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REGULATORY IMPACT ASSESSMENT

FOR THE

CIVIL AVIATION (CONSTRUCTION OF VISUAL AND INSTRUMENT FLIGHT
PROCEDURES) REGULATIONS 2024

NOVEMBER, 2024

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

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

TABLE OF CONTENTS	
CHAPTER ONE: INTRODUCTION	3
1.1 Regulatory Authority and the Legal Mandate	3
1.2 Requirements of the Statutory Instruments Act	3
1.3 What is a Regulatory Impact Assessment (RIA)?	4
CHAPTER TWO: PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS...	5
2.1 Scope of the proposed regulations	5
2.2 Objective of the proposed regulations	5
2.3 An Overview of the Proposed Regulations: Salient Features	5
CHAPTER THREE: BACKGROUND AND CONTEXT	6
3.1 Policy Background	6
3.1.1 International	6
3.1.2 Regional	7
3.1.3 Domestic	7
3.2 International Context	9
3.3 Domestic Context	10
CHAPTER FOUR: EVALUATION OF THE PROBLEM	11
CHAPTER FIVE: STAKEHOLDER CONSULTATION	14
5.1 Legal requirements relating to public participation and consultation	14
5.2 The Process of Public Consultation	14
5.3 Public Notice and awareness	15
5.4 Public participation forum	15
5.5 Analysis and Feedback	15
CHAPTER SIX: COST BENEFIT ANALYSIS	16
6.1 Costs and Benefits analysis	16
6.2 Consideration of Alternatives to the proposed Regulations	17
6.3 Impact analysis of the Options	18
6.4 Preferred Option	21
CHAPTER SEVEN: COMPLIANCE AND IMPLEMENTATION	22
CHAPTER EIGHT: CONCLUSIONS AND RECOMMENDATIONS	23
8.1 Conclusion	23
8.2 Recommendations	24
ANNEXURES	24

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:

- (i) minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation and air navigation services and prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;
- (ii) generally securing the safety, efficiency, and regularity of air navigation and safety of aircraft and of persons and cargo carried therein, and for preventing aircraft endangering other persons;
- (iii) prohibiting aircraft from flying over such areas in Kenya as the Cabinet Secretary may by order published in the Gazette declare to be prohibited areas;
- (iv) exempting any aircraft or persons or classes of aircraft or persons from the provisions of any regulations made under this Act;
- (v) regulating the firing of rockets;
- (vi) the classification and use of airspace and the control and use of air routes and provisions of search and rescue facilities;
- (vii) the control and operation of the aircraft within or directly above the aerodrome for the purpose of limiting or mitigating the effect of noise;

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 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
- (b) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (c) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (d) the reasons why the other means are not appropriate;
- (e) any other matters specified by the guidelines;
- (f) 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 Regulations apply to a person who intends to or provides flight procedure design services for air navigation purposes in the Republic of Kenya. The regulations do not apply to a person or organization providing flight procedure design services to state aircraft within designated military airspaces or airports.

2.2 Objective of the proposed regulations

The general objective of the regulations is to ensure compliance to the International Civil Aviation Organization (ICAO) requirements in the development and maintenance of the visual and Instrument flight procedures at Kenyan airports. This is meant to ensure that aircraft operations to and from our airports are conducted safely and efficiently. The specific Objectives are to:

- (a) Regulate the design, development, evaluation, approval and continued maintenance of the procedures.
- (b) Regulate the training of flight procedure designers including their continued competence in executing the assigned tasks.
- (c) Provides for the collection and management of design data and/or records
- (d) Provides for the management of the errors in published flight procedures including the publication of the Aerodrome operating minima.

2.3 An Overview of the Proposed Regulations: Salient Features

This overview aims to evaluate the clarity, consistency and comprehensiveness of the proposed Regulation in relation to the identified issues. It is essential that the regulations 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 (Construction of Visual and Instrument Flight Procedures) Regulations 2024 is as follows:

- Part I— Preliminary Provisions
- Part II— Requirements
- Part III—Exemptions
- Part IV— Offences and Penalties

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 (Construction of Visual and Instrument Flight Procedures) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 11 to the Convention on international civil aviation and the Procedures For Air Navigation Services Aircraft Operations, Volume II – Construction of Visual and Instrument Flight Procedures, Seventh Edition, 2020.

Kenya as a contracting state has an obligation under Article 37 to the Convention on international civil aviation to domesticate the SARPs and applicable Procedures for Air Navigation Services 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

(i) 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 to be 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.

(ii) 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. Article 94 (6) of the Constitution gives parliament the power to delegate its legislative authority to a State organ, State officer or person to make provision having the force of law in Kenya.

(iii) Kenya Aviation Policy

The Policy aims to foster the growth of aviation business in Kenya to support job creation by positioning Kenya as a recognized regional leader in aviation; maximize the contribution of the aviation sector to Kenya's economic growth and development; and enhance Kenya's connectivity at a national and international level by ensuring safe, secure and competitive access which is responsive to the needs of businesses, tourism and the population. The Policy covers the entire aviation sector in Kenya including key air transport challenges related to regulatory framework, safety, security, environmental aspects, economic regulation, institutional framework, air transport market and stakeholders, air transport infrastructure including planning, development, operation, and management, air transport personnel, and air transport statistics.

(iv) The Kenya Airspace Master Plan

The Plan outlines the evolution and associated investments to be made by the Kenya Civil Aviation Authority (KCAA) in Air Navigation Services (ANS) over the next 15 years. The objectives of the Plan include global and regional consistency, legal/regulatory considerations, and stakeholder expectations. The plan covers operational evolutions, technical improvements, and human resources development.

(v) The National Aviation Safety Plan (NASP)

The Plan is aligned with the International Civil Aviation Organization's (ICAO) Global Aviation Safety Plan (GASP), the NASP outlines objectives, strategic priorities, and safety actions to be taken over three years (2023 to 2025). The Plan includes key elements such as identification of national safety issues, setting aviation safety goals and targets, implementing safety enhancement initiatives (SEIs), and collaborating with industry stakeholders and agencies responsible for safety oversight. The NASP complements Kenya's State Safety Programme (SSP) Document.

(vi) Civil Aviation Act, Cap 394

The Civil Aviation Act 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 (Construction of Visual and Instrument Flight Procedures) Regulations, 2024 have been developed under section 82 of the Civil Aviation Act.

(vii) Statutory Instruments Act, Cap 2

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 (Construction of Visual and Instrument Flight Procedures) 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 require 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 (Construction of Visual and Instrument Flight Procedures) Regulations 2024 are meant to 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 (Construction of Visual and Instrument Flight Procedures) 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 current regulations were last promulgated under Legal Notice No. 121 in 2018. Since then, the International Civil Aviation Organization reviewed the Annex 11 provisions at the end of 2018 and also issued amendment 52 in the year 2020. In addition, ICAO also made an amendment to the procedures for air navigation -aircraft operations document that contain the key criteria that contains the requirements for the development of the visual and instrument flight procedures. Consequently, the regulations then required review and update.

The proposed regulations seek to address the following:

(a) Sustainability of Civil Aviation System

(i) International Obligation

The Republic of Kenya is a signatory of the Chicago convention and hence has an obligation of amending its regulations from time to time in accordance with the provisions of article 37. This will enable the State to secure the highest practicable degree of uniformity in regulations, standards, procedures, and organization and in the long run facilitate and improve air navigation and the provisions be in tandem with those of ICAO.

ICAO guides too that the promulgation of regulations is to address, at a minimum, national requirements emanating from the primary aviation legislation, for standardized operational procedures, products, services, equipment and infrastructures in conformity with the Annexes to the Convention on International Civil Aviation.

It is also the responsibility of a State to develop and implement a process to ensure the timely amendment of the specific operating regulations, as necessary, in order to keep pace with the amendments to the Annexes to the Convention. The system in place should ensure that the regulations are issued at the appropriate level, as provided for by the State's primary legislation. It should also ensure that the overall legislation is consistent and, in particular, that regulations are repealed when replaced by new ones.

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.

(ii) Aviation Safety

Aviation Safety is the state in which risks associated with aviation activities, related to, or in direct support of the operation of aircraft, are reduced and controlled majorly through proactive means to an acceptable level.

The epitome of aviation safety is anchored on the need of each state to ensure that there is the promulgation and timely amendment of national legislation and guidance to industry, as well as their effective implementation by service providers that is verified by the State in a continuous and systemic manner.

The inability of a state to have current regulations that are complied by the service providers is a mandatory requirement and in the event that the same is not available then the health of civil aircraft operations is threatened.

The goal of the regulations is to guarantee that an aircraft is always protected at each phase of the flight. This includes the protection against obstacles from the initial approach fix, or where applicable, from the beginning of a defined arrival route to a point from which a landing can be completed and thereafter, if a landing is not completed, to a position at which holding operations may be required.

Hence for purposes of ensuring that there are safe aircraft operations there is need of ensuring that the regulations are current and in compliant with the ICAO SARPS and any other requirements that could enhance the safety of aircraft operations in the country.

(iii) Operational rights to other jurisdictions

The need to have globally harmonized standards is meant to enhance compliance to the international standards in one State is bound to threaten the health of international civil aircraft operations. This state of affairs is as a result of the inter state aircraft operations. The way to achieve this uniformity is by bringing Kenyan regulations as close as possible with SARPS adopted and amended by ICAO.

(iv) Reduction of Cost of Doing Business

The regulatory framework in place may encourage or discourage people and organizations from doing business. The sustainability of the civil aviation system is increasingly linked to the cost of doing business. Civil aviation is a cost intensive venture requiring huge sums of money to procure aviation systems, establish the requisite infrastructure, purchase aircraft and run an airline to name a few. A poorly regulated

industry may never thrive owing to the negative perception associated with it, the associated high cost of doing business, high insurance premiums and the losses resulting from doing business in such an environment.

To reduce unwarranted losses, high cost of doing business and an unstable business environment, proper regulations are required. A robust regulatory framework goes a long way in assuring investors that they can invest without worrying about the possibility of their investment suddenly going down the drain because of preventable incidents, accidents, flight delays, unwarranted competition and inefficiencies. Robust regulations provide the confidence, cushion and order necessary to gain such confidence.

CHAPTER FIVE: STAKEHOLDER CONSULTATION

5.1 Legal requirements relating to public participation and consultation

The need to amend the Civil Aviation (Construction of the Visual and Instrument Flight procedures) Regulations 2018, was necessitated largely by the ICAO amendments to the Procedures of Air Navigation-Aircraft Operations Volume II and the best practices in the domain of flight procedure design. Kenya as a contracting State is therefore required to bring its regulations into uniformity with the adopted and amended international standards to continue participating on equal grounds with the rest of the world.

Public participation plays a crucial role in democratic governance by ensuring transparency, inclusivity, and accountability in decision-making processes. The Constitution of Kenya 2010, places emphasis on public participation as a fundamental principle of governance. Article 10 of the Kenya Constitution outlines the values and principles of governance, including public participation, which is crucial for achieving accountability, transparency, and public involvement in decision-making processes.

In addition, Article 118 of the constitution establishes the right to public participation in legislative and other processes of the State, ensuring that the public has an opportunity to participate in matters that affect them directly.

The requirement for public participation applies to regulation making too. As such, before the draft regulations would be forwarded for promulgation, a series of stakeholder/public engagements was conducted.

5.2 The Process of Public Consultation

The first of a series of stakeholder meetings covering a set of eleven (11) civil aviation regulations 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 Olesereni 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.

5.3 Public Notice and awareness

All stakeholders' engagement fora were advertised at least 21 days 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 in addition to a form to collect stakeholder comments which was uploaded alongside the regulations on the KCAA website www.kcaa.or.ke.

5.4 Public participation forum

The physical stakeholder engagement was conducted at the Ole Sereni Hotel in Nairobi on 30th April 2019 and attended by 102 participants. The virtual stakeholder engagement held between 14th and 18th June 2021 attracted a total attendance of 718 members of the public and aviation stakeholders. The Stakeholder engagement reports, Local daily newspaper adverts, copies of signed or digital attendance lists as applicable, Matrices containing input from stakeholders and how the same were incorporated in the regulations form annexures to this report.

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 analysed, 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 analyse 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 analysed 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 and Benefits analysis

Through the promulgation of the Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations, 2024, The Kenya Civil Aviation Authority aims to ensure that the navigational airspace remains secure, sustainable, and resilient. The visual and Instrument flight procedures are used by aircraft flying and designed to facilitate safe and efficient aircraft operations. These procedures are an really an essential component of the aviation system and hence the need of continued review and maintenance.

The benefits that will accrue through the promulgation of the revised Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations, 2024 outweigh the projected costs to be incurred mainly by the air navigation services provider or the design organization as service providers. This will involve costs in the initial design and maintenance/revision subsequent to collection of new obstacle data, change of the design criteria or any other valid reasons.

Table 1: Cost Benefit analysis

PROBLEM	PROPOSED REFORM	BENEFITS	COST
Application	Application amended for clarity	Enhances the understanding of the jurisdiction of the Authority and the operator	Nil
Quality Assurance	Introduced a new provision that made it mandatory for the quality assurance that shall cover the 16 steps of the flight procedure design including maintenance.	(a) Increased compliance to the ICAO requirements. (b) Enhances safety within the Kenya Airspace (c) Allows the optimization of	Minimum as majorly required documentation of the procedure design process

PROBLEM	PROPOSED REFORM	BENEFITS	COST
		the Kenyan airspace.	
Design of Flight procedures	Clarification on the design criteria, equipment acquisition by the service providers and training of personnel	(a) Enhances the quality of the flight procedure designs; (b) Allows the acquisition of tools that facilitate the process including the training of staff	Training costs of the personnel and maintenance of the design equipment.

6.2 Consideration of Alternatives to the proposed Regulations

Table 2: Alternative Approaches to Construction of Visual and Instrument Flight Procedures regulation

Option	Impact
Option One: Maintenance of the Status Quo	(a) Maintaining status quo means that no regulations are developed, thus the challenges of currency and keeping up with the international obligations and requirements will not be addressed. (b) Kenya won't be complying with terms of the Convention to which it is a signatory and hence will attract ICAO Universal Safety Oversight – continuous Monitoring Approach (USOAP-CMA) Audit findings. (c) Lack regulations that are current will place Kenya behind other States with more current and robust regulations thereby denying the State the much desired investment in the aviation industry.
Option Two: Administrative measures	(a) Involves issuance of directives and circulars to the various entities and hoping that they will be implemented. (b) Administrative measures do not have the force of law and may be challenged in court

Option	Impact
	of law.
Option Three: Promulgating the Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations 2024	Promulgation of the Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations 2024 will enhance safety by ensuring that that Kenya; (a) Shall be able to effectively enhance the safety oversight of the flight procedure design organizations and enhance the quality of the flight procedures. (b) Secures the highest practical 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 (c) Achieves a high effective implementation of standards and recommended practices by ensuring that there is compliance with ICAO standards.

6.3 Impact analysis of the Options

Table 3: Impact analysis of Construction of Visual and Instrument Flight Procedures regulation options

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations 2024
Flight procedure design organization	The design organization will not be able to apply the current requirements in the design of flight procedures	The administrative option will not suffice since it does not compel compliance. The state will not demonstrate compliance to the ICAO requirements	Will be able to guarantee compliance of the international requirements and enhance safety in the airspace
Provision of Air Navigation	Maintaining the current regulations poses the	(a) This will require the issuance of directives	

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations 2024
Services	following challenges: (a) Safety of aircraft operation may degrade due to non-applicability of the of the international requirements. (b) Operational inefficiencies especially in airspace optimization. (c) Stakeholders, including passengers and industry partners, may lose confidence in the safety and reliability of air transport services. (d) Non-compliance with regulations can lead to legal challenges and increased liability for airlines and the state.	and circulars to the various service providers; (b) Administrative measures do not have the force of law. These include Advisory Circulars and Aeronautical Information Circulars (c) Without a framework of formal regulations, there may be variations in how administrative documents are interpreted and applied across different service provision organizations.	
Aircraft Operators	If the Authority was to maintain the current set of regulations, the following issues are bound to arise: (a) Inability to optimize the airspace capacity; (b) Inability to make savings through	(a) Air operators require clear and accurate flight procedures to allow them to navigate into or transit over the Kenyan Airspace. (b) Administrative documents lack the same legal standing as formal regulations and	(a) The regulations will enhance safety standards, reducing the risk of accidents and incidents. (b) Well-defined regulations provide clear

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations 2024
	the design of fuel efficient routes including the continuous climb and descent operations the operators the benefit of enjoying new technology that can transform their business model (c) Denys operators the benefits accrued from choosing the most optimum route for lack of assurance of the safety of their aircraft while transiting over the Kenyan airspace. (d) Air operators may find it difficult to implement new technology since there are no supporting regulations. (e) Regulations that are not updated will result the identification of non-compliances to the international requirements by ICAO hence resulting to a negative impact.	mainly contain procedural information. (c) Without a framework of formal regulations, there may be variations in how administrative documents are interpreted and applied across different air operators. (d) Administrative documents may not impose clear accountability measures, making it difficult to hold the service provider responsible for non-compliance.	guidance for air operators, helping them understand their responsibilities and the requirements they must meet for compliance. (c) By aligning regulations with international standards, the CAA can facilitate smoother operations and acceptance by foreign aviation authorities, improving global cooperation which is a benefit to air operators.
The Civil Aviation Authority	(a) Difficulty on the part of the State carrying out	(a) Administrative documents lack the same legal standing as	(a) Provides the State with a basis on which

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations 2024
	effective oversight owing to deficiencies in the current regulations. (b) The State may lose its standing as a major aviation hub to other upcoming markets with more robust regulatory frameworks.	formal regulations and mainly contain procedural information. (b) Dependence on these may lead to uncertainty in enforcement and compliance. (c) The process of developing administrative documents may not normally involve the same level of stakeholder consultation as formal regulatory development, potentially resulting in overlooked stakeholder concerns or needs which may negatively affect the State's credibility.	to carry out oversight (b) Enables institution of enforcement action on violators (c) Enhances the State's standing among peers (d) Enables compliance with international standards.

6.4 Preferred Option

Based on the above analysis, the benefits of promulgating new regulations outweigh the costs and therefore the Kenya Civil Aviation Authority prefers option three over the other two options.

CHAPTER SEVEN: COMPLIANCE AND IMPLEMENTATION

As different aspects of the proposed Regulations are evaluated and analyzed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the Regulator to assess the adequacy of the institutional framework and other incentives through which the Regulations will take effect, and design responsive implementation strategies that make the best use of them.

In an ideal situation an institution responsible for enforcement of the Regulations should have the capacity of co-ordination of institutional frameworks from a whole-of-government perspective, independent and sufficient authority, political support at a high political level, and integration into a broad concept of reform. KCAA has been implementing the current Regulations for over 5 years now and has demonstrated capacity to implement the proposed Regulations and has indeed put in place a plan as outlined in the Strategic Plan 2023-2028 of strengthening its institutional capacity to enable it enforce full compliance with the proposed Regulations.

CHAPTER EIGHT: CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusion

Based on the above analysis, the following conclusions are drawn in respect of the draft Civil Aviation (Construction of Visual and Instrument Flight Procedures) 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 generally 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 a 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 (Construction of Visual and Instrument Flight Procedures) Regulations have been fully adhered to.

- (c) **Other legal frameworks:** The draft Civil Aviation (Construction of Visual and Instrument Flight Procedures) 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 (Construction of Visual and Instrument Flight Procedures) 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 (Construction of Visual and Instrument Flight Procedures) Regulations 2024 be adopted.

ANNEXURES

The Draft Civil Aviation (Construction of Visual and Instrument Flight Procedures) Regulations 2024

Matrix for stakeholder consultations