



Tuvalu

## CIVIL AVIATION (INVESTIGATION OF ACCIDENTS) REGULATIONS 1965

L.N.30/65

CIVIL AVIATION ACT 1949

Commencement [???

### 1 Citation

These Regulations may be cited as the Civil Aviation (Investigation of Accidents) Regulations 1965.

### 2 Interpretation

In these Regulations, unless the context otherwise requires —

“**aircraft**” includes all balloons (whether captive or free), gliders, airships and flying machines;

“**accident**” includes any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened;

“**owner**” means, where an aircraft is registered, registered owner;

“**substantial damage**” includes any damage which necessitates the replacement or extensive repair of any major components.

### **3 Application**

These Regulations relate to civil aircraft only and shall apply to accidents arising out of or in the course of air navigation which occur in or over Tuvalu to any civil aircraft or elsewhere to civil aircraft registered in Tuvalu.

### **4 Notification of accidents**

An accident shall be notified in accordance with the provisions of regulation 5 if, between the time when any person boards an aircraft with the intention of flight and such time as all persons have disembarked therefrom —

- (a) any person suffers death or serious injury while in or upon the aircraft or by direct contact with the aircraft or anything attached thereto; or
- (b) the aircraft receives substantial damage.

### **5 Persons notified**

- (1) Where an accident occurs of which notification is required to be given under regulation 4 the person in command of the aircraft involved at the time of the accident, or if he be killed or incapacitated, then the owner, operator, hirer, or other person on whose behalf he was in command of the aircraft, as the case may be, shall forthwith' send notice thereof to the Minister by the quickest means of communication available and, in the case of an accident occurring in or over Tuvalu, shall also notify forthwith the local police authorities or island executive officer of the accident and of the place where it occurred.
- (2) The notice to the Minister referred to in paragraph (1) shall state as far as possible —
  - (a) the type, and the nationality and registration marks of the aircraft;
  - (b) the name of the owner, operator and hirer (if any) of the aircraft;
  - (c) the name of the person in command of the aircraft;
  - (d) the date and local mean time of the accident;
  - (e) the last point of departure and the next point of intended landing of the aircraft;
  - (f) the position of the aircraft with reference to some easily defined geographical point;
  - (g) the number of persons (if any) —
    - (i) killed,
    - (ii) seriously injured, as the result of the accident;

- (h) the nature of the accident as far as is known;
  - (i) brief particulars of damage to the aircraft.
- (3) Where an accident to which these Regulations apply occurs, whether in or over Tuvalu or elsewhere, the owner, operator or hirer of the aircraft shall, if so required by notice in writing from the Minister, send to the Minister within such time as may be specified in the notice, such information with respect thereto in such form as the Minister may require.

## **6 Removal of damaged aircraft**

- (1) Where an accident occurs in or over Tuvalu of which notification is required to be given under regulation 4, no person other than an authorised person shall have access to the aircraft involved in the accident and the aircraft shall not except under the authority of the Minister be removed or otherwise interfered with:

Provided that —

- (i) the aircraft may be removed or interfered with so far as may be necessary for the purpose of extricating persons or animals involved, removing any mails carried by the aircraft, preventing destruction by fire or other cause or preventing any danger or obstruction to the public or to air navigation or to other transport;
  - (ii) goods or passengers' baggage may be removed from the aircraft under the supervision of an authorised person but, if the aircraft has come from a place outside Tuvalu, shall not be removed from the vicinity of the aircraft on clearance by or with the consent of an officer of customs;
  - (iii) if an aircraft is wrecked on the water, the aircraft or any contents thereof may be removed to such extent as may be necessary for bringing it or them to a place of safety.
- (2) In this Regulation the expression "authorised person" means any person authorised by the Minister either generally or specially to have access to any aircraft involved in an accident and includes any police officer, district officer or any officer of customs.

## **7 Inspector's investigation**

- (1) For the purpose of carrying out investigations into the causes and circumstances of accidents to which these Regulations apply, the Minister

shall appoint persons as Inspectors of Accidents, one of whom may be appointed by him a Chief Inspector of Accidents.

- (2) A Chief Inspector of Accidents, if he thinks fit, may himself carry out an investigation or cause an investigation to be carried out by an Inspector of Accidents of any accident to which these Regulations apply, whether or not such accident is one whereof notification is required to be given under Regulation 4.
- (3) Public notice that such investigation is taking place shall be given in such manner as the Minister may think fit and shall state that any person who may desire to make representations concerning the circumstances or causes of the accident may do so in writing within a time to be specified in the notice.

## **8 Powers for the purpose of investigation**

With respect to any Inspector's investigation, the following provisions of this Regulation shall have effect —

- (1) The Inspector of Accidents by whom the investigation is made (in this Regulation referred to as “the Inspector”) shall have power —
  - (a) by summons under his hand to call before him and examine all such persons as he thinks fit, to require such persons to answer any questions or furnish any information or produce any books, papers, documents and articles which the Inspector may consider relevant, and to retain any such books, papers, documents and articles until the completion of the investigation;
  - (b) to take 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) to have access to and examine any aircraft involved in the accident and the place where the accident occurred, and for that purpose to require any such aircraft or any part or equipment thereof to be preserved unaltered pending examination;
  - (d) to examine, remove, test, take measures for the preservation of, or otherwise deal with the aircraft or any part thereof or anything contained therein;
  - (e) to enter and inspect any place or building the entry or inspection whereof appears to the Inspector to be requisite for the purposes of the investigation;
  - (f) to take measures for the preservation of evidence.

- (2) Where an accident has occurred in or over Tuvalu to an aircraft registered in any country other than Tuvalu, the Minister may authorise an investigator appointed by the duly competent authority of that other country to carry out an investigation, and in that event the Minister shall so far as he is able facilitate inquiries by the investigator so appointed.
- (3) The investigation shall be held in private.
- (4) Where it appears to the Inspector that in order to resolve any conflict of evidence or that for any other reason it is expedient so to do, he may permit any person to appear before him and call evidence and examine witnesses.
- (5) Where it appears to the Inspector that any degree of responsibility for the accident may be attributed to any person, and if it appears to the Inspector to be practicable so to do, that person or, if he be deceased, his legal representatives, shall be given notice that blame may be attributed to him and be permitted to make a statement or give evidence and to produce witnesses and to examine any witnesses from whose evidence it appears that he may be blameworthy.
- (6) The Attorney-General may intervene at any stage of an investigation in order to make representations or to examine witnesses, if it appears to him expedient so to do in the public interest.
- (7) Every person summoned by the Inspector as a witness in accordance with this regulation shall be allowed such expenses as the Minister may from time to time determine.

## **9 Inspector's report**

Upon the completion of an investigation, the Inspector of Accidents shall make a report to the Minister. He shall state the circumstances of the case and his conclusions as to the cause of the accident, adding any observations and recommendations which he thinks fit to make with a view to the preservation of life and the avoidance of similar accidents in future. He shall also state to what extent effect has been given to the provisions of regulation 8 (2). The Minister may cause the whole or any part of such report to be made public in such manner as he thinks fit.

## **10 Public inquiries**

- (1) Where it appears to the Minister that it is expedient to hold a public inquiry into the causes and circumstances of an accident to which these Regulations apply, he may direct that a public inquiry be held by a Commissioner (hereinafter called "the court") appointed by him; and in

any such case any Inspector's investigation relating to the accident shall be discontinued.

- (2) The court shall be assisted by not less than 2 assessors possessing aeronautical, engineering or other special skill or knowledge. The assessors shall be appointed by the Minister.
- (3) Where the Minister has directed a public inquiry to be held, he shall remit the case to the Attorney-General and thereafter the preparation and presentation of the case shall be conducted under the direction of the Attorney-General; the Inspector of Accidents, or Chief Inspector of Accidents if appointed shall render such assistance to the court and to the Attorney-General as is in his power and for that purpose shall have the powers conferred by paragraph (1) of regulation 8 on an Inspector of Accidents with respect to an Inspector's investigation.
- (4) Every public inquiry held under these Regulations shall be conducted in such a manner that if a charge is made against any person that person shall have an opportunity of making a defence.
- (5) When a public inquiry has been ordered the Attorney-General may cause a notice, to be called a notice of inquiry, to be served upon the owner, operator, hirer and person in command of any aircraft involved in the accident, as well as upon any person who in his opinion ought to be served with such notice. The notice shall contain a statement of the questions which on the information then in the possession of the Attorney-General he intends to raise on the hearing of the inquiry, and the Attorney-General may, at any time before the hearing of the inquiry, by a subsequent notice amend, add to, or omit any of the questions specified in the notice of inquiry.
- (6) The Attorney-General, the owner, the operator, the hirer, the person in command and any other person upon whom a notice of inquiry has been served, shall be deemed to be parties to the proceedings.
- (7) Any other person may, by leave of the court, appear, and any person who so appears shall thereupon become a party to the proceedings.
- (8)
  - (i) The court shall have, for the purposes of the inquiry, all the powers of a magistrate's court when acting as a court in the exercise of its ordinary jurisdiction, and without prejudice to those powers, the court may —
    - (a) enter and inspect. or authorise any person to enter and inspect, any place or building entry or inspection whereof appears to the court requisite for the purposes of the inquiry;

- (b) by summons require the attendance as witnesses of all such persons as the court thinks fit to call and examine, and require such persons to answer any questions or furnish any information or produce any books, papers, documents and articles which the court may consider relevant;
    - (c) administer any lawful oath to any such witness, or require any witness to make and sign a declaration of the truth of the statements made by him in his examination.
  - (ii) The assessors shall have the same power of entry and inspection as the court.
- (9) Affidavits and statutory declarations may, by permission of the court and saving all just exceptions, be used as evidence at the hearing.
- (10) At the time and place appointed for holding the inquiry the court may proceed with the inquiry whether the parties upon whom a notice of inquiry has been served or any of them are present or not.
- (11) The court shall hold the inquiry in open court save to the extent to which the court is of opinion that in the interest of justice or in the public interest any part of the evidence or any argument relating thereto should be heard in camera.
- (12) The proceedings on the inquiry shall commence with the production and examination of witnesses on behalf of the Attorney-General. These witnesses, after being examined on behalf of the Attorney-General, may be cross-examined by the parties in such order as the court may direct and may then be re-examined on behalf of the Attorney-General. Questions asked and documents tendered as evidence in the course of the examination of these witnesses shall not be open to objection merely on the ground that they do or may raise questions which are not contained in or which vary from the questions specified in the notice of inquiry or subsequent notices referred to in paragraph (5).
- (13) When the examination of the witnesses produced on behalf of the Attorney-General has been concluded. the Attorney-General shall state the questions in reference to the accident and the conduct of persons connected with the accident upon which the opinion of the court is desired. In framing the questions for the opinion of the court, the Attorney-General shall make such modifications in, additions to or omissions from the questions in the notice of inquiry or subsequent notices referred to in paragraph (5) as, having regard to the evidence which has been given. the Attorney-General or the court may think fit.
- (14) After the questions for the opinion of the court have been stated. the court shall proceed to hear the parties to the proceedings upon and determine

the questions as stated. Each party to the proceedings shall be entitled to address the court and produce witnesses or recall any of the witnesses who have already been examined for further examination and generally adduce evidence. The parties shall be heard and their witnesses examined, cross-examined and re-examined in such order as the court shall direct. Further witnesses may also be produced and examined on behalf of the Attorney-General and may be cross-examined by the parties and re-examined on behalf of the Attorney-General.

- (15) When the whole of the evidence in relation to the questions for the opinion of the court has been concluded any of the parties who desires so to do may address the court upon the evidence and the court may be addressed in reply upon the whole case on behalf of the Attorney-General.
- (16) The court may adjourn the inquiry from time to time and from place to place, and where the adjournment is asked for by any party to the inquiry the court may impose such terms as to payments of costs or otherwise as it may think just as a condition of granting the adjournment.
- (17) The court shall make a report to the Minister stating fully the circumstances of the case and the opinion of the court touching the causes of the accident and adding any observations and recommendations which the court thinks fit to make with a view to the preservation of life and the avoidance of similar accidents in future, including a recommendation for the cancellation, suspension or endorsement of any licence, certificate or other document.
- (18) Each assessor shall either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent, and such reservations or dissent and reasons (if any) shall be forwarded to the Minister with the report. The Minister shall, unless there are good reasons to the contrary, cause any such report and reservations or dissent and reason (if any) to be made public wholly or in part in such a manner as he thinks fit.
- (19) Every person attending as a witness before the court shall be allowed such expenses as would be allowed to a witness attending before the High Court, and in case of dispute as to the amount to be allowed, the same shall be referred by the court to the Registrar of the High Court who on request signed by the court shall ascertain and certify the proper amount of the expenses, provided that, in the case of any party to the proceedings or of any person in the employment of such a party, any such expenses may be disallowed if the court in its discretion so directs.
- (20) The court may order the costs and expenses of the inquiry, or any part thereof, to be paid by any party. if it finds that the accident was due to the act or default or negligence of that party or of any person in the

employment of that party; and any such order shall, on the application of any person entitled to the benefit thereof, be enforced by a magistrate's court as if the costs and expenses were a penalty imposed by that court.

- (21) Any notice, summons or other document issued under this regulation may be served by sending the same by registered post to the last known address of the person to be served.
- (22) The service of any notice, summons or other document may be proved by the oath or affidavit of the person by whom it was served.

## **11 Rehearing of public inquiries**

- (1) The Minister may, in any case where a public inquiry has been held, direct a rehearing of the inquiry either generally or as to any part thereof and shall do so —
  - (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
  - (b) if for any other reason there is in his opinion ground for suspecting that a miscarriage of justice has occurred.
- (2) If the Minister directs any inquiry to be reheard he may order that the inquiry shall be reheard either by the court by whom the inquiry was heard in the first instance, or by some other person appointed by him to hold the rehearing.
- (3) Any rehearing shall be subject to and conducted in accordance with the provisions of these Regulations relating to the holding of public inquiries.

## **12 General**

Where an Inspector's investigations or a public inquiry relates to an accident which has occurred in or over Tuvalu to an aircraft registered in any country other than Tuvalu, an accredited representative of the country in which the aircraft is registered, or of any country which has, on request, furnished information in connection with the accident, may take part in the investigation or in the inquiry as the case may be; he may be accompanied by such technical and other advisers as may be considered necessary by the authorities of the country by which he is appointed.

### **13 Obstruction**

- (1) A person shall not obstruct or impede the court or an Inspector of Accidents or an assessor or any person acting under the authority of the Minister in the exercise of any powers or duties under these Regulations.
- (2) A person shall not without reasonable excuse (proof whereof shall lie on him) fail, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of the court holding a public inquiry or an Inspector of Accidents holding an Inspector's investigation under these Regulations.

### **14 Saving**

Nothing in these Regulations shall limit the power of the Minister under the Act of cancelling, suspending or endorsing any licence, certificate or other document.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References