



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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No. 1628

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## General Notice

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### MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

No. 202

1997

PROPOSED CIVIL AVIATION REGULATIONS :  
PART 12 - PROCEDURES : AVIATION ACCIDENTS  
AND INCIDENTS

The Ministry of Works, Transport and Communication recently initiated the project to update the current Namibian aviation legislation. There are two main reasons for updating the aviation legislation, namely, the current legislation does not adequately reflect the policies of Namibia for the aviation sector and does not reflect recent developments within SADC. The project further aims to enhance the safety of civil aviation by ensuring that the Namibian legislation complies with the minimum standards prescribed by the International Civil Aviation Organization.

Part of the short-term legislative reform involves the updating of the regulations made under the Aviation Act, 1962 (Act 74 of 1962).

Due to the nature and extensive range of subjects which need to be regulated, this part of the project will be executed in phases and regulations will be published accordingly. The proposed structure of the Civil Aviation Regulations is set out in Schedule 1.

All the definitions for the proposed civil aviation regulations will be contained and published in Part 1. The definitions for each Part will however be published with each set of proposed regulations, to facilitate the interpretation thereof. The definitions associated with the proposed regulations on aviation accidents and incidents are set out in Schedule 2.

The Director : Civil Aviation invites all interested parties to comment on the proposed structure of the Civil Aviation Regulations, the proposed definitions associated with the proposed regulations, as well as the proposed regulations on Aviation Accidents and Incidents set out in Schedule 3. The proposed regulations represent Part 12 of the proposed structure.

The proposed regulations on Aviation Accidents and Incidents make provision for certain information to be contained in a document called Document NA-CATS-ACCID and INCID. The compilation of the document does not form part of this project, but it is envisaged as a document that will contain all the technical standards regarding aviation accidents and incidents.

Comments or representations should be lodged in writing and should reach the Ministry not later than **90 days** from the date of publication of this notice. Correspondence should be addressed to:

The Director : Civil Aviation

Ministry of Works, Transport and Communication

Department of Transport

Private Bag 12003

WINDHOEK

Attention : Mr Louis Lourens

Telephone : 208-2159

Fax : 238-884

Upon expiry of the aforementioned 90 day period, all comments which have been received will be evaluated for possible incorporation into the proposed regulations on Aviation Accidents and Incidents and if necessary, a workshop will be held to finalise the proposed regulations.

**SCHEDULE 1**  
**NAMIBIAN CIVIL AVIATION REGULATIONS STRUCTURE**

<p><b>DEFINITIONS</b></p> <p>Part 1 Definitions</p> <p><b>PROCEDURES</b></p> <p>Part 11 Procedures for making regulations, issuing technical Standards and granting exemptions</p> <p>Part 12 Aviation accidents and incidents</p> <p>Part 13 Enforcement procedures</p> <p><b>AIRCRAFT</b></p> <p>Part 21 Certification procedures for products and parts</p> <p>Part 34 Engine Emissions</p> <p>Part 36 Noise certification</p> <p>Part 43 General maintenance rules</p> <p>Part 47 Aircraft registration and marking</p> <p><b>PERSONNEL</b></p> <p>Part 61 Pilot licensing</p> <p>Part 63 Flight engineer licensing</p> <p>Part 64 Cabin crew licensing</p> <p>Part 65 Air traffic service personnel licensing</p> <p>Part 66 Aircraft maintenance engineer licensing</p> <p>Part 67 Medical requirements</p> <p><b>RULES OF THE AIR AND GENERAL OPERATING RULES</b></p> <p>Part 91 General operating and flight rules</p> <p>Part 92 Conveyance of dangerous goods</p> <p>Part 98 Operation of powered paragliders</p> <p>Part 100 Operation of gyroplanes</p> <p>Part 101 Operation of unmanned balloons, kites, rockets, pilotless and model aircraft</p> <p>Part 102 Operation of free balloons and airships</p> <p>Part 103 Operation of microlight aeroplanes</p> <p>Part 104 Operation of gliders</p> <p>Part 105 Parachuting operations</p> <p>Part 106 Operation of hang gliders</p>	<p><b>CERTIFICATED AIRCRAFT OPERATORS AND OTHER FLIGHT OPERATIONS</b></p> <p>Part 121 Air transport operations - large aeroplanes</p> <p>Part 127 Air transport operations - helicopter</p> <p>Part 133 Helicopters external load operations</p> <p>Part 135 Air transport operations - small aeroplanes</p> <p>Part 137 Agricultural aircraft operations</p> <p>Part 138 Emergency medical services operations</p> <p><b>ORGANISATIONS</b></p> <p>Part 141 Aviation training organisations</p> <p>Part 145 Aircraft maintenance organisations</p> <p>Part 147 Design organisations</p> <p>Part 148 Manufacturing organisations</p> <p>Part 149 Aviation recreation organisations</p> <p><b>AERODROMES AND HELIPORTS</b></p> <p>Part 139 Licensing</p> <p>Part 139 General standards</p> <p><b>AIR TRAFFIC SERVICES</b></p> <p>Part 172 Airspace and air traffic services</p> <p><b>AERONAUTICAL INFORMATION AND RELATED SERVICES</b></p> <p>Part 174 Meteorological information services</p> <p>Part 175 Aeronautical information services</p> <p><b>ADMINISTRATION</b></p> <p>Part 183 General</p> <p>Part 185 Offences</p> <p>Part 187 Fees</p>
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**SCHEDULE 2****Definitions**

In these regulations, unless the context otherwise indicates -

“accident” means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, during which -

- (a) a person is fatally or seriously injured as a result of -
  - (i) being in the aircraft;
  - (ii) direct contact with any part of the aircraft, including parts which have become detached or are released from the aircraft; or
  - (iii) direct exposure to jet blast, rotor or propeller wake,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew; or

- (b) the aircraft sustains damage or structural failure which -
  - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
  - (ii) would normally require major repair or replacement

of the affected component, except for engine failure or damage when the damage is limited to the engine, its cowlings or accessories, or for damage limited to propellers, wing tips, antennae, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin; or

- (c) the aircraft is still missing after an official search has been terminated and the wreckage has not been located; or
- (d) the aircraft is in a place where it is completely inaccessible;

“accredited representative” means an authorised officer or authorised person designated by the Commissioner in terms of regulation 12.01.6;

“adviser” means an authorised person designated by the Commissioner in terms of regulation 12.01.7;

“aerodrome manager” means the person appointed as aerodrome manager by the holder of an aerodrome licence;

“aircraft proximity” means a situation in which, in the opinion of a pilot or air traffic services personnel, the distance between aircraft as well as their relative positions and speed, have been such that the safety of the aircraft involved may have been compromised;

“air traffic service incident” means an incident associated with and related to the provision of air traffic services, including aircraft proximity or other serious difficulty resulting in a hazard to an aircraft, caused by faulty procedures, non-compliance with procedures, failure of ground facilities or any other similar cause;

“air traffic service unit” means a unit providing an alerting service and one or more of the other air traffic services, or an air traffic services reporting office;

“cause”, for the purpose of Part 12, means any action, omission, event, condition or any combination thereof, which leads to an accident, serious incident or incident;

“Document NA-CATS-ACCID and INCID” means a document on the Namibian Civil Aviation Technical Standards relating to Aircraft Accident and Incident Investigation, which is published by the Director in terms of the Act;

“flight” means from the moment an aircraft commences its take-off until the moment it completes its landing;

“flight crew member” means a person assigned by an operator to duty on an aircraft during flight;

“flight deck crew member” means a licensed crew member charged by the operator of an aircraft with duties essential to the operation of an aircraft;

“flight recorder” means any type of recorder installed in an aircraft for the purpose of complementing the investigation of any accident or incident;

“hazard” means any act, omission, event or condition or a combination thereof that could lead to or result in an accident or incident;

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

“investigation” in relation to accidents and incidents means a process conducted for the purpose of accident prevention and includes the gathering and evaluation of information, the drawing of conclusions, including the determination of the cause, causes, probable cause or probable causes of an accident or the underlying cause or causes leading to an incident and, when appropriate, the making of recommendations in connection with aviation safety;

“investigator” means an authorised officer, or authorised person designated by the Commissioner in terms of regulation 12.01.4;

“investigator-in-charge” means an authorised officer designated by the Director on the basis of his or her qualifications and charged with the responsibility for the organisation, conduct and control of and the reporting on the investigation of an accident or incident;

“major repair” means a repair which, if improperly done, might appreciably affect mass, balance, structural strength, performance, power plant operation, flight characteristics or other qualities affecting airworthiness;

“operator” means a person, organisation or enterprise engaged in or offering to engage in aircraft operation;

“preliminary report” means the communication used for the prompt dissemination of data which is obtained in the early stages of an investigation;

“pro tem investigator” means an authorised person designated by the Commissioner in terms of regulation 12.01.5;

“safety recommendation” means a proposal of the investigator-in-charge based



on information derived from the investigation and made with the intention of preventing accidents or incidents;

“serious incident” means an incident involving circumstances indicating that an accident nearly occurred, and includes -

- (a) a near collision requiring an avoidance manoeuvre to avoid the collision or an unsafe situation or when an avoidance action would have been appropriate;
- (b) a controlled flight into terrain only marginally avoided;
- (c) an aborted take-off on a closed or engaged runway;
- (d) a take-off from a closed or engaged runway with marginal separation from an obstacle;
- (e) a landing or attempted landing on a closed or engaged runway;
- (f) a gross failure to achieve predicted performance during take-off or initial climb;
- (g) fires and smoke in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents;
- (h) an event requiring the emergency use of oxygen by the flight crew;

- (i) an aircraft structural failure or engine disintegration not classified as an accident;
- (j) a multiple malfunction of one or more aircraft systems seriously affecting the operation of the aircraft;
- (k) flight crew incapacitation in flight;
- (l) fuel quantity requiring the declaration of an emergency by the pilot;
- (m) take-off or landing incident, including undershooting, overrunning or running off the side of runways;
- (n) a system failure, weather phenomena, an operation outside the approved flight envelope or any other occurrence which could have caused difficulties in controlling the aircraft; and
- (o) a failure of more than one system in a redundancy system mandatory for flight guidance and navigation;

“serious injury” means an injury which -

- (a) requires hospitalisation for more than 48 hours, within seven days from the date on which the injury was sustained;
- (b) results in a fracture of any bone (except simple fractures of fingers, toes or nose);

- (c) involves lacerations which cause severe haemorrhage, or nerve, muscle or tendon damage;
- (d) involves injury to any internal organ;
- (e) involves second or third degree burns or any burns affecting more than five per cent of the surface of the body; or
- (f) involves verified exposure to infectious or toxic substances or injurious radiation;

“State of Design” means the State which has authority over the organisation responsible for the type design of an aircraft;

“State of Manufacture” means the State which has authority over the organisation responsible for the final assembly of an aircraft;

“State of the Operator” means the State in which the principal place of business of an operator of an aircraft is located or, if there is no such place of business, the State where the operator of the aircraft has permanent residence;

“State of Registry” means the State on whose aircraft register the aircraft is entered;

“the Act” means the Aviation Act, 1962 (Act 74 of 1962).

**SCHEDULE 3**  
**LIST OF REGULATIONS**

**SUBPART 1 : GENERAL**

- 12.01.1     Applicability
- 12.01.2     Designation of body or institution
- 12.01.3     Designation of investigator-in-charge
- 12.01.4     Designation of investigator
- 12.01.5     Designation of pro tem investigator
- 12.01.6     Designation of accredited representative
- 12.01.7     Designation of adviser
- 12.01.8     Establishment of confidential aviation hazard reporting system

**SUBPART 2 : ACCIDENT AND INCIDENT NOTIFICATION PROCEDURES**

- 12.02.1     Notification of accidents
- 12.02.2     Notification of incidents
- 12.02.3     Notification of accidents and incidents outside Namibia
- 12.02.4     Particulars of notification
- 12.02.5     Notification of hazards

**SUBPART 3 : INVESTIGATION OF ACCIDENTS AND INCIDENTS**

- 12.03.1     Purpose of accident and incident investigation
- 12.03.2     Accident and incident investigation procedures
- 12.03.3     Retention of objects for purposes of an investigation or inquiry

**SUBPART 4 : SCENE OF AN ACCIDENT**

- 12.04.1     Guarding of aircraft involved in an accident
- 12.04.2     Access to the scene of an accident
- 12.04.3     Control of evidence

- 12.04.4 Interference with objects and marks at the scene of an accident
- 12.04.5 Removal of damaged or disabled aircraft

**SUBPART 5 : REPORTING AND REOPENING OF INVESTIGATION**

- 12.05.1 Reporting
- 12.05.2 Appeal against findings on investigation
- 12.05.3 Reopening of investigation

**SUBPART 1****GENERAL****Applicability**

**12.01.1** This Part shall apply to the procedures relating to the reporting and investigation of accidents and incidents other than accidents and incidents involving -

- (a) aircraft so designed to remain moored to the earth or to be kept in tow by vehicles or vessels moving on the surface of the earth; and
- (b) aircraft designed to fly without any person on board.

**Designation of body or institution**

**12.01.2** (1) The Director may designate a body or institution to -

- (a) promote aviation safety or to reduce the risk of aircraft accidents or incidents; and
- (b) advise the Director on any matter connected with the promotion of aviation safety or the reduction of the risk of aircraft accidents or incidents.

(2) The designation referred to in subregulation (1) shall be made in writing and shall be published by the Director in the *Gazette* within 30 days from the date of such designation.

(3) The powers and duties referred to in subregulation (1) shall be exercised and performed according to the conditions, rules, requirements, procedures or standards as prescribed in Document NA-CATS-ACCID and INCID.

### **Designation of investigator-in-charge**

**12.01.3** (1) The Director may designate an investigator-in-charge to investigate any accident or incident in terms of this Part.

(2) An investigator-in-charge shall have authority, subject to the provisions of this Part, to -

- (a) have unhampered access to an aircraft which has been involved in an accident or incident, the wreck or wreckage, the place where the aircraft, the wreck or wreckage is located and the places where marks resulting from the accident or incident which may be of assistance in an investigation, are located;
- (b) preserve an aircraft which has been involved in an accident or incident or the wreck or wreckage and any marks resulting from the accident or incident which may be of assistance in the investigation, by any means available, including photographic means;
- (c) examine an aircraft involved in an accident or incident, the wreck or wreckage, any part or component thereof or anything transported therein or any marks resulting from the accident or incident which may be of assistance in the investigation, and to remove any such air-

craft, wreck or wreckage, or any part or component thereof or anything transported therein for the purpose of the investigation or for an inquiry by a board of inquiry appointed in terms of section 12(1) of the Act;

- (d) compile reports in connection with the investigation;
- (e) have unhampered access to all documents, books, notes, photographs, recordings and transcripts which the investigator-in-charge may consider necessary for the investigation, which documents, books, notes, photographs, recordings and transcripts shall be produced without delay by the possessor thereof when requested; and
- (f) obtain information from any person which may be necessary for the investigation.

### **Designation of investigator**

**12.01.4** (1) The Director may designate an investigator for the purpose of assisting an investigator-in-charge in the investigation of an accident or incident.

(2) An investigator may exercise all the powers granted to and imposed on an investigator-in-charge in terms of regulation 12.01.3(2), which are assigned to such investigator by the investigator-in-charge.

(3) The conditions and requirements for and the rules, procedures and standards connected with a designation referred to in subregulation (1), shall be as prescribed in Document NA-CATS-ACCID and INCID.



(4) The Director shall sign and issue to each investigator so designated, a document which shall state the full name of such investigator and contain a statement indicating that -

- (a) such investigator has been designated in terms of subregulation (1); and
- (b) such investigator is empowered to exercise any power entrusted to him or her in terms of this Part.

#### **Designation of pro tem investigator**

**12.01.5** (1) The Director may designate a pro tem investigator for the purpose of assisting the investigator-in-charge in the initial investigation of an accident or incident.

(2) A pro tem investigator may exercise all the powers granted to and imposed on an investigator-in-charge in terms of regulation 12.01.3(2), which are assigned to such investigator by the investigator-in-charge.

(3) A pro tem investigator shall, as soon as practicable after the arrival of the investigator-in-charge on the scene of an accident or incident, report on his or her initial investigation to such investigator-in-charge.

(4) The conditions and requirements for and the rules, procedures and standards connected with a designation referred to in subregulation (1), shall be as prescribed in Document NA-CATS-ACCID and INCID.

(5) The Director shall sign and issue to each pro tem investigator

so designated, a document which shall state the full name of such pro tem investigator and contain a statement indicating that -

- (a) such pro tem investigator has been designated in terms of subregulation (1); and
- (b) such pro tem investigator is empowered to exercise any power entrusted to him or her in terms of this Part.

### **Designation of accredited representative**

**12.01.6** (1) The Director may designate -

- (a) an accredited representative, for the purposes of investigating an accident or incident involving a Namibian registered aircraft in the territory of a contracting or non-contracting State; or
- (b) an accredited representative of the State of Registry, State of the Operator, State of Design or State of Manufacture for the purposes of investigating an accident or incident involving a foreign registered aircraft in the territory of Namibia.

(2) The conditions and requirements for and the rules, procedures and standards connected with a designation referred to in subregulation (1), shall be as prescribed in Document NA-CATS-ACCID and INCID.

(3) An accredited representative designated in terms of

subregulation (1)(b) may participate in the investigation of the accident or incident under the control of the investigator-in-charge.

(4) An accredited representative designated in terms of subregulation (1)(b) may, under the control of the investigator-in-charge -

- (a) visit the scene of the accident;
- (b) examine the wreckage;
- (c) obtain witness information and suggest areas of questioning;
- (d) have access to all relevant evidence;
- (e) receive copies of all relevant documents, books, notes, photographs, recordings and transcripts;
- (f) participate in readouts of recorded media;
- (g) participate in component examinations, technical briefings, tests and simulations and other investigative activities;
- (h) participate in deliberations on the analysis, findings, cause or causes and safety recommendations; and
- (i) make submissions in respect of the various elements of the investigation.

**Designation of adviser**

**12.01.7** (1) The Director may designate an adviser for the purpose of assisting the investigator-in-charge in the investigation of an accident or incident.

(2) The conditions and requirements for and the rules, procedures and standards connected with a designation referred to in subregulation (1), shall be as prescribed in Document NA-CATS-ACCID and INCID.

**Establishment of confidential aviation hazard reporting system**

**12.01.8** (1) The designated body or institution referred to in regulation 12.01.2, shall establish a confidential aviation hazard reporting system to promote aviation safety or reduce the risk of accidents or incidents.

(2) The requirements for and the procedures of a confidential aviation hazard reporting system and the manner in which such system shall be operated, shall be as prescribed in Document NA-CATS-ACCID and INCID.

(3) Any person who exercises or has exercised any function in terms of the confidential aviation hazard reporting system, shall not disclose any information which he or she obtained in the performance of such function which could identify the originator of the notice referred to in regulation 12.02.5.

**SUBPART 2****ACCIDENT AND INCIDENT NOTIFICATION PROCEDURES****Notification of accidents**

**12.02.1** (1) The pilot-in-command of an aircraft involved in an accident within Namibia, or if he or she is killed or incapacitated, a flight crew member, or if there are no surviving flight crew members or if they are incapacitated, the operator or owner, as the case may be, shall, as soon as possible, notify -

- (a) the Director;
- (b) an air traffic service unit; or
- (c) the nearest police station,

of such accident.

(2) If an air traffic service unit or police station is notified of an accident in terms of subregulation (1), such air traffic service unit or police station shall, immediately on receipt of the notification, notify -

- (a) the Director; and
- (b) where such accident occurs on an aerodrome, the aerodrome manager.

**Notification of incidents**

**12.02.2** (1) The pilot-in-command, and any other flight crew member,

operator or owner, as the case may be, of an aircraft involved in an incident, other than an air traffic service incident, within Namibia, shall, as soon as possible, notify -

- (a) the Director; or
- (b) an air traffic service unit,

of such incident.

(2) If an air traffic service unit is notified of an incident in terms of subregulation (1), such air traffic service unit shall, immediately on receipt of the notification, notify -

- (a) the Director; and
- (b) where such incident occurs on an aerodrome, the aerodrome manager.

(3) The pilot-in-command, any other flight crew member, operator or owner, as the case may be, of an aircraft involved in an air traffic service incident within Namibia, or any air traffic service personnel witnessing an air traffic service incident, shall, as soon as possible, notify an air traffic service unit of such air traffic service incident, and such air traffic service unit shall immediately on receipt of the notification, notify the Director.

#### **Notification of accidents and incidents outside Namibia**

**12.02.3** The pilot-in-command of a Namibian registered aircraft involved in an accident or incident outside Namibia, or if he or she is killed or incapacitated, a flight crew member, or if there are no surviving flight crew members, or if they are

incapacitated, the operator or owner, as the case may be, shall, as soon as possible, notify -

- (a) the appropriate authority in the State or territory where the accident or incident occurred, directly or through any air traffic service unit; and
- (b) the Director,

of such accident or incident.

#### **Particulars of notification**

**12.02.4** Any notification of an accident or incident referred to in regulation 12.02.1, 12.02.2 or 12.02.3 shall -

- (a) include the following particulars:
  - (i) Type, model, nationality and registration marks of the aircraft;
  - (ii) name of the owner or operator, as applicable;
  - (iii) surnames and initials of flight crew members;
  - (iv) the date and time of the accident or incident, specified in Coordinated Universal Time or local time;

- (v) last point of departure and point of intended landing of the aircraft;
  - (vi) location of the accident or incident with reference to an easily identifiable geographical point and, if known, with reference to latitude and longitude;
  - (vii) number of -
    - (aa) crew members and passengers aboard, killed or seriously injured; and
    - (bb) other persons killed or seriously injured;
  - (viii) nature of the accident or incident and extent of damage to aircraft as far as is known;
  - (ix) terrain characteristics of the area where the accident or incident occurred;
  - (x) details of any dangerous goods or hazardous substances known to be on board the aircraft; and
  - (xi) any other relevant information; and
- (b) be submitted forthwith to the Director, and any information which is not immediately available shall be submitted in writing as soon as it becomes available.



**Notification of hazards**

**12.02.5** (1) Any person involved in an accident or incident, or observing any accident, incident, hazard or discrepancy that may affect aviation safety, may notify the designated body or institution referred in regulation 12.01.2, of such accident, incident, hazard or discrepancy.

(2) Any person who notifies the designated body or institution referred to in regulation 12.01.2 of an accident or incident, shall not be absolved from the duty to notify the Director of such accident or incident in terms of regulation 12.02.1, 12.02.2 or 12.02.3, as the case may be.

**SUBPART 3**  
**INVESTIGATION OF ACCIDENTS AND INCIDENTS**

**Purpose of accident and incident investigation**

**12.03.1** The purpose of investigation of an accident or incident shall be to prevent accidents and incidents and not to apportion blame or liability.

**Accident and incident investigation procedures**

**12.03.2** (1) All accidents and serious incidents of which the Director is notified in terms of regulations 12.02.1 and 12.02.2, shall be investigated by an investigator-in-charge.

(2) All incidents, other than serious incidents referred to in subregulation (1), may be investigated by an investigator-in-charge.

(3) An accident or incident investigation shall be carried out by the investigator-in-charge, in accordance with the requirements for and the rules, procedures and standards as prescribed in Document NA-CATS-ACCID and INCID.

(4) Any person required by the investigator-in-charge to render the assistance or furnish the information which the investigator-in-charge may deem necessary for the investigation of an accident or incident, shall be obliged to render such assistance or furnish such information.

**Retention of objects for purposes of an investigation or inquiry**

**12.03.3** (1) Any item or wreckage of an aircraft involved in an accident

or incident, or any part or component thereof, or anything transported therein, may be retained by the investigator-in-charge until no longer required for the purpose of an investigation or for an inquiry by a board of inquiry in terms of section 12(1) of the Act, whereupon such wreckage, or part or component thereof, shall be discarded or destroyed, unless a person having a right to such item, or part or component thereof, has informed the Director in writing, within 60 days of the date of such accident or incident, that such item or component or part be returned to him or her after the completion of the investigation or inquiry.

**SUBPART 4**  
**SCENE OF AN ACCIDENT**

**Guarding of aircraft involved in an accident**

**12.04.1** Where an accident occurs within Namibia, the pilot-in-command of the aircraft involved in the accident, or if he or she is killed or incapacitated, a flight crew member, or if there are no surviving flight crew members, or if they are incapacitated, the operator or owner of such aircraft or where the accident occurs on an aerodrome, the aerodrome manager, shall -

- (a) pending the arrival of a police guard, take such steps which may be necessary to prevent any interference with the aircraft, the wreck or wreckage and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation, contrary to the provisions of this Part;
- (b) forthwith arrange with a member of the Namibian Police to guard the aircraft, the wreck or wreckage and anything transported therein and any marks resulting from the accident which may be of assistance in an investigation.

**Access to the scene of an accident**

**12.04.2** (1) No person other than -

- (a) a member of the rescue service;

- (b) a pro tem investigator;
- (c) a investigator;
- (d) an accredited representative;
- (e) an adviser;
- (f) a member of the Namibian Police; or
- (g) any other person authorised by the Director, after consultation with the investigator-in-charge,

shall, until such time as the investigator-in-charge otherwise determines, have access to an aircraft which has been involved in an accident or to the wreck or wreckage and any marks resulting from the accident which may be of assistance in an investigation.

(2) Every person permitted by the provisions of subregulation (1) or authorised in terms thereof to have access to an aircraft which has been involved in an accident or to the wreck or wreckage or to places where marks resulting from the accident occur which may be of assistance in an investigation, shall be subject to the direction of the investigator-in-charge until the investigation has been completed.

### **Control of evidence**

**12.04.3** The aircraft, the wreck or wreckage, and anything transported therein and any marks resulting from the accident which may be of assistance in an investi-

gation, shall remain under the control of the investigator-in-charge until released by such investigator-in-charge.

#### **Interference with objects and marks at the scene of an accident**

**12.04.4** (1) Subject to the provisions of this Part, no person shall interfere with an aircraft which has been involved in an accident, the wreck or wreckage, a part or component thereof or anything transported therein or any marks resulting from the accident which may be of assistance in an investigation -

(a) until authorised to do so by the investigator-in-charge;  
and

(b) until, in the case of an aircraft which must be cleared by a customs officer by virtue of the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964), clearance has been issued or permission granted by such officer.

(2) The provisions of subregulation (1) shall not prevent any action necessary for -

(a) the rescue or extrication of persons or animals from the aircraft or the wreck;

(b) the reasonable protection of the aircraft, the wreck or wreckage from destruction by fire or other causes;

(c) the safeguarding by the owner, operator or police guard

of precious metals, jewellery or valuables;

- (d) the prevention of danger or removal of an obstruction to other aircraft, other means of transport or to the public; and
- (e) the removal of the aircraft, any part or component thereof or anything transported therein to a safe place, when in water or otherwise endangered.

#### **Removal of damaged or disabled aircraft**

**12.04.5** Subject to the conditions which the Director may determine, a person authorised by the Director for this purpose, may direct any person to move an aircraft which is damaged or disabled or to move any part thereof or any cargo or thing carried therein, to another place, at the expense of the owner or operator of the aircraft.

**SUBPART 5**  
**REPORTING AND REOPENING OF INVESTIGATION**

**Reporting**

**12.05.1** (1) The investigator-in-charge shall, upon completion of an investigation of an accident or incident carried out in terms of Subpart 3, report the findings of such investigation to the Director.

(2) The reporting on an investigation referred to in subregulation (1) shall consist of -

- (a) a preliminary report, if necessary in the interests of aviation safety; and
- (b) a final report,

which shall be compiled and published in the manner as prescribed in Document NA-CATS-ACCID and INCID.

**Appeal against findings on investigation**

**12.05.2** (1) Any interested person who feels aggrieved by the findings on an investigation may appeal against such findings to the Director, within 30 days after such person becomes aware of such findings.

(2) An appellant shall deliver an appeal in writing, stating the reasons why, in his or her opinion, the findings should be varied or set aside.



(3) The appellant shall submit a copy of the appeal and any documents or records supporting such appeal, to the investigator-in-charge concerned and shall furnish proof of such submission for the information of the Director.

(4) The investigator-in-charge concerned may, within 30 days of receipt of the copy of the appeal referred to in subregulation (3), deliver his or her written reply to such appeal to the Director.

(5) The Director may -

- (a) adjudicate the appeal on the basis of the documents submitted to him or her;
- (b) order the appellant and the investigator-in-charge concerned to appear before him or her, either in person or through a representative, at a time and place determined by him or her, to give evidence.

(6) The Director may confirm, vary or set aside the findings referred to in subregulation (1).

### **Reopening of investigation**

**12.05.3** (1) The Director may order the reopening of an investigation -

- (a) of which the findings are set aside in terms of regulation 12.05.2(6);
- (b) if new and significant information which indicates that

the findings on the investigation may be incorrect, becomes available ; or

(c) if such a reopening is in the interests of aviation safety.

(2) Any investigation reopened in terms of this regulation shall be conducted in accordance with the provisions of this Subpart 3.

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