

2005 No. 2693

CIVIL AVIATION

**The Civil Aviation (Investigation of Military Air Accidents at
Civil Aerodromes) Regulations 2005**

Made - - - - - *26th September 2005*

Coming into force - - - - - *1st November 2005*

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The Secretary of State for Transport, in exercise of the powers conferred upon him by sections 75 and 102(1) and (2) of, and paragraphs 4 and 6 of Part III of Schedule 13 to, the Civil Aviation Act 1982(a) and Article 2 of the Civil Aviation Act (Application to Crown Aircraft) Order 1959(b), hereby makes the following Regulations:

(a) 1982. c.16.
(b) S.I. 1959/1309

Citation and commencement

1. These Regulations may be cited as the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005 and shall come into force on 1st November 2005.

Interpretation

2.—(1) “accident” means an occurrence associated with the operation of a military aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which:

- (a) a person suffers a fatal or serious injury as a result of:
 - (i) being in or upon 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 engine failure or damage when the damage is limited to the engine, its cowlings or accessories; or for damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin.

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

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

“the Annex” means Annex 13 to the Chicago Convention as amended^(a);

“Chief Inspector” means the Chief Inspector of Air Accidents appointed under regulation 8 of the Civil Regulations;

“civil aerodrome” means an aerodrome used wholly or mainly for the purposes of civil aviation;

“Civil Regulations” means the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996^(b);

“commander” in relation to a military aircraft means the person who is for the time being in command of the aircraft;

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

“the Directive” means Council Directive 94/56/EC of 21st November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents^(c);

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

“flight recorder” means any type of recorder installed in the aircraft for the purposes of facilitating accident investigation;

(a) The ninth edition of Annex 13 to the Convention dated 1st July 2001 is published by the International Civil Aviation Organisation, Montreal, Canada.

(b) S.I. 1996/2798.

(c) OJ No. L319, 12.2.94, p.14; a correction to Article 12 which incorrectly states that the implementation date is 21st November 1994 (the correct date is 21st November 1996), has been published in OJ No. L191, 12.8.95, p.39.

“Inspector” means a person appointed as an Inspector of Air Accidents under regulation 8 of the Civil Regulations;

“investigation” means a process conducted for the purposes of accident prevention which includes the gathering and analysis of information, the drawing of conclusions including the determination of the cause or causes and, when appropriate, the making of safety recommendations;

“investigating Inspector” means an Inspector carrying out an investigation pursuant to these Regulations;

“operator” in relation to an aircraft means any person, body or undertaking operating or proposing to operate one or more aircraft;

“owner” means, in relation to an aircraft, the registered owner;

“police officer” means any person who is a member of a police force or of the Police Service of Northern Ireland (including for the avoidance of doubt, the Police Service of Northern Ireland Reserve) and any special constable;

“safety recommendation” means any proposal by an investigating Inspector made with the intention of preventing accidents;

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

- (a) requires hospitalisation for more than 48 hours, commencing within 7 days from the date the injury was received;
- (b) results in the fracture of any bone (except simple fractures of fingers, toes or nose);
- (c) involves lacerations which cause 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 substances or harmful radiation;

and “seriously injured” shall be construed accordingly;

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

“State of Manufacture” means the State having jurisdiction over the organisation 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; and

“undertaking” means any natural person, any legal person, whether profit making or not, or any official body whether having its own legal personality or not.

(2) Any notice or other document required or authorised by any provision of these Regulations to be served on or given to any person may be served or given—

- (a) by delivering it to that person;
- (b) by leaving it at his usual last-known residence or place of business, whether in the United Kingdom or elsewhere;
- (c) by sending it to him by post at that address;
- (d) by sending it to him at that address by telex, by facsimile transmission, by electronic communication, or other similar 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.

(3) An aircraft shall be treated for the purpose of these Regulations as being a military aircraft if—

- (a) it is an aircraft in the ownership of any of Her Majesty’s naval, military or air forces, or

- (b) not being such an aircraft in sub-paragraph (a), it is an aircraft in the ownership of any of the naval, military or air forces of any other State, or
- (c) the Secretary of State for Defence certifies that by reason of the circumstances affecting the aircraft, it is to be treated for the purposes of these Regulations as being a military aircraft.

(4) References in these Regulations to the Secretaries of State are to the Secretary of State for Transport and the Secretary of State for Defence acting jointly.

Application

3.—(1) Where a military aircraft is involved in an accident arising out of or in the course of air navigation occurring in or over the United Kingdom and the Secretaries of State are of the opinion that the accident occurred or may have occurred—

- (a) while the aircraft was on, or in the course of taking off from or landing on, a civil aerodrome, or
- (b) in such circumstances that the Secretaries of State, are or may be concerned or interested in its circumstances or causes,

they may, save where the accident is one to which the Civil Regulations apply, direct that the accident shall be treated as an accident to which these Regulations apply.

(2) Public notice of any direction made under this regulation shall be given in such manner as the Secretaries of State may think fit.

(3) References in these Regulations to an accident to which these Regulations apply are references to an accident in respect of which a direction has been given under this regulation.

Purpose of the investigation of accidents

4. The sole objective of the investigation of an accident to which these Regulations apply shall be the prevention of accidents. It shall not be the purpose of such an investigation to apportion blame or liability.

Duty to furnish information relating to accidents

5.—(1) Where a military aircraft is involved in an accident to which these Regulations apply and the accident occurs on or adjacent to a civil aerodrome, the aerodrome authority shall—

- (a) give notice as soon as possible to the Chief Inspector by the quickest means of communication available, and
- (b) notify forthwith a police officer for the area where the accident occurred of the accident and the place where it occurred.

(2) The notice to the Chief Inspector referred to in paragraph (1) shall contain as much of the following information as is available—

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

- (ii) passengers on board the aircraft at the time of the accident and the number of them killed or seriously injured as a result of the accident;
- (iii) other persons killed or seriously injured as a result of the accident;
- (i) the nature of the accident and the extent of the damage to the aircraft and property as far as is known;
- (j) the nature of any air cargo, munitions or other dangerous or potentially hazardous items carried on the aircraft.

Publication

6. Subject to regulation 12, the Chief Inspector may at any time publish, or cause to be published, information relating to an accident to which these Regulations apply.

Removal of damaged aircraft

7.—(1) Subject to paragraph (2) and regulation 9, where an accident occurs to which these Regulations apply—

- (a) no person other than an authorised person shall have access to the aircraft involved, and
- (b) neither the aircraft nor its contents shall, except under the authority of the Secretary of State for Transport or the Secretary of State for Defence, be removed or otherwise interfered with.

(2) Subject to the provisions of section 21(4), (4A) and (5) of the Customs and Excise Management Act 1979(a)—

- (a) the aircraft may be removed or interfered with so far as may be necessary for the purposes of saving human life or for the removal of any immediate hazard to human life;
- (b) if the aircraft is wrecked on water, the aircraft or any of its contents may be removed to such extent as may be necessary for bringing it or them to a place of safety.

(3) In this regulation the expression “authorised person” means—

- (a) any person authorised by the Secretary of State for Transport or the Secretary of State for Defence either generally or specially to have access to any military aircraft involved in an accident;
- (b) any police officer;
- (c) any officer of Customs and Excise.

Inspectors of Air Accidents

8.—(1) The Chief Inspector shall determine whether or not an investigation shall be carried out into any accident to which these Regulations apply and he himself may carry out or cause an Inspector to carry out an investigation of any such accident.

(2) Without prejudice to the power of an Inspector to seek such advice or assistance as he may deem necessary in making an investigation, the Secretary of State for Transport may at the request of the Chief Inspector—

- (a) appoint persons to assist an Inspector in a particular investigation; and
- (b) such persons shall for the purpose of so doing have such of the powers of an Inspector under these Regulations as may be specified in their appointment.

(3) The Chief Inspector may authorise that any of his powers and obligations under these Regulations shall be performed on his behalf by an Inspector designated by him to be his deputy.

(a) 1979 c.2. Section 21(4A) was inserted by regulation 6(5) of the Customs Control on Importation of Goods Regulations 1991 (S.I. 1991/2724).

(4) In any case where the Chief Inspector causes more than one Inspector to carry out an investigation he shall nominate one of them to be in overall charge of the investigation.

Powers of Inspectors

9.—(1) For the purposes of enabling him to carry out an investigation into an accident to which these Regulations apply in the most efficient way and within the shortest time, an investigating Inspector is hereby authorised to—

- (a) have immediate free access to the site of the accident as well as to the aircraft, its contents or wreckage;
- (b) ensure an immediate listing of evidence and controlled removal of debris or components for examination or analysis purposes;
- (c) have immediate access to and use of the contents of the flight recorders and any other recordings;
- (d) have access to the results of examinations of the bodies of victims or of tests made upon samples taken from the bodies of the victims;
- (e) have access to the results of examinations of the people involved in the operation of the aircraft or of the tests made on samples taken from such people;
- (f) examine witnesses; and
- (g) have free access to any relevant information or records held by the owner, the operator or the manufacturer of the aircraft and by the authorities responsible for civil and military aviation or aerodrome operation.

(2) For the purposes of paragraph (1) above an inspecting Investigator shall have power —

- (a) by summons under his hand—
 - (i) to call before him and examine all such persons as he thinks fit;
 - (ii) to require such persons to answer any question or furnish any information or produce any books, papers, documents and articles which he may consider relevant; and
 - (iii) to retain any such books, papers, documents and articles until the completion of the investigation;
- (b) to take such 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) on production if required of his credentials, to enter and inspect any place, building or aircraft if it appears to him to be necessary for the purposes of the investigation;
- (d) on production if required of his credentials, to remove, test, take measures for the preservation of or otherwise deal with any aircraft or any part of such aircraft or anything carried thereon other than an aircraft involved in the accident where it appears to him necessary for the purposes of the investigation; and
- (e) to take such measures for the preservation of evidence as he considers appropriate.

(3) Every person summoned by an investigating Inspector under paragraph 2(a) shall be allowed such expenses as the Secretaries of State may determine.

Form and conduct of investigations

10.—(1) The extent of investigations and the procedure to be followed in carrying out investigations authorised under these Regulations shall be determined by the Chief Inspector taking account of the purpose described in regulation 4 and the lessons he expects to draw from the accident for the improvement of safety.

(2) The Chief Inspector shall notify the Secretaries of State in writing of his decision to proceed or not proceed with an investigation into an air accident to which these Regulations apply.

Inspector's report

11.—(1) On completion of an investigation into an accident to which these Regulations apply, the investigating Inspector shall prepare a report of the investigation in a form appropriate to the type and seriousness of the accident.

(2) If it appears to the investigating Inspector that the investigation of an accident to which these Regulations apply has been completed but for the investigation of matters affecting the discipline or internal administration of—

- (a) Her Majesty's naval, military or air forces; or
- (b) the naval, military or air forces of any other State

which are more appropriate for the investigation by some other person or body, the investigation may be treated for the purposes of paragraph (1) as if it had been completed without such matters being investigated under these Regulations.

(3) In a case covered by paragraph (2) the report of the investigation into the accident shall state those matters to which the investigation has not extended by reason of that paragraph.

(4) The report of an investigation into an accident to which these Regulations apply shall state the sole objective of the investigation as described in regulation 4 and contain, where appropriate, safety recommendations.

(5) A safety recommendation shall in no case create a presumption of blame or liability for an accident.

(6) The Chief Inspector shall submit a copy of every report prepared pursuant to paragraph (1) to the Secretaries of State without delay.

(7) In this regulation and regulation 12, the expression "investigating Inspector" in a case where more than one Inspector is carrying out the task of investigation means the Inspector nominated by the Chief Inspector to be in overall charge of the investigation, and that person shall not be the Chief Inspector.

Notice of Inspector's report and representations thereon

12.—(1) No report which is required by regulation 13 to be published shall be published if, in the investigating Inspector's opinion, it is likely to adversely affect the reputation of any person, until he has—

- (a) where it appears to him to be practicable so to do, served a notice under this regulation upon that person, or if that person is a deceased individual, upon the person who appears to him, at the time he proposes to serve the notice pursuant to this paragraph, to represent best the interest of the deceased in the matter, and
- (b) made such changes to the report as he thinks fit following his consideration of any representations made to him in accordance with paragraph (3) by or on behalf of the person served with such notice.

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

(3) Any representations made pursuant to paragraph (1)(b) shall be in writing and shall, subject to paragraph (6), be served on the investigating Inspector within 28 days of service of the notice referred to in paragraph (1)(a).

(4) A copy of the report submitted to the Secretaries of State under regulation 11(6) shall be served by the investigating Inspector on any person who has been served with a notice pursuant to paragraph (1).

(5) No person shall disclose or permit to be disclosed any information contained in a notice or report served on him pursuant to paragraphs (1) or (4) to any other person without the prior consent in writing of the Chief Inspector.

(6) The Chief Inspector shall have power to extend the period of 28 days prescribed in paragraph (3) and this power shall be exercisable notwithstanding that that period has expired.

Publication of reports

13. Subject to regulation 12(1), the Chief Inspector shall cause the report of an investigation to be made public in the shortest time possible (and, if possible, within 12 months of the date of the accident) and in such manner as he thinks fit.

Safety recommendations

14.—(1) The Chief Inspector shall cause the report referred to in regulation 13, including the safety recommendations contained therein, to be communicated to the undertakings or national aviation authorities concerned in the accident.

(2) Any undertaking or authority to which a safety recommendation is communicated pursuant to paragraph (1) shall, without delay—

- (a) take that recommendation into consideration and, where appropriate, act upon it;
- (b) send to the Secretaries of State—
 - (i) full details of the measures, if any, it has taken to or proposes to take to implement the recommendation and, in the case where it proposes to implement measures, the timetable for securing that implementation; or
 - (ii) a full explanation as to why the recommendation is not to be the subject of the measures taken to implement it; and
- (c) give notice to the Secretaries of State if at any time any information provided to the Secretaries of State in accordance with paragraph (2)(b)(i) concerning the measures it proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.

Reopening of investigation

15.—(1) The Chief Inspector may cause the investigation of any accident to which these Regulations apply to be re-opened and shall do so—

- (a) if, after the completion of the investigation, 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 the reputation of any person has been unfairly and adversely affected.

(2) Without prejudice to regulation 19(3) any investigation re-opened shall be subject to and conducted in accordance with the provisions of these regulations.

Accredited representatives

16.—(1) Where an investigation of an accident is being carried out by an investigating Inspector pursuant to regulation 8, an accredited representative appointed by—

- (a) the State of Registry;
- (b) the State of Design;
- (c) the State of Manufacture;
- (d) the State of the operator;
- (e) any other State which has, on request, furnished information, facilities or experts to the investigating Inspector in connection with the accident;

may take part in the investigation.

(2) For the purposes of paragraph (1) an accredited representative shall be permitted to—

- (a) visit the scene of the accident;

- (b) examine the wreckage;
- (c) question witnesses;
- (d) receive copies of all pertinent documents (saving all just exceptions as may be determined by the investigating Inspector);
- (e) have access to all relevant evidence and make submissions; and
- (f) be accompanied by such technical and other advisers as may be considered necessary by the authorities of the State by which he is appointed.

(3) In this regulation the expression “investigating Inspector” in a case where more than one Inspector is carrying out the task of investigation means the Inspector nominated under regulation 8(4).

Obstruction of investigation

17.—(1) No person shall obstruct or impede any investigating Inspector or any person acting under the authority of the Secretaries of State in the exercise of any powers under these Regulations.

(2) No person shall 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 of an investigating Inspector.

Disclosure of relevant records

18.—(1) Subject to paragraphs (2) and (4) to (6) no relevant record shall be made available by the Secretaries of State to any person for purposes other than accident investigation.

(2) Nothing in paragraph (1) shall preclude a person making a relevant record available to any other person where—

- (a) in a case where the other person is a party to or otherwise entitled to appear at judicial proceedings, the relevant court has ordered that the relevant record shall be made available to him for the purposes of those proceedings, or
- (b) in any other circumstances, the relevant court has ordered that the relevant record shall be made available to him for the purposes of those circumstances.

(3) In this regulation—

“judicial proceedings” includes any proceedings before any court, tribunal or person having by law the power to hear, receive and examine evidence on oath:

“relevant court” in the case of judicial proceedings or an application for disclosure, made in—

- (a) England, Wales or Northern Ireland means the High Court, and
- (b) In the case of Scotland means the Court of Session.

“relevant record” means any item in the possession, custody or power of the Secretaries of State which is of a kind referred to in sub-paragraphs (a) to (e) of paragraph 5.12 of the Annex; and

“Secretaries of State” includes any officer of theirs.

(4) Subject to paragraph (6) no order shall be made under paragraph (2) unless the relevant court is satisfied that the interests of justice in the circumstances in question outweigh the adverse domestic and international impact which disclosure may have—

- (a) on the investigation into the accident to which the record relates; or
- (b) on any future accident investigation undertaken in the United Kingdom.

(5) A relevant record or part thereof shall not be treated as having been made available under paragraph (1) in any case where that record or part is included in the final report (or the appendices to the final report) of the accident.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any relevant record or part thereof on the ground that the disclosure of it would be injurious to the public interest.

Revocation

19.—(1) The Air Navigation (Investigation of Air Accidents involving Civil and Military Aircraft or Installations) Regulations 1986^(a) are hereby revoked.

(2) Any investigation commenced under those Regulations which has not been the subject of a report submitted to the Secretaries of State, shall continue as if it had been commenced under these Regulations.

(3) Any investigation commenced under the Regulations in paragraph (1) which is subsequently re-opened shall continue as if it had commenced under these Regulations.

Signed by authority of the Secretary of State

Karen Buck
Parliamentary Under Secretary of State
Department for Transport

26th September 2005

^(a) S.I. 1986/1953.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Air Navigation (Investigation of Air Accidents involving Civil and Military Aircraft or Installations) Regulations 1986 in so far as they apply to Military Aircraft involved in Accidents or Incidents occurring at Civil Aerodromes only. They do not apply to any Accidents or Incidents involving Civil Registered Aircraft which are covered separately under The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996.

The principal differences made by these Regulations are—

- (i) to provide for the Chief Inspector to publish or cause to be published at any time information dealing with an investigation to which the Regulations apply (*regulation 6*). This power is subject to the proviso that such information cannot be published if it is likely to have an adverse effect on any person until that person has made representations regarding that information. It can only then be published once the investigating Inspector has made any necessary changes in light of the representations received (*regulation 12*).
- (ii) To provide for the Chief Inspector to appoint a deputy Inspector for the purposes of an investigation and to delegate his powers and obligations under those Regulations to him (*regulation 8*).
- (iii) To provide for the Chief Inspector to determine the scale of investigations required in an investigation along with procedure to be adopted (*regulation 10*). In determining the above he is obliged to have regard to the fact that the purpose of the investigation is the prevention of accidents, not the apportionment of blame or liability (*regulation 4*).
- (iv) The introduction of the requirement that any safety recommendation made in the investigation report shall not create a presumption of blame or liability for an accident to which these Regulations apply (*regulation 11*).
- (v) To preclude any person who has been afforded an opportunity to make representations on a proposed analysis of facts and conclusions as to the cause of the accident from disclosing that information or any information contained in the draft report provided to him (*regulation 12*).
- (vi) To require that the Chief Inspector endeavour to make any investigation report into an accident public within 12 months or within the shortest time possible and in such manner as he thinks fit (*regulation 13*).
- (vii) To provide that the Chief Inspector shall communicate the accident investigation report to any undertaking or national aviation authority whose military aircraft is involved in an accident to which these Regulations apply. Those bodies are required to consider and where appropriate to act on safety recommendations made and send details of the same to the Secretaries of State for Defence and Transport or explain why any recommendation so made will not be acted upon (*regulation 14*).
- (viii) To require that the investigation of an accident to which these Regulations apply be reopened if in the Chief Inspector's opinion new and important evidence relating to an accident has been disclosed or if he has any grounds to suspects that the reputation of any person has been unfairly and adversely affected (*regulation 15*).

Copies of Annex 13 9th Edition (July 2001) to the International Convention on Civil Aviation may be obtained from Airplan Flight Equipment Limited, of 1A Ringway Trading Estate, Shadowmoss Road, Manchester, M22 5LH.

2005 No. 2693

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**The Civil Aviation (Investigation of Military Air Accidents at
Civil Aerodromes) Regulations 2005**

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1372 10/2005 151372T 19585

ISBN 0-11-073388-6



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