance.

7,2 Costs and Benefits Generally

The analysis of the expected costs and benefits of the proposed regulation, seeks to answer the question whether the benefits justify the costs. This would enable the Regulator to estimate the total expected cost and benefit of every aspect of the regulation. This will in turn inform the decision makers since the cost of government action should be justified by its benefits before action is taken.

However, given the nature of the industry and the available information, the costing will to a substantial degree, be qualitative rather than quantitative.

7.3 Cost-Benefits analysis

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs

Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
Personnel	Exposure to risks that are not adequately managed leading to accidents and incidents	Lack of adequate risk mitigation measures	Investing in safety training for pilots, ground crew, maintenance personnel, etc promotes a safer work environment. This leads to higher productivity, lower turnover, and reduced costs associated with accident-related downtime.
Training Organisation	Inability to address potential technical issues before they escalate.	Lack of adequate risk mitigation measures	Effective safety management reduces risks that lead to accidents and incidents.
Maintenance Organisation	Exposure to risks that cause frequent aircraft technical failures	Lack of adequate risk mitigation measures	Safety systems that include predictive maintenance practices help identify and address potential technical issues before they escalate, avoiding costly breakdowns and reducing unscheduled maintenance costs.

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
			Regular inspections and proactive maintenance also extend aircraft lifespan and optimize performance.
Air Operator	Lack of adequate risk mitigation measures that escalate to accidents and	Lack of adequate risk mitigation measures that escalate to accidents and	Safety improvements align with fuel-saving initiatives, such as

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
	incidents	incidents	optimized flight paths and efficient descent procedures. These practices cut down on fuel consumption, reducing one of the largest operating costs for airlines.
Costs	Lack of adequate risk	Lack of adequate risk	Safety protocols in

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
	mitigation measures that escalate to accidents and incidents	mitigation measures that escalate to accidents and incidents	air traffic management help maintain smooth, efficient air traffic flows, which reduces delays, unnecessary fuel burn, and airspace congestion.
Benefits	inadequate risk	Lack of adequate risk	Rigorous safety

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
	mitigation measures leading to poor runway conditions, accidents and incidents.	mitigation measures	protocols in runway management, ground operations, and baggage handling reduce accidents. Preventing accidents saves costs associated with repair, emergency response,

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
			and potential litigation.
Aviation Service Consumer	Exposure to risks that are not adequately managed	Exposure to risks that are not adequately managed	Safety-focused maintenance and well-organized ground operations minimize the likelihood of technical delays and

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
			cancellations, ensuring a smoother and more reliable travel experience for passengers.
The State	Ineffective management of safety risks	Lack of effective safety oversight of the aviation industry	Compliance with the International standards with regard to safety, efficiency

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
			and regularity of civil aviation leading to better performance and increased ease of doing business due to high assurance of safety.
The	Ineffective management	Lack of effective safety	Enhanced safety

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Safety Management) Regulations 2024
Costs	Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Difficulties in enforcement Lack of international standardization Risk of accidents Cost of legal liabilities Inefficiencies in operations Growth in industry trust Reputational losses Non-compliance with international standards Environmental degradation	Development and enforcement of a safety management system Certification and auditing costs Operational costs
Benefits			Reduced accidents Cost savings from avoiding accidents e.g legal liabilities Increased efficiencies Growth in industry trust Enhanced reputation Compliance with international standards Data-driven decision making Environmental benefits
Authority	of safety risks	oversight of the aviation industry	oversight of the aviation industry

Problem	Proposed reform	Benefit	Cost
Applicability of Safety Management Systems (SMS)	a) Requirement for all commercial operators to implement SMS.	a) Effective safety management systems (SMS) and rigorous	Training and appointment of safety managers and officers

Problem	Proposed reform	Benefit	Cost
		safety protocols prevent costly accidents, which can result in significant financial liabilities, legal expenses, and compensation payouts. Avoiding these incidents saves costs associated with aircraft repairs, investigations, insurance claims, and fines.	
	b) inclusion of maintenance of approved training organization (ATO) aircraft in the category of approved maintenance organizations that require to implement an SMS	b) Reducing maintenance Costs through preventive safety Practices	Nil
	c) specification of the aerodromes that are required to implement SMS i.e Category “A” and “B”	c) Management of risks leading to reduced accidents and incidents at domestic airports	Training and appointment of safety managers and officers
Safety data and information protection for service providers	include service providers in the requirement to protect safety data and will be subject to the principles of protection provided in the third schedule.	Assurance of protection creates an environment in which people can be confident that safety data and safety information will be used exclusively for maintaining and	NIL

Problem	Proposed reform	Benefit	Cost
		improving safety. This helps to ensure that people remain willing to report their errors and experiences, so that the Authority and service providers have access to the relevant data and information necessary to address existing and potential safety deficiencies and hazards.	
Requirements for appointment of safety manager	Provision of technical, operational qualifications and the competencies required for appointment of a safety manager.	Appointment of key management personnel who will effectively implement Safety Management Systems.	Training and appointment of safety manager

7.3 Preferred Option

Based on the above analysis it is clear that the third option (Promulgating the Civil Aviation (Safety Management) Regulations 2024) is the preferred option. The benefits and impact of promulgating new and amended Regulations by far outweigh the cost of its implementation. The other two options have little or no impact in addressing the problems outlined above.

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 enforce full compliance with the proposed Regulations.

9.0 CHAPTER NINE – CONCLUSIONS & RECOMMENDATIONS

9.1 Conclusions

1.2.9 Based on the above analysis, the following conclusions are drawn in respect of the draft Civil Aviation (Safety Management) Regulations, 2024:

1.2.10 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.

1.2.10.1 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:

- (a) a statement of the objectives of the proposed legislation and the reasons.
- (b) a statement explaining the effect of the proposed legislation.
- (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; and
- (e) the reasons why the other means are not appropriate.

1.2.10.2 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 (Safety Management) Regulations have been (will be) fully adhered to.

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

9.2 Recommendations

- 1.2.11 In view of the above conclusions, it is recommended that the draft Civil Aviation (Safety Management) Regulations 2024 be adopted.

2.0 Annexures

- 2.1 The Draft Civil Aviation (Safety Management) Regulations 2024
- 2.2 Matrix for stakeholder consultations