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Government Notice

MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

No. 82

2000

REGULATIONS REGARDING THE INVESTIGATION OF AIRCRAFT ACCIDENTS

The Minister of Works, Transport and Communication has under section 22(1) of the Aviation Act, 1962 (Act No. 74 of 1962) -

- (a) made the regulations set out in the Schedule; and
- (b) repealed the Regulations Regarding the Investigation of Aircraft Accidents promulgated by Government Notice No. R.120 of 26 January 1973.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it, and unless the context otherwise indicates -

“accident” means an occurrence associated with the operation of an aircraft which takes place between the time a person boards the aircraft with the intention of flight until such time as all such persons have disembarked after completion of such flight in which -

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

- (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 a 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 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 limited to the engine, its cowlings or accessories, or for damage limited to propellers, wing tips, antennae, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin; or
 - (c) the aircraft is still missing after an official search has been terminated; or
 - (d) the aircraft is in a place where it is completely inaccessible;

“air traffic services unit” means an aerodrome control tower, approach control office, area control centre, flight information centre, aerodrome flight information service unit or a reporting office for any of the above-mentioned units;

“chief of aircraft accident investigations” means the person designated by the Minister under regulation 3(1);

“flight crew member” means a person, other than the pilot in command of the aircraft, charged by the operator with duties essential to the operation of an aircraft during flight;

“flight” means the time from the moment an aircraft commences its take-off until the moment it completes its landing;

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

“investigation” in the application of regulation 10(d), includes the gathering and evaluation of information, the drawing of conclusions regarding the cause or probable cause of an accident or incident, and the making of a recommendation in connection with flight safety;

“investigator” means a person designated by the chief of aircraft accident investigations under regulation 5, and includes, except where obviously inappropriate, the “investigator-in-charge”;

“investigator-in-charge” means a person designated as such in terms of regulation 5;

“major repair” means a repair which, if improperly done, might appreciably affect mass, balance, structural strength, performance, power plant operation, flight characteristics or other qualities relating to airworthiness;

“operator” means a person, organisation or enterprise engaged in or offering to engage in aircraft operations;

“serious injury” means an injury which -

- (a) requires hospitalisation for more than 48 hours, within seven days from the date on which the injury was sustained;
- (b) results in the fracture of any bone (except simple fractures of fingers, toes or nose);
- (c) involves lacerations which cause severe haemorrhage, or damage to a nerve, muscle or tendon;
- (d) involves injury to any internal organ; or
- (e) involves second or third degree burns or any burns affecting more than five per cent of the surface of the body;

“staff member” means a person employed in the service of the Ministry; and

“the Act” means the Aviation Act, 1962 (Act No. 74 of 1962).

Application of regulations

- 2. These regulations shall not apply to accidents and incidents involving -
 - (a) an aircraft designed to remain moored to the earth or to be kept in tow by vehicles or vessels moving on the surface of the earth; and
 - (b) aircraft designed to fly without any person on board.

Appointment and functions of chief of aircraft accident investigations

3. (1) Subject to the Public Service Act, 1995 (Act No. 13 of 1995), and such terms and conditions as the Minister may determine, the Minister shall designate a staff member of the Ministry as chief of aircraft accident investigations to perform the functions provided for in these regulations.

- (2) Subject to the provisions of the Act -
 - (a) the chief of aircraft accident investigations is responsible for carrying out these regulations; and
 - (b) all powers and duties conferred or imposed on the chief of aircraft accident investigations by these regulations may be exercised or performed by the chief of aircraft accidents investigations in person or by a person designated by him or her.

Appointment of body of persons or institution for the purpose of reducing aircraft accidents

4. (1) Subject to the Public Service Act, 1995 (Act No. 13 of 1995), and such terms and conditions as the Minister may determine, the Minister may designate persons to form a body, or designate an institution, to perform the functions mentioned in section 22(1)(h) of the Act.

(2) The body of persons or institution designated in terms of subregulation (1) shall be answerable and report directly to the Minister.

Designation of investigators

5. (1) The chief of aircraft accident investigations may designate persons as investigators, who shall, subject to his or her control, investigate accidents.

(2) Except if the chief of aircraft accident investigations personally acts as investigator-in-charge, he or she shall appoint one of the investigators referred to in subregulation (1) to be the investigator-in-charge.

Reporting of accidents and incidents

6. (1) An accident or incident which occurs within Namibia shall be reported as soon as possible by the pilot in command of the aircraft involved in the accident or incident, or if he or she is killed or incapacitated, by a flight crew member, or if there are no surviving flight crew members or if they are incapacitated, by the operator or owner, as the case may be, to -

- (a) the chief of aircraft accident investigations directly or through any air traffic services unit; and
- (b) the nearest police station.

(2) An accident or incident involving a Namibian aircraft outside Namibia shall be reported as soon as possible by the pilot in command of the aircraft involved in the accident or incident, or if he or she is killed or incapacitated, by a flight crew member, or if there are no surviving flight crew members, or if they are incapacitated, by the operator or owner, as the case may be, to -

- (a) the appropriate aviation authority in the country where the accident or incident occurred, directly or through any air traffic services unit; and
- (b) the chief of aircraft accident investigations.

(3) The reporting of an accident or incident referred to in subregulations (1) and (2) shall take the form of a written report containing particulars relating to -

- (a) the type, model, nationality and registration marks of the aircraft;
- (b) the name of the owner, operator or hirer, as the case may be;
- (c) the surnames and initials of flight crew members;
- (d) the date and time of the accident or incident (Greenwich Mean Time or local time to be stated specifically);
- (e) the last point of departure and point of intended landing of the aircraft;
- (f) the location of the accident or incident with reference to an easily identifiable geographical point, and, if known, with reference to latitude and longitude;
- (g) the number of crew and passengers aboard, killed and those who have sustained serious injuries, and of other persons killed or injured;
- (h) the nature of the accident or incident, and the extent of damage to the aircraft as far as is known;
- (i) the characteristics of the area where the accident or incident occurred; and
- (j) any other pertinent information.

(4) The report shall be submitted forthwith to the person and authorities referred to in subregulations (1) and (2), and any information which is not directly available shall be submitted in writing as soon as it becomes available.

(5) The investigator-in-charge may require any information which he or she considers necessary from any person concerning the investigation of an accident or incident, and any such person shall accordingly furnish the investigator-in-charge with the required information.

Guarding of an aircraft involved in an accident

7. (1) Where an accident occurs within Namibia, the pilot in command of the aircraft involved in the accident, or if he or she is killed or incapacitated, a flight crew member, or if there are no surviving flight crew members or if they are incapacitated, the operator or owner, as the case may be, shall -

- (a) take such steps as are possible, pending the arrival of a police guard, to prevent interference, contrary to the provisions of these regulations, with the aircraft or wreckage thereof and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation.
- (b) forthwith arrange with the police to guard the aircraft or wreckage thereof and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation.

(2) The chief of aircraft accident investigations or the air traffic services unit to which a report has been made in terms of regulation 6(1)(a) shall ascertain whether the provisions of subregulation (1) have been complied with.

Control of the scene of an accident

8. The aircraft or wreckage thereof, anything transported therein and any marks resulting from the accident which may be of assistance in an investigation shall be under the control of the chief of aircraft accident investigations, until released or until access has been granted thereto by him or her or by the investigator-in-charge with the consent of the chief of aircraft accident investigations.

Access to and interference with objects and marks at the scene of an accident

9. (1) Subject to these regulations, no person, other than rescuers, investigators, members of the police or persons authorised by the chief of aircraft accident investigations shall interfere with an aircraft which has been involved in an accident or the wreckage thereof, a part or component thereof or anything transported therein or any marks resulting from the accident which may be of assistance in the investigation, unless -

- (a) authorised to do so by the investigator-in-charge; and
- (b) in the case of an aircraft which must be cleared by a customs officer by virtue of the provisions of the Customs and Excise Act, 1998 (Act No. 20 of 1998), clearance has been issued or permission granted by such officer.

(2) The provisions of subregulation (1) shall not prevent any action necessary for -

- (a) the rescue or extrication of persons or animals from the aircraft or wreckage of an aircraft;
- (b) the reasonable protection of the aircraft or wreckage thereof from destruction by fire or other causes;
- (c) the safeguarding by the owner, operator or police guard of precious metals, jewellery or valuables;
- (d) the removal of an obstruction to other aircraft, other means of transport or to the public or the prevention of danger; and
- (e) the removal of the aircraft or wreckage or any part or component thereof or anything contained therein to a safe place, when in water or otherwise endangered.

Authority of investigators

10. An investigator shall have authority to -
- (a) have unlimited access to an aircraft which has been involved in an accident or incident or the wreckage thereof, the place where the aircraft or wreckage is located, and places with marks resulting from the accident or incident which may be of assistance in the investigation;
 - (b) take measures for the preservation of an aircraft which has been involved in an accident or incident or the wreckage thereof and any marks resulting from the accident or incident which may be of assistance in the investigation;
 - (c) examine an aircraft involved in an accident or incident or the wreckage or any part or component thereof or anything transported therein or any marks resulting from the accident or incident which may be of assistance in the investigation, and remove any such aircraft or the wreckage or any part or component thereof or anything transported therein for the purpose of the investigation or for an inquiry by an accident inquiry board;
 - (d) compile and submit to the investigator-in-charge a report in connection with his or her investigation;
 - (e) have unlimited access to all documents, books and notes which he or she considers necessary for the investigation of an accident or incident, which documents, books and notes shall be produced without delay by the possessor thereof when requested; and
 - (f) interrogate any person for the purpose of obtaining information which may be necessary for the investigation of an accident or incident.

Reporting to Minister

11. (1) The investigator-in-charge shall compile a report of the findings from the investigation of an aircraft accident or incident.

(2) The chief of aircraft accident investigations shall submit the report referred to in subregulation (1) to the Minister with such comments and recommendations as he or she considers necessary.

Retention of objects for the purpose of an investigation or inquiry

12. Subject to regulation 8, any part or wreckage of an aircraft involved in an accident or incident or anything transported in the aircraft may be retained by an investigator, until no longer required for the purpose of the investigation or for an inquiry by an accident or inquiry board, whereupon such item or wreckage shall be discarded or destroyed, unless a person having an interest in or a right to the part or wreckage has informed the chief of aircraft accident investigations in writing, within sixty days of the date of such accident or incident, that such part or wreckage be returned to him or her after the completion of the investigation.

Offences

13. Any person who -
- (a) hinders or obstructs any person conducting an investigation of an aircraft accident or incident under these regulations in the performance of his or her duties or the exercise of his or her powers;
 - (b) wilfully or negligently gives false information or refuses or fails to give information, which he or she knows of and is requested to give, pertaining to the investigation of an aircraft accident or incident in terms of these regulations; or

(c) contravenes any provision of these regulations,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$ 50 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

Repeal of regulations

14. The Regulations Regarding the Investigation of Aircraft Accidents promulgated by Government Notice No. R. 120 of 26 January 1973 are hereby repealed.
