

GOVERNMENT NOTICE NO. 39

AVIATION ACT

(CAP. 70:01)

AVIATION (INVESTIGATION OF AIR ACCIDENTS)  
REGULATIONS, 2013

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IN EXERCISE of the powers conferred by section 19 of the Aviation Act, I, MOHAMMED SIDIK MIA, Minister of Transport and Public Works, make the following Regulations—

PART I—GENERAL

Citation and Application

1.—(1) These Regulations may be cited as the Aviation (Investigation of Air Accidents) Regulations, 2013

(2) The regulations prescribe the requirements in relation only to Civil Aviation and shall apply—

(a) to accidents arising out of or in the course of air navigation which occur to civil aircraft in or over Malawi;

(b) to such accidents which occur elsewhere to civil aircraft registered in Malawi; and

(c) for the purpose of regulation 21 only, to such accidents which occur elsewhere to civil aircraft registered in a country or territory other than Malawi.

Interpretation

2.—(1) For the purposes of these Regulations, unless the context otherwise requires—

“accident” means an incident and a reportable accident;

“accredited representative” means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another State;

“adviser” means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation;

“aerodrome authority” means, in relation to any aerodrome, the person by whom the aerodrome is managed;

“board” means the Air Accidents Investigation Board;

“the CAA” means the Civil Aviation Authority or Department responsible for Civil Aviation in Malawi;

“cause” means any action, omission, event, condition or combination thereof, which leads to an accident or incident; the identification of causes does not comply the assignment of fault or determination of administrative, civil or criminal liability;

“chairperson” means the member of the Air Accidents Investigation Board appointed under regulation 8 (1) as the Chairperson of the Board and includes any Deputy Chairperson;

“commander” means in relation to an aircraft means a member of the crew designated as commander of that aircraft by the operator thereof, or failing such a person, the person who is for the time being the pilot in command of the aircraft;

“crew” includes every person employed or engaged in an aircraft in flight on the business of the aircraft;

“field investigation” means an investigation which is not intended to be the subject of a report by the Board to the Minister;

“Flight recorder” means any type of recorder installed in the aircraft for the purpose of complementing accident/incident investigation.

“formal” investigation means an investigation which is intended to be the subject of a report by the Board to the Minister;

“incident” means any fortuitous or unexpected event, not being a reportable accident, by which the safety of an aircraft or any person is threatened;

“investigation” means any investigation carried out by the Board into an accident; it is conducted for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations;

“investigator-in-charge” means a person charged, on the basis of his or her qualifications, with the responsibility for the organization, conduct and control of an investigation;

“member” means a person appointed as a Member of the Air Accidents Investigation Board under regulation 8 (1);

“operator” in relation to an aircraft means the person for the time being having the management of that aircraft;

“owner” where an aircraft is registered, means the registered owner;

“pilot in command” in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

“Preliminary Report” means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

“reportable accident” means an occurrence associated with the operation of an aircraft which takes place between the time when any person boards the aircraft with the intention of flight until such time as all persons have disembarked there from, in which—

(a) any person suffers death or serious injury while in or upon the aircraft or by direct contact with any part of the aircraft (including any part which has become detached from the aircraft) or by direct exposure to jet blast, except when the death or serious injury is from natural causes, is self-inflicted or is inflicted by other persons or when the death or serious injury is suffered by a stowaway hiding outside the areas normally available in flight to the passengers and members of the crew of the aircraft;

(b) the aircraft incurs damage or structural failure, other than—

(i) engine failure or damage, when the damage is limited to the engine, its cowling or accessories; or

(ii) damage limited to propellers, wing tips, antennae, tyres, brakes, fairings, small dents or punctured holes in the aircraft skin, which adversely affects its structural strength, performance or flight characteristics and which would normally require major repair or replacement of the affected component; or

(c) the aircraft is missing or is completely inaccessible;

“safety recommendation” means a proposal of the accident investigation authority of the State conducting the investigation, based on information derived from the investigation, made with the intention of preventing accidents or incidents;

“serious incident” means an incident involving circumstances indicating that an accident nearly occurred;

“serious injury” means an injury which is sustained by a person in a reportable accident and which—

(a) requires his stay in hospital for more than 48 hours commencing within seven days from the date on which the injury was received;

(b) results in a fracture of any bone (except simple fractures of fingers, toes or nose);

(c) involves lacerations which cause nerve, muscle or tendon damage or severe hemorrhage;

(d) involves injury to any internal organ;

(e) involves second or third degree burns or any burns affecting more than five per cent of the body surface;

(f) involves verified exposure to infectious substances or injurious radiation; and ‘seriously injured’ is to be construed accordingly;

“State of Design” means the State having jurisdiction over the organization responsible for the type design;

“State of Manufacture” means the State having jurisdiction over the organization responsible for the final assembly of the aircraft;

“State of the Operator” means the State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence;

“State of Registry” means the State on whose register the aircraft is entered.

3.—(1) Any notice or other document required or authorized by any provision of these Regulations to be served on or given to any person shall be served or given by—

- (a) delivering it to that person;
- (b) leaving it at his usual or last-known residence or place of business, whether in Malawi or elsewhere;
- (c) sending it to him by post at that address; or
- (d) sending it to him at that address by e-mail, facsimile, telex or other means which produce a document containing a text of the communication, in which event the document shall be regarded as served when it is received.

4.–(1) The fundamental purpose of investigating accidents and serious incidents under these Regulations shall be to determine the circumstances and causes of the accident or incidents with a view to the preservation of life and the avoidance of accidents in the future; it is not the purpose to apportion blame or liability.

Purpose of accident investment and incident analysis

(2) The Authority shall establish incidents reporting systems to promote accident prevention by analysis of accidents and incidents data and prompt exchange of information.

PART II—ACCIDENT INVESTMENT

5.–(1) Where a reportable accident occurs the commander of the aircraft involved at the time of the accident, or if he be killed or incapacitated then the operator of the aircraft, and, in the case of an accident occurring on or adjacent to an aerodrome, the aerodrome authority shall forthwith give notice thereof to the Board by the quickest means of communication available and in the case of a reportable accident occurring in or over Malawi shall also notify forthwith the local police authorities of the accident and of the place where it occurred.

Duty to furnish information relating to accidents

(2) The notice to the Board referred to in subregulation (1) of this Regulation shall be given the identifying abbreviation “ACCID” for accidents and “INCID” for serious incidents and shall state as far as possible—

- (a) the type, model and nationality and registration marks of the aircraft;
- (b) the name of the owner, operator, and hirer, if any, of the aircraft;
- (c) the name of the commander of the aircraft and nationality of crew and passengers;
- (d) the date and Coordinated Universal Time of the accident or incidents;
- (e) the last point of departure and the next point of intended landing of the aircraft;
- (f) the position of the aircraft by reference to some easily defined geographical point and latitude and longitude;
- (g) the number of crew on board the aircraft at the time of the accident or incident and the number of them killed or seriously injured as a result of the accident;

(h) the number of passengers on board the aircraft at the time of the accident or incident and the number of them killed or seriously injured as a result of the accident;

(i) the number of other persons killed or seriously injured as a result of the accident;

(j) the nature of the accident and the extent of the damage to the aircraft as far as is known.

(3) Where an accident or serious incident to which these Regulations applies occurs, whether in or over Malawi or elsewhere, the owner, operator, commander or hirer of the aircraft shall, if so required by notice in writing given to him by the Board, send to the Board, within such time as shall be specified in the notice, such information as is in his possession or control with respect to the accident in such form as the Board shall require.

(4) See IS 13:5(4) for procedures for provision of accident and incident notification.

(5) The commander of the aircraft or operator or aerodrome shall report to the Board by quickest means of communication available of a serious incident.

Publication of  
accident  
information

6.—(1) The Board shall at any time publish, or cause to be published, information relating to an accident whether or not such an accident is the subject of an information investigation by the Board, of a Review Board or of a Public Inquiry.

Removal of  
damaged  
aircraft

7.—(1) Subject to regulation 9 of these Regulations, where a reportable accident occurs in or over Malawi, no person other than an authorized person shall have access to the aircraft involved in the accident and neither the aircraft nor its contents shall except under the authority of the Minister be removed or otherwise interfered with:

Provided that, subject to the provisions of the Customs and Excise Act (Cap 42:01)—

(a) the aircraft shall be removed or interfered with so far as shall be necessary for the purpose of extricating persons or animals, removing any mails, valuables and dangerous goods carried by the aircraft, preventing destruction by fire or other cause, or preventing any danger of obstruction to the public or to air navigation or to other transport, or under the supervision of a Member or, with the agreement of a Member or of a police officer, for the purpose of removing any other property from the aircraft;

(b) if an aircraft is wrecked on the water, the aircraft or any of its contents shall be removed to such extent as shall be necessary for bringing it or them to a place of safety.

(2) In this regulation the expression “authorized person” means any person authorized by the Minister either generally or specially to have access to any aircraft involved in an accident and includes any police officer or customs officer.

(3) Where an accident occurs within Malawi, the pilot in command of the aircraft involved in the accident, or if he or she is killed or incapacitated, a flight crewmember, or if there are no surviving flight crewmembers, or if they are incapacitated, the operator or owner of such aircraft or where the accident occurs on an aerodrome, the aerodrome manager, shall—

(a) pending the arrival of a police guard, take such steps which may be necessary to prevent interference with the aircraft, the wreck or wreckage and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation;

(b) forthwith arrange with a member of the Malawi Police Service to guard the aircraft, the wreck or wreckage and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation.

8.—(1) For the purpose of carrying out investigation into the circumstances and causes of accidents to which these Regulations apply, the Minister shall appoint persons as Members of an Air Accidents Investigation Board, one of whom shall be appointed by the Minister as Chairperson of the Board.

Air accidents investigation board

(2) The Chairperson shall determine whether or not an investigation shall be carried out into any accident to which these Regulations apply and the form of the investigation. He shall himself carry out, or shall cause a Member to carry out, an investigation of any such accident.

(3) Without prejudice to the power of a Member to seek such advice or assistance as he shall deem necessary in making an investigation, the Minister shall at the request of the Board appoint persons to assist any Member in a particular investigation and such persons shall for the purpose of so doing have such of the powers of a Member under these Regulations as shall be specified in their appointment.

9.—(1) For the purpose of the investigation of any accident to which these Regulations apply, or any inquiries undertaken with a view to determining whether any such investigation should be held, a Member shall have power—

Powers of members of investigation board

(a) by summons under his hand, to call before him and examine all such persons as he thinks fit, to require such persons to answer any question or furnish any information or produce any books, papers, documents and articles until the completion of the investigation or any inquiry held pursuant to regulation 18 herein, or as the case shall be, it is determined that an investigation shall not be carried out;

(b) to take statements from all such persons as he thinks fit and to require any such person to make and sign a declaration of the truth of the statement made by him;

(c) to have unhampered access to and examine any aircraft involved in any such accident and the place where the accident occurred and to require any such aircraft or any part of equipment thereof to be preserved unaltered pending investigation;

(d) to examine, remove, test and take measures for the preservation of, or otherwise deal with—

(i) aircraft involved in the accident; or

(ii) where it appears to the Member requisite for the purposes of such investigation or inquiries, any other aircraft, or any part of such aircraft or anything contained therein;

(e) on production, if required, of his credentials, to enter and inspect any place, building or aircraft the entry or inspection whereof appears to the Member to be requisite for the purposes of any such investigation or inquiries or any inquiry held pursuant to regulation 18 herein, except that a Member shall not have power to enter any premises under this subparagraph for the purpose of inquiries with a view to determining whether an investigation should be held if at the time of the proposed entry the premises are being used as a dwelling;

(f) to take such measures for the preservation of evidence as he considers appropriate; and

(g) to secure and place in safe keeping all ATS communication recordings and documents associated with the flight involved in an accident or serious incident.

Form and  
conduct of  
investments

10.—(1) An investigation into any accident to which these Regulations apply shall be a formal investigation or a field investigation.

(2) Public notice that a formal investigation is taking place shall be given in such manner as the Board shall think fit and shall invite any persons who desire to make representations concerning the circumstances or causes of the accident to do so in writing within the time to be specified in the notice.

(3) All investigations shall be held in private.

(4) Where it appears to the Member in the course of any investigation that in order to resolve any conflict of evidence or that for any other reason it is expedient so to do, he shall permit any person to appear before him and to call evidence and examine witnesses.

(5) Every person summoned by the Member, as a witness in accordance with these Regulations shall be allowed such expenses as the Minister, with the approval of the Ministry of Finance, shall determine.

(6) Every witness shall, in respect of any evidence written by him or given to him before a Member, be entitled to the same privileges to which he would have been entitled if giving evidence before a court.

(7) The Board shall determine that any investigation being carried out into an accident shall be discontinued and in the event of a formal investigation being discontinued no report shall be made thereon to the Minister under regulation 11 (1) herein, but public notice shall be given, in such manner as the Board shall think fit, that the investigation has been discontinued.

(8) Following the discontinuance of any investigation, the Board shall submit to the Civil Aviation Authority such information as the Board considers desirable in the interest of the avoidance of accidents in the future.



(9) The Board shall take into consideration to provision of ICAO Annex 13 in conducting the investigations.

(10) if, in the course of an investigation it becomes known, or it is suspected, that an act of unlawful interference was involved, the instigator in-charge shall immediately initiate action to ensure that the aviation security authorities of the State(s) concerned are so informed.

11.—(1) Subject to the provisions of regulation 12 herein, upon completion of a formal investigation the Board shall submit to the Minister the report of the Member who carried out the investigation to the Authority.

Board's report and submission of information to the Authority

(2) Upon completion of a field investigation the Board shall submit to the Authority such information as it considers desirable in the interest of the avoidance of accidents in the future.

(3) The report to the Minister upon completion of a formal investigation shall state the facts relating to the accident followed by an analysis of the facts and conclusions as to the causes of the accident, together with any recommendations which the Member thinks fit to make with a view to the preservation of life and the avoidance of accidents in the future.

(4) The format of the Final Report may be adapted to the circumstances of the accident or incident; see IS 13:11 in the Schedule hereto.

12.—(1) No report shall be submitted to the Minister under regulation 11 (1) of these Regulations in respect of an accident until the Board has—

Notice of board's report and representations thereon

(a) where it appears to the Board to be practicable so to do, served a notice under this regulation upon the operator and commander of the aircraft involved in the accident and on any person whose reputation is, in the Board's opinion, likely to be adversely affected by the report or, if any of the foregoing be a deceased individual, upon such person or persons as appears to the Board, at the time the Board proposes to serve notice pursuant to this paragraph, to represent best the interest of the deceased in the matter; and

(b) considered any representations which shall be made to the Board in accordance with subregulation (3) herein by or on behalf of the persons served with such notice.

(2) The notice referred to in regulation (1) herein shall include particulars of any proposed analysis of facts and conclusions as to the cause or causes of the accident which shall affect the person on whom or in respect of whom the notice is served.

(3) Any representations made pursuant to paragraph subregulation (1) herein shall be in writing and shall be served on the Board within 28 days of service of the notice referred to in that paragraph or within such further period as shall be allowed under regulation 20 of these Regulations.

(4) A copy of the report submitted to the Minister under regulation 11 (1) of these Regulations shall be served by the Board on any person who has been served with a notice pursuant to subregulation (1) herein.

(5) No person shall disclose or permit to be disclosed any information contained in a notice or report served on him pursuant to paragraph sub-regulations (2) or (4) of this Regulation to any other person without the prior consent, in writing, of the Board.

#### PART III—REVIEW BOARD

Notice of  
review

13.—(1) Any person who has been served with a notice under regulation 12 (1) herein shall, at any time before the expiration of the period of 21 days from the date on which he has been served with a copy of the report under regulation 12 (4) (or within such further period as shall be allowed under regulation 22) serve on the Minister written notice (hereinafter called the ‘notice of review’) that he wishes those findings and conclusions in the report from which it appears that his reputation or, as the case shall be, the reputation of the person on whose behalf representations have been made under regulation 12 (3) of these Regulations, is likely to be adversely affected, to be reviewed by a Review Board.

(2) The notice of review shall specify the findings and conclusions that should be considered for review by the Review Board, shall state concisely the grounds on which the findings and conclusions in the report are challenged and the reasons why the reputation of the person requesting the review is likely to be adversely affected by such findings and conclusions and there shall be appended to the notice a copy of any representations made under regulation 12 of these Regulations.

(3) A copy of the notice of review, together with a copy of any representations made under regulation 12 (3) shall, at the same time as the notice of review is served on the Minister, be served on the Attorney General, and the person requesting the review shall then or as soon as possible thereafter inform the Attorney General whether or not he proposes to be represented at the hearing of the review and of the name and address of the solicitor, if any, acting for him or of any other person who will be representing him at the review.

(4) A copy of the notice of review, together with a copy of any representations made under regulation 12 (3) of these Regulations shall also be served by the person requesting the review on all other persons on whom the Board has served a notice under regulation 12 (1) of these Regulations, and for this purpose the person requesting the review shall require the Board to furnish him with the names and addresses of those persons.

Appointment  
of review  
board and  
preliminary  
meeting

14.—(1) Where a notice of review in accordance with regulation 13 has been served the review shall be entrusted to a Review Board consisting of a chairperson to be appointed for the purpose by the Chief Justice and such technical assessors as shall be so appointed.

(2) Before the hearing of the review the Review Board shall hold a preliminary meeting at which any directions shall be given or any preliminary interlocutory order as to the procedure shall be made. Not less than 21 days’ notice of the date, time and place of the preliminary meeting shall be given by the Attorney General to the person requesting the review and all persons on whom a copy of the notice of review has been served and any person intending to make any application to the Review Board at the meeting shall give notice thereof to the Attorney General.

(3) The preliminary meeting shall be in public unless the Review Board determines that it is to be held in private in the interests of justice or in the public interest.

(4) Where at any time during the preliminary meeting the Review Board is satisfied that any of the findings and conclusions in the Board's report do not adversely affect the reputation of the person requesting the review, the Review Board shall decide not to proceed with the review in respect of those findings and conclusions.

(5) The Review Board shall not reach a decision under subregulation (4) of this Regulation unless it has given the person requesting the review and all persons on whom a copy of the notice of review has been served an opportunity to make representations as to whether the review should be proceeded with.

(6) The Attorney General shall serve on the person requesting the review and all other persons on whom the Board has served a notice under regulation 12(1) of these Regulations, not less than 21 days' notice of the date, time and place of the hearing of the review.

(7) The hearing shall be in public unless the Review Board determines, in relation to the whole or part of the review, that it is to be held in private in the interests of justice or in the public interest:

Provided that a decision by the Review Board that the hearing, or part of it, be held in private shall not preclude the Member who made the report.

(8) The Review Board shall be assisted by the Attorney General, or by Counsel instructed by him, who shall present any evidence required by the Review Board and shall examine any witnesses giving evidence at the review; the Board shall render such assistance to the Review Board as is in its power.

15.—(1) The person requesting the review shall be heard by the Review Board and shall have the right to give evidence, produce witnesses and examine any other witnesses giving evidence at the review. Proceedings of  
review board

(2) The Member who made the report shall be entitled to be heard by the Review Board.

(3) Any person who in the opinion of the Review Board may be directly affected by the review shall be granted leave to appear and to give evidence, produce witnesses and examine any other witnesses giving evidence at the review. Any application for such leave shall be made to the Review Board at the preliminary meeting.

(4) In any proceedings of the Review Board the person requesting the review and any other person appearing pursuant to leave granted under subregulation (3) of this Regulation shall appear in person or be represented by any other person whom he shall have authorized to represent him.

(5) The proceedings of the Review Board shall commence with the giving of evidence by the person requesting the review and the production and examination of witnesses on his behalf. When the examination of witnesses on behalf of such person has been concluded the Review Board shall proceed to hear the other persons appearing before it.

(6) The Review Board shall have all the powers of the Board under these Regulations and, in addition, shall administer an oath to or require a solemn affirmation from any witness.

(7)—(a) Where new and important evidence is given at the review, which was not given at the Member's investigation, the Review Board shall, on an application by the Board discontinue the review, and the Board shall thereupon cause the investigation to be re-opened;

(b) where at any time during the review, Review Board is satisfied that any of the findings and conclusions in the Member's report do not adversely affect the reputation of the person in respect of whom the notice of review was served, the Review Board shall discontinue the review in respect of those findings and conclusions;

(c) where a review is totally discontinued under this Regulation no report shall be made to the Minister under regulation 16 (1).

(8) Every person summoned by the Review Board as a witness shall be allowed such expenses as the Minister, with the approval of the Ministry of Finance, shall determine.

(9)—(a) The Review Board shall, if it thinks fit, order any person who appears or is represented as mentioned in subregulation (3) of this Regulation to pay in respect of the costs of the Review Board or of any other person who appears or is represented as mentioned in regulation (4) of this Regulation such sum as shall be specified in the order, or the taxed amount of those costs or such part thereof as shall be so specified upon such basis as shall be so specified; and

(b) without prejudice to the generality of the foregoing, the Review Board shall, in determining whether to make an order as to costs against any person, have regard to whether or not that person took advantage of such opportunities as were open to him to make representations under regulation 12 or, where that person gave new and important evidence at the review and the review was discontinued, whether or not that person could reasonably have given that evidence at the investigation by the Board.

(10) Any costs required by an order under subregulation (9) (a) to be taxed shall be taxed by the Supreme Court on the basis specified in the order.

(11) Any sum payable by virtue of an order under subregulation (9) (a) shall, if the local court so orders, be recoverable by execution issued from the local court or otherwise as if payable under an order of the court.

(12) Upon completion of the review the Review Board shall make a report to Minister containing a summary of the proceedings at the hearing and either confirming or rejecting in whole or in part those findings and conclusions of the Board which were the subject of the review, together with its reasons therefore, and the Minister shall serve a copy of the report on all persons who appeared or were represented before the Review Board.

16.—(1) The Minister shall, unless in his opinion there are good reasons to the contrary, cause the Board's report and, where a Review Board has been held, thereport of the Review Board to be made public wholly or in part in such manner as he thinks fit: Publication of reports

Provided that—

(a) in any case where notice has been served under regulation 12, the Board's report shall not be published before the expiry of the time for service of a notice of review under regulation 13 (1); and

(b) save where a review is totally discontinued under regulation 15 (7) (c) above, in any case where a Review Board is held, the Board's report shall not be published until the Review Board has made a report to the Minister under regulation 15 (12).

17.—(1) In the case of any formal investigation which has not been the subject of a review, the Board shall cause the investigation to be reopened, and in the case of a review, including a review which has been discontinued under regulation 15 (7) (c), the Minister shall direct the review to be reheard or, if a decision has been reached under regulation 14 (4) not to proceed with the review, shall direct the review to be proceeded with, in each case either generally or as to any part thereof, and the Board or the Minister, as the case may be, shall do so— Reopening of investigation or review

(a) if after the completion of the investigation or the completion or curtailment of the review evidence has been disclosed which is in his opinion both new and important; or

(b) if for any other reason there is in his opinion ground for suspecting that a miscarriage of justice has occurred.

(2) If the Minister directs any review to be reheard or proceeded with the Chief Justice shall direct that the review shall be heard or proceeded with either by the Review Board by whom it was heard or to which it had been entrusted to in the first instance or by some other Review Board appointed by him to hold the rehearing.

(3) Any investigation reopened or review reheard or proceeded with shall be subject to and conducted in accordance with the provisions of this Part relating to a formal investigation or review thereof as the case may be.

#### PART IV—PUBLIC INQUIRIES

18.—(1) Where it appears to the Minister that it is expedient in the public interest to hold a Public Inquiry into the circumstances and causes of an accident to which these Regulations apply or into any particular matter relating to the avoidance of such accidents in the future, he shall direct that a Public Inquiry be held by a Commissioner appointed by the Chief Justice. In any such case any investigation relating to the accident or to the particular matter, as the case shall be, shall be discontinued except for the purpose of rendering assistance as required by subregulation (3) of this Regulation. Holding of public inquiries

(2) The Commissioner shall be a judge of not less than five years standing and shall be assisted by not fewer than two Assessors possessing aeronautical, engineering or other special skills or knowledge who shall be appointed by the Chief Justice in consultation with the Minister.

(3) Where the Minister has directed a Public Inquiry to be held, he shall remit the case to the Attorney General, and thereafter the preparation and presentation of the case shall be conducted by the Attorney General under the direction of the Attorney General, the Board shall render such assistance to the Commissioner and to the Attorney General as is in his power.

(4) When the Minister has directed a Public Inquiry to be held, the Attorney General shall cause a notice of the date, time and place and the nature of the Public Inquiry to be served upon the owner, operator, hirer and commander of any aircraft involved in the accident and on any other person who in his opinion ought to be served with such notice.

(5) The owner, the operator, the hirer, the commander and any other person upon whom a notice of inquiry has been served under subregulation (4) of this Regulation, shall be deemed to be parties to the proceedings.

(6) Any other person shall by leave of the Commissioner appear, and any person who obtains leave to appear shall thereupon become a party to the proceedings and any application for such leave shall be made to the Commissioner at a preliminary meeting.

(7) At any time before the date appointed for holding the inquiry, the Commissioner shall hold a preliminary meeting at which any directions shall be given or any preliminary or interlocutory order as to the procedure shall be made. Notice of the date, time and place of the preliminary meeting shall be given by the Attorney General to the parties to the proceedings and to any other person who has notified the Attorney General that he intends to apply to the Commissioner for leave to appear. Any person intending to make an application to the Commissioner at the meeting shall give notice thereof to the Attorney General.

(8) The Commissioner shall have, for the purposes of the inquiry, all the powers of a Magistrate's Court, and without prejudice to those powers, the Commissioner shall—

(a) enter and inspect, or authorize any person to enter and inspect, any place, building or aircraft the entry or inspection whereof appears to the Commissioner to be requisite for the purposes of the inquiry;

(b) by summons require the attendance as witnesses of all such persons as the Commissioner thinks fit to call and examine, and require such persons to answer any question or furnish any information or produce any books, papers, documents and articles which the Commissioner shall consider relevant;

(c) administer an oath to or require a solemn affirmation from any such witness.

(9) The Assessors shall have the same power of entry and inspection as the Commissioner.

(10) Affidavits and statutory declarations shall, by permission of the Court, be used as evidence at the hearing.

(11) At the time and place appointed for holding the inquiry the Court shall proceed with the inquiry whether the parties, upon whom a notice of inquiry has been served or who have obtained leave to appear, or any of them, are present or not.

(12) The Court shall hold the inquiry in public Court save to the extent to which the Court directs, in relation to any part of the evidence or any argument relating thereto, that the inquiry be held in private in the interest of justice or in the public interest.

(13) The Member who carried out or, before its discontinuance under sub-regulation (1) of this Regulation, was carrying out an investigation into an accident to which the inquiry relates and a member of the Review Board shall be entitled to be present at any proceedings of the Commissioner held in private.

19.—(1) The proceedings on the inquiry shall commence with an opening speech by or on behalf of the other parties. The proceedings shall continue with the production and examination of witnesses on behalf of the Attorney General. These witnesses, after being examined on behalf of the Attorney General, shall be cross-examined by the parties in such order as the Commissioner shall direct, and shall then be re-examined on behalf of the Attorney General.

Proceedings of  
public  
inquiries

(2) When the examination of the witnesses produced on behalf of the Attorney General has been concluded, the Commissioner shall proceed to hear the other parties to the proceedings. Each party to the proceedings shall be entitled to address the Commissioner and the produce witnesses or recall any of the witnesses who have already been examined for further examination and generally adduce evidence. The parties shall be heard and their witnesses examined, cross-examined and re-examined in such order as the Commissioner shall direct. Further witnesses shall also be produced and examined on behalf of the Attorney General and shall be cross-examined by the parties and re-examined on behalf of the Attorney General.

(3) When the whole of the evidence has been concluded any of the parties who desire so to do shall address the Commissioner upon the evidence and the Commissioner shall be addressed in reply upon the whole case on behalf of the Attorney General.

(4) The Commissioner shall adjourn the inquiry from time to time and from place to place, and where an adjournment is asked for by any party to the inquiry the Commissioner shall impose such terms as to payment of costs or otherwise as he shall think just as a condition of granting the adjournment.

(5) Upon completion of the inquiry, the Commissioner shall make a report to the Minister stating the facts relating to the accident and the opinion of the Commissioner concerning the cause or causes of the accident or on the particular matter referred to the Commissioner and adding any recommendations which the Commissioner thinks fit to make with a view to the preservation of life and the avoidance of accidents in the future.



(6) Each Assessor shall either sign the report with or without reservations, or state in writing his dissent there from and his reasons for any such dissent, and such reservations or dissent and reasons shall be forwarded to the Minister with the report.

(7) The Minister shall, unless in his opinion there are good reasons to the contrary, cause any such report and reservations or dissent and reasons to be made public wholly or in part in such manner as he thinks fit.

(8) Every person attending as a witness before the Commissioner shall be allowed such expenses as would be allowed to a witness attending before the High Court, and in case of a dispute as to the amount to be allowed, the same shall be referred by the Commissioner to a master of the Supreme Court who on a request signed by the Commissioner shall ascertain and certify the proper amount of the expenses:

Provided that in the case of any party to the proceedings or of any person in the employment of such a party, any such expenses shall be disallowed if the Commissioner in his discretion so directs.

Rehearing of  
public  
inquiries

20.—(1) The Minister shall, in any case where a Public Inquiry has been held, direct the inquiry to be reheard either generally or as to any part thereof and shall do so—

(a) if after the completion of the inquiry evidence has been disclosed which is in his opinion both new and important; or

(b) if for any other reason there is in his opinion ground for suspecting that a miscarriage of justice has occurred.

(2) If the Minister directs any inquiry to be reheard, the Chief Justice shall direct that the inquiry shall be reheard either by the Commissioner by whom it was heard in the first instance or by some other person appointed by him to hold the rehearing.

(3) Any inquiry reheard shall be subject to and conducted in accordance with the provisions of these Regulations relating to the holding of Public Inquiries.

#### PART V—MISCELLANEOUS

Accidents to  
aircraft  
registered  
Malawi

21.—(1) Where an accident has occurred in or over Malawi to an aircraft registered in any country or territory other than Malawi, the Board shall authorize an outside investigator appointed by the duly competent authority of that other country or territory to carry out an investigation in Malawi and in that event the Minister shall so far as he is able facilitate inquiries by the investigator so appointed.

(2) In any formal investigation or any Public Inquiry an accredited representative of the country or territory in which the aircraft is registered, or of any country or territory in which the aircraft was designed or manufactured or which has, on request, furnished information in connexion with the accident, shall take part in the investigation or in the inquiry as the case shall be, that is to say, he shall be permitted to visit the scene of the accident, examine the wreckage, question witnesses, receive copies of all pertinent documents (saving



all just exceptions), have access to all relevant evidence and make submissions; and he shall be accompanied by such technical and other advisers as shall be considered necessary by the authorities of the country or territory by which he is appointed

(3) Where an accident has occurred elsewhere than in Malawi to an aircraft registered in any country or territory other than Malawi, the Board shall have power to take the measures described in regulation 9 (1) of these Regulations for the purpose of obtaining any information relevant to the investigation of the accident by the duly competent authority of the country or territory conducting such investigation.

22. The Board, in the case of the period of 28 days prescribed in regulation 12 (3) of these Regulations, and the Minister, in the case of the period of 21 days prescribed in regulation 13 (1) shall have power to extend the said periods, and this power shall be exercisable notwithstanding that the period so prescribed has expired.

Extension of time

23.–(1) A person shall not obstruct or impede the Commissioner or the Review Board or any Member or an Assessor or any person acting under the authority of the Minister in the exercise of any powers or duties under these Regulations.

Obstruction investigation

(2) A person shall not without reasonable excuse fail, after having had the expenses (if any) to which he is entitled under these Regulations tendered to him, to comply with any summons or requisition of the Commissioner holding a Public Inquiry or of a Review Board or a Member holding an investigation or undertaking any inquiries with a view to determining whether any investigation should be held under these Regulations.

24. The Board may with the consent of the Minister allow any State which has a special interest in an accident by virtue of fatalities or serious injury to its citizens to appoint an expert who shall be entitled to—

Participation of an expert from a state with special interest

(a) visit the scene of the accident;

(b) have access in the relevant factual information which is approved for public release by the State by the Board and information on the progress of the investigation, and

(c) receive a copy of the Final Report.

25.–(1) The Authority shall establish and implement a mandatory incident reporting system to facilitate the collection of information on actual or potential safety reporting systems.

Accident and incident prevention measures incident reporting systems

(2) The Authority shall establish and implement a voluntary occurrence reporting system to facilitate the collection of information otherwise not captured by the mandatory incident reporting system in subregulation 26(1).

(3) The Authority shall ensure that the voluntary occurrence reporting system is non-punitive and protects the sources of the information

Offences and penalties

26.—(1) Any person who—

(a) willfully obstructs or impedes the Board, or the Review Board or a Commissioner or a Member or an assessor or any person acting under the authority of the Minister in exercise of any powers or duties under these Regulations;

(b) without any reasonable excuse (proof whereof shall lie on him) fails after having the expenses (if any) to which he is entitled rendered to him to comply with any summons or requisition of the Commissioner holding a public enquiry or the Review Board or a Member holding a Member's investigation under these Regulations; or

(c) without reasonable excuse (proof whereof shall lie on him) fails to comply with any of the provisions of regulations 5 or 7 these Regulations, shall be guilty of an offence and shall be liable to a fine of K20,000 and to imprisonment for two months.

Effect of the Aviation (Investigation of Accident) Regulations

27.—(1) Any investigation commenced, or anything made or done under the provisions of the Aviation (Investigation of Accidents) Regulations, 2004 having effect immediately prior to the coming into operation of these Regulations, shall continue to have effect and shall be deemed for all purposes to have been commenced, made or done, under the provisions of these Regulations.

Revocation  
Cap. 70:01  
Sub. leg. p.203

28 The Aviation (Investigation of Accidents) Regulations are hereby revoked.

## SCHEDULE

### IMPLEMENTING STANDARDS FOR INVESTIGATION OF AIR ACCIDENTS

#### IS 13: 5(4) NOTIFICATIONS OF AIRCRAFT ACCIDENTS

The Authority and Accident Investigations Board shall be guided by these procedures for provision of accident and incident notifications.

1. Accidents or Serious incidents in the territory of Malawi to Aircraft of another Contracting State

1.1 Responsibility of the Authority (State of Occurrence).

1.1.1 Forwarding

(a) Malawi shall forward a notification of an accident or serious incident with minimum of delay and by the most suitable and quickest means available to—

(i) the State of Registry;

(ii) the State of the Operator;

(iii) the State of Design;

(iv) the State of Manufacture;

(v) the International Civil Aviation Organization, when the aircraft involved is of a maximum mass of over 2 250kg;

- (b) however, when Malawi is not aware of a serious incident, the State of Registry or the State of the Operator, as appropriate, shall forward a notification of such an incident to the State of Design, the State of Manufacture and the State of Occurrence.

NOTE 1—Telephone, facsimile, e-mail or the Aeronautical Fixed Telecommunication Network (AFTN) will in most cases constitute “the most suitable and quickest means available”. More than one means of communication may be appropriate.

#### 1.1.2 Format and content

The notification shall be in plain language and contain as much of the following information as is readily available, but its dispatch shall not be delayed due to the lack of complete information—

- (a) for accident the identifying abbreviation ACCID, for serious incidents INCID;
- (b) manufacturer, model, nationality and registration marks, and serial number of the aircraft;
- (c) name of owner, operator and hirer, if any, of the aircraft;
- (d) name of the pilot-in command, and nationality of crew and passengers;
- (e) date and time (local time or UTC) of the accident or serious incident;
- (f) last point of departure and point of intended landing of the aircraft;
- (g) position of the aircraft with reference to some easily defined geographical point and latitude and longitude;
- (h) number of crew and passengers: aboard, killed and seriously injured; others: killed and seriously injured;
- (i) description of the accident or serious incident and the extent of damage to the aircraft so far as is known;
- (j) an indication to what extent the investigation will be conducted or is proposed to be delegated by Malawi;
- (k) physical characteristics of the accident or serious incident are, as well as an indication of access difficulties or special requirements to reach the site;
- (i) identification of the originating authority and means to contact the investigator-in-charge and the accident investigation authority of Malawi at any time; and
- (m) presence and description of dangerous goods on board the aircraft.

NOTE 2.-The Manual of Aircraft Accident and Incident Investigation, Part I – Organization and Planning (DOC 9756) contains guidance material concerning the preparation of notification messages and the arrangements to be made for their prompt delivery to the addressee.

### 1.1.3 Language

The notification shall be prepared in English, taking into account the language of the recipient(s), whenever it is possible to do so without causing undue delay.

### 1.1.4 Additional Information

As soon as it is possible to do so, Malawi shall dispatch the details omitted from the notification as well as other known relevant information.

## 1.2 Responsibility of the State of Registry, the State of the Operator, the State of Design and the State of Manufacture.

### 1.2.1 Information – Participation

- (i) The State of Registry, the State of the Operator, the State of Design and the State of Manufacture should acknowledge receipt of the notification of an accident or serious incident.
- (ii) Upon receipt of notification, the State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall, as soon as possible, provide Malawi with any relevant information available to them regarding the aircraft and flightcrew involved in the accident or serious incident. Each State shall also inform Malawi whether it intends to appoint an accredited representative and if such an accredited representative is appointed the name and contact details; as well as the expected date of arrival if the accredited representative will travel to Malawi.

## 2. Accidents or Serious incidents in the Territory of the State of Registry, in a Non-contracting State or outside the Territory of any State

### 2.1 Responsible of the State of the State of Registry

#### 2.1.1 Forwarding

1.8 When the State of Registry institutes the investigation of an accident or serious incident that State shall forward a notification, in accordance with regulation 2 of these Regulations with a minimum of delay and by the most suitable and quickest means available, to—

- (a) the State of the Operator;
- (b) the State of Design;
- (c) the State of Manufacture; and
- (d) the International Civil Aviation Organization, when the aircraft involved is of a maximum mass of over 2 250kg.

### 2.2 Responsibility of the State of the Operator, the State of design and the State of Manufacture

#### 2.2.1 Information - Participation

- (i) the State of the Operator, the State of Design and the State of Manufacture should acknowledge receipt of the notification of an accident or serious incident (1:1 refers);

- (ii) upon receipt of the notification, the State of the Operator, the State of Design and the State of manufacture shall upon request, provide the State of Registry with any relevant information available to them regarding the flightcrew and the aircraft involved in the accident or serious incident. Each State shall also inform the State of Registry whether it intends to appoint an accredited representative, and if such an accredited representative is appointed the name and contact details; as well as the expected date of arrival if the accredited representative will be present at the investigation;
- (iii) upon receipt of the notification, the State of the Operator shall, with a minimum of delay and by the most suitable and quickest means available, provide the State of Registry with details of dangerous goods on board the aircraft.

#### IS 13:11 FORMAT OF THE FINAL REPORT OF AN ACCIDENT OR INCIDENT INVESTIGATION

##### PURPOSE

The purpose of this format is to present the Final Report in a convenient and uniform manner.

Detailed guidance on completing each section of the Final Report is found in the Manual of Aircraft Accident Investigation

##### FORMAT

**Title:** The Final Report begins with a title comprising: name of the operator; manufacturer, model, nationality and registration marks of the aircraft; place and date of the accident or incident.

**Synopsis:** Following the title is a synopsis describing briefly all relevant information regarding:

Notification of accident to national and foreign authorities; identification of the accident investigation authority and accredited representation; organization of the investigation; authority releasing the report and date of publication; and concluding with a brief résumé of the circumstances leading to the accident.

**Body:** The body of the Final Report comprises the following main headings—

- (a) factual information
- (b) analysis
- (c) conclusions
- (d) safety recommendations

Each heading consisting of a number of sub-headings as outlined in the following.

**Appendices:** Include as appropriate.

**NOTE.**— In preparing a Final Report, using this format, ensure that—

- (a) all information relevant to an understanding of the factual information, analysis and conclusions is included under each appropriate heading;
- (b) where information in respect of any of the items in 1. — Factual information is not available, or is irrelevant to the circumstances leading to the accident, a note to this effect is included under the appropriate sub-headings.

## 1. FACTUAL INFORMATION

- ### 1.1 History of the flight. A brief narrative giving the following information—
- Flight number, type of operation, last point of departure, time of departure (local time or UTC), point of intended landing.
  - Location (latitude, longitude, elevation), time of the accident (local time or UTC), whether day or night.
- ### 1.2 Injuries to persons. Completion of the following (in numbers)—

Injuries	crew	Passengers	Other
Fatal			
Serious			
Minor/None			

NOTE .— Fatal injuries include all deaths determined to be a direct result of injuries sustained in the accident. Serious injury is defined in chapter 1 of the Annex.

- ### 1.3 Damage to aircraft. Brief statement of the damage sustained by aircraft in the accident (destroyed, substantially damaged, slightly damaged, no damage).
- ### 1.4 Other damage. Brief description of damage sustained by objects other than the aircraft.
- ### 1.5 Personnel information—
- (a) pertinent information concerning each of the flight crewmembers including: age, validity of licences, ratings;
  - (b) brief statement of qualifications and experience of other crew members;
  - (c) pertinent information regarding other personnel, such as air traffic services, maintenance, etc., when relevant.
- ### 1.6 Aircraft information—
- (a) brief statement on airworthiness and maintenance of the aircraft (indication of deficiencies known prior to and during the flight to be included, if having any bearing on the accident);

- (b) brief statement on performance, if relevant, and whether the mass and centre of gravity were within the prescribed limits during the phase of operation related to the accident, (if not and if of any bearing on the accident give details);
  - (c) type of fuel used.
- 1.7 Meteorological information—
  - (a) Brief statement on the meteorological conditions appropriate to the circumstances including both forecast and actual conditions, and the availability of meteorological information to the crew.
  - (b) Natural light conditions at the time of the accident (sunlight, moonlight, twilight, etc.).
- 1.8 Aids to navigation: Pertinent information on navigation aids available, including landing aids such as ILS, MLS, NDB, PAR, VOR, visual ground aids, etc., and their effectiveness at the time
- 1.9 Communications: Pertinent information on aeronautical mobile and fixed service communications and their effectiveness.
- 1.10 Aerodrome information: Pertinent information associated with the aerodrome, its facilities and condition, or with the take-off or landing area if other than an aerodrome.
- 1.11 Flight recorders: Location of the flight recorder installations in the aircraft, their condition on recovery and pertinent data available therefrom.
- 1.12 Wreckage and impact information: General information on the site of the accident and the distribution pattern of the wreckage; detected material failures or component malfunctions. Details concerning the location and state of the different pieces of the wreckage are not normally required unless it is necessary to indicate a break-up of the aircraft prior to impact. Diagrams, charts and photographs may be included in this section or attached in the Appendices.
- 1.13 Medical and pathological information: Brief description of the results of the investigation undertaken and pertinent data available therefrom.  
  
Note.—Medical information related to flightcrew licences should be included in 1.5 — Personnel information.
- 1.14 Fire: If fire occurred, information on the nature of the occurrence, and of the fire fighting equipment used and its effectiveness.
- 1.15 Survival aspects: Brief description of search, evacuation and rescue, location of crew and passengers in relation to injuries sustained, failure of structures such as seats and seat-belt attachments.

- 1.16 Tests and research: Brief statements regarding the results of tests and research.
- 1.17 Organizational and management information.  
Pertinent information concerning the organizations and their management involved in influencing the operation of the aircraft. The organizations include, for example, the operator; the air traffic services, airway, aerodrome and weather service agencies; and the regulatory authority. The information could include, but not be limited to, organizational structure and functions, resources, economic status, management policies and practices, and regulatory framework.
- 1.18 Additional information: Relevant information not already included in 1.1 to 1.17.
- 1.19 Useful or effective investigation techniques: When useful or effective investigation techniques have been used during the investigation, briefly indicate the reason for using these techniques and refer here to the main features as well as describing the results under the appropriate sub-headings 1.1 to 1.18.
2. Analysis  
Analyse, as appropriate, only the information documented in 1. — Factual information and which is relevant to the determination of conclusions and causes.
3. Conclusions  
List the findings and causes established in the investigation. The list of causes should include both the immediate and the deeper systemic causes.
4. Safety Recommendations  
As appropriate, briefly state any recommendations made for the purpose of accident prevention and any resultant corrective action.
5. Appendices  
Include, as appropriate, any other pertinent information considered necessary for the understanding of the report.

Made this 26th day of June, 2013.

MOHAMMED SIDIK MIA  
*Minister of Transport and Public Works*