

Subsidiary Legislation made under s.39.

Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018

LN.2018/187

Commencement

16.8.2018

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In exercise of the powers conferred on him by section 39 of the Civil Aviation Act 2009 and of all other enabling powers the Minister has made the following Regulations

Title.

1. These Regulations may be cited as the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3.(1) In these Regulations—

“AAIB” means the United Kingdom’s Air Accident Investigation Branch;

“Annex 13” means Annex 13 (Aircraft Accident and Incident Investigation) to the Chicago Convention as that Annex has effect from time to time;

“Chief Inspector” means the Chief Inspector of the AAIB;

“Inspector” means an Inspector of the AAIB;

“Investigating Inspector” means the Investigator-in-charge and any other Inspector who is assisting the Investigator-in-charge with a safety investigation;

“Investigator-in-charge” means a person charged, on the basis of that person’s qualifications with responsibility for the organisation, conduct and control of a safety investigation;

“Regulation 996/2010” means Regulation (EU) No 996/2010 of the European Parliament and of the Council on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC;

“safety investigation” means a process conducted by the AAIB for the purposes of accident and incident prevention, which includes the gathering and analysis of information, the drawing of conclusions (including the determination of causes and contributing factors) and, when appropriate, the making of safety recommendations; and

“victim”, for the purposes of Article 15(4) and (5) of Regulation 996/2010, means any person who suffers a fatal injury or a serious injury in any of the circumstances described in Article 2(1)(a) of that Regulation and for the purposes of this definition “fatal injury” and “serious injury” have the same meanings given by Article 2 of that Regulation.

(2) In these Regulations the following words and expressions have the meanings given by Article 2 of Regulation 996/2010–

“accident”;

“incident”;

“person involved”; and

“serious incident”.

(3) In these Regulations “aircraft” has the same meaning as in Regulation 996/2010.

Service of notice and other documents.

4.(1) Any notice or other document required or authorised by these Regulations to be served on any person may be served by–

- (a) delivering it to that person in person;
- (b) leaving it at that person’s proper address; or
- (c) sending it by post or by electronic means to that person’s proper address.

(2) In the case of a body corporate any such notice or document may be served on a director of that body or on any other officer or employee of that body (“the authorised person”) who is authorised to accept service of such notices or documents on its behalf.

(3) For the purposes of this regulation “proper address” means–

- (a) in the case of a body corporate or its director or authorised person–
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the secretary or clerk of that body, the director or the authorised person;

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(b) in any other case, a person's last known address, which includes an email address.

Safety investigation authority and inspectors.

5.(1) The AAIB is hereby designated as—

(a) the safety investigation authority for Gibraltar for the purposes of Article 4 of Regulation 996/2010; and

(b) the accident investigation authority for Gibraltar for the purposes of Annex 13.

(2) The AAIB shall be subject to the civil law of Gibraltar in respect of the performance of the powers and obligations of the civil aviation safety investigation authority in Gibraltar under Regulation 996/2010.

(3) The Chief Inspector, Deputy Chief Inspector and any Investigating Inspector shall be subject to the civil law of Gibraltar in respect of the performance of their powers and obligations under these Regulations.

Objective of a safety investigation.

6. The sole objective of a safety investigation which is undertaken pursuant to Regulation 996/2010, Annex 13 or these Regulations is the prevention of accidents and incidents, without the apportionment of blame or liability.

Inspectors of Air Accidents.

7.(1) Any of the Chief Inspector's powers and obligations under these Regulations may be exercised or discharged by his Deputy where he so decides.

(2) Where a safety investigation is required or permitted under Regulation 996/2010, Annex 13 or by these Regulations, the investigator-in-charge is the Chief Inspector or any other Inspector selected by him for that purpose.

(3) The Chief Inspector may determine that the Investigator-in-charge shall be assisted by one or more inspectors.

Power to investigate.

8.(1) Notwithstanding the obligations to investigate imposed by Article 5(1) and (2) of Regulation 996/2010 and by Chapter 5 of Annex 13, the Chief Inspector may cause a safety

investigation to be conducted in accordance with Regulation 996/2010, Annex 13 and these Regulations where–

- (a) an accident, a serious incident or any other incident occurs in or over Gibraltar;
- (b) that accident, serious incident or incident involves any aircraft, including–
 - (i) an aircraft to which the obligation in Article 5(1) of Regulation 996/2010 does not apply; or
 - (ii) an aircraft engaged in military, customs, police or similar services; and
- (c) the Chief Inspector expects to draw safety lessons for civil aviation from the safety investigation.

(2) In this regulation “similar services” has the same meaning as in Article 3(3) of Regulation 996/2010.

Obligation to investigate accidents and serious incidents occurring outside Gibraltar.

9.(1) Insofar as it is practicable to do so, the Chief Inspector must cause a safety investigation to be conducted in accordance with Annex 13 and these Regulations where–

- (a) an accident or serious incident occurs in or over a country or territory other than Gibraltar, the United Kingdom or any other Contracting State;
- (b) the accident or serious incident involves an aircraft in respect of which Gibraltar is–
 - (i) the place maintaining a register in which the aircraft is registered;
 - (ii) the place in which the operator’s principal place of business is located or, if there is no principal place of business, the operator’s permanent residence;
 - (iii) the place maintaining jurisdiction over the organisation responsible for type design; or
 - (iv) the place maintaining jurisdiction over the organisation responsible for the final assembly of the aircraft; and
- (c) an investigation is not being conducted by a Contracting State.

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(2) In this regulation–

“Contracting State” means any State which is party to the Chicago Convention;

“investigation”, in paragraph (c) of subregulation (1) only, means a process conducted other than by the AAIB for the purpose of accident and incident prevention, which includes the gathering and analysis of information, the drawing of conclusions (including the determination of causes and contributing factors) and, when appropriate, the making of safety recommendations.

Additional provisions – Inspectors’ powers.

10.(1) The power conferred by Article 11(2)(f) (power to call and examine witnesses) of Regulation 996/2010 must be exercised by the service of a summons signed by an Investigating Inspector and requiring any person (“witness”) to attend a witness interview, at a time and place stated in the summons, in order to–

- (a) answer any question; or
- (b) produce any document, record, information or other evidence,

which is, in the opinion of that Inspector, relevant to the safety investigation.

(2) A witness must be allowed the expenses of attending a witness interview, payable by the Minister.

(3) An Investigating Inspector has the power to–

- (a) record a witness interview in any manner that the Investigating Inspector considers appropriate;
- (b) take a statement from a witness and require the witness to make and sign a declaration of truth in relation to that statement; and
- (c) retain any evidence which is produced by a witness or to which the Investigator-in-charge has access to or control over, by virtue of Article 11(2) of Regulation 996/2010, until the completion of the safety investigation.

(4) Subject to subregulation (5) an Investigating Inspector may, on production of that Inspector’s authority to act as an Inspector, enter and inspect any land or premises (including

any dwelling and any aircraft) where, in the opinion of the Investigator-in-charge, such action is necessary for the purposes of the safety investigation.

(5) An Investigating Inspector may not enter and inspect any dwelling unless one of the following conditions is met—

- (a) the occupier of the dwelling has consented to the entry and inspection;
- (b) such entry and inspection has been authorised by a warrant issued by a justice, on an application made by an Investigating Inspector and supported by an information in writing;
- (c) the Investigator-in-charge is satisfied that access to the dwelling is required urgently and that the requirement to obtain consent or a warrant would undermine the safety investigation.

(6) A justice or a judge may issue a warrant if he is satisfied that there are reasonable grounds for entering and inspecting the dwelling for the purpose of the safety investigation and that at least one of the following conditions is met—

- (a) entry to the dwelling has been, or is likely to be, refused and notice of the intention to apply for a warrant has been served on the occupier;
- (b) asking for consent to enter and inspect the dwelling would undermine the safety investigation;
- (c) entry to the dwelling is required urgently;
- (d) the dwelling is unoccupied or the occupier is temporarily absent.

(7) A warrant may authorise a maximum of two Investigating Inspectors to enter and inspect a dwelling.

(8) A warrant is valid for as long as is reasonably necessary for the safety investigation to be conducted but shall not exceed one month beginning on the date of issue.

(9) Where an Investigating Inspector exercises the power conferred by subregulation (4), that Inspector may—

- (a) search the land or premises for any item;
- (b) examine anything that is on the land or premises;

- (c) require any persons to produce any document or record that is in that person's possession or control;
- (d) seize, detain or remove any item that is on the land or premises and any document or record that has been produced in accordance with paragraph (c);
- (e) take copies of or extracts from any document or record found on the land or premises.

(10) Any item, document or record seized by an Investigating Inspector may be retained until the completion of the safety investigation.

(11) In this regulation "dwelling" means any premises wholly or mainly used as a place of residence or abode, including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling.

Release of evidence to owner.

11.(1) This regulation applies where an aircraft, its contents or wreckage is held by the AAIB in a hangar, or in any other facility which is being used by the AAIB, for the purposes of a safety investigation.

(2) Subject to subregulation (5), where any such property is no longer required for the purposes of the safety investigation the Chief Inspector must inform the owner of the property, by serving a notice in writing, that it will be released to the owner at the place and date specified in the notice and in accordance with any other arrangements that are specified in the notice.

(3) An owner on whom such a notice is served must collect the property in accordance with the arrangements specified in the notice (or in accordance with any alternative arrangements that the owner agrees in writing with the Chief Inspector), failing which—

- (a) the Chief Inspector may make arrangements for the destruction or disposal of the property; and
- (b) the reasonable costs of such destruction or disposal will be recoverable from the owner as a debt to the Minister.

(4) A notice served pursuant to subregulation (2)—

- (a) must not specify a date for collection of the property earlier than one month beginning with the date on which the notice was served;

- (b) must include a warning that a failure by the owner to collect the property on the date specified in the notice (or such other date that the owner agrees in writing with the Chief Inspector) will entitle the Chief Inspector to make arrangements for the destruction or disposal of the property and that the reasonable costs of such destruction or disposal will be recoverable from the owner as a debt due to the Minister.

(5) Where any property referred to in subregulation (1) is no longer required for the purposes of the safety investigation and the Chief Inspector is satisfied that a person, body or authority (other than the owner) is entitled (under Gibraltar law) to collect that property for the purposes of another investigation and has confirmed their intention to do so—

- (a) subregulation (2) does not apply to that property; and
- (b) the Chief Inspector must release it to that person or authority and inform the owner of the property by serving a notice in writing that it has been so released.

(6) In this regulation “owner”, in relation to an aircraft which is registered, means the registered owner of the aircraft.

Notice of safety investigation report.

12.(1) Where the Investigator-in-charge considers that a safety investigation report could adversely affect the reputation of any person (“the person concerned”), the final safety investigation report must not be published until the Investigator-in-charge has—

- (a) served a notice on the person concerned or, where that person is deceased, the person who appears to the Investigator-in-charge to best represent the interests of the person concerned in the matter; and
- (b) made such changes as are thought fit following the consideration by the Investigator-in-charge of any representations that have been made pursuant to subregulation (2)(b).

(2) The notice referred to in subregulation (1)(a) must—

- (a) include particulars of any proposed analysis of facts and conclusions as to the circumstances and causes of the relevant accident or incident which could affect the person concerned; and

- (b) inform the person on whom it is served that written representations regarding that proposed analysis may be made to the Investigator-in-charge by or on behalf of that person within 28 days, beginning with the date on which the notice was served, or within such longer period as the Chief Inspector may allow.

Pre-publication copies of the final safety report.

13. Before the publication of the final safety investigation report, the Chief Inspector must provide a copy of it to the Minister and must also serve a copy of it on any person on whom a notice was served pursuant to regulation 12(1)(a).

Reopening a safety investigation.

14.(1) Subject to subregulation (3), where, following publication of a final safety investigation report relating to an accident or serious incident, evidence has become available which, in the Chief Inspector's opinion, is new and significant, the Chief Inspector must cause the safety investigation to be reopened.

(2) Subject to subregulation (3), following publication of a final safety investigation report relating to an accident or serious incident, the Chief Inspector may cause the safety investigation to be reopened for any other reason where the Chief Inspector considers it appropriate to do so.

(3) The Chief Inspector must not reopen a safety investigation into an accident or serious incident in respect of which the task of conducting the safety investigation has been delegated to the AAIB, pursuant to Article 6(2) of Regulation 996/2010 or paragraph 5.1, 5.1.1 or 5.1.2 of Annex 13, without first obtaining the consent of the head of the investigation authority which so delegated that task.

Failure to notify accident or serious incident.

15. Any person involved who—

- (a) has knowledge of the occurrence of an accident or serious incident in or over Gibraltar; and
- (b) fails, without reasonable excuse, to notify it without delay to the Chief Inspector and, in the case of an accident, a police officer,

contravenes these Regulations.

Obstruction.

16.(1) Any person who, without reasonable excuse, obstructs or impedes an Inspector in the exercise of any duties, powers or entitlements imposed or conferred by Regulation 996/2010, Annex 13 or by these Regulations, contravenes these Regulations.

(2) Any person who knowingly provides false or misleading information to an Inspector in connection with a safety investigation contravenes these Regulations.

Failure to comply with witness summons.

17. Any person who fails, without reasonable excuse, to comply with a witness summons under regulation 10(1) contravenes these Regulations.

Failure to preserve evidence.

18.(1) Any person who, without reasonable excuse, contravenes any of the prohibitions in Article 13(2) of Regulation 996/2010 also contravenes these Regulations.

(2) Any person involved who fails, without reasonable excuse, to take the necessary steps described in Article 13(3) of that regulation also contravenes these Regulations.

Failure to protect sensitive safety information.

19.(1) Subject to subregulations (3) and (4), any relevant person who knowingly contravenes any of the prohibitions in Article 14(1) or (2) of Regulation 996/2010 also contravenes these Regulations.

(2) In subregulation (1) “relevant person” means—

- (a) an Inspector;
- (b) any other officer of the Minister; or
- (c) any person to whom any relevant record has been made available by such an Inspector or other officer.

(3) Subregulation (1) does not apply to information which is included in a final safety investigation report.

(4) Subregulation (1) does not apply where a relevant person makes a relevant record available to another person (“person A”) in the following circumstances—

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

(5) The relevant court must not make an order under subregulation (4) unless it is satisfied that the benefits of the disclosure of the record concerned outweigh the adverse domestic and international impact which the disclosure might have on the safety investigation to which the record relates or any future safety investigation.

(6) In this regulation–

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

“relevant court” means the Supreme Court;

“relevant record” means any of the records specified in Article 14(1) and (2) of Regulation 996/2010.

Unauthorised disclosure of information relating to a safety investigation.

20.(1) This regulation applies to a person who receives information from–

- (a) an Inspector in accordance with subregulation 4 of Article 15 of Regulation 996/2010; or
- (b) the Investigator-in-charge in accordance with regulation 14(1).

(2) Any person to whom this regulation applies who, without the prior written consent of the Chief Inspector in the case of subregulation (1)(a), causes or permits that information or any part of it to be disclosed to any other person, body or organisation before it is made publicly available by the Chief Inspector (on publication of the final safety investigation report or otherwise) contravenes these Regulations.

Failure to provide information on persons and dangerous goods on board an aircraft following an accident.

21.(1) This regulation applies where an accident has occurred in or over Gibraltar.

(2) Where the operator of an aircraft involved in the accident fails to—

- (a) provide to the Chief Inspector, within two hours of the notification by the operator of the occurrence of the accident, the list required by Article 20(1)(a) of Regulation 996/2010, or
- (b) provide to the Chief Inspector, immediately following the notification by the operator of the occurrence of the accident, the list required by paragraph (1)(b) of that Article,

the operator contravenes these Regulations.

Disclosure of information relating to persons and dangerous goods on board an aircraft and persons to be contacted in the event of an accident.

22.(1) Any person who causes or permits—

- (a) any information contained in a list produced pursuant to Article 20(1)(a) or (b) of Regulation 996/2010; or
- (b) any information provided to an operator pursuant to Article 20(3),

to be used or disclosed other than in accordance with paragraphs (2), (3) or (4) of that Article, contravenes these Regulations.

Penalties.

23. Insofar as any provision in regulations 15 to 22 is not made under section 39 of the Civil Aviation Act 2009, subsection (6) of that section (penalties) nevertheless applies to that provision as if it had been so made.

Revocations and saving.

24.(1) The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2009 are revoked.

(2) Part X of the Factories Act 1956 shall not apply to anything that must be notified under Article 9 of Regulation 996/2010.