



REPUBLIC OF KENYA

MINISTRY OF ROADS AND TRANSPORT

REGULATORY IMPACT ASSESSMENT

FOR THE

**CIVIL AVIATION (CARBON OFFSETTING AND REDUCTION SCHEME FOR
INTERNATIONAL AVIATION) 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 2

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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 overseeing 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:

- (a) prohibiting the flying of any aircraft— (i) unless there is in force in respect of such aircraft a certificate of airworthiness or permit to fly issued or recognized in accordance with regulations made under this Act; and (ii) except upon compliance with such conditions as to maintenance and repair as may be prescribed or specified in the certificate or permit;
- (b) providing for the manner and conditions of issue, validation, renewal, extension or variation of any licence required in regulations and for the form, custody, production, cancellation, suspension, endorsement and surrender of such;
- (c) exempting any aircraft or persons or classes of aircraft or persons from the provisions of any regulations made under this Act;
- (d) prohibiting or regulating in the vicinity of any aerodrome the emission or causing of smoke, soot, ash, grit, dust and any other substance whatever which obscures or may obscure visibility; and
- (e) 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, Cap 2A(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 Regulations apply to an aeroplane operator that produces annual CO₂ emissions greater than 10,000 tonnes from the use of an aeroplane(s) with a maximum certificated take-off mass greater than 5,700 kg conducting international flights.

2.2 Objective of the proposed regulations

The general objective of Carbon Offsetting and Reduction Scheme for International Aviation is to promote consistent implementation of the technical requirements for the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). The specific objectives of the Carbon Offsetting and Reduction Scheme for International Aviation services are to:

- (a) Provide guidelines for monitoring, reporting and verification of an aeroplane operator's CO₂ emissions;
- (b) Provide guidelines on an aeroplane operator's CO₂ offsetting requirements;
- (c) Provide relevant applicability requirements to an aeroplane operator engaged in international air navigation.
- (d) Provide for developing and maintaining the CO₂ emission registry for the purpose of implanting CORSIA.
- (e) Ensuring that Kenya complies with existing national and international regulations, guidelines and standards on climate change mitigation and adaptation in the aviation sector.

2.3 An Overview of the Proposed the proposed Regulations: Salient Features

This overview aims to evaluate the clarity, consistency, comprehensibility, and comprehensiveness of the proposed Regulation 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 (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations, 2024 is as follows:

- PART I: - Preliminary (Citation, Interpretation and Application)
- PART II: - Carbon Offsetting and Reduction Scheme for International Aviation
- PART III: - Monitoring, Reporting and Verification of Emissions
- PART IV: - CO₂ Offsetting Requirements from International Flights and Emissions Reductions from the Use of Corsia Eligible Fuels
- PART V: - Emissions Units
- PART VI: - General Provisions
- PART VII: - Miscellaneous Provisions

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 (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 16 Volume 4 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 being 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 5 of the Constitution outlines the obligations in respect of the environment. 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 for 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.

(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 (Carbon Offsetting and Reduction Scheme for International Aviation) 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 (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations, 2024 will 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 (Carbon Offsetting and Reduction Scheme for International Aviation) 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 Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations are new regulations (being published for the first time). ICAO adopted Annex 16, Volume IV of the Chicago convention, containing Standards and Recommended Practices relating to the implementation of the Carbon Offsetting and Reduction Scheme for International Aviation. The Annex 16 Vol. IV was first published in 2018 and became applicable in 1st January 2019. Kenya is therefore not in compliance with the terms of the convention of which it is a signatory. The gap in the regulations then, can only be bridged through promulgation of these new regulations.

The proposed regulations seek to address the following:

(a) Sustainability of Civil Aviation System

(i) International Obligation

While the International Civil Aviation Organization has a responsibility to adopt and amend from time to time, international standards and recommended practices and procedures dealing with Aviation environmental protection in accordance to Article 37 to the Chicago Convention, Kenya, as a contracting State has agreed to collaborate in securing the highest practicable degree of uniformity in its regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services with those adopted and amended by ICAO.

To achieve effective compliance with terms of the Convention, State regulations should be comprehensive, clear, consistent and up to date. The regulations should conform with the Annexes to the Convention.

It is 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 civil aviation act. It is also required that the State ensures that the overall legislation is consistent and, in particular, that regulations are repealed when replaced by new ones.

At regional level, Kenya is a member of the East Africa Community treaty. The East Africa Community Civil Aviation Safety and Security Agency (EAC CASSOA) coordinates aviation activities at regional level and serves as the Regional Safety Oversight Organization. To achieve uniformity and standardization at Regional level, member states have agreed to jointly develop model EAC civil aviation regulations which member States should adopt. Regulations promulgated by member States therefore should reflect those developed at regional level.

(ii) Aviation Safety

Safety is a core value-offering of rapid and dependable air services, and international cooperation on aviation safety by governments and industry groups. Initiatives taken by ICAO in collaboration with contracting States have helped commercial air transport to become the safest way to travel.

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.

ICAO working together with member States are currently working toward their agreed global safety target of zero fatalities by 2030, in tandem with the strengthening of their regulatory capacities, while pursuing a range of programmes and targets relevant to current core areas of global aviation safety planning, oversight, and risk mitigation.

Over the years, ICAO and its Member States have collaborated to develop uniform Standards and Recommended Practices (SARPs) and procedures for the safe and orderly development of international civil aviation as well as for sound and economical international air transport services. United by a common cause and commitment, ICAO and its Member States have been able to confront crucial issues and, to a great degree, overcome the challenges encountered.

A number of factors that are in play underline the importance of renewed commitment and political will on the part of governments:

- (a) an increased involvement of non-traditional sectors in civil aviation, necessitating a significantly heightened attention to matters of aviation safety within the context of wider policy initiatives;
- (b) increasing globalization of civil aviation itself, exemplified by foreign and multi-national ownership and alliances of airlines, joint marketing arrangements, multinational approaches to both technical and economic regulations, along with increasing interaction between domestic and international civil aircraft operations;
- (c) an increasing demand for flights and for the infrastructure and services that such demand generates. The growth of air transport is surpassing the capacity of many aerodromes and airspace utilization, causing authorities to reconsider concepts, processing methods and facilities. This presents the challenge of providing additional capacity while maintaining or even improving safety levels;
- (d) increasingly intense social, economic, political, environmental and other pressures on civil aviation policy, particularly at the national and regional levels. Such pressures can result from rapid changes to socio-economic systems, which can have global effects (for example, rising expectations

by society of safety levels). These pressures can also lead to conflicts such as those between safety and environmental obligations. In meeting environmental obligations, those relating to safety should not be compromised;

- (e) aviation safety is essential to ensure the healthy development of the air transport sector, which is a catalyst for sustainable development. Air transport impacts tourism and trade. It serves as the main mode of transportation to deliver humanitarian relief and response to crises and public health emergencies. It generates other socio-economic benefits which help eradicate poverty by creating jobs and enhancing air connectivity.

The State has the responsibility to regulate and supervise all aviation activities within Kenya to ensure the safe, efficient and regular operation of air services.

As such, for the State to effectively oversight aviation activities in Kenya, it must be supported with a robust and up to date regulations. The lack of up to date aviation environmental protection regulations therefore introduces a gap in requirements to be implemented by aeroplane operators and limits the State in undertaking its oversight responsibility over persons or organizations providing or intending to provide international air navigation.

(b) Environmental Protection

ICAO serves as a multilateral platform for cooperation on international aviation environmental protection. Over the years, the national governments who participate together under the Chicago Convention, have agreed to concentrate their aviation environmental collaboration on three core areas:

- (a) Climate change and aviation emissions
- (b) Aircraft noise
- (c) Local air quality

States are pursuing these objectives through ICAO primarily via their development of new global aviation standards. They have also agreed to aspirational goals for international aviation, and have prioritized ICAO's Environmental Protection resources on:

- (a) Airframe, propulsion, and other aeronautical and technological innovations
- (b) Optimizing flight procedures to reduce fuel burn
- (c) Increasing the production and deployment of sustainable aviation fuels and clean energy
- (d) Implementing the Carbon Offsetting Reduction Scheme for International Aviation (CORSIA).

(c) Operational rights from other jurisdictions

Kenya's Geopolitical location attracts many a person and operator from other jurisdictions. Many airlines and air operators operating into, out of and through Kenya have home in States that have standardized their regulations with SARPS adopted and amended by the International Civil Aviation Organization. Kenya as a State therefore stands to gain if operational rights and State regulations mirror those of jurisdictions of the target operators. The way to achieve this uniformity is by bringing Kenyan regulations as close as possible with SARPS adopted and amended by ICAO.

(d) Reduction of Cost of Doing Business

The regulatory framework in place may encourages 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 in air navigation services provision. Robust regulations provide the confidence, cushion and order necessary to gain such confidence.

Establishing robust regulations for Carbon Offsetting and Reduction Scheme for International Aviation will provide guidance to aeroplane operators that produce annual CO₂ emissions greater than 10,000 tonnes from the use of an aeroplane(s) with a maximum certificated take-off mass greater than 5,700 kg conducting international flights how to implement carbon Offsetting and Reduction Scheme.

CHAPTER FIVE: STAKEHOLDER CONSULTATION

5.1 Legal requirements relating to public participation and consultation

The need to promulgate the Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations, 2024, was necessitated largely by adoption of ICAO annex 16 Volume 4 to the Chicago convention. 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 were conducted.

5.2 The Process of Public Consultation

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 the 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 a 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 were 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

The benefits that will accrue from promulgation of new Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations far outweigh the projected costs to be incurred mainly by the Kenya Civil Aviation Authority and air operators. The costs mainly related to initial implementation costs to achieve compliance with the regulatory requirement. Requirements for Monitoring, Reporting and Verification (MRV) and CO₂ Offsetting Requirements will however incur additional costs owing to the need for their regular implementations.

It is however impossible to fully quantify the cost that goes into ensuring that Carbon Offsetting and Reduction Scheme for International Aviation, which is a cardinal element of all civil aviation activities, is maintained at all times. Furthermore, standards complied with the promulgation of these regulations have been meticulously studied and trialed at an international level. The results of such trials and tests have proven that the benefits accrued are worth the cost, hence the adoption of the standards and recommended practices into ICAO Annex 16 Volume IV.

Table 1 below summarizes the problems promulgation of new regulations is supposed to treat, the proposed amendments as well as the attached benefits and costs.

Table 1: Cost Benefit analysis

PROBLEM	PROPOSED	BENEFITS	COST
No regulation	Introducing new regulations on Carbon Offsetting and Reduction Scheme for International Aviation covering the following key areas:		
	1. Administrative (Authority) (a) Attribution of international flights to an aeroplane operator (b) Attribution of an	(a) Reduced CO ₂ emissions (b) States will be able to comply with international standards and	a) .Cost of running CORSIA oversight function

	aeroplane operator (c) Approval of Compliance (d) Record keeping (e) Compliance periods and timeline (f) Equivalent procedures	obligations (c) Cleaner and healthy environment (d) Assist the state to meet the UN SDG through effective oversight	
	2. Monitoring, Reporting and Verification of Emissions (Authority) (a) Monitoring of CO₂ Emissions (b) Reporting of CO₂ Emissions (c) Verification of CO₂ Emissions (d) Data Gaps	(a) States will be able to comply with international standards and obligations (b) Cleaner and healthy environment (c) Assist the state to meet the UN SDG through effective oversight (d) develop the regulations for the implementation of the Monitoring, Reporting and Verification (MRV) system	(a) Cost of running CORSIA oversight function (b) Cost of setting and running a registry for CO₂ emissions
	3. Monitoring, Reporting and Verification of Emissions (Aeroplane Operators) a) Monitoring of CO₂ Emissions b) Reporting of CO₂ Emissions c) Verification of CO₂ Emissions d) Data Gaps	(a) Cleaner and healthy environment (b) Assist the state to meet the UN SDG through effective oversight (c) comply with the regulations for the implementation of the Monitoring,	(a) Cost of implementing MRV system (b) Cost of setting and running a registry for CO₂ emissions (c) Cost associated with verifications

		Reporting and Verification (MRV) system	
	4. CO ₂ Offsetting Requirements from International Flights and Emissions Reductions From the use of CORSIA Eligible Fuels (Authority) -Emissions Units	(a) Assist the state to meet the UN SDG through effective oversight (b) comply with the regulations for the implementation of the Monitoring, Reporting and Verification (MRV) system	(a) Cost of implementing MRV system (b) Cost of running CORSIA oversight function
	5. CO ₂ Offsetting Requirements from International Flights and Emissions Reductions From the use of CORSIA Eligible Fuels (Aeroplane operators) - Emissions Units	(a) Assist the state to meet the UN SDG through effective oversight (b) comply with the regulations for the implementation of the Monitoring, Reporting and Verification (MRV) system	(a) Cost associated with Carbon offsetting (b) Cost associated with verifications

6.2 Consideration of Alternatives to the proposed Regulations

Table 2: Alternative Approaches to Carbon Offsetting and Reduction Scheme for International Aviation 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

Option	Impact
	(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	Involves 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.
Option Three: Promulgating the Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations, 2024	Promulgation of the Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations, 2024 will enhance integrity by ensuring that Kenya; (a) Secures the highest practical degree of uniformity in regulations, standards, procedures and organization in relation to aviation environmental protection and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation (b) Achieves a high effective implementation of standards and recommended practices by ensuring that there is compliance with ICAO standards (c) Can effectively regulate and oversight the aeroplane operators compliance with the regulations

6.3 Impact analysis of the Options

Table 3: Impact analysis of Carbon Offsetting and Reduction Scheme for International Aviation regulation options

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
Aeroplane Operators	Maintaining the current status poses the following challenges: (a) Difficulty in attracting international clients who are not assured of aviation environmental integrity in Kenya hence choosing to route over longer routes that pass over States perceived to run safer aviation activities. (b) Operational inefficiencies due to a deficiency in addressing current industry practices and emerging technologies, the use of which would make flights more efficient and environmentally friendly. (c) Stakeholders, including passengers and industry partners, may lose confidence in the environmental	Involves 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 Advisory Circulars and Aeronautical Information Circulars (a) Administrative documents lack the same legal standing as formal regulations and mainly contain procedural information. Dependence on administrative documents may lead to uncertainty in enforcement and compliance. (b) Without a framework of formal regulations, there may be variations in how administrative documents are interpreted and applied across the industry. (c) The process of developing administrative	(a) Promulgation of these Regulations will establish and enhance Environmental Protection standards, reducing the risk of environmental ambiguity. (b) These Regulations will carry legal weight; hence they will be clear that compliance is a requirement. Aeroplane operators will therefore know that they will be held accountable for non-compliance, thereby improving overall industry adherence to environmental protection safe practices. (c) The New regulations promote uniformity across

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
	integrity and reliability of air transport services. (d) Non-compliance with regulations can lead to legal challenges and increased liability for air operators.	documents may not normally involve the same level of stakeholder consultation potentially resulting in overlooked stakeholder concerns or needs. (d) Administrative documents may not impose clear accountability measures, making it difficult to hold persons responsible for non-compliance. (e) Persons may find it challenging to comply with administrative documents if they lack the rigor and specificity that formal regulations provide. (f) Stakeholders may resist adopting administrative documents that lack the authority and clarity of formal regulations, resulting in a lack of commitment to compliance.	the aviation sector, ensuring that all aeroplane Operators adhere to the same standards, which enhances safety and operational efficiency. (d) Well-defined regulations provide clear guidance for aeroplane operators, helping them understand their responsibilities and the requirements they must meet for compliance. (e) The Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) regulations will enhance confidence among Aeroplane operators by demonstrating a commitment to

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
			safety and regulatory compliance. (f) By using regulations aligned with international standards, the aeroplane operators can facilitate smoother operations. (g) A robust regulatory framework can promote a safer and more efficient aviation environment though effective air navigation services.
The State	(a) Difficulty on the part of the State carrying out effective oversight due to lack of regulations (b) The inability to provide up to date environmental protection, regulations can stifle the growth of the aviation sector, affecting economic	(a) Administrative documents lack the same legal standing as formal regulations and mainly contain procedural information. Depending on them may lead to uncertainty in enforcement and compliance. (b) Without a framework of formal regulations,	(a) Provides the State with a basis on which to carry out oversight (b) Enables institution of enforcement action against violators (c) Enhances the State's standing among peers (d) Enables compliance with

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
	development and regional connectivity. (c) The State may lose its standing as a major aviation hub to other upcoming markets with more robust regulatory frameworks.	the State may not be able to control the varied understanding and interpretation of administrative documents by target persons or organizations. (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. (d) Administrative documents may not impose clear accountability measures, making it difficult for the State to hold persons responsible for non-compliance. (e) Relying on administrative documents may lead to a fragmented approach	international standards

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
		to regulation, with varying practices that hinder safety and efficiency across the aviation sector. (f) Stakeholders may resist adopting administrative documents that lack the authority and clarity of formal regulations, resulting in a lack of commitment to compliance. (g) Regulation and oversight using administrative documents is nearly impossible	
The Authority	(a) The Authority may lose credibility and trust among stakeholders for not initiating the amendment of regulations and bringing them to effect in a timely manner. (b) A lack of robust regulations can deter investment in the aviation sector, stunting growth and economic	(a) Administrative documents typically do not carry the same legal weight as formal regulations, making enforcement difficult and leading to uncertainty among stakeholders about compliance requirements. (b) Without formal Regulations, there may be inconsistencies in how the administrative	(a) Promulgation of these Regulations will establish and enhance environmental protection standards. (b) These Regulations will carry legal weight, allowing the CAA to enforce compliance and hold persons accountable for

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
	development in the country and the region. (c) The authority may experience challenges in coordinating with other national and international regulatory bodies owing to different levels of compliance with international standards thereby complicating collaborative efforts to enhance aviation environmental protection.	documents are interpreted and applied across different aeroplane operators. (c) The process of developing administrative documents may not involve comprehensive consultations with all relevant stakeholders, potentially missing important input from industry experts, operators and consumers of air navigation services. (d) Administrative documents can sometimes lack the specificity and clarity needed to guide organizations effectively, leading to confusion about applicable standards and recommended practices. (e) It may be challenging to hold persons accountable for non-compliance if the guidelines are not formally codified	non-compliance, thereby improving overall industry adherence to safety and environmental practices. (c) The New regulations promote uniformity across the aviation sector, ensuring that all aeroplane operators adhere to the same standards, which enhances safety and operational efficiency. (d) Well-defined regulations provide clear guidance for aeroplane operators, helping them understand their responsibilities and the requirements they must meet for compliance. (e) The CAA can conduct more

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
		into regulation, which can lead to a lack of adherence to safety standards. (f) Relying on administrative documents can lead to a fragmented regulatory framework, where different persons may adopt varying practices that compromise overall safety and operational efficiency. (g) Stakeholders may be less likely to adhere to administrative guidelines that lack the authority of formal regulations, reducing the effectiveness of the intended safety measures.	effective oversight and monitoring of aeroplane operators, facilitating better risk management and safety assurance. (f) The Carbon Offsetting and Reduction Scheme for International Aviation regulations will enhance confidence among stakeholders by demonstrating a commitment to environment and regulatory compliance. (g) Updated regulations will address new technologies, practices, and safety concerns, ensuring that the regulatory framework remains relevant and effective. (h) A robust

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation regulation) Regulations 2024
			regulatory framework can promote a safer and more efficient aviation environment, which can contribute to the growth of the aviation sector and the broader economy.

6.4 Preferred Option

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

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 requirements for ICAO Annex 16 volume 4 for over six 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 2023/24-2027/2028 of strengthening its institutional capacity to enable it enforce full compliance with the proposed Regulations.

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 (Carbon Offsetting and Reduction Scheme for International Aviation) 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 (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations have been fully adhered to.

- (c) **Other legal frameworks:** The draft Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation) 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 (Carbon Offsetting and Reduction Scheme for International Aviation) 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 (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations 2024 be adopted.

ANNEXURES

Draft Civil Aviation (Carbon Offsetting and Reduction Scheme for International Aviation) Regulations 2024

Matrix for stakeholder consultations