

LEGAL NOTICE NO. 125

THE CIVIL AVIATION ACT, 2013

(No. 21 of 2013)

THE CIVIL AVIATION (CERTIFICATION OF AIR NAVIGATION SERVICE PROVIDERS) REGULATIONS, 2018

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THE CIVIL AVIATION ACT, 2013

(No. 21 of 2013)

IN EXERCISE of the powers conferred by section 82 of the Civil Aviation Act, 2013 the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development makes the following Regulations—

THE CIVIL AVIATION (CERTIFICATION OF AIR NAVIGATION SERVICE PROVIDERS) REGULATIONS, 2018

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Civil Aviation (Certification of Air Navigation Service Providers) Regulations, 2018 and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

Citation

2. In these Regulations, unless the context otherwise requires—

Interpretations

“accuracy” means a degree of conformance between the estimated or measured value and the true value;

“Act” means the Civil Aviation Act, 2013;

“aerodrome” means a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

“aeronautical information” means information resulting from the assembly, analysis and formatting of aeronautical data;

“aeronautical Information Circular (AIC)” means a notice containing information that does not qualify for the origination of a NOTAM or for inclusion in the AIP, but which relates to flight safety, air navigation, technical, administrative or legislative matters;

“aeronautical Information Publication (AIP)” means a publication issued by or with the authority of the State and containing aeronautical information of a lasting character essential to air navigation;

“aeronautical Information Service (AIS)” means a service established within the defined area of coverage responsible for the provision of aeronautical data and aeronautical information necessary for the safety, regularity and efficiency of air navigation.

“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;

“air navigation services” means one or more of the following services provided for air navigation—

Air traffic services;

Instrument flight procedure design (IFPD) services;

Aeronautical Information services (AIS);

Aeronautical Cartographic Services;

Aeronautical Telecommunication Services; and

Search and Rescue Services;

“air navigation services facility” means any facility used, available for use, or designed for use in aid of navigation of aircraft, including airports, landing fields, any structures, mechanisms, lights, beacons, marks, communicating systems, or other instruments or devices used or useful as an aid to the safe taking off, navigation, and landing of aircraft and any combination of such facilities;

“air navigation services provider” means an independent entity established for the purpose of providing one or more of the air navigation services as defined in these Regulations;

“air traffic” means all aircraft in flight or operating on the maneuvering area of an aerodrome;

“air traffic control service” means a service provided for the purpose of—

- (a) preventing collisions—
 - (i) between aircraft; and
 - (ii) on the manoeuvring area between aircraft and obstructions; and
- (b) expediting and maintaining an orderly flow of air traffic;

“air traffic management (ATM)” means the dynamic, integrated management of air traffic and airspace (including air traffic services, airspace management and air traffic flow management) safely, economically and efficiently through the provision of facilities and seamless services in collaboration with all parties and involving airborne and ground-based functions.

“air traffic service” means a generic term meaning variously, flight information service, alerting service, air traffic control service (area control service, approach control service or aerodrome control service);

“authority” means the Kenya Civil Aviation Authority established under section 4 of the Act;

“authorised person” means any person authorized by the Authority either generally or in relation to a particular case or class of cases and any reference to an authorised person includes reference to the holder for the time being of an office designated by the Authority;

“certificate” means the certificate for the provision of Air Navigation Services issued by the Authority under Part II of these Regulations;

“designated service provider” means a person or organization designated by the Authority to provide services in accordance with these Regulations;

“quality” means a degree to which a set of inherent characteristics fulfils requirements;

“quality management” means coordinated activities to direct and control an organization with regard to quality;

“quality system” means the organisational structure, procedures, processes and resources needed to implement quality management;

“requirement” means a need or expectation that is stated, generally implied or obligatory.

“Safety management system (SMS)” means a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

“state aircraft” means aircraft used by or in the military, customs or police services of Kenya or of any other State or any other civil registered aircraft at the time performing a state function and fully converted to offer services to heads of States, military service, customs or police or to any other State; and

“tribunal” means the National Civil Aviation Administrative Review Tribunal established under section 66 of the Act.

3. (1) These Regulations shall apply to a person providing air navigation services within designated air spaces and at aerodromes.

Application

(2) These Regulations do not apply to state aircraft.

PART II—CERTIFICATION OF AIR NAVIGATION SERVICES PROVIDERS

4. A person shall not provide air navigation services unless he or she holds an Air Navigation Service Providers’ (ANSP) certificate issued by the Authority.

Requirements for the provision of air navigation services.

5. (1) An applicant for an ANSP certificate under regulation 4 shall—

Application for ANSP certificate.

(a) submit an application in the form and manner prescribed by the Authority; and

(b) apply at least one hundred and eighty days before the commencement of operations.

(2) The application for an ANFP certificate shall be accompanied by—

(a) the applicant’s Manual of Air Navigation Service Operations;

(b) a written profile of the all the proposed key portfolio holders;

(c) a safety management system manual;

(d) a quality management system manual;

(e) an ANSP’s security procedures manual;

(f) proof of financial capability to provide the required service as prescribed by the Authority; and

(g) the fees as may be prescribed by the Authority.

6. (1) The Authority shall, before issuing an ANSP certificate, be satisfied that—

Issuance of certificate

- (a) the personnel of the applicant are adequate in number and have the necessary competency to provide the service;
- (b) the Manual of Air Service Operations (MANSOPs) prepared by the applicant and submitted with the application contains all the relevant information;
- (c) the facilities, services and equipment of the applicant are established in accordance with these Regulations;
- (d) the operating procedures make satisfactory provisions for the safety of aircraft
- (e) an acceptable safety management system is in place;
- (f) an approved quality management system is in place;
- (g) the applicant has an acceptable ANSP security procedures manual;
- (h) the applicant has the financial capability to provide the service; and
- (i) the applicant has insurance policy in force in relation to the services provided.

(2) Subject to subregulation (1), the Authority may impose any other conditions as may be deemed necessary.

(3) The issuance of a certificate shall be subject to compliance with these Regulations and any other conditions as may be specified or notified by the Authority.

(4) The Authority may refuse to issue an ANSP certificate to an applicant if it finds that the applicant does not comply or meet the requirements of these Regulations.

7. An ANSP certificate shall contain the following information—

Contents of the Certificate

- (a) the holder's name and physical and mailing address of its principal place of business;
- (b) the type of services to be provided;
- (c) the location of services to be provided;
- (d) for air traffic service, the service to be provided within a particular airspace or controlled aerodrome designated to the provider by the Authority;
- (e) the conditions of approval; and
- (f) the effective and expiry dates of the certificate.

8. (1) A certificate issued or renewed to an ANSP shall be valid for twenty-four months from the date of issue or renewal, unless a shorter period is specified by the Authority or unless—

Validity of a certificate

- (a) the Authority amends, suspends, revokes or otherwise terminates the certificate;
- (b) an ANSP certificate holder surrenders it to the Authority;
- (c) the Authority establishes that the ANSP certificate holder has suspended operations for more than sixty continuous days; or
- (d) the ANSP certificate holder notifies the Authority of the suspension of operations.

(2) An ANSP certificate which is suspended or revoked shall be returned to the Authority.

9. (1) An application for the renewal of an ANSP certificate shall be made in the form prescribed by the Authority not later than ninety days before the certificate expires and shall be accompanied by—

- (a) the Manual of Air Navigation Service Operations (MANSOPs) if significant changes have been made following the initial certification; and
the fee as prescribed by the Authority.

(2) The renewal of an ANSP certificate shall be subject to compliance with these Regulations and any other conditions that may be specified or notified by the Authority.

10. (1) The Authority may vary an ANSP certificate on the application made by the holder of the certificate in the form prescribed by the Authority.

(2) A holder of a certificate applying to the Authority for variation of a certificate under subregulation (1) shall be required to—

- (a) attach to the application form two copies of the proposed amendments in the MANSOPs; and
- (b) pay such fee as may be prescribed by the Authority.

11. (1) The Authority may amend or modify an ANSP certificate to correct errors.

(2) A person shall not amend or alter any certificate or exemption issued or required by or under these Regulations without the approval of the Authority.

12. (1) The holder of an ANSP certificate shall display the certificate or a certified copy of it in a conspicuous place, generally accessible to the public at the certificate holder's principal place of business.

(2) Where a certified copy of the ANSP certificate is displayed under subregulation (1), the holder of the certificate shall produce the original certificate to the Authority for inspection if requested to do so.

13. An ANSP certificate issued under these Regulations shall not be transferable.

Renewal of a certificate.

Variation of ANSP certificate.

Amendment of ANSP certificate

Display of certificate.

Transfer of ANSP certificate.

14. (1) The Authority may suspend provisionally, pending further investigation, an ANSP certificate issued under these Regulations if it considers that—

Suspension and cancellation of certificates.

- (a) a relevant provision of the Act or these Regulations, or a condition in the certificate, has not been or is not being complied with;
- (b) false or materially incorrect information was given to the Authority in the application for the certificate; or
- (c) it is in the public interest to do so.

(2) The Authority may, on giving reasons to the holder of a certificate, suspend the certificate for a period not exceeding sixty days.

(3) A holder of an ANSP certificate who is notified of a suspension under subregulation (2) may submit a response in writing within a period not exceeding fourteen days from the date of the suspension.

(4) Notwithstanding subregulation (3), the Authority may suspend any or all of the operations of the holder of the ANSP certificate pending receipt of a response from the certificate holder.

(5) The Authority may, upon the completion of an investigation which has shown sufficient ground to the Authority's satisfaction, suspend or cancel any ANSP certificate issued under these Regulations.

(6) A holder or any person having the possession or custody of any ANSP certificate which has been suspended or cancelled under these Regulations shall surrender the certificate to the Authority within fourteen days from the date of suspension or cancellation.

15. (1) The Authority shall keep and maintain a register showing—

Register of certificate holders

- (a) name of the holder of the ANSP certificate;
- (b) date of issue or renewal of the ANSP certificate;
- (c) type of service offered by the holder of the ANSP certificate;
- (d) expiry date of the ANSP certificate;
- (e) date of variation, replacement, suspension or cancellation of the ANSP certificate, if any;
- (f) physical and postal address of the holder of the ANSP certificate; and
- (g) any other particulars as may be prescribed by the Authority.

(2) Any changes in the particulars recorded under subregulation (1) shall be entered in the register by the Authority.

(3) The register shall be a public document and any particular entered may be obtained upon payment of such fee as may be prescribed by the Authority.

PART III—MANUAL OF AIR NAVIGATION SERVICES
OPERATIONS

16. (1) The Manual of Air Navigation Services Operations (MANSOPs) submitted under these Regulations shall be in the form prescribed by the Authority.

Requirements for the manual of air navigation services operations.

(2) The MANSOPs shall be submitted to the Authority for approval.

(3) A holder of an ANSP certificate shall keep at least one approved copy of the MANSOPs at the holder's principal place of business.

17. A MANSOPs shall contain all information and instructions necessary to enable the personnel of an air navigation service provider to perform their duties including—

Contents of the MANSOPs.

- (a) the services to be provided;
- (b) the personnel requirements and their responsibilities;
- (c) the training and performance assessment of staff;
- (d) the Safety Management System and Quality Management System;
- (e) the contingency plan;
- (f) an ANSP security procedures manual;
- (g) the specifications of the facilities and equipment (including the installation and maintenance procedures);
- (h) fault and defect reporting;
- (i) the maintenance of documents and records;
- (j) search and rescue responsibilities and co-ordination, operations, plans and procedures;
- (k) the hours of operation;
- (l) the systems and procedures in the provision of air navigation services; and
- (m) any other information as may be required by the Authority.

18. (1) For the purposes of maintaining the accuracy of the information in the MANSOPs, the—

Amendment of the MANSOPs.

- (a) holder of an ANSP certificate shall, whenever necessary, amend the manual; or
- (b) the Authority may issue a written directive requiring the air navigation services provider to amend the manual.

(2) Notwithstanding subregulation (1), the holder of an ANSP certificate shall submit the proposed amendment to the Authority for approval.

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| <p>19. The holder of an ANSP certificate shall—</p> <p>(a) demonstrate compliance to applicable regulations and requirements by the Authority to the type of services that have been certificated; and</p> <p>(b) comply with all procedures and processes detailed in their manual.</p> | <p>Continued
Compliance.</p> |
| <p>20. A holder of an ANSP certificate shall—</p> <p>(a) provide in the designated portion of airspace and aerodromes, facilities for the provision of air navigation services; and</p> <p>(b) adopt and put into operation the appropriate standard systems, operational practices and rules as prescribed by the Authority.</p> | <p>Air navigation
services facilities
and standard
systems.</p> |
| <p>21. A person shall not install, maintain or operate air navigation service facilities in the designated airspaces and aerodromes without the approval of the Authority.</p> | <p>Approval of Air
Navigation
Services facilities.</p> |
| <p>22. (1) The Authority shall carry out safety inspections and audits of air navigation facilities, services, documents and records of the air navigation service providers to ensure compliance with these Regulations.</p> <p>(2) The safety inspections and audits under subregulation (1) shall be carried out in accordance with the requirements prescribed by the Authority.</p> <p>(3) The Authority may impose operating restrictions or sanctions on the operations of a certificate holder in the event of non-conformance with the certification requirements or any unresolved safety concerns.</p> | <p>Safety inspections
and audit of Air
Navigation
Services.</p> |
| <p>23. The Authority may make and issue orders, circulars, air navigation services Technical Standards and directives prescribing any air navigation service matter which, under these Regulations, may be prescribed, and generally for the better carrying out or enhancing of the objects and purposes of these Regulations.</p> | <p>Power of
Authority to issue
orders, circulars,
air navigation
services Technical
Standards and
directives.</p> |
| <p>PART V — GENERAL PROVISIONS</p> | |
| <p>24. (1) A person may apply to the Authority in the prescribed form for the replacement of documents issued under these Regulations if such documents have been lost, mutilated or destroyed.</p> <p>(2) When applying for the replacement of documents under subregulation (1), the holder of a certificate shall submit to the Authority—</p> <p>(a) the original certificate or a copy thereof in case of loss; and</p> <p>(b) a court order or any other legal document in support of the application for replacement.</p> | <p>Replacement of
documents.</p> |
| <p>25. (1) A holder of an ANSP certificate issued under these Regulations shall notify the Authority of the change in the physical and mailing address within fourteen days of such change.</p> | <p>Change of
address.</p> |

(2) A person who does not notify the Authority of the change in the physical and mailing address within the time frame specified in subregulation (1) shall not exercise the privileges of the certificate.

26. (1) A person shall not mutilate, alter, render illegible or destroy any records, or any entry made therein, required by or under these Regulations to be maintained, or knowingly make, or procure, or assist in the making of, any false entry in any such record, or willfully omit to make a material entry in such record.

Use and retention of documents and records.

(2) All records required to be maintained by or under these Regulations shall be recorded in a permanent and indelible material for a period of not less than six months.

27. (1) Any person who becomes aware of a violation of any of the provisions of the Act, or any Regulations, rules, or orders issued thereunder, shall report the violation to the Authority.

Reports of violation.

(2) The Authority may determine the nature and type of investigation or enforcement action that may be taken in relation to a violation reported under subregulation (1).

28. Any person who fails to comply with any direction given to him by the Authority or by any authorised person under any provision of these Regulations shall be deemed, for the purposes of these Regulations, to have contravened that provision.

Failure to comply with directions

29. (1) The Authority shall notify in writing the fees to be charged in connection with the issue, renewal or variation of any certificate, test, inspection or investigation required by, or for the purpose of, these Regulations, any orders, notices or proclamations made thereunder.

Aeronautical fees.

(2) Upon an application being made in connection with which any fee is chargeable in accordance with the provisions of subregulation (1), the applicant shall be required, before the application is accepted, to pay the fee so chargeable.

(3) If, after that payment has been made, the application is withdrawn by the applicant or otherwise ceases to have effect or is rejected, the Authority shall not refund the fees paid.

30. (1) The air navigation services inspector shall carry out independent oversight of Service Inspectors of the ANSP by applying a system of safety approach to the air navigation services operations.

Air Navigation.

(2) Subject to subregulation (1), the approach shall require safety to be an inherent part of the operational system, dictating continual improvement and requiring a closed loop system for monitoring and corrective action.

(3) Air navigation services inspectors shall be authorised to perform inspections and audits to determine compliance with these Regulations and any other Regulations made under the Act.

(4) In the performance of his or her official duties an air navigation services inspector shall be provided with free and

uninterrupted access to air navigation services facilities, records, data and restricted areas governed by the Air Navigation Service Provider.

31. (1) The Authority shall issue air navigation services inspectors with credentials to perform safety oversight duties.

Air navigation Service inspector's credentials.

(2) The ANS inspectors once issued with the credentials shall follow the basic guidelines stipulated in the inspector's manual and be governed by the provisions of the Act and these Regulations.

PART VI—MISCELLANEOUS PROVISIONS

32. The Authority may suspend or revoke the licence, certificate, approval, authorisation, exemption or other document of a person who contravenes any provision of these Regulations.

Contravention of Regulations.

33. A person aggrieved with the decision of the Authority under these Regulations may, within twenty one days of such decision, appeal to the tribunal.

Appeals to the tribunal.

34. (1) A person who contravenes any provision of these Regulations commits an offence and is liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months or to both.

Offences.

(2) If it is proved that an act or omission of any person, which would otherwise have been a contravention by that person of a provision of these Regulations, orders, notices or proclamations made thereunder, was due to any cause not avoidable by the exercise of reasonable care by that person, that act or omission shall be deemed not to be a contravention by that person of that provision.

35. The Civil Aviation (Air Navigation Services) Regulations, 2013, are repealed.

Revocation of L.N.78/2013.

36. (1) A licence, certificate, permit or authorization issued or granted by the Authority before the commencement of these Regulations shall remain operational until it expires or is revoked, annulled or replaced.

Transitional.

(2) Notwithstanding any other provision of these Regulations, a person who, at the commencement of these Regulations, is carrying out any acts, duties or operations affected by these Regulations shall, within one year from the date of commencement, or within such longer time as the Cabinet Secretary may, by notice in the *Gazette* prescribe, comply with the requirements of these Regulations or cease to carry out such acts, duties or operations.

Dated the 9th May, 2018.

JAMES MACHARIA,
*Cabinet Secretary for Transport, Infrastructure,
Housing and Urban Development.*