



STATUTORY INSTRUMENTS.

S.I. No. 460 of 2009

AIR NAVIGATION (NOTIFICATION AND INVESTIGATION OF
ACCIDENTS, SERIOUS INCIDENTS AND INCIDENTS)
REGULATIONS 2009

(Prn. A9/1690)

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ACCIDENTS, SERIOUS INCIDENTS AND INCIDENTS)
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I, NOEL DEMPSEY, Minister for Transport, in exercise of the powers conferred on me by sections 3(2), 6 and 60, of the Air Navigation and Transport Act 1936 (No. 40 of 1936), the Air Navigation and Transport (Application of Regulations to State Aircraft) (Government) Order 1997 (S.I. No. 198 of 1997), sections 3(2), 5, 6, 9 and 11 of the Air Navigation and Transport Act 1946 (No. 23 of 1946), the Air Navigation and Transport (Application of Regulations to State Aircraft) (Ministerial) Order 1997 (S.I. No. 206 of 1997), the Communications (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 1987 (S.I. No. 92 of 1987) and the Public Enterprise, (Alteration of Name of Department and Title of Minister) Order 2002 (S.I. No. 305 of 2002), and for the purpose of giving effect to Council Directive 94/56/EC of 21 November 1994 and Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003, hereby make the following regulations:

PART 1

PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Air Navigation (Notification and Investigation of Accidents, Serious Incidents and Incidents) Regulations 2009.

(2) These Regulations shall come into operation on the 9th of December 2009.

Interpretation

2. (1) In these Regulations—

“AAIU” means the Air Accident Investigation Unit referred to in Regulation 4;

“accident” means an event associated with the operation of an aircraft with the intention of flight which, in the case of manned aircraft, takes place from the time any person boards the aircraft with the intention of flight until such time as all persons have disembarked, or in the case of unmanned aircraft, takes place between the time the aircraft is ready to move for the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, in which—

(a) a person is fatally or seriously injured as a result of—

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 1st December, 2009.*

- (i) being in the aircraft,
- (ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or
- (iii) direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew,

or

- (b) the aircraft sustains damage or structural failure which—
 - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft, and
 - (ii) would normally require major repair or replacement of the affected component,
 except for—
 - (I) engine failure or damage, when the failure or damage is limited to a single engine, its cowlings or accessories,
 - (II) minor damage to rotor blades,
 - (III) damage limited to propellers, wing tips, antennas, probes, vanes, tyres, brakes, or wheels,
 - (IV) superficial damage to landing gear, fairings, panels, or landing gear doors,
 - (V) damage to windscreens,
 - (VI) small dents or puncture holes in the aircraft skin, or
 - (VII) minor damage due to hail or bird strikes (including holes in the radome),

or

- (c) the aircraft is missing or inaccessible;

“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 or public inquiry conducted by another state;

“ADREP Report” means the Accident/Incident Data Report sent to ICAO following an occurrence;

“advisor” means a person appointed by a state, on the basis of his or her qualifications, for the purpose of assisting that state’s accredited representative in an investigation;

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth’s surface;

“An Garda Síochána” means the national police service of Ireland;

“Annex 13” means Annex 13 to the Chicago Convention, as amended from time to time;

“another state” means a state other than the State;

“cause”, in relation to an occurrence, means any action, omission, event, or condition, or combination thereof, which led to the occurrence, but has no implication regarding liability or fault;

“Chicago Convention” means the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

“Chief Inspector” means the person nominated under Regulation 5(1) to be the Chief Inspector of Air Accidents;

“court of inquiry” or “court” means a person appointed under Regulation 18(3) to hold a public inquiry;

“CVR” means cockpit voice recorder;

“data recorder” means any recording device carried in an aircraft that could provide data that may be of assistance to an investigation;

“Directive 94/56/EC” means Council Directive 94/56/EC of 21 November 1994¹ establishing the fundamental principles governing the investigation of civil aviation accidents and incidents;

“Directive 2003/42/EC” means Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003² on occurrence reporting in civil aviation;

“disidentified data” means data from which all personal details pertaining to the reporter and technical details which might lead to the identity of the reporter, or of third parties, being inferred from the information, has been removed;

“draft final report” means a draft of a final report prepared in accordance the requirements of Regulation 12;

“EASA” means the European Aviation Safety Agency;

¹ OJ No. L319, 12.12.1994, p.14.

² OJ No. L167, 4.7.2003, p.23.

“ECCAIRS” means the database used by the cooperative network of European transport authorities and accident investigation bodies, as laid down in Commission Regulation 1321/2007 of 12 November 2007³ and refers to the European Coordination Centre for Accident and Incident Reporting Systems;

“emergency services” means those services that attend accident or incident sites with the purpose of saving life or providing rescue services to injured persons;

“expert” means a person who may take part in an investigation on behalf of a state whose citizens have suffered fatal or serious injuries in an accident;

“fatal injury” means an injury sustained by a person in an accident and which results in his or her death within 30 days of the date of the accident;

“FDR” means flight data recorder;

“field investigation” means the phase of an investigation involving visitation of the occurrence site or other sites;

“final report” means a report made pursuant to Regulation 13;

“flight recorder” means any type of recorder installed in the aircraft for the purpose of assisting in an investigation;

“foreign state aircraft” means an aircraft of another state used for military, customs or police services;

“formal investigation” means an investigation which is the subject of a final report that is made available to the public;

“IAA” means the Irish Aviation Authority;

“ICAO” means the International Civil Aviation Organisation;

“incident” means an event, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operations;

“inspector” means an Inspector of Air Accidents appointed under Regulation 5(1) and includes the Chief Inspector;

“investigation” means a process conducted by the AAIU under these Regulations for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, the making of findings, including the determination of causes and/or contributing factors, and, when appropriate, the making of safety recommendations, and includes a re-examination under Regulation 15;

“investigator in charge” means an inspector who, on the basis of his or her qualifications, is nominated as such under Regulation 5(6) and charged with the responsibility for the organisation, conduct and control of an investigation;

³ OJ No. L294, 13.11.2007, p.3.

“maximum mass” means the maximum certified take-off mass of an aircraft;

“Member State” means a Member State of the European Communities;

“Minister” means the Minister for Transport;

“non-contracting state” means a state that has not adopted the Chicago Convention;

“occurrence” means an accident, serious incident or incident to which these Regulations apply;

“operator” means a person, undertaking or enterprise engaged in, or offering to engage in, an aircraft operation;

“owner”, in relation to a registered aircraft, means the person who is registered as the owner in the register established under the Air Navigation and Transport Act 1946 (No. 23 of 1946), a register established under section 60 of the Irish Aviation Authority Act 1993 (No. 29 of 1993), or a corresponding register established in another state;

“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;

“public inquiry” means a public inquiry carried out under Regulation 18 or 19;

“safety recommendation” means a proposal of an accident investigating authority based on information derived from an investigation or a review board or a public inquiry, made with the intention of preventing accidents or incidents and which in no case creates a presumption of blame or liability for an accident or incident;

“serious incident” means an event involving circumstances indicating that there was a high probability of an accident associated with the operation of an aircraft with the intention of flight, examples of which are specified in Schedule 1;

“serious injury” means an injury sustained by a person in an accident that—

- (a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received,
- (b) results in a fracture of any bone (except simple fractures of fingers, toes or nose),
- (c) involves laceration which causes severe haemorrhage, nerve, muscle or tendon damage,
- (d) involves injury to any internal organ,

- (e) involves second or third degree burns or any burns affecting more than 5 per cent of the body surface, or
- (f) involves verified exposure to infectious or injurious substances or injurious radiation;

“State” includes the territorial seas of the State;

“State aircraft” means an aircraft of the State used for military, customs or police services;

“state of design”, in relation to an aircraft, means the state having jurisdiction over the undertaking responsible for the type design;

“state of manufacture”, in relation to an aircraft, means the state having jurisdiction over the undertaking responsible for the final assembly of the aircraft;

“state of occurrence”, in relation to an occurrence, means the state in the territory of which the occurrence occurs;

“state of operator”, in relation to an aircraft, 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”, in relation to an aircraft, means the state on whose register the aircraft is entered or another state operating on behalf of the state of registry;

“State safety programme” means the State’s integrated set of regulations, procedures and activities aimed at improving aviation safety;

“substantial damage” means any damage which necessitates the replacement or extensive repair of any major component of any aircraft or property damaged, as referred to in Schedule 2;

“undertaking” includes any natural or legal person, or official body or organisation (whether having its own legal personality or not);

“UTC” means Coordinated Universal Time.

(2) A word or expression that is used in these Regulations and is also used in Directive 94/56/EC or Annex 13 has the same meaning in these Regulations as it has in that Directive or in Annex 13.

Application

3. (1) Subject to Regulations 8 and 23, these Regulations shall apply to investigations into occurrences in the State.

(2) Subject to Regulation 22, these Regulations shall also apply outside the territory of the State to investigations into accidents and serious incidents involving aircraft registered in the State, or aircraft operated by an operator established in the State, or where major components are designed, manufactured

or overhauled in the State, when such investigations are not carried out by another state.

(3) In these Regulations, the specifications concerning the state of the operator apply only when an aircraft is leased, chartered or interchanged and when that state is not the state of registry and if it discharges, in respect of Annex 13, in part or in whole, the functions and obligations of the state of registry.

PART 2

INVESTIGATIONS

Air Accident Investigation Unit

4. (1) The Minister shall ensure that there is, in the Department of Transport, a civil aviation body, to be known as the Air Accident Investigation Unit, to carry out technical investigation of occurrences in accordance with these Regulations.

(2) The AAIU shall be functionally independent of the State aviation authorities responsible for the operation or regulation of airworthiness, certification, flight operations, aircraft maintenance, licensing, air traffic control or airport management, and in general shall be independent of any other person or body whose interest could conflict with the functions of the AAIU.

(3) The functions of the AAIU include the gathering and analysis of air safety data, in particular for accident or incident prevention purposes, in so far as those functions do not affect its independence and entail no responsibility in regulatory, administrative or standards matters.

(4) The Minister shall ensure that the AAIU is given the means necessary for it to perform its functions independent of the authorities referred to in paragraph (2).

(5) The Minister shall ensure that—

(a) the AAIU includes at least one inspector capable of performing the function of investigator in charge in the event of an occurrence, and

(b) its members are afforded such status as is necessary to guarantee its independence in the performance of its functions.

(6) The Minister shall ensure that an investigation has unrestricted access to all evidential material without external interference.

(7) Where feasible, the scene of an accident shall be visited, the wreckage examined, witnesses interviewed and, where appropriate, statements taken.

(8) An investigation shall be separate from any other proceedings whose function it is to apportion blame or liability.

(9) All notifications, reports, safety recommendations and data reports made by the AAIU shall be issued initially in English, in accordance with Annex 13.

Inspectors of Air Accidents

5. (1) The Minister shall appoint such qualified persons to the staff of the AAIU as Inspectors of Air Accidents as the Minister thinks necessary for the purposes of these Regulations and shall nominate one of them to be the Chief Inspector of Air Accidents.

(2) An appointment under paragraph (1) may be general or specific in relation to an investigation into a particular occurrence.

(3) The Minister shall furnish an inspector with a warrant of the inspector's appointment and, when performing a function of an inspector under these Regulations the inspector shall, if so required by any person affected, produce the warrant to that person.

(4) The remuneration of the Chief Inspector and inspectors shall be determined by the Minister, with the consent of the Minister for Finance.

(5) The Chief Inspector may appoint himself or herself as investigator in charge for any particular investigation.

(6) Where paragraph (5) does not apply, the Minister or the Chief Inspector shall appoint an inspector, or any other qualified person, to be the investigator in charge for an investigation.

(7) The Minister may, at the request of the Chief Inspector or otherwise, appoint one or more qualified persons to act as assistants to an investigator in charge during an investigation and such person or persons shall have, for the purpose of so acting, such functions of an inspector under these Regulations as may be specified at the time of his or her appointment.

(8) The Minister may direct that an assistant appointed under paragraph (7) shall receive such remuneration, if any, as the Minister, with the consent of the Minister for Finance, may determine.

(9) The investigator in charge shall be independent of any parties involved in the occurrence, the authorities referred to in Regulation 4(2) and any other undertaking whose interests could conflict with the task entrusted to the investigator in charge.

(10) A state other than the State that has a direct interest in an investigation conducted by the State, or which on request provides information, facilities or experts to an investigation, shall be entitled to appoint an accredited representative to participate in the investigation. A state that provides an operational base for field investigations, or is involved in search and rescue or wreckage recovery operations, or is involved as a state of a code-share or alliance partner of the operator, may be invited to appoint an accredited representative to participate in the investigation.

(11) A state entitled to appoint an accredited representative shall be entitled to appoint one or more advisors to assist the accredited representative in the investigation. The degree of participation of such advisors in the investigation shall be decided by the investigator in charge in consultation with the accredited representative.

(12) A person appointed to an investigation, an accredited representative, an advisor to an accredited representative, an expert or as an assistant under these Regulations shall—

- (a) provide the investigator in charge with all relevant information available to them,
- (b) respect the confidentiality of the investigation and not disclose information on the progress, evidence and findings of the investigation without the written consent of the investigator in charge and, if so required by the investigator in charge, swear or affirm to such confidentiality, and
- (c) be provided with documentation that shows the person's credentials and authorises his or her participation in the investigation.

(13) An accredited representative shall be entitled to participate in all aspects of an investigation under the control of the investigator in charge including:

- (a) visiting the scene of the accident;
- (b) examining the wreckage;
- (c) obtaining witness information and suggesting areas of questioning;
- (d) full access to all relevant evidence as soon as possible;
- (e) receiving copies of all pertinent documents;
- (f) participation in read-outs of recorded media;
- (g) participation in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;
- (h) participation in investigation progress meetings, including deliberations related to analysis, findings, causes and safety recommendations;
- (i) making submissions in respect of the various elements of the investigation.

(14) Participation by accredited representatives from states other than the state of registry, the state of the operator, the state of design and the state of manufacture may be limited to those matters which entitle such states to participation.

(15) When another state, conducting an investigation of an accident to an aircraft of a maximum mass above 2,250 kg, specifically requests participation by the State and the State is the state of registry, the state of the operator, the state of design or the state of manufacture, an accredited representative shall be appointed by the Minister or the Chief Inspector.

(16) The Chief Inspector shall publish a chart showing the organisational structure of the AAIU.

Access to and control of wreckage and accident site

6. An investigator in charge shall have unhampered access to any aircraft wreckage, the site on which it is located and unrestricted control over it to ensure that a detailed examination can be made, without delay, by persons who, under these Regulations, are entitled to participate in such examination.

Powers of inspectors

7. (1) Without prejudice to the generality of Regulation 6, for the purposes of the investigation of an occurrence to which these Regulations apply, or any inquiry undertaken to determine if an investigation should be undertaken, an inspector may, without delay and subject to the directions of the investigator in charge, and where appropriate, in cooperation with the authorities responsible for the identity of victims or any criminal investigation or public inquiry, do any or all of the following:

- (a) enter and inspect any place or building on or in which there are reasonable grounds for believing there is or may be found any object that, in the opinion of the inspector, should be examined;
- (b) take possession of, examine, remove, test, take measures for the preservation of, or otherwise deal with any such object found on or in such place or building, including the following:
 - (i) any aircraft, the wreckage of any aircraft or the contents of any aircraft involved in an occurrence;
 - (ii) where it appears to the inspector necessary for the investigation, any other aircraft;
 - (iii) any part of such aircraft or wreckage or any object contained therein, including any CVR, FDR or other data recorder and the contents of such recorder, and any other recordings, whether in the aircraft or wreckage or any other place;
- (c) direct that access be forbidden or restricted, or attach conditions to such access, to any person, at, or in vicinity of—
 - (i) an aircraft (including any wreckage or part), or other object, or
 - (ii) any site,

that the inspector considers, on reasonable grounds, might be relevant to the investigation of the occurrence, for such period as the inspector considers necessary, to enable a proper investigation of the occurrence to be carried out under these Regulations;

- (d) require the attendance of such persons as the inspector thinks fit, examine them and require answers to any inquiry the inspector thinks fit to make;
- (e) require any such person, or a person providing relevant information, to make and sign a declaration under the Statutory Declarations Act 1938 (No. 37 of 1938), as to the truth of any statement made by the person during the investigation;
- (f) require any person to whom a requirement is made under this paragraph, or the owner, operator or manufacturer of the aircraft or any of its components or systems, or the authorities responsible for civil aviation or airport operations, to produce any books, recordings, papers, documents and articles in his or her possession or control which the inspector considers relevant, and may retain such items for such time as they may reasonably be required;
- (g) direct a pathologist or other qualified person to conduct—
 - (i) an autopsy examination of the bodies of fatally injured persons, and
 - (ii) where applicable, an examination by way of analysis, test or otherwise of particular parts or contents of the body or of any other relevant substance or object of, or relating to, any fatally injured person,and to provide to the inspector a report on the results of any such examination, analysis or test or of any such report previously provided to a coroner;
- (h) require a person involved in the operation of the aircraft, or on the aircraft, expeditiously to be medically or otherwise examined or to give such bodily samples for forensic testing as the medical examiner may consider appropriate;
- (i) direct a medical practitioner or other person examining or who has examined a person referred to in subparagraph (h), or who has analysed or tested samples as referred to in that subparagraph, whether at the request of the inspector or otherwise, to provide the inspector with a report on the results of any such examination, analysis or test.

(2) A direction under paragraph (1)(c) may be given orally or in writing or generally to all persons by a written notice affixed on or in such a way in the

vicinity of the aircraft, wreckage, site or object so as to be clearly visible to the public or persons to whom it is directed.

Obligation to investigate

8. (1) Subject to Regulation 23, every accident and serious incident shall be the subject of a formal investigation.

(2) The Chief Inspector may take measures to investigate any incident that is not a serious incident where he or she considers that significant air safety lessons may be drawn from such an investigation.

(3) The sole objective of an investigation conducted under these Regulations shall be the prevention of future accidents and incidents. It is not the purpose of an investigation to apportion blame or liability.

(4) Investigations of accidents or serious incidents involving air transport operations shall be conducted in accordance with Annex 13.

Reporting of occurrences

9. (1) When an accident or serious incident to which these Regulations apply occurs, the pilot in command, or if he or she is incapacitated, the operator of the aircraft, shall, as soon as practicable, send notice of the accident or serious incident to the Chief Inspector at the AAIU by the most rapid practicable means available and, in the case of an accident, shall also immediately notify An Garda Síochána or, if it occurs outside the State, the appropriate local authorities.

(2) The notice referred to in paragraph (1) shall include, as far as possible—

- (a) the identifying abbreviation “ACCID”, in the case of an accident, and “INCID”, in the case of a serious incident;
- (b) the manufacturer, type, and model, and the nationality and registration marks, of the aircraft;
- (c) the name of the owner, operator and hirer, if any, of the aircraft;
- (d) the name and qualifications of the pilot in command of the aircraft and the nationality of the crew and passengers;
- (e) the date and time (indicating local time or UTC) of the accident or serious incident;
- (f) the last point of departure and point of intended landing of the aircraft;
- (g) the position of the aircraft with reference to some easily defined geographical point, and its latitude and longitude;
- (h) the number of crew and passengers on board the aircraft at the time of the accident or serious incident;
- (i) the number of persons on board the aircraft killed or seriously injured as the result of the accident;

- (j) the number of persons killed or seriously injured elsewhere than on the aircraft as the result of the accident;
- (k) the nature of the accident or serious incident and the extent of the damage to the aircraft, as far as it is known;
- (l) the physical characteristics of the accident or serious incident area;
- (m) a description of any dangerous goods carried on board the aircraft;
- (n) the identification of the person sending the notice.

(3) If all of the particulars required by paragraph (2) are not available at the time of the accident or serious incident, the notice shall contain such of the particulars as are available and a further notice containing the remaining particulars shall be furnished as soon as possible thereafter.

(4) Where an occurrence takes place, whether in or over the State or elsewhere, the owner or hirer, operator, or pilot in command of the aircraft shall, if so required by notice in writing from the investigator in charge, send to the investigator in charge within such times as may be specified in the notice, such information as is in his or her possession or control in respect of the occurrence, in such form as the investigator in charge may require.

(5) An Garda Síochána shall report to the AAIU any occurrence that has come to its notice.

Access to wreckage and removal of damaged aircraft

10. (1) Where an accident occurs in or over the State, no person other than—
- (a) a member of the emergency services,
 - (b) an inspector,
 - (c) a member of An Garda Síochána,
 - (d) an officer of Customs and Excise,
 - (e) a person authorised by the Minister,
 - (f) where a requirement or direction has been given by an inspector under Regulation 7(1), a person so required or directed, or
 - (g) when so determined by an inspector, due to the nature of the accident site, a person suitably qualified in relevant hazard awareness,

shall have access to the aircraft involved, or a site or object the subject of a direction given in pursuance of Regulation 7(1), and except as authorised by the Minister or a person so authorised by the Minister, or pursuant to a direction given by an inspector, a person shall not move or otherwise interfere with the aircraft, a part of the aircraft, the contents of the aircraft, or the site or object.

(2) Notwithstanding paragraph (1), the following shall apply:

- (a) the aircraft or any part of the aircraft may be moved or interfered with in so far as may be necessary for the purpose of extricating survivors or animals from the aircraft;
- (b) with the agreement of the AAIU, the aircraft or any part may be moved for the purposes of removing any mail carried by the aircraft, preventing destruction by fire or any other cause, or preventing any danger or obstruction to the public, air navigation or other means of transport;
- (c) goods or passengers' baggage may, if released by a person authorised under paragraph (1) as not being required as evidence, be removed from the aircraft under the supervision of a member of An Garda Síochána, but in the case of an aircraft which has come directly from a place outside the State, shall not be removed from the aircraft, or the vicinity of the aircraft, except with the consent of an officer of Customs and Excise;
- (d) the aircraft or any of its parts or contents, if lying in a position of danger to life or property or to the aircraft, part or contents, or if wrecked in water, may be moved to such extent as may be necessary for bringing it or them to a place of safety;
- (e) where it is necessary to disturb or move aircraft wreckage, or any mail or cargo in the aircraft or wreckage, the person supervising the disturbance or movement shall, whenever possible, take measures (which may include the preparation of descriptive notes, the taking of accurate measurements, the making of sketches and the taking of photographs and video recordings) to record the original scene, and the position and condition of the wreckage and of any significant impact marks.

Investigations generally

11. (1) The Chief Inspector shall ensure that the investigation is conducted in accordance with Directive 94/56/EC and Annex 13.

(2) Public notice that an investigation is taking place may be given in such manner as the Chief Inspector thinks fit and shall invite—

- (a) any witness to the occurrence to come forward, and
 - (b) any person who desires to make representations concerning the circumstances of the occurrence to do so in writing within the time specified in the notice.
- (3) The investigation shall be initiated immediately and held in private.

(4) An investigation shall include—

- (a) the gathering, recording and analysis of all relevant information on the occurrence,
- (b) where appropriate, the issuance of safety recommendations,
- (c) if possible, the determination of cause, and
- (d) where appropriate, the final report.

(5) Where it appears to an investigator in charge that in order to resolve any conflict of evidence or for any other reason it is expedient to do so, the investigator in charge may permit any person to appear before him or her and to give evidence, call witnesses and cross-examine other witnesses.

(6) At any stage of the investigation of an occurrence the Chief Inspector shall recommend to the appropriate authorities, including those in other states, any preventive action which needs to be taken promptly to prevent similar occurrences.

(7) The Chief Inspector may at any time publish, or cause to be published, information relating to an occurrence, whether or not it is the subject of an investigation by an inspector or a review board or is a public inquiry.

(8) The Chief Inspector may determine that an investigation into an occurrence shall be discontinued and in that case, no report on the investigation shall be made.

(9) An investigation into an occurrence may be discontinued once a determination has been made as to whether or not airworthiness matters were concerned in the cause of the occurrence and, where a determination is made that such matters were so concerned, the investigator in charge shall submit a report to the Chief Inspector detailing the inspector's findings in respect of those matters.

(10) On completion of a field investigation the Chief Inspector, whether or not he or she decides to proceed with a formal investigation, shall promptly submit such information as he or she considers relevant to the State's aviation authorities and, where he or she considers it appropriate in order to enhance aviation safety, to the appropriate aviation authority of any other state.

(11) If, in the course of an investigation, it becomes known or is suspected that an act of unlawful interference or criminal act was involved in the occurrence, the investigator in charge shall immediately initiate action to ensure that the aviation security authorities or the police of the states concerned are informed.

(12) Every person summoned and attending as a witness by an inspector for the purposes of these Regulations shall be allowed such expenses as would be allowed to a person attending as a witness before the High Court.

(13) The extent of an investigation shall be determined by the Chief Inspector, taking into account the lessons that the investigation may hold for the prevention of future accidents.

Draft final report

12. (1) No final report under Regulation 13 may be made to the Minister or made public until the investigator in charge has—

- (a) where it appears to him or her practicable to do so, served a draft final report on any undertaking or person, including the Minister, who is, in the inspector's opinion, likely to be adversely reflected on by findings in the draft final report or, where such person is deceased, on the person who appears to the investigator in charge to best represent the interests of the deceased person,
- (b) considered any comments which may be made to him or her in accordance with paragraph (3) by or on behalf of the persons served with such notice, and
- (c) informed in writing the undertaking or person who made the comments referred to in subparagraph (b) of the response of the investigator in charge to the comments.

(2) The draft final report shall include particulars of any proposed analysis of facts and conclusions as to the circumstances and causes of the occurrence.

(3) Any comments referred to in paragraph (1)(b) shall be in writing and served on the investigator in charge within a period of 28 days, subject to Regulation 21(8), commencing on the day of service of the draft final report under paragraph (1), or such longer period as the investigator in charge may allow (whether or not the 28 day period has expired).

(4) The investigator in charge may, after considering any comments referred to in paragraph (1)(b), amend the draft final report, or may append such comments to the final report.

(5) A copy of the final report shall be served by the Chief Inspector on any person who has been served with the draft final report.

(6) No person shall disclose or permit to be disclosed any information contained in a draft final report, without first obtaining the permission in writing of the Chief Inspector.

Final report

13. (1) Prior to completion of a formal investigation, the investigator in charge shall prepare a draft final report of the investigation in a form appropriate to the type and seriousness of the occurrence.

(2) On completion of the provisions of Regulation 12, the investigator in charge shall prepare a final report based on the draft final report.

- (3) The final report shall state that the sole objective of the investigation is the prevention of future accidents and incidents.
- (4) The final report shall include the following:
- (a) a summary of the occurrence;
 - (b) the factual information relating to the occurrence, including the history of the flight;
 - (c) the inspector's analysis of the occurrence, his or her findings and conclusions and, where possible, the determination of the causes of the occurrence;
 - (d) where appropriate, safety recommendations;
 - (e) where appropriate, details of safety measures already implemented.
- (5) On completion of a formal investigation, the Chief Inspector shall, subject to Regulation 14, submit to the Minister the final report prepared by the investigator in charge. The final report shall not reveal the identity of the individuals involved in the occurrence.
- (6) The Chief Inspector shall, as soon as practicable after submitting the final report to the Minister (and where possible within 12 months of the date of the occurrence), make the final report publicly available. Publishing the final report on the Internet shall satisfy this requirement.
- (7) If the final report cannot be made publicly available within 12 months, the Chief Inspector shall make an interim report publicly available on each anniversary of the occurrence, detailing the progress of the investigation and any safety issues raised.
- (8) The Chief Inspector should, upon request, provide other states with pertinent information additional to that made available in the ADREP Report.
- (9) The final report shall be in the format laid down in the Appendix to Annex 13 and may be adapted to the circumstances of the occurrence.
- Safety recommendations and information analysis*
14. (1) A safety recommendation shall in no case create a presumption of blame or liability for an occurrence.
- (2) The AAIU shall maintain a database of all safety recommendations issued by it. The database shall record the recipients of safety recommendations, their response to them and the current status of safety recommendation. The AAIU shall monitor the status of responses to safety recommendations and the implementation and effectiveness of the responses.
- (3) When safety recommendations arise out of an investigation or otherwise they shall be addressed in a dated transmittal letter as soon as possible to the

accident investigation authorities of any other state concerned and, when ICAO documents are involved, to ICAO.

(4) An undertaking to whom a safety recommendation has been addressed shall, without delay—

(a) take the safety recommendation into consideration, and where appropriate, act upon it,

(b) send to the Chief Inspector—

(i) full details of the measures, if any, it has taken or proposed to take to implement the safety recommendation, and in cases where it proposes to implement the safety recommendation, the timetable for achieving implementation, or

(ii) a full explanation as to why any safety recommendations are not to be implemented,

and

(c) inform the Chief Inspector of any subsequent delays in the implementation timetable supplied under paragraph (b)(i).

(5) Where the State receives safety recommendations from another state it shall inform that state within 90 days of the notification of the preventive action taken or under consideration, or the reasons why no action will be taken. The State shall monitor the progress of the action taken in response to that safety recommendation.

(6) Where the AAIU, in the analysis of information, identifies safety matters considered to be of interest to other states, it shall forward such safety information to them as soon as possible.

(7) Where the AAIU, in the analysis of information, identifies safety information considered to be of interest to other aviation users it shall promote such safety information among all users of the aviation system and facilitate the free exchange of information on actual and potential safety deficiencies.

(8) Where the State participates in foreign investigations, it may make safety recommendations, after coordinating with the state conducting the investigation.

PART 3

RE-EXAMINATION AND REVIEW

Re-examination of investigation

15. (1) Any person who has been served with a draft final report under Regulation 12 may, within a period of 28 days of receiving it, serve on the Minister written notice (in these Regulations referred to as a “notice of re-examination”) that the person wishes any findings and conclusions in that report that appear

to reflect adversely on the person's reputation or on the reputation of any person, living or dead, whose executor, administrator or other representative he or she is, to be re-examined.

(2) The notice of re-examination shall state—

- (a) the findings and conclusions that the person wishes to be re-examined,
- (b) the grounds on which the findings and conclusions in the context of the report are challenged, and
- (c) the reason why the reputation of the person concerned is likely to be adversely affected by such findings and conclusions,

and there shall be appended to the notice of re-examination a copy of any comments submitted under Regulation 12.

Review board

16. (1) Where a notice of re-examination under Regulation 15(1) has been served on the Minister and the Minister is satisfied that it is in accordance with that Regulation, he or she may appoint a review board to conduct the re-examination requested.

(2) The review board shall consist of a chairperson (who shall be either a barrister or solicitor of not less than 10 years' standing, or a person who, in the Minister's opinion, possesses aeronautical, engineering or other special knowledge or experience of air navigation or aviation), and may also include one or more persons who, in the Minister's opinion, possesses aeronautical, engineering, legal or other special knowledge, to act as technical assessors to assist the chairperson in conducting the re-examination.

(3) A re-examination by the review board shall be in private.

(4) The review board shall have all the powers of an inspector under these Regulations and the Chief Inspector shall give such assistance to it as is requested by the board.

(5) Where, at any time, the review board is satisfied that any of the findings and conclusions in the draft final report do not adversely affect the reputation of the person concerned, it may decide not to proceed further with the re-examination in respect of those findings or conclusions, but it shall not reach such a decision unless it has given the person requesting the re-examination an opportunity to make representations to it as to why the re-examination should be proceeded with.

(6) The review board shall, by notice in writing, give the person requesting the re-examination and all other persons on whom the draft final report under Regulation 12 has been served not less than 21 days' notice of the date, time and place of the re-examination.

(7) The following persons shall have the right to be heard by the review board and to give evidence, call witnesses and cross-examine any other witnesses giving evidence at the re-examination:

- (a) the person requesting the re-examination, or the representative of that person;
- (b) the inspector who made the draft final report;
- (c) any person summoned or granted leave to appear by the review board.

(8) The review board may summon, or grant leave to appear before it at a re-examination, any person who, in its opinion, may be directly affected by the re-examination or who may have information pertinent to it.

(9) Where new and relevant evidence is given at the re-examination that was not given to the investigation, the review board may, with the agreement of the Chief Inspector, discontinue the re-examination.

(10) On completion of the re-examination the chairperson of the review board shall make a report to the Minister—

- (a) containing a summary of the proceedings of the re-examination hearing, and
- (b) either confirming, dismissing or varying, in whole or in part, those findings and conclusions of the inspector's report which were the subject of the re-examination, together with its reasons therefor

and the Minister shall serve a copy of the report on all persons who appeared or were represented before it.

(11) Where a re-examination is not proceeded with or is discontinued under this Regulation, no report shall be made to the Minister by the review board.

Re-opening of investigation

17. (1) The Chief Inspector may cause any investigation to be re-opened, either generally or as to any part of the investigation, and shall do so—

- (a) in circumstances referred to in Regulation 16(9),
- (b) if new and relevant evidence is otherwise discovered, or
- (c) if for any other reason there are, in the opinion of the Minister, grounds for suspecting that a significant error has occurred.

(2) These regulations shall apply to any re-opened investigation with any necessary modifications.

(3) The Minister may direct that a re-examination (including a re-examination that has been discontinued under Regulation 16(9)) shall be reheard, either generally or as to any part thereof, if—

- (a) after completion or otherwise of the re-examination, evidence is disclosed which, in the opinion of the Minister, is both new and relevant,
 - (b) for any other reason there are, in the opinion of the Minister, grounds for suspecting that a significant error has occurred.
- (4) If the Minister directs that a re-examination be held, he or she shall also direct as to whether the original review board shall conduct the rehearing or appoint a new review board for the purpose.
- (5) A re-examination directed by the Minister to be held shall be conducted in accordance with Regulation 15.
- (6) If an investigation is reopened by the Chief Inspector or a re-examination is directed by the Minister under this Regulation and the State has conducted the investigation but did not institute it, the prior consent of the state that instituted the investigation shall be obtained.
- (7) Where an aircraft, which was missing following a search, is subsequently located, the Chief Inspector may consider re-opening the investigation.

Holding of public inquiry

18. (1) Where it appears to the Minister that it is expedient to hold a public inquiry into an occurrence, the Minister may, whether or not any other investigation under these Regulations is taking or has taken place, by order, direct a public inquiry to be held.
- (2) If the Minister directs a public inquiry to be held, any other investigation under these Regulations, or re-examination being conducted by a review board, relating to the occurrence, shall be discontinued.
- (3) Where the Minister directs a public inquiry to be held, he or she shall appoint a competent person, who shall be either a barrister or solicitor of at least 10 years standing or a person who, in the Minister's opinion, possesses aeronautical or engineering knowledge or other special knowledge or experience of air navigation or aviation, to constitute a court of inquiry (in these Regulations referred to as a "court") to hold the inquiry. The Minister may appoint not less than two persons who, in the opinion of the Minister, possess legal, aeronautical, engineering or other special knowledge or experience of air navigation, to act as technical assessors to assist the court in conducting the inquiry.
- (4) Except to the extent to which the court is of the opinion that, in the interests of justice or in the public interest, any part of the evidence or any argument relating to the evidence should be heard in private, the public inquiry shall be open to the public and, subject to this Regulation, shall be conducted in such manner and under such conditions as the court may think most effective for ascertaining the causes and circumstances of the occurrence and enabling the court to make its report under this Regulation.
- (5) Schedule 3 shall apply to and in relation to a public inquiry.

(6) The court shall make a report to the Minister stating its findings as to the probable cause of the occurrence and the circumstance thereof, and may include any observations and safety recommendations it thinks fit with a view to the preservation of life and the avoidance of similar occurrences in future.

(7) The technical assessors shall either sign the report, with or without reservations, or state in writing any dissent from the report and their reasons for the dissent, and such reservations or dissent and reasons shall be forwarded to the Minister with the report.

(8) The Minister shall, unless in his or her opinion there are good reasons for not doing so, cause any such report and reservations or dissent and reasons therefor to be made public in such manner as the Minister thinks fit.

(9) Every person summoned and attending as a witness before the court shall be allowed such expenses as would be allowed to a person attending before the High Court as a witness, and in case of dispute as to the amount to be allowed, the matter shall be referred by the court to a Taxing Master of the High Court who, on request signed by the court, shall ascertain and certify the proper amount of the expenses.

(10) The court may, in its discretion, direct that any expenses of a party be disallowed and, accordingly, those expenses shall not be recoverable by the party.

(11) The court and the technical assessors shall receive such remuneration as the Minister, with the approval of the Minister for Finance, may determine.

Rehearing of public inquiry

19. (1) The Minister may, in any case where a public inquiry has been held, direct a rehearing of the public inquiry, either generally or as to any part of the inquiry, and shall do so—

(a) if new and relevant evidence which was not produced at the inquiry has been discovered by the court or otherwise, or

(b) if for any other reason there are, in the opinion of the Minister, grounds for suspecting that a significant error has occurred.

(2) If the Minister directs an inquiry to be reheard, he or she may direct that the inquiry shall be reheard either by the person who heard it at first instance or by a different person appointed by the Minister.

(3) A rehearing under paragraph (2) shall be subject to and conducted in accordance with the provisions of these Regulations relating to the holding of public inquiries.

PART 4

MISCELLANEOUS

Disclosure of records

20. (1) The Minister, the Chief Inspector, the investigator in charge, or any other person concerned with the conduct of an investigation into an occurrence (wherever occurring) shall not make any of the following records available to any person for purposes other than such an investigation unless the High Court, on application to it, determines that the benefits resulting from disclosure of the records outweighs the adverse domestic and international impact that the disclosure may have on that or any future investigation:

- (a) statements taken from persons by the investigation authorities in the course of their investigation;
- (b) communications between persons involved in the operation of the aircraft;
- (c) medical or private information regarding persons involved in the occurrence;
- (d) CVR recording or transcript from such recordings;
- (e) recordings and transcriptions of recordings from air traffic control units;
- (f) FDR records or other data recordings or output from such recordings;
- (g) cockpit airborne image recordings and any part or transcripts from such recordings;
- (h) opinions expressed in the analysis of information, including CVR, FDR and data recorder information;
- (i) names of persons involved in the accident or incident.

(2) The records referred to in paragraph (1) shall be included in the final report or its appendices or, where any other report is concerned, only when pertinent to the analysis of the occurrence. Parts of the records not relevant to the analysis shall not be disclosed in the final report or in any other report.

International co-operation

21. (1) The Chief Inspector, as soon as practicable after receiving notice of an accident or serious incident, shall—

- (a) forward a notification of the occurrence, comprising the information detailed in Regulation 9(2), by the most rapid practicable means available, to the following:
 - (i) the state of registry, where the aircraft is not registered in the State;

- (ii) the state of the operator, where the operator is not licensed in the State;
 - (iii) the state of design, where the aircraft is not designed in the State;
 - (iv) the state of manufacture or final assembly, where the aircraft is not manufactured or assembled in the State;
 - (v) the state of occurrence, where the state of occurrence is not aware of the occurrence, and the State is the state of registry or the state of the operator;
 - (vi) ICAO, if the aircraft involved is of a maximum mass of over 2,250 kg, or is a turbojet-powered aircraft;
 - (vii) EASA;
 - (viii) the Air Safety Unit of the European Commission,
- (b) when the operator is based in the State, by the most suitable and most rapid means available, provide the state of occurrence with details of dangerous goods on board the aircraft;
- (c) where the notice of an accident or serious incident comes from another state—
- (i) acknowledge receipt of the notice,
 - (ii) provide the state of occurrence with any relevant information available to the State regarding the aircraft, flight crew and passengers involved in the accident or serious incident,
 - (iii) inform the state of occurrence whether the State intends to appoint an accredited representative, and
 - (iv) where such an accredited representative is appointed, furnish his or her name, contact details and, if applicable, expected date of arrival to the state of occurrence.

(2) When the State conducts a formal investigation or public inquiry into an accident or serious incident, the states referred to in paragraph (1)(a) and any other state which on request provides information, facilities or expertise to the investigation, shall be entitled to appoint an accredited representative and one or more advisors to the accredited representative to participate in the investigation or public inquiry.

(3) The Chief Inspector shall, within 30 days of an accident involving an aircraft of maximum mass of over 2,250 kg, send a preliminary report, as laid down in Annex 13, to the competent authorities of the states referred to in paragraph (2) and to ICAO, unless the ADREP Report has been sent by that time.

(4) The Chief Inspector shall, within 30 days of an accident involving an aircraft of maximum mass of 2,250 kg or less, or when airworthiness or matters are considered to be of interest to the other states involved, send the preliminary report, as laid down in Annex 13, to the competent authorities of the states referred to in paragraph (2).

(5) When matters directly affecting safety are involved, the preliminary report shall be sent as soon as the information is available and by the most suitable and most rapid means available.

(6) The Chief Inspector shall, when an accident occurs and the aircraft involved is an aircraft of a maximum mass of over 2,250 kg, as soon as practicable after the completion of the investigation, send the ADREP Report to ICAO, as laid down in Annex 13.

(7) Where the Chief Inspector conducts an investigation into an incident involving an aircraft of a maximum mass of over 5,700 kg, or causes such an investigation to be conducted, he or she shall, as soon as practicable after the investigation is completed, send the ADREP Report to ICAO, as laid down in Annex 13.

(8) The Chief Inspector shall send as soon as possible a copy of the draft final report to the states referred to in paragraph (1)(a), to all states that participated in the investigation, and through their competent authorities to the operator and the undertakings responsible for the type design, certification and the final assembly of the aircraft, and where the investigation was initiated by another state, to that state, inviting their significant and substantiated comments on the draft final report, and—

(a) if comments are received within 60 days, the investigator in charge shall—

(i) include the comments received in the final report, or

(ii) append the comments to the final report, or

(iii) if specifically requested by the state that provided the comments, so append the comments,

or

(b) if no comments are received within 60 days, the final report shall be submitted to the Minister and made public unless an extension of that period has been agreed with the state or states concerned.

(9) The Chief Inspector shall, as soon as practicable after the investigation, also send a copy of the final report to—

(a) all parties specified in paragraph (8), and

(b) any state—

- (i) whose citizens suffered fatal or serious injuries in the accident, or
 - (ii) that provided relevant information or significant facilities,
- (c) accredited representatives,
- (d) advisors,
- (e) experts,
- (f) the Air Safety Unit of the European Commission, and
- (g) EASA.

(10) The Chief Inspector shall, as soon as practicable after the investigation, send a copy of the final report to ICAO where—

- (a) the occurrence is an accident and the aircraft has a maximum mass of over 2,250 kg, or
- (b) the occurrence is an incident and the aircraft has a maximum mass of over 5,700 kg.

(11) The Minister may delegate all or part of the investigation of an accident or serious incident to the competent authority of another state or a regional accident investigation organisation by mutual agreement and consent. When part of an investigation is delegated to another state or a regional accident investigation organisation, and the State is the state of occurrence, the State shall retain responsibility for the conduct of the investigation.

(12) If an investigation is delegated under paragraph (11), the State shall use every means to facilitate it and preserve evidence pertinent to it.

(13) If, in the opinion of the Chief Inspector, it is expedient to do so, the Chief Inspector may request the assistance of undertakings from other states to supply—

- (a) installations, facilities and equipment for—
 - (i) the technical investigation of wreckage and aircraft equipment and other objects relevant to the investigation,
 - (ii) the evaluation of information from flight or data recorders, and
 - (iii) the computer storage and evaluation of air accident data,or
- (b) accident investigation experts to undertake specific tasks, but only when an investigation is opened following an accident that, in the opinion of the Chief Inspector, is a major accident.

(14) The Minister shall, as far as possible, facilitate requests from other states for relevant information and technical assistance. When available, such assistance shall, as far as possible, be free of charge to Member States.

(15) The Minister shall not circulate, publish or give access to a draft final report or any part of such a report, or any documents obtained during an investigation of an occurrence to which this Regulation applies, without the express consent of the state that conducted the investigation, unless the report or document has already been published or released by that state.

(16) Any state that has, by virtue of fatal or serious injuries to its citizens, a special interest in an accident being investigated by the State, shall, upon making a request to do so, be permitted to appoint an expert who shall be entitled to—

- (a) visit the scene of the accident,
- (b) access to factual information that is approved for public release by the investigator in charge and information on the progress of the investigation.
- (c) participate in the identification of victims,
- (d) assist in meetings with surviving passengers who are citizens of the state concerned, and
- (e) receive a copy of the final report.

(17) If an occurrence takes place in the State and the State receives from the state of registry, the state of the operator, the state of design or the state of manufacture a request that the aircraft, its contents and any evidence remain undisturbed pending inspection by the accredited representative of the requesting state, the State shall take all necessary steps to comply with the request, so far as this is reasonably practicable and compatible with the proper conduct of the investigation, provided that the aircraft may be moved to the extent necessary to extricate persons, animals, mail and valuables, to prevent destruction by fire or other causes, or to eliminate any danger or obstruction to air navigation, other transport or the public, and provided that it does not result in undue delay in returning the aircraft to service where this is practicable.

(18) When any, or all, of the state of registry, the state of operator, the state of design or the state of manufacture do not appoint accredited representatives, the Chief Inspector shall invite the operator and the undertakings responsible for the type design and the final assembly of the aircraft to appoint advisors to assist the investigation.

(19) When an entire investigation is delegated to the State by another state, the State shall be responsible for the conduct of the investigation, including the issuance of the final report and the ADREP report.

(20) Where safety recommendations result from sources other than accident and incident investigations, but including safety studies, and such safety recommendations are addressed to an undertaking in another state, they shall also be transmitted to that state's investigation authority.

Accident or serious incident outside State

22. (1) When an accident or serious incident occurs in the jurisdiction of another state to an aircraft registered in the State, or to an aircraft operated by the holder of an Air Operator's Certificate issued in the State, and the state of occurrence delegates the whole or any part of the conduct of the investigation of the accident or serious incident to the State, the Chief Inspector shall cause the investigation to be conducted in accordance with these Regulations.

(2) If an accident or serious incident occurs in the jurisdiction of another state to an aircraft—

- (a) registered in the State,
- (b) operated by an operator licensed in the State, or
- (c) designed or manufactured or in respect of which any of the significant components of which were designed or manufactured in the State,

or if the State—

- (i) provides information, CVR data, FDR data, facilities or experts, on request, to the state conducting the investigation into the accident or serious incident,
- (ii) has a special interest in the occurrence by virtue of fatal or serious injuries to its citizens, or
- (iii) provides pertinent information on any undertaking whose activities may have directly or indirectly influenced the operation of the aircraft,

the Chief Inspector shall appoint an accredited representative to the investigation and may also appoint one or more advisors or experts to assist the accredited representative. When an accredited representative is appointed, the Chief Inspector shall advise the state of occurrence of his or her name, contact details, and expected date of arrival, if the accredited representative is travelling. One or more advisors, proposed by the operator, shall be appointed by the Chief Inspector to assist the accredited representative.

(3) Where the State is requested by another state to appoint an accredited representative, the Chief Inspector shall do so and also provide all relevant information, as far as the State is able, in response to a request from such a state.

(4) If—

- (a) an accident or serious incident occurs in international waters, and

(b) the State is the nearest state to it

the Minister shall, in accordance with Regulations 21, respond to requests for assistance from the state of registry, as far as the State is able. However, the Minister may delegate the whole or any part of the investigation to another state by mutual arrangement and consent.

(5) If—

(a) an accident or serious incident occurs in international waters,

(b) the state of registry is a non-contracting state that does not intend to conduct an investigation in accordance with Annex 13, and

(c) the State is the state of operator, state of design or state of manufacture

the Minister shall endeavour to institute and conduct an investigation. However, the Minister may delegate the whole or any part of the investigation to another state by mutual arrangement and consent.

(6) When an aircraft is involved in an accident or a serious incident in another state and subsequently lands in the State, the State shall, where possible, on request from the state conducting the investigation, furnish the latter state with the CVR and FDR data and, if necessary, the associated recorders, where the requesting state requires these items for the sole purpose of assisting an investigation that is conducted in accordance with the provisions of Annex 13.

(7) Where the State participates in an investigation conducted by another state, it shall not circulate, publish or give access to a draft final report or any part thereof, or any documents obtained during the investigation, without the express consent of the state conducting the investigation, unless such reports or documents have already been published or released by that state.

(8) If the AAIU, in the analysis of the information contained in its database, identifies safety matters considered to be of interest to other states, it shall forward such safety information to them as soon as possible.

(9) When the facilities or services located in the State have been, or would normally have been, used by an aircraft prior to an occurrence, and these facilities or services have information pertinent to the investigation, the State shall provide such information to the state conducting the investigation.

(10) The State, on request from a state conducting the investigation of an occurrence, shall provide pertinent information on any organisation located within the State whose activities may have directly or indirectly influenced the operation of the aircraft.

(11) If the location of an accident or serious incident cannot be definitely established as having occurred in the territory of any other state, and the aircraft

is registered in the State, it shall be notified and investigated under these Regulations, unless the investigation is delegated under Regulations 21(11).

(12) If the location of an accident or serious incident occurred in the territory of a non-contracting state that does not intend to conduct an investigation in accordance with Annex 13, and the aircraft is registered in the State, the State shall—

- (a) endeavour to institute and conduct an investigation in cooperation with the state of occurrence, but failing such cooperation, shall conduct an investigation under these Regulations, and
- (b) forward notification of the occurrence in accordance with Regulation 21(1).

Occurrences involving State aircraft and foreign state aircraft

23. (1) Where a foreign state aircraft is involved in an occurrence in the State these Regulations shall apply.

(2) Where an occurrence in the State or in international airspace involves only State aircraft, the Minister and the Minister for Defence may jointly direct that the occurrence shall be treated as an occurrence to which these Regulations apply and these Regulations, with any necessary modifications, shall apply accordingly.

(3) Where—

- (a) an accident or serious incident involving a State aircraft occurs in another state and that state does not provide for an investigation conducted by an independent civilian accident investigation body in accordance with Annex 13, or
- (b) an accident or serious incident occurs in another state involving—
 - (i) an aircraft registered or operated in the State, and
 - (ii) a foreign state aircraft or facility,

and that state does not provide for an investigation conducted by an independent civilian accident investigation body in accordance with Annex 13,

the Minister may direct that the accident or serious incident shall be treated as an accident or serious incident to which these Regulations apply and these Regulations, with any necessary modifications, shall apply accordingly.

(4) If it appears to the investigator in charge that an investigation to which paragraph (1), (2) or (3) applies, has been completed but for the investigation of matters affecting the discipline or the internal administration of the operator of the state aircraft or facility which are more appropriate for the investigation by some other person or body, the investigation may be treated for the purposes

of these Regulations as if it had been completed without such matters being investigated under these Regulations. In such a case the report of the investigation into the occurrence shall state those matters which the investigation did not deal with by reason of this paragraph.

Disposal of aircraft or aircraft wreckage

24. (1) Aircraft or aircraft wreckage preserved by an inspector pursuant to Regulation 7(1) for the purpose of investigation or public inquiry may be disposed of to its rightful owners, or their authorised representatives, on completion of the associated proceedings, or at such time as is considered appropriate by the inspector. For this purpose the investigator in charge may facilitate access to the aircraft, its contents or any parts thereof. If the aircraft, its contents, or any parts thereof lie in an area within which the investigator in charge finds it impracticable to grant such access, he or she shall, where possible, effect removal to a point where access can be given.

(2) In cases where the investigation is unable to determine its rightful owners, the investigation shall release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required in the investigation, to any person or persons duly designated by the state of registry or the state of the operator, as applicable.

Disposal of records

25. The Minister or an inspector shall not be required to hold aircraft records, factual information concerning an occurrence, including photographs, witness statements or documentation pertaining to the occurrence, its circumstances, the aircraft or personnel involved in the occurrence beyond such time as is necessary for the completion of the associated investigation or public inquiry and any related statutory reports.

Database

26. (1) The AAIU shall maintain a database of accidents, serious incidents and incidents where these are investigated, using the ECCAIRS Database and Reporting System in accordance with the provisions of Article 6(3) of Directive 2003/42/EC, as part of the State safety programme. The sole purpose of this database shall be to facilitate the effective analysis of information on actual or potential safety deficiencies and to determine any preventive actions required.

(2) The AAIU shall provide the IAA with disidentified data of completed investigations involving—

- (a) accidents and serious incidents, and
- (b) incidents where these are investigated,

to assist in the completion of the national occurrence repository maintained by the IAA in accordance with Commission Regulation (EC) No. 1321/2007 of 12 November 2007 and Commission Regulation (EC) No. 1330/2007 of 24 September 2007⁴.

⁴ OJ No. L295, 14.11.2007, p. 7.

(3) If the AAIU, in the analysis of the information contained in its database, identifies safety matters considered to be of interest to other states, it shall forward such safety information to them as soon as possible.

(4) The AAIU shall promote the establishment of safety information sharing networks among all users of the aviation system and facilitate the free exchange of information on actual and potential safety deficiencies. The database shall be maintained in accordance with the Commission Regulations referred to in this Regulation and protocols and procedures associated with ECCAIRS.

(5) The AAIU shall use ECCAIRS to meet the requirements of the ADREP reporting system.

General

27. (1) A person shall not obstruct or impede the court, an inspector, a technical assessor or any person acting under the authority of the Minister, in the performance of his or her functions under these Regulations.

(2) Subject to Regulation 11(12), every person summoned under these Regulations as a witness or required under these Regulations to give evidence or produce documents or any other object may be allowed such expenses as the Minister, with the approval of the Minister for Finance, may determine.

(3) A person shall not, without reasonable excuse (proof of which shall lie on the person) fail to comply with any requirement or direction under these Regulations.

(4) If a person objects to answering a question asked of him or her as a witness at an investigation or public inquiry on the grounds that the answer might tend to incriminate that person or make the person liable to a penalty, and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against that person, other than proceedings against him or her in respect of the falsity of the answer, or failure to answer the question.

Revocation of Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations 1997

28. (1) The Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations 1997 (S.I. No 205 of 1997) are revoked.

(2) The revocation by paragraph (1) shall not affect any investigation or public inquiry commenced under those Regulations and any such investigation or public inquiry may be continued and completed as if these Regulations had not been made.

SCHEDULE 1

EXAMPLES OF SERIOUS INCIDENTS

The incidents specified below are typical examples of serious incidents. These examples are not exhaustive and only serve as a guide to the definition of “serious incident”:

- (a) near collisions requiring an avoidance manoeuvre to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate;
- (b) controlled flight into terrain only marginally avoided;
- (c) aborted take-offs on a closed, engaged or unassigned runway, or from a taxiway (but excluding authorised operations by helicopters);
- (d) take-offs from a closed, engaged or unassigned runway, or from a taxiway (but excluding authorised operations by helicopters);
- (e) landings or attempted landings on a closed, engaged or unassigned runway, or on a taxiway (but excluding authorised operations by helicopters);
- (f) gross failures to achieve predicted performance during take-off or initial climb;
- (g) fires and smoke in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents;
- (h) vents requiring the emergency use of oxygen by the flight crew;
- (i) aircraft structural failures or engine disintegrations not classified as an accident;
- (j) multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft;
- (k) flight crew incapacitation in flight;
- (l) fuel quantity requiring the declaration of an emergency by the pilot;
- (m) runaway incursions classified as security A, in accordance with the severity classifications defined in the ICAO Manual on the Prevention of Runaway Incursions (DOC 9870);
- (n) take-off or landing incidents, such as undershooting, overrunning or running off the side of runways;

- (o) system failures, weather phenomena, operations outside the approved flight envelope or other occurrences, which could have caused difficulties controlling the aircraft;
- (p) failures of more than one system in a redundancy system mandatory for flight guidance and navigation.

SCHEDULE 2

THE EXAMPLES BELOW SERVE AS GUIDANCE FOR THE DETERMINATION OF AIRCRAFT DAMAGE:

- (a) if an engine separates from an aircraft, the event is categorised as an accident even if damage is confined to the engine;
- (b) a loss of engine cowls (fan or core) or reverser components, which does not result in further damage to the aircraft, is not considered an accident;
- (c) occurrences where compressor or turbine blades, or other engine internal components, are ejected through the engine tail pipe are not considered an accident;
- (d) a collapsed, or missing radome is not considered an accident, unless there is related substantial damage in other structures or systems;
- (e) missing flap, slat and other lift augmenting devices, including winglets, that are permitted for dispatch under the Minimum Equipment List (MEL) or Configuration Deviation List (CDL) are not considered to be an accident;
- (f) retraction of a landing gear leg, or wheels up landing, resulting in skin abrasion only — if the aircraft can be safely dispatched after minor repairs, or patching, and subsequently undergoes more extensive work to effect a permanent repair, then the occurrence would not be classified as an accident;
- (g) if the damage is such that the aircraft depressurises, or cannot be pressurised, the occurrence is categorised as an accident;
- (h) the removal of components for inspection following an occurrence, such as the precautionary removal of an undercarriage leg following a low speed runway excursion, while involving considerable work, is not considered an accident unless significant damage is found;
- (i) occurrences that involve an emergency evacuation are not counted as an accident unless someone receives serious injuries, or the aircraft has otherwise sustained sufficient damage.

Note 1 — Regarding aircraft damage which adversely affects the structural strength, performance or flight characteristics, the aircraft may have landed safely, but cannot be safely dispatched on a further sector without repair.

Note 2 — If the aircraft can be safely dispatched after minor repairs, e.g. patching a tail strike, and subsequently undergoes more extensive work to effect a permanent repair, then the occurrence would not be classified as an

accident. Likewise, if the aircraft can be dispatched under the MEL or CDL with the affected component removed, missing or inoperative, the repair would not be considered as a major repair and consequently the occurrence would not be considered an accident.

Note 3 — The cost of repairs, or estimated loss, such as provided by insurance undertakings may provide an indication of the damage sustained, but should not be used as the sole guide as to whether the damage is sufficient to count the occurrence as an accident. Likewise, an aircraft may be considered a “hull loss” because it is uneconomic to repair, without it having incurred sufficient damage to be classified as an accident.

SCHEDULE 3

PROCEDURES OF PUBLIC INQUIRY

1. The court shall have, for the purpose of the public inquiry, all the powers of a court of summary jurisdiction, and without prejudice to those powers, may—
 - (a) enter and inspect, or authorise any person to enter and inspect, any place or building the entry or inspection of which appears to it to be required for the purposes of the inquiry,
 - (b) by summons, require the attendance as witnesses of all such persons as it thinks fit to call and examine, and require such persons to answer any question or furnish any information or produce any books, papers, articles and documents which it may consider relevant,
 - (c) administer an oath to any such person, or require any witness to make and sign a declaration of the truth of the statements made by him or her in his or her examination.
2. The technical assessors shall have the like powers of entry and inspection as are conferred by these Regulations on the court.
3. Where the Minister directs a public inquiry to be held, the Minister shall remit the case to the Attorney General and thereafter the preparation and presentation of the case shall be conducted by the Chief State Solicitor under the direction of the Attorney General.
4. The Chief Inspector shall give such assistance as the court and the Attorney General may require, and shall, for that purpose but subject to the direction of the court, have all the powers conferred by Regulation 7 on an inspector.
5. The Minister may appoint an inspector to assist the court and the Attorney General in the conduct of an inquiry and any inspector so appointed shall, for that purpose subject to the directions of the court, have all the powers conferred by Regulation 7 on an inspector in relation to an investigation.
6. Where a public inquiry has been ordered, the Attorney General may cause a notice (in this Schedule referred to as a “notice of inquiry”) to be served on the owner, operator, hirer and pilot in command of the aircraft concerned and on any other person who, in the Attorney General’s opinion, ought to be served with such notice.
7. (a) The Attorney General and all persons on whom a notice of inquiry has been served shall be deemed to be parties to the proceedings.
 - (b) Any other person, including the Minister, may seek the leave of the court to become a party to the proceedings, and on the granting of such leave, become a party to the proceedings.

8. (a) At any time before the date appointed for holding a public inquiry, the court may hold a preliminary meeting at which any directions may be given or any preliminary or interlocutory order as to the procedure may be made.

(b) Any person intending to make an application to the court at a preliminary meeting shall give notice of the application to the Chief State Solicitor.

9. A public inquiry shall be conducted in such a manner that, if a charge in relation to the occurrence is laid or is likely to be laid against any person, that person shall have the opportunity of making a defence. Where a charge could have been laid against a person who is dead, that person's executor, administrator or other representative shall have that opportunity.

10. The proceedings of the public inquiry shall commence with the submission on behalf of the Attorney General of the questions which, on the information then in the Attorney General's possession, he or she intends to raise on the conclusion of evidence, and shall be followed by the production of the evidence and examination of the witnesses produced by the Attorney General. These witnesses, after being examined on behalf of the Attorney General, may be cross-examined by the parties in such order as the court may direct, and may then be re-examined on behalf of the Attorney General.

11. When the examination of the witnesses produced by the Attorney General has concluded, the Attorney General shall state the questions in reference to the occurrence on which the opinion of the court is requested. The court may make such modification in or omissions from the questions so stated and put such additional questions as it thinks fit.

12. Hearsay evidence of conversations held with members of the crew who were fatally injured in the occurrence may be admitted as evidence at the discretion of the court.

13. The court may conduct the inquiry in such manner as it thinks fit without being bound by rules of evidence.

14. The data records from CVR, FDR and other recorders may be admitted as evidence.

15. (a) Each party to the proceedings shall be entitled to address the court and produce witnesses or recall any of the witnesses who have already been examined for further examination and generally adduce evidence.

(b) The parties shall be heard and their witnesses examined, cross-examined and re-examined in such order as the court may direct.

(c) Further witnesses may also be produced and examined on behalf of the Attorney General and may be cross-examined by the parties and re-examined on behalf of the Attorney General.

- (d) Every witness produced by any party may be cross examined on behalf of the Attorney General and by permission of the court every witness produced by the Attorney General may be cross-examined on behalf of the Attorney General as if that witness had originally been produced by another party.

16. When the evidence in relation to the question for the opinion of the court has concluded, any of the parties who desire so to do may address the court on the evidence and the court may be addressed in reply on the case in its entirety on behalf of the Attorney General.

17. The court may adjourn the inquiry from time to time and from place to place, and where an adjournment is asked for by a party to the inquiry, the court may impose such terms as to payment of costs or otherwise as it thinks fit as a condition of granting the adjournment.

18. Any notice, summons or other document issued under this Schedule may be served by sending it by registered post to the last known address of the person to be served.

19. The service of any notice, summons or other document may be proved by the oath or affidavit of the person by whom it was served.



GIVEN under my Official Seal,
26 November 2009.

NOEL DEMPSEY,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations give effect to changes to Annex 13 (International Standards and Recommended Practices for Aircraft Accident and Incident Investigation) of the Chicago Convention, and also give effect to the relevant provisions of EU Directives and Regulations relating to accident investigation and maintenance of an accident and serious incident database.

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