

SUBSIDIARY LEGISLATION 499.22

**CIVIL AVIATION (INVESTIGATION OF AIR ACCIDENTS
AND INCIDENTS) REGULATIONS**

11th January, 2013

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ARRANGEMENT OF REGULATIONS

| | | Regulations |
|----------|----------------|-------------|
| Part I | Preliminary | 1 - 3 |
| Part II | Investigations | 4 - 21 |
| Part III | Miscellaneous | 22 - 31 |

PART I

PRELIMINARY

Citation. 1. The title of these regulations is the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations.

Interpretation. 2. In these regulations, unless the context otherwise requires:

"accident" means an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

- (a) a person is fatally or seriously injured as a result of:
 - (i) being in the aircraft, or
 - (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 a single engine, its cowlings or accessories,
 - damage limited to propellers, wing tips, antennas, probes, vanes, tyres, brakes, wheels, fairings, panels, landing gear doors,
 - damage to windscreens,
 - small dents or puncture holes in the aircraft skin,
 - minor damages to main rotor blades, tail rotor blades, landing gear, and
 - minor damages resulting from hail or bird strike, including holes in the radome; or
- (c) the aircraft is missing or is completely inaccessible;

"accredited representative" means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in a safety investigation conducted by another State

and who shall be from a safety investigation authority;

"the Act" means the Civil Aviation Act;

Cap. 232.

"adviser" means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in a safety investigation;

"aerodrome" has the same meaning as assigned to it in the Air Navigation Order;

S.L. 499.09

"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, bearing civil registration except where in other cases the Chief Inspector of the Bureau determines that an investigation is appropriate under regulations 5(4) and 10(2);

"the Annex" means Annex 13 to the Chicago Convention, as amended from time to time;

"the Bureau" means the Bureau of Air Accident Investigation established under regulation 5;

"cause" means any action, omission, event, condition, or a combination thereof, which led to the accident or incident, but its identification does not imply the assignment of fault or the determination of administrative, civil or criminal liability;

"Chicago Convention" means the Convention on International Civil Aviation, done at Chicago on the 7th December, 1944;

"Chief Inspector" means the Chief Inspector of aircraft accidents appointed under regulation 6;

"Civil Aviation Directorate" means the Civil Aviation Directorate within the Authority for Transport in Malta established under the Authority for Transport in Malta Act;

Cap. 499.

"contributing factors" means actions, omissions, events, conditions, or a combination thereof, which, if eliminated or avoided, would have reduced the probability of the accident or incident occurring, or mitigated the severity of the consequences of the accident or incident. The identification of contributing factors does not imply the assignment of fault or the determination of administrative, civil or criminal liability;

"EASA" means the European Aviation Safety Agency;

"the European Commission" means the Commission of the European Union;

"Contracting State" means any State which is a party to the Chicago Convention;

"Directive 2003/42/EC" means Directive 2003/42/EC of the European Parliament and of the Council on occurrence reporting in civil aviation, as amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council;

"European Economic Area" has the meaning assigned to it in the European Economic Area Agreement between the European Community and the European Free Trade Area signed in Oporto, on

the 2nd May, 1992;

"fatal injury" means an injury sustained by a person in an accident and which results in his or her death within thirty days of the date of the accident;

"flight recorder" means any type of recorder installed in the aircraft for the purpose of facilitating accident and, or incident investigations;

"final report" means a report made pursuant to regulation 17, made in the format set out in the Appendix to the Annex and which may be adapted to the circumstances of the accident or incident under investigation;

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

"inspector" means a qualified person in the employ of the Bureau on an *ad hoc* or part-time or full-time basis;

"international standards and recommended practices" means international standards and recommended practices for aircraft accident and incident investigation adopted in accordance with Article 37 of the Chicago Convention;

"investigation" means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of cause or causes and, or contributing factors and, when appropriate, the making of safety recommendations;

"investigator-in-charge" means an inspector who, on the basis of his or her qualifications, is nominated as such under regulation 6 and charged with the responsibility for the organisation, conduct and control of a safety investigation;

"Member State" means a Member State of the European Union or of the European Economic Area;

"the Minister" means the Minister responsible for matters relating to civil aviation;

"operator" means any natural or legal person, operating or proposing to operate one or more aircraft;

"owner", in relation to an aircraft which is registered, means the registered owner of the aircraft;

"pilot in command" means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

"preliminary report" means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;

"Regulation (EU) No. 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 as may be amended from time to time;

"relatives" means the immediate family and, or next of kin and, or other person closely connected with the victim of an accident, as defined under the national law of the victim;

"safety recommendation" means a proposal of a safety investigation authority, based on information derived from a safety investigation or other sources such as safety studies, made with the intention of preventing accidents and incidents;

"serious incident" means an incident involving circumstances indicating that there was a high probability of an accident associated with the operation of an aircraft, which -

- (a) in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or
- (b) in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down. Examples of serious incidents are specified in the Annex of Regulation (EU) No. 996/2010;

"serious injury" means an injury which is sustained by a person in an accident that -

- (a) requires hospitalisation for more than forty-eight hours, commencing within seven days from the date the injury was received; or
- (b) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); or
- (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage; or
- (d) involves injury to any internal organ; or
- (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;

"State of design" means the State having jurisdiction over the organisation responsible for the type design;

"State of manufacture" means the State having jurisdiction over the organisation responsible for the final assembly of the aircraft;

"State of occurrence" means the State in the territory of which an accident or incident occurs;

"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;

"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.

Scope and application.

3. (1) The scope of these regulations is the implementation of Regulation (EU) No. 996/2010 and of Annex 13 of the Chicago Convention.

(2) These regulations shall apply to any accident or serious incident arising out of, or in the course of air navigation which occurs to any aircraft -

- (a) in or over Malta, or
- (b) elsewhere to an aircraft registered in Malta or an aircraft operated by an operator established in Malta but the aircraft is not registered in Malta, when such investigations are not carried out by another State.

(3) These regulations do not apply to those aircraft specified in paragraphs (i) and (j) of Annex II of Regulation (EC) No 216/2008 of the European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Aviation Safety Agency.

PART II

INVESTIGATIONS

Objective of investigation.

4. (1) The sole objective of the investigation of an accident or an incident under these regulations shall be the prevention of future accidents and incidents.

(2) Subject to sub-regulation (1), the purpose of such an investigation shall not be to apportion blame or liability.

(3) An investigation shall include -

- (a) the gathering, recording and analysis of all available information and evidence on the accident or incident;
- (b) if appropriate, the issuance of safety recommendations;
- (c) if possible, the determination of the causes; and
- (d) in the case of an accident or serious incident, the completion of the final report.

Establishment of Bureau of Air Accident Investigation.

5. (1) There shall be established, under the Ministry responsible for civil aviation, a body, to be known as the Bureau of Air Accident Investigation, to carry out safety investigations in accordance with these regulations.

(2) The Bureau shall be functionally independent of any authority in Malta responsible, in particular, for airworthiness, certification, flight operation, maintenance, licensing, air traffic control or aerodrome operation, the judicial authorities and, in general, of any other party or entity whose interests or missions could conflict with the functions of the Bureau or influence its objectivity.

(3) In the conduct of any safety investigation, the Bureau shall

neither seek nor take instructions from anybody and shall have unrestricted authority over the conduct of the investigations.

(4) The functions of the Bureau shall include the gathering and analysis of aviation safety related information and data, in particular for accident prevention purposes, in so far as those functions do not affect its independence and entail no responsibility in regulatory, administrative or standards matters.

(5) The Bureau shall be given the means, resources and adequate facilities required for it to carry out its responsibilities independently, including hangarage facilities for the storage and examination of an aircraft, its contents and its wreckage.

(6) The Minister shall ensure, in particular, that

(a) the Bureau includes at least -

(i) one chief inspector capable of performing his functions in accordance with these regulations, and

(ii) one inspector capable of performing the function of investigator-in-charge in the event of a major air accident;

(b) the inspectors within the Bureau be afforded such status as is necessary to guarantee the independence of the Bureau in the performance of its functions.

(7) The Bureau may, at any time, request the assistance from investigation authorities of other States or give assistance, if requested, to other investigation authorities in other States. Where such assistance is given to Member States it shall, as far as possible, be free of charge.

(8) The Bureau shall have in place an operations manual of aircraft accident and incident investigation containing all information and instructions necessary to enable the investigators to perform their duties.

6. (1) For the purpose of these regulations, the Minister shall appoint a Chief Inspector, on the basis of adequate qualification, who shall be responsible directly to the Minister for the administrative function of the Bureau. The Minister shall, on the advice of the Chief Inspector, appoint Inspectors of Air Accidents in conformity with the criteria established in the operations manual of the Bureau.

Appointment of
inspectors.

(2) The Minister shall furnish an inspector with a warrant of the inspector's appointment and, when performing a function of an inspector he shall, if so required by any person affected, produce the warrant to that person.

(3) The remuneration of the Chief Inspector and inspectors as well as to any other person appointed under sub-regulation (7) to assist in an investigation, shall be determined by the Minister with the consent of the Minister responsible for finance.

(4) The Chief Inspector may delegate any of his powers and obligations under these regulations to an inspector designated by

him to be his deputy.

(5) The Chief Inspector may appoint himself as investigator-in-charge for any particular investigation, provided no conflict of interest exists.

(6) Where sub-regulation (5) does not apply, the Chief Inspector shall appoint a qualified inspector in accordance with the criteria established in the Bureau's operations manual, to be the investigator-in-charge for an investigation.

(7) The Chief Inspector may appoint one or more qualified persons to assist the investigator-in-charge during an investigation and such person or persons shall have, for the purpose of so acting, such functions of an inspector under these regulations as may be specified in the Bureau's operations manual at the time of his appointment.

(8) An investigator-in-charge shall be independent of any parties involved in an accident or incident, the authorities referred to in regulation 5(2) and any other undertaking whose interests could conflict with the task entrusted to the said investigator.

Appointment of
accredited
representatives by
other States.

7. (1) Where an investigation into an accident or a serious incident is being carried out by an investigator-in-charge under these regulations, any other State being -

- (a) the State of registry;
- (b) the State of design;
- (c) the State of manufacture;
- (d) the State of the operator; or
- (e) a State which, on request, provides information, facilities or experts in an investigation,

shall be entitled to appoint an accredited representative to participate in all aspects of the investigation.

(2) The 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 such just exceptions as may be determined by the investigator);
- (e) have full access to all relevant evidence as soon as possible;
- (f) make submissions;
- (g) participate in readouts of recorded media; and
- (h) participate in any off-scene investigative activities.

(3) An accredited representative appointed under this regulation may be accompanied by such technical and other advisers as may be considered necessary by the authorities of the State by which he is appointed. The degree of participation of such

advisors in the investigation shall be decided by the investigator-in-charge in consultation with the accredited representative.

(4) A Contracting State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens may, upon request to the investigator-in-charge, appoint an expert to participate in the investigation.

(5) An expert appointed under sub-regulation (4) shall be entitled to -

- (a) visit the scene of the accident;
- (b) have access to the relevant factual information;
- (c) participate in the identification of victims;
- (d) assist in questioning surviving passengers who are citizens of the expert's State; and
- (e) receive a copy of the final report.

(6) The accredited representative, his adviser and the expert appointed under sub-regulation (4) shall -

- (a) provide the investigator-in-charge with all relevant information available to them; and
- (b) not disclose any information on the progress and findings of the investigation without the express consent in writing of the investigator-in-charge.

8. A representative of a State or an air accident investigation body from a State other than the States specified in regulation 7(1) may, upon a request made and with written permission of the Chief Inspector in consultation with the investigator-in-charge, participate in an investigation as an observer.

Observers.

9. (1) The Chief Inspector may appoint an accredited representative to participate in the investigation into an accident or incident which occurs in another State and one or more advisers to assist the accredited representative where Malta:

Appointment of accredited representative, adviser and expert by the Chief Inspector.

- (a) is the State of registry, State of the operator, State of manufacture or State of design of the aircraft involved in the accident or incident; or
- (b) has, at the request of the State conducting the investigation, provided information, facilities or experts to that State in connection with the investigation.

(2) The Chief Inspector may appoint an expert to participate in the investigation into an accident which occurs in another State where Malta has a special interest in the accident by virtue of fatalities or injuries to citizens of Malta.

(3) The accredited representative and, to the extent specified by the Chief Inspector, an adviser appointed by him under sub-regulation (1) may, for the purposes of the investigation in which they are participating, under the control of the investigator-in-charge, exercise all or any of the rights and powers of the investigator-in-charge specified in regulation 14(1) and (3) in

respect of any aircraft, records, information, documents, objects, witnesses or other evidence in Malta or held by any person in Malta which or whom the accredited representative or adviser considers to be relevant or necessary to the investigation.

Obligation to investigate.

10. (1) Subject to sub-regulation (4), the Chief Inspector shall cause an investigation to be carried out into an accident in the following circumstances:

- (a) where the accident occurs in or over Malta;
- (b) where the accident occurs in any non-contracting State which does not intend to carry out an investigation of the accident and involves an aircraft registered in Malta or an aircraft operated by an operator established in Malta;
- (c) where the accident involves an aircraft registered in Malta or an aircraft operated by an operator established in Malta and the investigation has been delegated to Malta by another Contracting State by mutual arrangement and consent; and
- (d) where the accident involved an aircraft registered in Malta and the location of the accident or serious incident cannot be definitely established as being in the territory of any State.

(2) In the event of an accident or incident involving a civilian aircraft and a military or State aircraft, the investigation shall be conducted in accordance with the provisions of these regulations, with the military or the State being a party to investigation.

(3) The Chief Inspector may, when he expects to draw air safety lessons from it, cause an investigation to be carried out into an incident which occurs -

- (a) in or over Malta; or
- (b) otherwise than in or over Malta to an aircraft registered in Malta.

(4) The Chief Inspector may, with the approval of the Minister, delegate the task of carrying out an investigation into an accident or a serious incident or part thereof to another Contracting State or accident investigation body by mutual arrangement and consent.

(5) Where the Chief Inspector delegates the task of carrying out an investigation as aforesaid, he shall -

- (a) facilitate the investigation carried out by the investigator-in-charge appointed by the Contracting State conducting the investigation; and
- (b) retain responsibility for the conduct of the investigation where the accident or incident has occurred in or over Malta.

(6) The Chief Inspector may carry out, or cause an inspector to carry out, an investigation into an accident or incident where the task of carrying out the investigation had been delegated to Malta

by another Contracting State in accordance with paragraphs 5.1, 5.1.1 or 5.3 of the Annex.

- 11.** (1) When an accident or a serious incident occurs - Notification of accidents and incidents.
- (a) in or over Malta; or
 - (b) outside Malta which involves an aircraft registered in Malta or an aircraft operated by an operator established in Malta,

the pilot in command, or if he is incapacitated, the operator of the aircraft and, in the case of an accident or serious incident occurring on or adjacent to an aerodrome, the aerodrome operator, shall, without delay -

- (i) send notice thereof to the Chief Inspector of the Bureau by the quickest means of communication available;
- (ii) in the case of an accident occurring in Malta, notify also the police of the accident and of the place where the accident has occurred; and
- (iii) file a mandatory occurrence report with the Civil Aviation Directorate.

(2) The notice referred to in sub-regulation (1) shall contain as much of the following information as is available:

- (a) in the case of an accident, the identifying abbreviation "ACCID" or, in the case of a serious incident, the identifying abbreviation "INCID";
- (b) the type, model and 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 pilot in command of the aircraft;
- (e) the date and local time or Coordinated Universal Time (UTC) of the accident or serious incident;
- (f) the last point of departure and next point of intended landing of the aircraft;
- (g) the position of the aircraft with reference to some easily defined geographical point and the latitude and longitude;
- (h) the number of crew members and passengers on board the aircraft at the time of the accident or incident;
- (i) the number of crew members and passengers killed or seriously injured as a result of the accident;
- (j) the number of other persons killed or seriously injured elsewhere than on the aircraft as a result of the accident;
- (k) the nature of the accident or serious incident and the extent of the damage to the aircraft, as far as it is known;

- (l) the physical characteristics of the area of the accident or serious incident, including an indication of access difficulties or special requirements to reach the site;
- (m) the presence and description of dangerous goods on board the aircraft, if any; and
- (n) the identification of the person sending the notice.

(3) If all of the details required by sub-regulation (2) are not available at the time of the accident or serious incident, the notice shall contain such of the details that are available and a further notice containing the remaining details shall be furnished as soon as possible thereafter.

- (4) Where an accident, other than a serious incident, occurs -
 - (a) in or over Malta; or
 - (b) outside Malta which involved an aircraft registered in Malta or an aircraft operated by an operator established in Malta,

the relevant person or hirer of the aircraft shall, if so required by notice in writing from the investigator-in-charge, send to the investigator-in-charge such information as is in his possession or control in respect of the accident in such time and in such form as the investigator-in-charge may require.

- (5) In this regulation, "relevant person" means -
 - (a) the pilot in command, operator, or the owner of the aircraft at the time of the accident or serious incident; and
 - (b) where the accident or incident occurs on or adjacent to an aerodrome in Malta, the owner or operator of the aerodrome.
- (6) Any other person shall report to the Bureau and the Civil Aviation Directorate any occurrence that has come to his notice.

Action to be taken on receipt of notification.

12. (1) Upon receipt of a notification in terms of the provisions of regulation 11, the Chief Inspector shall, without delay, send a notification of the accident or serious incident, comprising the information detailed in regulation 11(2) to -

- (a) the Air Safety Unit of the European Commission;
- (b) the EASA;
- (c) the International Civil Aviation Organisation (ICAO);
- (d) the State of registry, where the aircraft is not registered in Malta;
- (e) the State of the operator, where the operator is not licensed in Malta;
- (f) the State of design, where the aircraft is not designed in Malta;
- (g) the State of manufacture or final assembly, where the aircraft is not manufactured or assembled in Malta.

(2) The said notification shall be sent in accordance with international standards and practices.

(3) The Chief Inspector shall immediately initiate a formal investigation into the accident or serious incident, as the case may be.

(4) Upon receipt of a notification of an accident or a serious incident which occurs outside Malta involving an aircraft registered in Malta or an aircraft operated by an operator established in Malta, the Chief Inspector shall:

- (a) acknowledge receipt of the notification;
- (b) where the State of occurrence, the State of registry or the State of the operator which is investigating the accident or incident is a Contracting State, provide that State with the following information with the least possible delay:
 - (i) any relevant information regarding the aircraft and flight crew involved in the accident or serious incident;
 - (ii) if Malta is the State of the Operator, details of any dangerous goods on board the aircraft;
 - (iii) if Malta is the State of the operator, within two hours of the notification of the occurrence of an accident, a validated list, based on the best possible information, of all the persons on board;
- (c) inform the State referred to in paragraph (b) -
 - (i) whether the Chief Inspector intends to appoint or has appointed an accredited representative; and
 - (ii) if such accredited representative has been appointed and may be travelling to the State in which the investigation is being carried out, the contact details and the expected date of arrival of the accredited representative in such State.

13. (1) The investigator-in-charge shall designate parties to participate in the investigation.

Parties to investigation.

(2) The parties shall be limited to those persons, government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel to actively assist in the investigation.

(3) The participants shall be under the direction of the investigator-in-charge through their respective party representatives and party coordinators and a party may lose party status if they do not comply with their assigned duties and activity proscription or instructions or if they conduct themselves in a manner prejudicial to the investigation.

14. (1) For the purposes of the investigation of an accident or serious incident to which these regulations apply, an investigating inspector shall -

Powers of inspectors.

- (a) have immediate unrestricted and unhampered access to the site of the accident or incident and to any other place or building on or in which there is or there may be found any object that, in his opinion, should be examined;
- (b) have unhampered access to the aircraft, its contents or its wreckage and unrestricted control over it;
- (c) have powers to secure and preserve the scene of the accident and to ensure an immediate listing of evidence and controlled removal of debris, or components for examination or analysis purposes;
- (d) have immediate and unrestricted access to and control over the flight recorders, their contents and any other relevant recordings;
- (e) have full access to the evidence as may be required, even when such evidence is held under the possession of the Courts of Malta or the Police, in which case the enquiring magistrate or the Police Commissioner, as the case may be, shall allow such inspector to access all evidence within the possession of the Courts or the Police;
- (f) request, and contribute to, a complete autopsy examination of the bodies of victims or tests made on samples taken from the bodies of the victims and have access to and be provided with the results of such examinations or tests;
- (g) request the medical examination of the persons involved in the operation of the aircraft or request tests to be carried out on samples taken from such persons and to have immediate access to and be provided with the results of such examinations or tests;
- (h) have the power to call and examine witnesses and to require them to furnish or produce information or evidence relevant to the investigation; and
- (i) have free access to any relevant information or records held by the owner, the certificate holder of the type design, the responsible maintenance organisation, the training organisation, the operator or the manufacturer of the aircraft, the hirer, the authorities responsible for civil aviation, EASA and air navigation service providers or airdrome operators.

(2) The investigating inspector may direct that access be forbidden or restricted, or attach conditions to such access, to any person at, or in the vicinity of an aircraft, including any wreckage or part, or other object, or any site that he considers, on reasonable grounds, might be relevant to the investigation of the accident or serious incident, for such period as the investigating inspector considers necessary, to enable a proper investigation to be carried out.

(3) For the purpose of sub-regulation (1), an investigating

inspector shall have the power -

- (a) to require the attendance of such persons as he thinks fit, examine them and require them to answer any question or to furnish any information or to produce any books, papers, documents and articles which the investigation inspector may consider relevant and to retain any such books, papers, documents and articles until the completion of the investigations;
- (b) to take statements from all such persons as he thinks fit and to require 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 the entry or inspection whereof appears to the investigating inspector to be requisite for the purposes of the investigation;
- (d) on production if required of his credentials, to remove, test, takes measures for the preservation of or otherwise deal with any aircraft other than an aircraft involved in the accident or incident where it appears to the investigating inspector requisite for the purposes of the investigation;
- (e) direct a pathologist or other qualified person to conduct any autopsy examination of the bodies of fatally injured persons or an examination by way of analysis, test or otherwise of parts or contents of the body or of any other relevant substance or object of, or relating to, any fatally injured person and to provide a report on the results of any such examination, analysis or test; and
- (f) to take such measures for the preservation of evidence as he considers appropriate.

(4) Every person summoned by an investigating inspector under sub-regulation (3)(a) shall be allowed such expenses as the Minister may determine.

15. (1) The extent of investigations and the procedure to be followed in carrying out investigations required or authorised under these regulations shall be determined by the Chief Inspector taking into account -

Form and conduct
of investigations.

- (a) the objective described in regulation 4(1) and (2);
- (b) the lessons he expects to draw from the accident or incident for the improvement of safety; and
- (c) the complexity of the investigation.

(2) Notice that an investigation is taking place may be given in such manner as the Chief Inspector thinks fit and shall invite -

- (a) any witness to the accident or incident to come forward, and
- (b) any person who desires to make representations

concerning the circumstances of the accident or incident to do so in writing within the time specified in the notice.

(3) The investigation shall be initiated immediately and held in private.

(4) An investigation shall include -

- (a) the gathering, recording and analysis of all relevant information on the accident or incident,
- (b) where appropriate, the issuance of safety recommendations,
- (c) if possible, the determination of cause, and
- (d) where appropriate, the final report.

(5) At any stage of the investigation the Chief Inspector shall recommend to the appropriate authorities, including those in other States, any preventive action which needs to be taken promptly to prevent similar accidents or incidents.

(6) Subject to the provisions of regulations 17(4) and 22, the Chief Inspector may at any time publish, or cause to be published, information relating to the accident or incident, whether or not it is the subject of an investigation by an inspector.

(7) If, in the course of an investigation, it becomes known or is suspected that an act of unlawful interference or criminal act was involved in the accident or incident, the Chief Inspector shall, after consultation with the Minister, immediately initiate action to ensure that the Maltese judicial authorities and the aviation security authorities or the police of the States concerned are informed.

Coordination of investigation and removal of aircraft or wreckage.

16. (1) When a judicial investigation is also instituted, the Chief Inspector shall be notified thereof and he shall ensure traceability and retain custody of flight recorders and any physical evidence.

(2) Where the Court seizes any evidence, the Chief Inspector shall have immediate and unlimited access to such evidence and to its use. The term "use" shall also be understood to imply any form of destructive testing as may be necessary, in which case coordination shall be made with the judicial authorities to approve such tests.

(3) Pending the arrival of the investigator-in-charge on the site of an accident or serious incident, no person shall -

- (a) modify the state of the site of the accident or incident;
- (b) take any samples therefrom;
- (c) undertake any movement of the aircraft, its contents or its wreckage or sampling therefrom or move or remove it, except where such action may be required for safety reasons or to bring assistance to injured persons, or under the express permission of the Chief Inspector.

(4) (a) Notwithstanding sub-regulation (3), the aircraft may be

removed or interfered with so far as may be necessary for the purpose of -

- (i) extricating persons or animals or the removal of dangerous goods carried by the aircraft;
 - (ii) removing, with the approval of the investigator-in-charge, any mail or valuables;
 - (iii) preventing destruction by fire or other cause;
 - (iv) preventing any danger or obstruction to the public, air navigation or other transport insofar as the removal is not for gain or commercial purposes;
 - (v) removing any other property from the aircraft with the authority of the investigator-in-charge and under the supervision of a police inspector and, or of a customs official.
- (b) If an aircraft is wrecked on water, the aircraft or any of its contents or wreckage may be removed to such extent as may be necessary for bringing it or them to a place of safety.

(5) Where the Chief Inspector or the investigator-in-charge has authorised any person to remove any goods or passenger baggage from the aircraft or to release any goods or passenger baggage from the custody of the Chief Inspector or the investigator-in-charge, may -

- (a) remove the goods or passenger baggage from the aircraft subject to the supervision of a police officer; and
- (b) release the goods or passenger baggage from the custody of the Chief Inspector or the investigator-in-charge subject to clearance by or with the consent of an officer of customs, if the aircraft has come from a place outside Malta.

(6) Where the Chief Inspector or the investigator-in-charge is of the opinion that the aircraft involved in the accident or serious incident is likely to endanger or obstruct the public, air navigation or other transport, he may order the owner, operator or hirer of such aircraft to remove it to such place as the Chief Inspector or the investigator-in-charge shall indicate.

(7) In the absence of the owner, operator or hirer or in the event of non-compliance with the provisions of sub-regulation (6), the Chief Inspector or the investigator-in-charge shall be empowered to remove or cause the removal of the aircraft and shall not be liable for any further damage that may occur during removal.

(8) The expenses incurred in removing such aircraft shall be borne by the owner, operator or hirer of the aircraft and where the aircraft is removed by the Chief Inspector or the investigator-in-charge under sub-regulation (7), such expenses shall be recoverable from the owner, operator or hirer or all of them.

(9) Any police officer shall be responsible for the maintenance

of law and order and preservation of the site of accident pending the arrival of the investigator-in-charge.

(10) Subject to sub-regulation (9) and in the absence of a police officer at the site, the responsibility for securing the site shall rest with -

- (a) the airdrome operator and the Emergency Response and Fire Fighting unit if within the precincts of the airdrome, and
- (b) the Civil Protection Department if beyond the jurisdiction of the airdrome operator.

(11) The Bureau, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities on the other hand shall have in place, protocols ensuring cooperation between them through such advance arrangements.

Investigation
reports.

17. (1) Where an investigation is carried out under these regulations into an accident or serious incident involving -

- (a) an aircraft of a maximum certificated take-off mass of more than 2,250 kg; or
- (b) an aircraft of a maximum certificated take-off mass of 2,250 kg or less and when airworthiness or matters considered to be of interest to other Contracting States are involved,

the investigator-in-charge shall, unless an Accident Data Report has been sent within thirty days of the accident, send a Preliminary Report as laid down in the Annex within that period to -

- (i) the competent authorities of the States referred to in regulation 12(1)(d), (e), (f) and (g) and to ICAO in respect of an aircraft under paragraph (a); and
- (ii) the competent authorities of the States referred to in regulation 12(1)(d), (e), (f) and (g) in respect of an aircraft under paragraph (b).

(2) When matters directly affecting safety are involved, the preliminary report shall be sent as soon as the information is available and by the most suitable and most rapid means available.

(3) The investigator-in-charge shall, as soon as possible after the completion of an investigation into an accident -

- (a) send a copy of the draft final report to the States referred to in regulation 12(1)(d), (e), (f) and (g), to all States that participated in the investigation and, through their competent authorities, to the operator and the undertakings responsible for the type design, certification and the final assembly of the aircraft, and where the investigation was initiated by another State, to that State, inviting their significant and substantiated comments of the draft final report;

- (b) if such comments are received within sixty days of the date of the transmittal letter, amend the draft Final Report to include the substance of the comments received, as deemed appropriate or, if desired by the State that provided the comments, append the comments to the Final Report;
- (c) if no comments are received within sixty days, the final report shall be submitted to the Minister and made public unless an extension of that period has been agreed with the State or States concerned.

(4) The final report shall state that the sole objective of the investigation is the prevention of future accidents and incidents and it shall not reveal the identity of the individuals involved in the accident or incident.

(5) The Chief Inspector shall, as soon as practicable after the investigation, also send a copy of the final report to -

- (a) all parties specified in sub-regulation (3)(a), and
- (b) any State whose citizens suffered fatal or serious injuries in the accident, or States that provided relevant information or significant facilities;
- (c) accredited representatives;
- (d) advisers;
- (e) the Air Safety Unit of the European Commission; and
- (f) EASA.

(6) The Chief Inspector shall also send to ICAO -

- (a) a copy of the final report where the accident involves an aircraft of a maximum certified take-off mass of more than 5,700 kg; and
- (b) the Accident Data Report where the accident involves an aircraft of a maximum certified take-off mass of more than 2,250 kg.

(7) The Chief Inspector shall, where an investigation is carried out into a serious incident involving an aircraft of a maximum certificated take-off mass of more than 5,700 kg, send to the ICAO after the completion of the investigation into the incident the final report of the incident, if the final report has been released, and the Incident Data Report.

18. (1) No report which is required by regulation 20 to be published shall be so published if, in the Chief Inspector's opinion, it is likely to affect adversely the reputation of any person, until the Chief Inspector 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 notice pursuant to this sub-regulation, to represent best the interest of the deceased in the matter; and

Notice of report
and representations
thereof.

(b) made such changes to the report as he thinks fit following his consideration of any representations which may be made to him in accordance with sub-regulation (3) by or on behalf of the person served with such notice.

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

(3) Any representations made pursuant to sub-regulation (1)(b) shall be in writing and shall, subject to sub-regulation (6), be served on the Chief Inspector within twenty-eight days of service of the notice referred to in sub-regulation (1)(a).

(4) A copy of the report submitted to the Minister under regulation 19 shall be served by the investigating inspector on any person who has been served with a notice pursuant to sub-regulation (1).

(5) No person shall disclose or permit to be disclosed any information contained in a notice or report served on him pursuant to sub-regulations (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 twenty-eight days prescribed in sub-regulation (3) and this power shall be exercisable notwithstanding that that period has expired.

Presentation of the final report.

19. (1) The Chief Inspector shall present the final report of the investigation of an aircraft accident or incident to the Minister within twelve months from the date of the occurrence of the accident or incident.

(2) Where it is not possible to present the said report as provided in sub-regulation (1), the Chief Inspector may release interim reports periodically but not later than each anniversary of the occurrence detailing the progress of the investigation and any safety issues raised.

Publication of the report.

20. (1) Subject to sub-regulation (2), the Chief Inspector shall, as soon as practicable after submitting the final report to the Minister, cause the publication of that report in such manner as he thinks fit. Publishing the final report on the Bureau's website shall satisfy this requirement.

(2) The Final Report shall be sent to the relevant States fourteen days prior to publication under sub-regulation (1).

(3) No person shall circulate, publish or give access to a draft report or any part thereof, or any documents obtained during an investigation of an aircraft accident or incident unless the report or document has already been published by the Bureau.

Safety recommendations.

21. (1) At any stage of an investigation carried out under these regulations, the Chief Inspector shall, in a dated transmittal letter, after appropriate consultation with relevant parties -

- (a) recommend to the appropriate aviation authorities, including those in other States, any preventive action that the investigator-in-charge considers necessary to be taken promptly to enhance aviation safety; and
 - (b) address, as soon as possible, any safety recommendation arising out of the investigation to the accident investigation authorities of the States concerned and to ICAO.
- (2) An undertaking or authority to whom a safety recommendation has been addressed shall, without delay -
- (a) take that recommendation into consideration and, where appropriate, act upon it;
 - (b) send to the Chief Inspector -
 - (i) full details of the measures, if any, it has taken or proposes to take to implement the recommendation and, if such measures are to be implemented, the schedule for the implementation; or
 - (ii) a full explanation as to why no measures will be taken to implement the recommendation; and
 - (c) inform the Chief Inspector of any subsequent delays in the implementation timetable supplied under paragraph (b)(i).
- (3) A recommendation for preventive action or safety recommendation shall in no case create a presumption of liability for an aircraft accident or incident.
- (4) Where any recommendation for preventive action or safety recommendation is forwarded to the Minister or the Chief Inspector by another State, the Chief Inspector shall inform that State within ninety days of the notification of the preventive action taken or under consideration, or the reasons why no action will be taken.

PART III MISCELLANEOUS

22. (1) Subject to sub-regulations (3), (5) and (6), information collected in the course of an investigation shall not be disclosed or made available to any other person other than in connection with an investigation carried out under these regulations.

Non-disclosure of records.

- (2) Information referred to in sub-regulation (1) shall include the following:
- (a) all statements taken from persons in the course of the investigation;
 - (b) records revealing the identity of persons who have given evidence in the context of the investigation;
 - (c) information collected during the investigation which is of a particular sensitive and personal nature, including information concerning the health of individuals;
 - (d) material subsequently produced during the course of

- the investigation such as notes, drafts, opinions written by the investigators, opinions expressed in the analysis of information, including flight recorder information;
- (e) information and evidence provided by investigators from other States in accordance with the international standards and recommended practices, where so requested by their investigation authority;
 - (f) draft preliminary and final reports or interim statements;
 - (g) cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units;
 - (h) all communications between persons having been involved in the operation of the aircraft;
 - (i) written or electronic recordings, and transcriptions of recordings from air traffic control units, including reports and results made for internal purposes;
 - (j) covering letters for the transmission of safety recommendations from any investigating authority to the addressee, where so requested by the investigating authority issuing the recommendation; and
 - (k) occurrence reports filed under Directive 2003/42/EC on occurrence reporting in civil aviation, as amended:

Provided that the records under paragraphs (h), (i), (j) and (k) may be used for purposes aimed at the improvement of aviation safety.

(3) Nothing in sub-regulation (1) shall preclude the Minister, in consultation with the Chief Inspector, from making any record available to any person where in a case where that person is a party to or otherwise entitled to appear at judicial proceedings, the court has ordered that the record shall be made available to him for the purpose of those proceedings.

(4) Subject to sub-regulation (6), no order shall be made under sub-regulation (3) unless the Court is satisfied that the interests of justice in the judicial proceedings in question outweigh any adverse domestic and international impact which disclosure might have on the investigation into the accident or incident to which the record relates or any future accident or incident investigating undertaken in Malta.

(5) A record or part thereof shall not be treated as having been made available contrary to sub-regulation (1) in any case where the record or part is included in the final report of the accident or incident, or to the appendices to the final report.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any record or part thereof on the ground that the disclosure of it would be injurious to the public interest, unless such record or part thereof is deemed necessary by the Chief Inspector for inclusion in the final report under regulation 20.

23. (1) The investigator-in-charge shall take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft involved in the accident or incident and its contents for such period as may be necessary for the purposes of an investigation.

Protection of evidence.

(2) Any person who may be in possession of any item which may constitute evidence for the purpose of an investigation under these regulations shall hold and preserve the same and shall promptly hand them over to the investigator-in charge.

(3) Protection of evidence shall include the preservation, by photographic or other means, of any evidence which might otherwise be removed, effaced, lost or destroyed.

(4) Subject to sub-regulation (1) safe custody shall include protection against further damage, access by unauthorised persons, pilfering and deterioration.

24. (1) No person shall obstruct or impede an inspector or any person acting under the authority of the Minister in the exercise of any powers or duties under these regulations.

Obstruction of investigation.

(2) Subject to regulation 14(1)(h) no person shall, without reasonable cause, fail to comply with any summons of an inspector conducting an investigation.

(3) The onus of proving reasonable cause for failing to comply with a summons shall lie on the person relying on such cause.

25. (1) The Chief Inspector may cause the investigation of any accident or serious incident to be reopened, either generally or as to any part of the investigation, and shall do so -

Reopening of investigations.

(a) where new and significant evidence becomes available after the investigation has been closed; 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) Where the investigation of an accident or a serious incident has been instituted by another State, the Minister shall obtain the consent of that State before causing the investigation to be reopened.

(3) Any investigation reopened shall be subject to and conducted in accordance with the provisions of these regulations.

26. (1) Aircraft or aircraft wreckage preserved by an inspector for the purpose of an investigation may be disposed of to its rightful owners, or their authorised representatives, at such time as the inspector considers appropriate. For this purpose, the Chief Inspector may facilitate access to the aircraft, its contents or any parts thereof.

Disposal of aircraft or wreckage.

(2) Where the rightful owners cannot be determined, the Chief Inspector shall release the aircraft, its contents or any parts thereof to any person or persons duly designated by the State of registry or the State of the operator, as applicable.

(3) The Chief Inspector shall, where he intends to release aircraft wreckage, issue a notice to persons referred to in sub-regulations (1) and (2), or where such persons cannot be traced, by publishing such notice in at least three daily newspapers giving details of the aircraft wreckage and specifying the period during which it should be removed:

Provided that the person to whom the notice has been issued may, before the expiry of the notice and for good cause, apply in writing to the Chief Inspector for an extension of the period within which the wreckage may be removed.

(4) Where a person served with a notice fails to take custody of the aircraft, parts thereof, contents or wreckage within the period specified in the notice, the aircraft, parts thereof, contents or wreckage may be disposed in such manner as the inspector considers fit and the expenses incurred by the Bureau for such disposal shall be recoverable from the owner or operator of the aircraft or both.

Disposal of records.

27. The Chief Inspector shall, after the completion of an investigation or at any time determined by the investigator-in-charge, return the aircraft records or factual information concerning the accident or incident to the persons from whom they were obtained, or dispose of such records or information in a manner he considers fit, unless they are still required for judicial or other proceedings.

Assistance to victims and families.

28. (1) The Civil Aviation Directorate shall be responsible for developing a civil aviation accident emergency plan at national level that shall also cover assistance to the victims of civil aviation accidents and their relatives.

(2) Every airline established in Malta shall have in place a plan to assist victims of civil aviation accidents and their relatives taking particular account of psychological support for victims and their relatives.

(3) When an accident occurs in or over Malta a reference person shall be appointed jointly by Malta, the State in which the aircraft of which was involved in the accident is established and, or the State which had a large number of its nationals on board the aircraft involved in the accident as a point of contact and information for the victims and their relatives.

(4) The Civil Aviation Directorate shall also ensure assistance to the families of victims and survivors of an accident or incident being investigated under these regulations by:

- (a) communicating all relevant information in time;
- (b) facilitating their entry into the country; and
- (c) coordinating assistance efforts.

Database and occurrence reporting.

29. (1) The Bureau shall maintain a database of accidents, serious incidents and incidents where these are investigated to be used for exchange of information in accordance with Article 7(1) of Directive 2003/42/EC on occurrence reporting in civil aviation.

The Bureau shall also have unrestricted access to ECCAIRS (European Coordination Centre for Aviation Incident Reporting Systems) database.

(2) The Bureau shall also submit all safety recommendations originating from its investigations under regulation 21, and such safety recommendations received from third countries in the SRIS (Safety Recommendation Information System) central repository.

(3) The Civil Aviation Directorate shall, in accordance with the provisions of Directive 2003/42/EC, promote a non-punitive environment facilitating the spontaneous reporting of occurrences and thereby advancing the principle of 'just culture'. Such occurrence reports shall be uploaded in the ECCAIRS database.

(4) Names or addresses of individual persons shall not be recorded in the database and the information recorded shall be used solely to facilitate the effective analysis of information on actual or potential safety deficiencies and to determine any preventive actions required.

30. (1) A person who contravenes any provision of these regulations shall be guilty of an offence and, upon conviction, shall be liable to the penalties applicable under article 4(3) of the Act. Penalties.

(2) Where 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 was due to any cause not avoidable by the exercise of reasonable care by that person, the act or omission shall be deemed not to be a contravention by that person of that provision.

31. Any investigation commenced under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2002 (revoked by these regulations) shall not be affected by such revocation, and any such investigation may be continued as if it were commenced under these regulations. Saving.
L.N. 135 of 2002.