



REPUBLIC OF KENYA
MINISTRY OF ROADS AND TRANSPORT

REGULATORY IMPACT ASSESSMENT
For the Civil Aviation (Security) Regulations 2024

November, 2024

This Regulatory Impact Assessment (RIA) has been prepared by the Cabinet Secretary - Ministry of Roads and Transport pursuant to Section 6 and 7 of the Statutory Instruments Act CAP 2A

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1.0 CHAPTER ONE – INTRODUCTION

1.1 Regulatory-Making Authority and the Legal Mandate

Kenya Civil Aviation Authority is established under the Kenya Civil Aviation Act CAP 394 (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-

- 1.1.1 regulating aviation security operations and providing for security audits and inspections, security system tests of aircraft, aerodromes, regulated agents (cargo & mail), Inflight Catering Operators, Aviation Security Service Providers, Aviation Security Training Centres and any pre-flight and post flight passenger processing and screening area. Certification of Aviation Security personnel, regulated agents (cargo & mail), Inflight Catering operators, Aviation Security Service Providers, Aviation Security Training Centres and Explosive Detection Dogs, suppliers and handlers.
- 1.1.2 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;
- 1.1.3 providing for the conditions under which passenger and cargo may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- 1.1.4 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;

We now undertake public and stakeholder consultations and present this RIA in partial fulfilment of the requirements of the Statutory Instruments Act.

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:

- 1.2.1 a statement of the objectives of the proposed legislation and the reasons for them
- 1.2.2 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
- 1.2.3 a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- 1.2.4 an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- 1.2.5 the reasons why the other means are not appropriate;
- 1.2.6 any other matters specified by the guidelines;
- 1.2.7 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.

2.0 CHAPTER TWO – PURPOSE AND OBJECTS OF THE CIVIL AVIATION (SECURITY) REGULATIONS 2024

2.1 Scope and application

Civil aviation (Security) Regulations regulate the following scope of activities:

- a) Airport Security including access control-restricting access to sensitive areas, such as runways, and control towers, to authorized personnel only.

Screening of Passengers and Baggage using technologies like X-rays, metal detectors, and explosive detection systems to screen passengers, hand luggage, and checked baggage.

Perimeter Security on airport boundaries using fencing, surveillance systems, and patrols to prevent unauthorized entry.

b) Aircraft Security

Aircraft Searches: Conduct thorough inspections of aircraft before departure to detect unauthorized items or tampering.

Cockpit Security: Enforce reinforced cockpit doors and protocols to prevent unauthorized access during flights.

In-flight Security Measures: Train crew to handle potential threats, and deploy air marshals on certain flights.

c) Cargo and Mail Security

Screening and Inspection: All cargo and mail must undergo security screening or inspection before being loaded onto an aircraft.

Secure Supply Chains: Establish known consignor programs to ensure cargo is handled securely from origin to aircraft.

d) Passenger and Crew Security

Passenger Profiling and Screening: Identify high-risk passengers through advanced profiling systems and additional screening measures.

Crew Background Checks: Conduct rigorous vetting of flight and ground crew to ensure no individuals with malicious intent are employed.

e) Security Management Systems (SeMS)

Risk Assessment: Regularly identify and evaluate potential threats to aviation security.

Incident Response Plans: Develop protocols for responding to security incidents, including hijackings, bomb threats, and sabotage.

Security Audits: Conduct periodic evaluations to ensure compliance with security standards.

f) International and National Collaboration

Regulatory Standards: Comply with International Civil Aviation Organization (ICAO) Annex 17, which sets global standards for aviation security.

Information Sharing: Collaborate with international agencies, governments, and airlines to exchange intelligence on emerging threats.

Law Enforcement Coordination: Work closely with local and international law enforcement to address security risks.

g) Technology and Infrastructure

Advanced Screening Technologies: Deploy biometric systems, body scanners, and artificial intelligence for enhanced security checks.

Surveillance Systems: Use CCTV, motion detectors, and intrusion detection systems for continuous monitoring of facilities.

Cyber-security Measures: Protect aviation systems and data from cyber threats and hacking attempts.

h) Training and Awareness

Employee Training: Provide regular security training to all aviation personnel, including recognizing threats and responding to incidents.

Public Awareness Campaigns: Educate passengers on security protocols, such as

The Regulations apply to:

- (i) all airports in Kenya, which includes aerodromes in categories A, B and C as provided for under the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations;
 - (ii) passengers in civil aviation;
 - (iii) persons at airports;
 - (iv) persons working in the aviation industry;
 - (v) persons who occupy land or buildings forming part of an airport;
 - (vi) persons on land adjoining or adjacent to, or within the vicinity of airports or air navigation installations which do not form part of an airport;
 - (vii) operators or owners of airports;
 - (viii) operators or owners of aircraft registered in Kenya or aircraft registered in another State and operating in Kenya;
 - (ix) air navigation service providers;
 - (x) ground handling agencies and aviation security service providers, fuel suppliers, travel agents and any other entities conducting business with or at the airport;
 - (xi) persons permitted to have access to security restricted areas at an airport;
 - (xii) persons who offer stores and supplies for use in an aircraft and goods for transport by air;
 - (xiii) any person whose conduct amounts to an act of unlawful interference or endangers aviation safety; and
 - (xiv) All aerodromes in categories D and E as provided for under the Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations.
- (a) These Regulations does not apply to or affect: -
- (i) a State aircraft; and
 - (ii) military or police aviation operations in Kenya.

1.1. Objective

The overall objective of the Civil Aviation (Security) Regulations is to protect passengers, crew, aircraft, and aviation infrastructure from unlawful interference, such as terrorism, sabotage,

and other malicious acts to ensure the safe and efficient functioning of the aviation industry in Kenya.

1.2. Specific objectives

The objectives of civil aviation security regulations are designed

- a) **Protect Passengers, Crew, and Aircraft:** Ensure the safety of all individuals traveling by air by preventing acts of unlawful interference such as hijackings, sabotage, or attacks.
- b) **Safe Aircraft Operation:** Maintain the physical and operational security of aircraft during all phases of flight.
- c) **Safeguard Airport and Aviation Infrastructure:** Prevent unauthorized access to restricted areas of airports, such as runways, control towers, and terminals. Secure aviation facilities, equipment, and systems, including air traffic control centers and navigation aids.
- d) **Prevent Acts of Unlawful Interference:** Detect, deter, and respond to threats such as terrorism, sabotage, and the use of weapons or explosives against civil aviation. **Proactive Security Measures:** Implement screening, surveillance, and monitoring systems to identify and address potential risks.
- e) **Enhance Public Confidence in Aviation Security;** Build trust among passengers, airlines, and governments by demonstrating a robust and reliable security framework. Ensure seamless and secure travel to promote the aviation industry as a safe mode of transportation.
- f) **Comply with International Standards;** Align national regulations with the standards set by the International Civil Aviation Organization (ICAO), particularly those outlined in Annex 17.
- g) **Facilitate Efficient Aviation Operations:** Balance security requirements with operational efficiency to minimize disruptions while ensuring safety. Optimize passenger flow through airports without compromising the effectiveness of security measures.
- h) **Protect the Aviation Supply Chain:** Ensure the security of cargo, mail, and supply chains to prevent the introduction of hazardous materials or threats to aircraft and airport facilities.
- i) **Promote Technological Innovation in Security:** Encourage the use of advanced technologies such as biometrics, artificial intelligence, and explosive detection systems to improve security.
- j) **Prepare for and Respond to Security Incidents:** Establish contingency plans for managing security breaches, including hijackings, bomb threats, and cyberattacks.
- k) **Adapt to Evolving Threats:** Continuously review and update security measures to counter new and emerging risks, such as drones or insider threats.

1.3. An Overview of the Proposed the Civil Aviation (Security) Regulations 2024 Salient Features

The salient features of these regulations are as follows;

- a) Part I: Preliminary Provisions- The citation, interpretation, definition of terms, application and purpose of the regulations.
- b) Part II: Organization- Describes the functions of the Authority in relation to aviation security.
- c) Part III: Security Programmes and Committees- describes the various operator security programmes and security committees coordinating the implementation of security measures within the aviation industry.
- d) Part IV: Preventive Security Measures –describes the airport security control measures and responsibilities for various operators within the aviation industry.
- e) Part V: Management of Response to Acts of Unlawful Interference- Measures for prevention of acts of unlawful interference and obligations for entities in the management of response to acts of unlawful interference.
- f) Part VI: Offences and Penalties- describes the offences and penalties under this regulation.
- g) Part VII: Enforcement of Regulations –describes how these regulations can be enforced in case of breach.
- h) Part VIII: Revocation, Savings and Transitional Provisions

3.0 CHAPTER THREE – BACKGROUND AND CONTEXT

3.1 Policy Background

- 3.1.1 **The 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.

- 3.1.2 **Kenya Vision 2030:** This 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.

- 3.1.3 **Bottom-Up Economic Transformation Agenda (BETA):** The Bottom-Up Economic Transformation Plan 2022-2027 is the manifesto of the Kenya Kwanza administration 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.
- 3.1.4 **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.
- 3.1.5 **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.
- 3.1.6 **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.
- 3.1.7 **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.

- 3.1.8 **Civil Aviation Act:** The Civil Aviation Act CAP 394 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.

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

The Civil Aviation (Security) 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.

3.3 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 (Security) 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.

4.0 CHAPTER FOUR – EVALUATION OF THE PROBLEM

The proposed Civil Aviation (Security) Regulations 2024 aims to address the challenges and gaps in the current Civil Aviation (security) Regulations 2020.

4.1 Currency of the Civil Aviation (security) Regulations

The Civil Aviation (Security) Regulations 2020 were promulgated in July 2020. The following are reasons which necessitate the review: -

- (a) ICAO amended Annex 17 (Aviation Security) Amendment 18, 12th Edition dated July 2022 to the Convention on International Civil aviation affecting several Standards and Recommended practices.
- (b) The ICAO USAP-CMA audit of Kenya picked findings/gaps which were to be closed by amendment of the Civil Aviation (Security) Regulations 2020
- (c) Amendments to the regulations due to emerging needs and gaps

4.2 Sustainability of Civil Aviation System

4.1.1 International Obligation

The State is obligated by the International Civil Aviation Organization to regulate the security operations of airports, aircraft, regulated agents, air navigation service providers, catering operators and other related entities, as the case may be, for the purpose of: -

- (a) protecting passengers, crew members, airport, the general public and other aviation facilities;
- (b) preventing unlawful interference against civil aviation; and
- (c) ensuring that appropriate action is taken when an act of unlawful interference occurs or is likely to occur;

4.1.2 Aviation Security

For the Sustainability of Civil Aviation System, Kenya Civil Aviation Authority is designated as the Appropriate Authority for civil aviation security and responsible for the regulation of aviation security in Kenya as per the Civil Aviation Act, No. 21 of 2013 and is obligated to develop and implement regulations, practices and procedures that are capable of responding rapidly to meet any increased security threat for purposes of safeguarding civil aviation against acts of unlawful interference, taking into account the safety, regularity and efficiency of flights;

4.1.3 Operational rights to other jurisdictions

In order to get approvals for flight to operate in and out of EU, US and other jurisdictions, it is imperative that the State adheres to international requirements in the regulations of air transport for purposes of safeguarding civil aviation against acts of unlawful interference, taking into account the safety, regularity and efficiency of flights;

Kenya's Geopolitical location attracts operators from other jurisdictions. Many airlines and air operators operating in and out of Kenya 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 up to the same level with SARPS adopted and amended by ICAO.

4.1.4 Reduction of Cost of Doing Business

For the sustainability of Civil Aviation System, safety and security is paramount in civil aviation operations as it encourages people and organizations in 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 acts of unlawful interference being perpetuated by terrorists. Robust aviation security regulations provide the confidence, cushion and order necessary to gain such confidence.

5.0 CHAPTER FIVE – LEGAL FRAMEWORK FOR THE PROPOSED CIVIL AVIATION (SECURITY) REGULATIONS 2024

5.1 The Civil Aviation Act

The Civil Aviation Act CAP 394 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 (security) Regulations, 2024 have been developed under section 82 of the Civil Aviation Act.

5.2 International and Regional Legislation

5.3 International Standards

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 (Security) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 17 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.

5.4 Regional Legislative initiatives

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.

6.0 CHAPTER SIX – STAKEHOLDER CONSULTATION

(To insert)

7.0 CHAPTER SEVEN – CONSIDERATION OF REGULATORY AND NON-REGULATORY OPTIONS

7.1 Cost-Benefits Analysis

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Security) Regulations 2024
Benefits	None	None	<p>Safety and Security: Reduction in the likelihood and consequences of terrorist incidents or other security breaches.</p> <p>Increased passenger confidence in aviation safety.</p> <p>Economic Benefits: Avoidance of costs associated with aviation related attacks (e.g., damages, lawsuits, loss of lives, economic disruption).</p> <p>Social Benefits: Enhanced public perception of air travel.</p> <p>Protection of lives and property.</p> <p>System Efficiency: Potential improvements in technology and processes.</p>

Costs	Passenger delays and inconvenience.	Passenger delays and inconvenience.	Infrastructure upgrades (e.g., advanced scanners, surveillance systems).
	Impact on airline operations and schedules.	Impact on airline operations and schedules.	Operational expenses (e.g., staffing, maintenance of security systems).
	Effects on trade and logistics (e.g., cargo delays)	Effects on trade and logistics (e.g., cargo delays)	Training of personnel.

Although the implementation of Civil Aviation (Security) Regulations is significant, the benefits that will accrue from their implementation far outweigh the projected costs to be incurred mainly by the operators and regulated entities. The costs are mainly related to initial implementation costs to achieve compliance with the regulatory requirements. The benefits of certification of explosive detection dogs and training outweighs the initial costs of implementation and recurrency hence the reason why the industry is pushing for implementation of the same.

It is however impossible to fully quantify the cost that goes into ensuring that aviation security, which is a cardinal element of all civil aviation activities, is maintained at all times. Furthermore, standards to be complied with the promulgation of these regulations have been meticulously researched at 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 17.

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.

7.2 Consideration of Regulatory and non regulatory options

Table 2: Analysis of Alternatives

Option	Impact
Option One: Maintenance of the Status Quo	a) The aviation industry in Kenya will lag behind by not implementing the new Standards and Recommended practice in Annex 17 (Aviation Security) 12 th Edition amendment 18, thus remaining uncompetitive and unattractive for International Commercial Air Transportation business.
Option Two: Administrative measures	a) These directives, Circulars and Orders do not have the force of the law, may be challenged in court of law, operators may not comply with them

Option	Impact
Issuance of Aeronautical Information Circulars, Orders and Directives.	hence jeopardizing the security and safety standards of commercial air transportation operations in Kenya.
Option Three: Promulgating the Civil Aviation (Security) Regulations 2024	a) Promulgating Civil Aviation (Security) Regulations 2024 shall incorporate the new Standards and Recommended practices as enshrined in Annex 17 (Aviation Security) 12 th Edition amendment 18. b) Kenyan aviation industry shall remain competitive and attractive for commercial air transport business locally and internationally. c) Aviation security standards shall be upheld hence increased air transport business in Kenya.

Impact analysis of the Options

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Security) Regulations 2024
Aerodrome Operator(s)	a) The operators shall continue to operate in the current environment, remain vulnerable to acts of unlawful interference hence less attractive and competitive.	a) Issuance of directives and circulars to the various entities and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law. These include Aeronautical Information Circulars, Orders and Directives. b) These directives, Circulars and Orders do not have the force of the law, may be challenged in court of law, operators may not comply with them hence jeopardizing the security and safety standards of	Promulgating Civil Aviation (Security) Regulations 2024 shall incorporate the new Standards and Recommended practices in Annex 17 (Aviation Security) Kenyan aviation industry shall remain competitive and attractive for commercial air transport business locally and internationally. Aviation security standards shall be upheld hence increased air transport business in Kenya.

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Security) Regulations 2024
		commercial air transportation operations in Kenya.	
Aircraft Operator(s)	<p>a) The operators shall continue to operate in the current environment and prone to security threats hence less attractive and less competitive.</p> <p>b) Increased cost of doing business as a result of operators being profiled as high risk clients by insurance companies, leading to payment of high insurance premiums.</p>	<p>a) The operators will not comply with these administrative measures which will lead to low compliance levels thus compromising aviation security standards.</p> <p>b) The international operations shall be negatively affected as the aircraft operators will not subscribe to international requirements.</p>	International aviation security standards shall be upheld once Annex 17 (Aviation Security) Amendment 18 Standards and Recommended practices are incorporated into the regulations.
Regulated Cargo Agents/Catering Operators/Ground Handling Agents and other regulated entities	<p>a) The operators shall continue to operate in the current environment, remain less attractive and competitive.</p> <p>b) Increased cost of doing business as a result of being profiled as high risk clients by insurance companies, leading to payment of high insurance premiums.</p>	<p>a) The operators will not comply with these administrative measures which will lead to low compliance levels thus compromising aviation security standards.</p> <p>b) International operations shall be negatively affected as the operators will not subscribe to international requirements.</p>	International aviation security standards shall be upheld once Annex 17 (Aviation Security) Amendment 18 Standards and Recommended practices are incorporated into the regulations.

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative measures	Option three: Promulgating the Civil Aviation (Security) Regulations 2024
Aviation Security Personnel	a) The Aviation Security Personnel shall continue to operate in the current environment and expose the civil aviation operations to threats including insider threats.	b) The operators and Aviation Security Personnel will not comply with these administrative measures thus compromising aviation security standards.	International aviation security standards on personnel training, certification and background checks requirements in Annex 17 shall be upheld and complied with once incorporated into the regulations.
The Authority	The Authority may lose credibility and have challenges in over-sighting the aviation security operations in Kenya.	The authority will not be able to enforce the requirements issued administratively hence low compliance levels thus compromising aviation security standards.	a) incorporate the new Standards and Recommended practices in Annex 17 b) Kenyan aviation industry shall remain competitive and attractive for commercial air transport business locally and internationally.

7.4 Preferred Option

The preferred option will be the promulgation of Civil Aviation Security Regulations 2024 over the other two options.

8.0 Chapter Eight – 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 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.

9.0 CHAPTER NINE – CONCLUSIONS & RECOMMENDATIONS

9.1 Conclusions

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

9.1.2 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.

9.1.2.1 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:

- a) a statement of the objectives of the proposed legislation and the reasons.
- b) a statement explaining the effect of the proposed legislation.
- 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; and
- e) the reasons why the other means are not appropriate.

9.1.2.2 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 (Security) Regulations have been (will be) fully adhered to.

9.1.2.3 Other legal frameworks: The draft Civil Aviation (Security) Regulations 2024 proposes to publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.

9.1.2.4 The draft: The draft Civil Aviation (Security) Regulations 2024 as drafted are clear, consistent, comprehensible and comprehensive enough to cover all matters and meet the established drafting standards.

9.2 Recommendations

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

9.3 Annexures (C.A. (Security) Regulations 2024 & Matrix for stakeholder consultations)