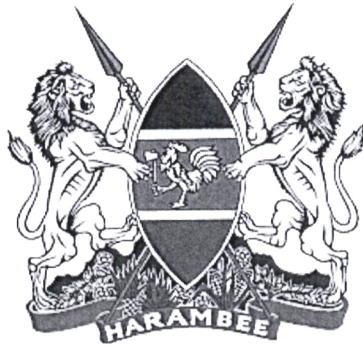




REPUBLIC OF KENYA

MINISTRY OF ROADS AND TRANSPORT

REGULATORY IMPACT ASSESSMENT

FOR THE

CIVIL AVIATION (HELIPORTS) REGULATIONS 2024

November, 2024

This Regulatory Impact Assessment (RIA) has been prepared by the Cabinet Secretary - Ministry of Roads and Transport in accordance with

Section 6 and 7 of the Statutory Instruments Act, Cap 2A

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CHAPTER ONE: INTRODUCTION

1.1 Regulatory Authority and the Legal Mandate

Kenya Civil Aviation Authority is established under the Kenya Civil Aviation Act No. 21 of 2013 (the Act) with the primary functions being Regulation and Oversight of Aviation Safety and Security; Economic Regulation of air services and development of Civil Aviation; Provision of Air Navigation Services; and Training of aviation personnel as guided under the provisions of the Convention on International Civil Aviation, related ICAO Standards and Recommended Practices (SARPs), the Act, and the Civil Aviation Regulations.

The object and purpose for which the Authority was established are, to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act

Section 82 (1) of the Civil Aviation Act, 2013 empowers the Cabinet Secretary, at the time being in Charge of Transport, to make Regulations to give effect to and for the better carrying out of the objects and purposes of the Act, and to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

Further, Section 82(2) of the Act is more specific and provides that Without prejudice to the generality of Section 82(1), the regulations developed are for providing for the licensing, inspection and regulation of aerodromes, access to places where aircraft, have landed or may land.

1.2 Requirements of the Statutory Instruments Act

The Statutory Instruments Act, No. 23 of 2013 (SIA) is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the Regulation-Making Authority (RMA) shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument. SIA further sets out certain key elements that must be contained in the RIA namely:

- (a) a statement of the objectives of the proposed legislation and the reasons for them.
- (b) a statement explaining the effect of the proposed legislation including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (e) the reasons why the other means are not appropriate;
- (f) any other matters specified by the guidelines;

(g) a draft copy of the proposed statutory rule.

Section 5 of SIA requires an RMA to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.3 What is a Regulatory Impact Assessment (RIA)?

RIA is a systemic approach of critically assessing the positive and negative effects of proposed or existing regulations and non-regulatory alternatives. It is an analytical report to assist decision makers to arrive at an informed policy decision.

As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory option provides the greatest net public benefit.

Typically, the structure of a RIA should contain the following elements: title of the proposal, the objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts distribution, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

RIA promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee. From a societal viewpoint, RIA confirms whether a proposed regulation is welfare enhancing, in that, the benefits will surpass costs.

RIA therefore has an overall objective of not only improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, but also integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental Authority.

CHAPTER TWO: PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS

2.1 Scope of the proposed regulations

The proposed Regulations shall apply to all heliports in Kenya.

2.2 Objective of the proposed regulations

The general objective of the proposed regulations is to provide for the requirements for design and operations of heliports. Specifically, the objectives seek to:

- (a) establish the requirements for design and construction of heliports and associated heliport data;
- (b) provide for the requirements and physical characteristics for the onshore, helidecks and shipboards heliports;
- (c) establish the criteria for obstacle environment including the obstacle requirements and limitation surfaces;
- (d) establish the requirements for visual aids associated with heliports
- (e) provide for the obligations of the heliport operator;
- (f) provide for the requirements of heliport emergency response;
- (g) highlight the information to be reported to the aeronautical information services;
- (h) detail the preliminary and general provisions;
- (i) provide for the offenses, penalties and transitional provisions; and
- (j) provide guidance materials for Instrument Heliports with Non-Precision or Precision Approaches and Instrument Departures.

2.3 An Overview of the Proposed Regulations: Salient Features

This overview aims to evaluate the clarity, consistency, comprehensibility, and comprehensiveness of the proposed Regulations in relation to the identified issue. It is essential that the rules are easily understood by those who may be impacted. To achieve this, the Kenya Civil Aviation Authority has implemented measures to enhance the clarity of both the text and structure of the proposed Regulation. The structure of the Proposed Civil Aviation (Heliports) Regulations is as follows:

- (a) Part I —Preliminary provisions
- (b) Part II —Design and construction of heliports
- (c) Part III —Heliports data
- (d) Part IV —Heliports Physical Characteristics
- (e) Part V —Obstacle Environment
- (f) Part VI —Visual Aids
- (g) Part VII — Heliport Emergency Response
- (h) Part VIII —Obligation of the Operator
- (i) Part IX —Information to be reported to aeronautical information services
- (j) Part X —General provisions

- (k) Part XI — Offences, penalties & transitional provisions
- (l) Schedules

CHAPTER THREE: BACKGROUND AND CONTEXT

3.1 Policy Background

3.1.1 International

(a) Sustainable Development Goals

The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. Goal 9 of the SDGs advocates for building resilient infrastructure, promoting inclusive and sustainable industrialization and fostering innovation. Kenya intends to provide access to safe, affordable, accessible and sustainable *transport* systems for all, improving road safety, notably by expanding public *transport* by 2030.

(b) Convention of International Civil Aviation (Chicago Convention)

Kenya, by virtue of Articles 2 (5) and (6) of the Constitution has ratified and become part of the international participants in the aviation space. The International Civil Aviation Authority (ICAO) was established as a specialized United Nations (UN) agency under the Convention of International Civil Aviation (Chicago Convention) which helps 193 countries to cooperate and share their skies to their mutual benefit. To achieve this, ICAO has provided for the establishment of international Standards and Recommended Practices (SARPs) the uniform application of which is necessary in order to achieve the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. The draft Civil Aviation (Heliports) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex ... to the Convention on international civil aviation.

Kenya as a contracting state has an obligation under Article 37 to the Convention on international civil aviation to domesticate the SARPs into legally enforceable legislative material. These regulations thus are issued in fulfilment of Kenya's international obligations as an ICAO contracting state and to ensure the safety, security, regularity and economic viability of global air transport system.

3.1.2 Regional

Regionally, Kenya is a member of the African Civil Aviation Commission (AFCAC) which is a specialized body of the African Union (AU) whose mandate is to create a safe, secure, efficient, and sustainable civil aviation industry across Africa that propels development through furthering connectivity. Further, under the East African Community, Kenya is a member of Civil Aviation

Safety and Security Oversight Agency(CASSOA) which is established under Article 92 of the EAC Treaty which in summary states that the Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

Under commitments under these regional arrangements and the aspiration to ensure that the regional air transport industry is appropriately managed, Kenya is obliged to issue these regulations to fulfill the regional obligations to a safe, secure and economically viable air transport system.

3.1.3 Domestic

(a)Kenya Vision 2030

Kenya Vision 2030 is a nationwide multi-sectorial document that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement. The 2030 Vision aspires for a country firmly interconnected through a network of roads, railways, ports, air, water and sanitation facilities, and telecommunications. The expansion, modernization and management of the aviation sector continues to enhance air transport safety, security, and connectivity across the country and beyond. Civil aviation is a critical catalyst for global and national development. Air transport in Kenya has continued to grow and has contributed to job creation and increased interaction and trade with other countries. As part of the implantation of the Vision 2030, the Kenya Kwanza administration adopted the Bottom-Up Economic Transformation Agenda (BETA) that will be implemented over the next five years The agenda is built on six main pillars, to be implemented through five (5) MTP IV sectors that include Infrastructure. One of the aims under infrastructure sector is to enhance transport connectivity and the provisions of the regulations are meant to institutionalize a civil aviation regulatory and oversight framework that promotes a sustainable safe and secure air transport system in Kenya.

(b) Constitution of Kenya 2010

The Constitution recognizes civil aviation as one of the functions under the National Government in the fourth schedule. Chapter 4 of the Constitution provides for the Bill of Rights. Article 46 provides for consumer protection where it applies to goods and services offered by public entities or private persons. Aviation Consumers have rights for services of reasonable quality; information necessary for them to get full benefit from the services; and protection of their economic interests. Chapter 6 of the Constitution provides for leadership and integrity including the conduct of state officers and public officers. Employees and officers of the Authority are public officers hence they are bound by the principles of Chapter 6 of the Constitution. The regulations have largely provided standardized ways of provision of quality services, information to be used by its consumers for protection of their economic interest, data

protection issues, access to information while maintaining technical infrastructure within the aviation sector.

(c) Civil Aviation Act

The Civil Aviation Act No. 21 of 2013 was enacted to provide for the control, regulation and orderly development of civil aviation in Kenya; and for connected purposes. Section 4 of the Act provides that the provisions of the Act and regulations made thereunder unless expressly excluded shall apply to: aerodromes used for civil aviation in Kenya; air services established or operating in Kenya; any aircraft registered by the Authority; any foreign aircraft within the Kenya territory; aviation personnel and training schools certified by the Authority; enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft and aircraft parts or components; and air navigation facilities and services in Kenya. Section 82 provides for the Regulations that can be made by the Cabinet Secretary responsible for aviation matters to give effect to the Act and for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention on aviation ratified by Kenya. The draft Civil Aviation (Heliports) Regulations, 2024 have been developed under section 82 of the Civil Aviation Act.

(d) Statutory Instruments Act, Cap 2A

This Act provides rules for the making and revocation of Statutory Instruments made directly or indirectly under any Act of Parliament or other written legislation. The object of this Act is to provide a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments by:

- (a) requiring regulation-making authorities to undertake appropriate consultation before making Statutory Instruments;
- (b) requiring high standards in the drafting of Statutory Instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;
- (c) improving public access to Statutory Instruments;
- (d) establishing improved mechanisms for parliamentary scrutiny of Statutory Instruments; and
- (e) establishing mechanisms to ensure that Statutory Instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed.

The Act also makes provision for the making of regulatory impact statements under section 6 as well as contents of the regulatory impact statement under section 7.

3.2 International Context

The Convention on International Civil Aviation, which, has been ratified by Kenya established the International Civil Aviation Organization (ICAO) with a mandate to support, coordinate and help countries to diplomatically and technically realize a uniquely rapid and dependable network of global air mobility, connecting families, cultures, and businesses all over the world, and promoting sustainable growth and socio-economic prosperity wherever aircraft fly.

As a global forum of States for international civil aviation. ICAO develops policies and Standards, undertakes compliance audits, performs studies and analyses, helps and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.

Article 37 of the Convention on International Civil Aviation provides for Adoption of international standards and procedures requiring each contracting State undertaking to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

The International Civil Aviation Organization adopts and amends international standards and recommended practices and procedures dealing with various aspects of air navigation and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Further, Article 12 of the Convention requires that each contracting State undertakes to adopt measures to ensure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable.

Internationally, each of the 193 contracting States has, in compliance with their national commitments and obligations under the Convention, established national civil aviation regulations with the objective of governing the aviation industry in their jurisdiction.

Article 12 of the Convention relating to scheduled air services provides that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

The lack of an appropriate set of regulations in one contracting state jeopardizes the safety, security and economic status of international air navigation. The Civil Aviation (Heliports) Regulations 2024 are therefore proposed to ensure fulfilment of state obligation and alignment of the Kenyan aviation system with international requirements and allow Kenya effectively to explore the potential economic and geopolitical benefits of participating in international air navigation.

3.3 Domestic Context

The Kenya Civil Aviation Authority is established under the Civil Aviation Act with the object and purpose for which the Authority as established shall be, to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act. Further The Civil Aviation Act requires that the

Cabinet Secretary shall make regulations to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

The Civil Aviation (Heliports) Regulations 2024 enable KCAA to effectively discharge its mandate by establishing operational standards that ensure that the aviation system in Kenya is aligned to the standards established internationally and applicable globally.

The Civil Aviation (Heliports) Regulations 2024 therefore are issued in fulfilment of the obligations set forth in the Civil Aviation Act and in support of the mandate of KCAA.

CHAPTER FOUR: EVALUATION OF THE PROBLEM

The proposed Regulation is a new regulation necessitated by the fact that the Kenya Civil Aviation Authority had not adopted the Standards and Recommended practices detailed in the Convention of the International Civil Aviation Organization, Annex 14 Volume II (Heliports), 5th Edition. Therefore, the oversight for heliports have been conducted under the Civil Aviation (Aerodromes) Regulations 2013 and the Associated Manual of Heliport Standards which could not be enforced as required. The proposed regulations seek to address the following:

(a) Inadequate regulatory framework

Following the enactment of the Civil Aviation Act, No. 21 of 2013 and Amendment Act No.42 of 2016, the Cabinet Secretary in exercise of powers under section 7 of the Civil Aviation Act, 2013 made the Civil Aviation (Aerodromes) Regulations, 2013. These Regulations provided for the regulation and oversight of the Aerodromes in Kenya and largely captured the requirements of fixed wing aerodromes and highlighted the category of the aerodromes available for use by helicopters only. However, the Regulation did not capture the requirements for establishment and operation of helicopter landing sites and the facilities and equipment required. Additionally, the requirements of the Manual of Aerodrome Standards only captured the requirements of runways. The Aerodromes Regulations as promulgated left a void in the regulation of heliports hence the Authority is unable to sufficiently regulate and oversee heliports due to challenges occasioned by inadequate Regulatory framework. This has affected the implementation of the Civil Aviation Act, 2013 as amended in 2016 and subsequently compliance with international instruments ratified by Kenya.

(b) Inadequate implementation and enforcement mechanisms for the performance standards for heliport operators.

Inadequate regulatory framework of the heliport infrastructure and operations makes the development, adoption, implementation and enforcement of standards and recommended practices for heliports a challenge. The different enabling legislation that provides for licensing of helicopters do not have requisite provision on establishment and maintenance of standards for physical characteristics, obstacle environment, visual aids, operations and heliport emergency response which causes implementation of different standards based on Regulations from other States and subject to misinterpretation and implementation. In absence of clear legislation on heliports, the Authority is unable to guide towards of enforce compliance with standards for heliport operators in private sector and related-government agencies. This has a direct impact on safety of heliport operations.

(c) Non-compliances due to failure of heliport operators to certify and license the airstrip.

The lack of clear regulatory framework for has resulted to many helipads remaining unlicensed leading to safety risk exposures, loss of revenue to the government resulting to increased surveillance of non-compliant heliports without cost recovery to enhance safety. Currently, there

is a no single heliport certified for international operation which impacts on ease of doing cross-border operations and reduced revenue. Additionally, all the offshore heliports operated from the ship decks are unregulated leading to loss of revenue to the nation. Several helipads have been constructed without permits which is a loss to the Authority in terms of revenue and may lead to litigation issues in the event of incidences.

(d) Inadequate complaint resolution mechanism

The Authority receives complaints in respect of unauthorized helipads in residential and declared areas but there is no elaborate framework on handling of complaints. The nature of some of the complaints received require a dispute resolution mechanism embedded in a legal framework.

(e) Sustainability of Civil Aviation System

(i) International Obligation

Article 37 of the Convention on International Civil Aviation requires each contracting state to undertake to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. The International Civil Aviation Organization adopts and amends from time to time as may be necessary, the international standards and recommended practices and procedures dealing with the characteristics of airports and landing areas and such other matters concerning with the safety, regularity and efficiency of air navigation as may from time to time appear appropriate.

In absence of heliports Regulations, Kenya is not meeting this obligation as Annex 14 Volume II has not been adopted by the State.

(ii) Aviation Safety

Annex 14, Volume II, contains Standards and Recommended Practices (specifications) that prescribe the physical characteristics and obstacle limitation surfaces to be provided for at heliports, and certain facilities and technical services normally provided at a heliport to ensure safety, efficiency and regularity of helicopter operations into or from a heliport. However, the State has not adopted Annex 14 Volume II into National Regulations to ensure oversight heliports and thus the assurance for safety is compromised.

(iii) Operational rights to other jurisdictions

The helicopter operators have a right to operate from a properly designed and certified/licensed heliports/helipad whose physical characteristics have been evaluated and standards operating procedures reviewed to provide assurances for safety and emergency response. In absence of such regulations and challenges in oversight, the rights of persons are not protected.

(iv) Reduction of Cost of Doing Business

Provisions of standards heliports/helipads within the State of Kenya is an enabler to ease of doing business, emergency response by hospital air ambulances, evacuation from high rise buildings and access to difficult environments which would otherwise be inaccessible by the conventional modes of transport. Absence of Regulations bring forth challenges of operations and costly insurance premiums where safety is not assured.

CHAPTER FIVE: STAKEHOLDER CONSULTATION

Public Participation refers to the process by which citizens, as individuals, groups, or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives. It is a constitutional requirement that policy and law-making should be done in an open and transparent manner, with appropriate procedures for effective and timely input from professionals and persons affected by the policy instruments.

5.1 Legal requirements relating to public participation and consultation

Participation of the people, inclusivity, transparency, and accountability are constitutional requirements whenever a State organ, public officer or other person applies or interprets the Constitution, enacts or applies to any law, or makes or implements a public policy decision. This requirement is premised on the sovereignty principle⁴ which vests all sovereign power to the people of Kenya. This power entitles the people to unfettered access to the process of making public decisions through their involvement. Transparency of public finances and performance is ensured through rules, mechanisms, and capacities for sharing information on government programs, budgets, expenditures, and results with citizens. Participation mechanisms enable citizens to participate in setting budget priorities and monitor expenditures and assess service delivery performance. They also include feedback systems, which provide citizens with the opportunity to provide comments and grievances.

Accountability mechanisms include both direct and indirect relationships, where service providers are sanctioned if they fail to meet an established standard.

5.2 The Process of Public Consultation

Pursuant to section 5 of the Statutory Instruments Act, the Authority identified specific stakeholders whom it engaged in a consultative process. These include the main professional and specialist institutions and individuals who will be directly or indirectly affected by the proposed statutory instrument.

5.3 Public Notice and awareness

All stakeholders' engagement fora were advertised at least 21 days (about 3 weeks) before being held in at least major local daily in accordance with applicable requirements for stakeholder engagement. Additionally, formal notice of the same was posted on the KCAA official website. All sets of regulations to be discussed during the public participation fora were well spelt out in the adverts. An online registration form was provided on the website and a form to collect stakeholder comments uploaded alongside the regulations on the

KCAA website, www.kcaa.or.ke. Additionally, notices were made to the public through the MyGov Newspaper informing them of the planned Stakeholder Engagement exercise.

5.4 Public participation forum

The first of a series of stakeholder meetings was physically held at the Ole Sereni Hotel in Nairobi on 30th April 2019. The second Stakeholders meeting was hybrid (both physically at Four Points Hotel and virtually) between 14th – 18th June 2021. The third public engagement was a physical meeting with stakeholders held at the Emara Ole Sereni Hotel between 14th and 15th February 2022.

In each of the engagements, comments and input from stakeholders were taken and incorporated into the regulations as appropriate and the outcome presented in the succeeding engagement forum. To conclude stakeholder engagement, the Authority organized for a final Regulations validation workshop at the Panari Hotel in Nairobi between 6th and 8th May 2024 to allow stakeholders to confirm that the Authority had considered and incorporated their comments and input in the final drafts of the regulations. This was the final activity that paved way for the regulation review to proceed to the next stage.

5.5 Analysis and Feedback

The Authority received many memoranda from the industry and General public using the forms provided to collect stakeholder feedback. Some memoranda were delivered physically, in writing or through email. Memoranda received before stakeholder meetings were analyzed, the Authority's response documented in a matrix and the same presented during the physical or virtual stakeholder engagement sessions.

Every additional effort was made to analyze each comment and give feedback to every input received from stakeholders initially on the floor of the physical or virtual engagement during question-and-answer sessions which came immediately after regulation presentations, or in writing where stakeholder input and comments were received in writing or after the engagement sessions.

For stakeholder input and comments requiring substantial analysis and amendment to draft regulations, the stakeholders were invited to shed more light on their comments and requests through physical/virtual meetings, in writing or email. Their input was then discussed and analyzed together with the regulation drafters and when consensus had been reached, the regulations were either redrafted to incorporate their input or retained as were where taking the industry comments in full would make the State to contravene ICAO standards to ensure that the State didn't contravene international standards and practices.

At all stages of regulation making, the Authority kept contact lines with stakeholders open to ensure that as important players they were fully involved and that they felt part of the process.

CHAPTER SIX: COST BENEFIT ANALYSIS

6.1 Costs

The analysis of the expected costs and benefits of the proposed regulation seeks to evaluate whether the benefits justify the costs. This would enable the Authority to estimate the total expected cost and benefit of every aspect of the regulation and in turn inform the decision makers in justification of the cost of government action by its benefits before implementation.

Given the nature of the aviation industry, and the need for high standards of safety, uniformity and regularity, the cost will largely be qualitative rather than quantitative. The estimate may include the following costs;

- (a) cost of construction permit
- (b) cost of new license fee and renewal;
- (c) cost of documentation for compliance;
- (d) cost of equipment and facilities required for compliance with the law;
- (e) training cost to comply with the regulation;
- (f) Maintenance costs of certification and licensing

The enactment of the Civil Aviation Act, 2013, necessitated prescription of fees payable by the aerodrome/helicopter providers. It is worth noting that the construction and license costs shall be borne by the operators.

The projected player in the industry at the time of implementing the regulation will be as follows;

- (a) Private heliport operators
- (b) Hospital helipads
- (c) Government agencies

The projected cost for the initial licensing of a helipad besides construction costs shall be approximately Kshs 100,000 and subsequent renewal at Kshs. 60,000 respectively. The Authority shall allocate in the Annual budget approximately Kshs 2.5 million to sustain the continuous surveillance expenses to ensure safety and compliance with heliports.

6.2 Benefits

The adoption and implementation of the proposed regulations will lead to the following benefits to the aviation industry. It shall:

- (a) improve rapid response in areas inaccessible by other modes of transport, reducing opportunity costs associated with delays;
- (b) provide facilities for emergency response by hospital air ambulances engaged in medical services to enhance saving of lives;

- (c) provide alternative modes of transport to sensitive facilities without requiring interconnectivity with other modes of transport for seamless connectivity.
- (d) promote the participation of Kenyan citizens in the air transport.
- (e) provide processes for the establishment of safety standards in heliports and create awareness of the requirements;
- (f) provide compliance and enforcement mechanisms in the provision of heliport facilities;
- (g) reduce instances of non-compliance with national and international standards;
- (h) ensure certification and licensing regime, of heliport operators, does not exclude other operators from the ambit of the Authority;
- (i) enhance the quality of air transport services, inappropriate modal split and institutional deficiencies;
- (j) ensure reduced continued loss of revenue because of unauthorized helicopter landing sites;
- (k) provide platform for redressing customer enquiries and complaints; and
- (l) promote investment in the aviation industry by both private and public sector;
- (m) create awareness of the opportunities available in the aviation sector
- (n) provide adequate implementation and enforcement mechanisms for the safety standards for heliport providers; and
- (o) create an adequate regulatory framework for air transport;

6.3 Cost benefit analysis of the proposed Regulations

Table 1

Problem	Proposed reform	Benefit	Cost (Kshs)
Inadequate regulatory framework due to lack of regulations covering heliports	Development of separate Regulations for Heliports	-Safe operations in heliports due to clarity in design and certification requirements. -Compliant heliports. -Ease of certification and licensing of heliports and thus improved compliance. -Compliance with international obligation. -Improved safety and quality standards.	Nil

Problem	Proposed reform	Benefit	Cost (Kshs)
Inadequate implementation and enforcement mechanisms for the performance standards for heliport operators.	Develop Regulations to facilitate planning, design, construction, maintenance, certification and licensing of heliport	-Clarity in design and certification requirements. -Compliant heliports. -Ease of certification and licensing	Costs related to issuance of construction permits and licensing fees Kshs. 110,000
Non-compliances due to failure of heliport operators to certify and license the airstrip	Have clear regulations that are enforceable to facilitate certification and licensing of heliports	-Regulations as an enabler to design and operationalization of heliports. -Enhanced compliance	Nil
Inadequate complaint resolution mechanism	Develop the Regulations with clear obligations regarding requirements for planning, design, construction and in the Regulations.	- The Authority can effectively address compliance in planning, design, construction and oversight of heliports and address issues of public interest through the coordination mechanism established. Emerging helipad operations issues can be addressed and enforced where required.	Nil

6.4 Consideration of Alternatives to the proposed Regulations

Table 2: Regulatory and non-regulatory options

Option	Impact
Option One: Maintenance of the Status Quo	Maintaining the status quo would continue exposing the state to significant safety concerns resulting from non-compliance with the international obligations ratified by the State.

Option	Impact
	Also, the State would continue losing revenue from certification and licensing fees due to inadequacy in the regulatory framework. Further, non-uniformity in applicable standards may create confusion which would expose the operations of helicopters and introduce risks in the regulation of heliports leading to Regulatory liabilities.
Option Two: Administrative measures Issuance of directives and circulars to the various entities and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law. These include Aeronautical Information Circulars (AIC), Advisory circulars or direct usage of ICAO standards and Recommended Practices.	Whereas directives and circulars would offer an alternative, their usage may not be feasible for the long term and thus can only be used as a stopgap measure. The ICAO USOAP-CMA requires the ratification of the Standards and Recommended Practices into National Regulations which are enforceable. Failure by the heliport operators to comply with the directives and circulars of the Authority exposes the Authority to Regulatory liabilities in the event of any incidents which may lead to litigation. Additionally, administrative measures cannot be applied in perpetuity and may lead to non-uniform application of the requirements as not everyone may be willing to comply as required with what the Authority cannot enforce.
Option Three: Promulgating the Civil Aviation (Heliports) Regulations 2024	- The promulgation of Civil Aviation (Heliport) Regulations 2024 requires Stakeholders' participation which leads to creation of awareness and buy in and when these Regulations are well understood. - Standardization and uniformity can be applied across the board which makes it easier to enhance compliance and enforcement of the Regulations due to the force of law. - Promulgation allows the anchoring of the directives of the Authority to be anchored in law and thus meeting the constitutional requirements.

Option	Impact
	Additionally, it ensures that subjectivity in issuing directives on grey areas is regulated and thus curtails misuse of Authority and at the same time enhancing objectivity in the performance of regulatory function and equity and fairness in certification and licensing.

6.5 Impact analysis of the Options

Table 3: Summary of the Impact Analysis of the Options

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Heliports) Regulations 2024
Personnel	Degraded safety in operations due to poor heliport standards.	Poor compliance due to lack of enforceability, hence poor safety standards.	Well designed and operated heliports with enhanced safety in operation.
Air Operator	The aircraft operator will be exposed to risks of poor heliport standards which may not enhance the safety of operations into and out of the heliports	Exposure to risks with no recourse due to design and operational gaps of the established helipads with the Authority unable to enforce the requirements for safety and the aircraft operator having to use discretion due to lack of assurance for safety and operations.	Well designed and operated heliports with assurance of safety to the aircraft operators including emergency response.
ANSP	Exposure to risks due to helicopters operating from undesignated heliports and inadequate coordination procedures with other existing aerodromes	Poor compliance due to lack of enforceability, hence poor safety standards which would introduce risks to other aviation operations.	Well-designed heliports with standards operating procedures and better coordination frameworks to ensure synergy with other aviation operations

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Heliports) Regulations 2024
Aerodrome/heliports Operator	Degraded safety standards and inadequate guidance due to poor safety standards	Poor compliance with the required standards due to lack of enforceability, hence poor safety standards.	Well designed and operated heliports with enhanced safety in operation.
Aviation Service Consumer	Inadequate assurance of safety and quality of air service due to poor infrastructure.	Exposure to risks due to lack of proper legislation to facilitate uniformity in safety and quality standards and inadequate enforceability following breach of safety	Assurance of safety enhancing compliance and advantage of legislative protection for the consumers using the service
The State	Exposure to audit findings by international organizations including significant safety concerns for failing to meet international obligation following ratification of the Convention for international Civil Aviation.	Directives and Circulars issued by the State are inadequate to cover the liability towards the State with non-compliant standards. Additionally, the directives will not have a force of law and thus continued exposure to audit findings and safety concerns.	Compliance with the International standards with regard to safety, efficiency and regularity of civil aviation leads to better performance and increased ease of doing business due to high assurance of safety.
The Authority	Inability of the Authority to meet its regulatory mandate leading to liabilities in the event of exposure to safety risks as a result of inadequate authorizations, surveillance, resolution of safety issues and enforcement.	An inadequate legislative framework to support the directives of the Authority leading to poor enforceability of the required standards.	Enhanced oversight with well-designed and operated heliports improving the safety standards.

6.6 Preferred Option

Based on the analysis, Option 3 (Promulgation of the Civil Aviation (Heliports) Regulations, 2024) was adopted as the preferred option. It is clear that the benefits and impact of promulgating these Regulations by far outweigh the cost of implementation. The other two options have negative impacts in addressing the problem.

CHAPTER SEVEN: COMPLIANCE AND IMPLEMENTATION

Regulatory-Making Authority and the legal mandate: The Cabinet Secretary has the responsibility of developing civil aviation regulations while Kenya Civil Aviation Authority implements and enforces the developed civil aviation regulations in order to promote safe aviation systems in Kenya; and Requirements of the Statutory Instruments Act: Section 5 requires that a regulation making authority conduct public consultations and to drawing on the knowledge of persons having expertise aviation and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

CHAPTER EIGHT: CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

Based on the above analysis, the following conclusions are drawn in respect of the draft Civil Aviation (Heliports) Regulations, 2024:

- (a) **Regulations making mandate:** Section 82 of the Civil Aviation Act empowers the Cabinet Secretary in Consultation to give effect to and for the better carrying out of the objects and purposes of this Act, to provide for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.
- (b) **Provisions of the Statutory Instruments Act:** Section 5 requires that a regulation-making authority to conduct public consultations and drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that an RIA be prepared where a statutory instrument is likely to impose significant costs on the community. This RIA thus contains certain the following key elements:
 - (i) a statement of the objectives of the proposed legislation and the reasons.
 - (ii) a statement explaining the effect of the proposed legislation.
 - (iii) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options.
 - (iv) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
 - (v) the reasons why the other means are not appropriate.

The RIA structure and content requirements established in the Statutory Instruments Act requirements have been fully met. Additionally, public consultation requirements in respect of the Civil Aviation (Heliports) Regulations have been fully adhered to.

- (c) **Other legal frameworks:** The draft Civil Aviation (Heliports) Regulations 2024 proposes to publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.
- (d) **The draft:** The draft Civil Aviation (Heliports) Regulations 2024 as drafted are clear, consistent, comprehensible, and comprehensive enough to cover all matters and meet the established drafting standards.

8.2 Recommendations

In view of the above conclusions, it is recommended that the draft Civil Aviation (Heliports) Regulations 2024 be adopted.

ANNEXURES

The Draft Civil Aviation (Heliports) Regulations 2024
Matrix for stakeholder consultations.