

## Chapter 01 - POLICY OVERVIEW

### 1.1 General

Flight Safety Standards Department (FSSD) of Civil Aviation Authority of Nepal (CAAN) promote the goal of improved aviation safety by encouraging voluntary compliance with and through the enforcement of Nepal's Civil Aviation Rules and Regulations. When necessary Flight Safety Standards Department (FSSD) investigates alleged violations of the rules and regulations and takes necessary enforcement action to maintain aviation safety standards.

This aviation enforcement manual has been developed on the basis of Civil Aviation Regulation 2002, second amendment 2013, Rule 84 Sub Rule 6 that empowers the Director General, CAA Nepal to take enforcement action based on the enforcement manual.

### 1.2 Our Obligation

As a contracting State of the International Civil Aviation Organization (ICAO), Nepal has an obligation to oversee the safe and efficient operation of aviation activity for which Nepal is responsible. Further, as a signatory to the ICAO *Convention on International Civil Aviation*, Nepal has agreed to the application of Article 12 of the Convention, "Rules of the air", which states in part:

*Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering 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 maneuver of aircraft there in force. . . . Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.*

Accordingly, the Aviation Safety Department supervises and administers the Enforcement mandate inherent in the international agreement. Enforcement and sanctioning powers, provided by a legal framework, have been delegated to inspectors of Aviation Safety Department, who have the responsibility and authority to conduct investigations.

As a result of international agreement and domestic legislation, enforcement is not an option, it is an obligation. Vigorous enforcement action will be taken with respect to all deliberate breaches of the aviation safety standards.

### 1.3 Voluntary Compliance

CAAN recognize that voluntary compliance with the regulations is the most progressive and effective approach to aviation safety.

Voluntary compliance is based on the idea that members of the aviation community have a shared interest, commitment, and responsibility to aviation safety, and that

they will operate on the basis of *common sense, personal responsibility, and respect for others*.

## 1.4 Fairness and Firmness

CAAN is committed to enforcing the regulations in a fair and firm manner. Concern about potential consequences should not be taken in to consideration when determining the appropriate enforcement action.

CAAN shall promote and apply a policy of fairness and firmness by:

- a. encouraging open communication between alleged offenders and enforcement inspectors, especially in cases where there are mitigating circumstances;
- b. providing oral counseling for minor violations where there is no threat to aviation safety;
- c. informing offenders of their right to have penalties reviewed by the DGCA of Nepal; and
- d. ensuring that repeat offenders and those who willfully disregard aviation safety are dealt with firmly

## 1.5 Handling of Complaints

Complaints concerning Civil Aviation personnel shall be handled by DGCA. In this instance, a complaint is a formal expression of dissatisfaction with a Civil Aviation service, procedure, application of policy, or staff member.

## 1.6 Accessibility of Managers

The Director of FSSD or his representative will be accessible to members of the public to explain the Enforcement policy process. Suggestions for improvement of this process are always welcome.

## 1.7 Amendment of the Policy Manual

This document will be amended as required; however, from time to time Enforcement policies will be revised or modified. These revisions will be presented to DGCA for approval in the form of an Aviation Enforcement policy amendment. After getting approval from DGCA, the Director of FSSD on behalf of the DGCA, will issue an appropriate amendment to this procedures as soon as practical. The content and format of Aviation Enforcement policy amendments will supersede the related policy as stated in this document.

## 1.8 Glossary

“Act” - The *Civil Aviation Act and Nepal Civil Aviation Authority Act* of Nepal

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"Administrative Action" - Deterrent action taken by or on behalf of the DGCA, including oral counselling, suspension or cancellation of documents of entitlement and imposition of a monetary penalty.

"Authority" - Civil Aviation Authority of Nepal (CAAN).

"Civil Aviation "Rules / Regulations" - the *Civil Aviation Act, Nepal Civil Aviation Authority Act* and all documents enabled pursuant thereto.

"Compliance" - Conformity with the provisions of the regulations. Compliance and enforcement can be used interchangeably.

"Comprehensive Investigation" - The follow-up to the initial violation process to obtain conclusive evidence as to whether or not a violation occurred so that appropriate deterrent action can be taken.

"Counsel" - Government Counsel is any consultants or lawyer representing the interests of the government during criminal proceedings.

"Designated Provisions" - Regulations specified in Civil Aviation Regulations, 2002 for which deterrent action is limited to administrative measures; judicial action cannot be taken. The majority of the offence-creating provisions of the CARs have been designated.

"Deterrent Action" - Administrative (or judicial) measures taken in response to a violation to induce future compliance.

"Enforcement Action" - The steps including deterrent action that must be taken from the moment a possible violation of the regulations has been detected until the case is concluded.

"Functional Authority" - Technical services within CAAN grouped by aeronautical knowledge or skills (such as Flight operations, civil airworthiness, personnel licensing, Flight Safety etc.). Functional authority includes the prerogative of a functional specialist to prescribe how the activity within the specialist's area of expertise should be carried out.

"Functional Direction" - The exercise of functional authority through the issuing of and ensuring compliance with policies and procedures and provision of instructions to supervisors and subordinates.

"Hybrid Offence" - An offence under *Act* that may be proceeded against by way of indictment, by summary conviction procedures or by administrative process.

"Incompetent" - Lacking knowledge, ability or fitness necessary for effective action; unable to meet specified requirements; not legally qualified.

"Indictable Offence" - An offence that is considered very serious, that carries with it the possibility of a severe penalty and that must be proceeded with by way of indictment. Some offences under the *Civil Aviation Act, Nepal Civil Aviation Authority Act /CARs* may be addressed by indictment.

"Initial Violation Process" - The immediate actions taken on observing or being apprised of a violation. Information is gathered concerning the occurrence and, if an infraction has occurred, a decision is made to conclude the case with an Oral Counselling or to send the information to (Concerned Supervisor) for further investigation.

"Inspector" - Any CAAN official with appropriate authority under the Delegation of Authority document.

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"Investigator" – A CAAN authorised Investigator.

Note: Inspectors inspect; Investigators investigate.

"Line Authority" - The prerogative of line managers to direct the activities of the staff and resources over which they are responsible.

"Government" - The Government of Nepal and all persons and institutions with delegated authority to act on its behalf in civil aviation matters.

"Negligence" - Conduct falling below, and/ or violation the standard required for the protection of others against unreasonable risk or harm.

"Nepalese Civil Aviation Document" - Any licence, permit, accreditation, certificate or other document issued by the DGCA, CAAN under of the *Civil Aviation Act/CARs* to or with respect to any person or in respect of any aeronautical product, aerodrome, facility or service. A Nepalese Civil aviation document includes virtually any document of entitlement that authorizes a person to perform functions on his own behalf.

"Nepalese Civil Aviation Official" - Any officer of CAAN whose duties on behalf of the DGCA are related to the safe and lawful operation of the Nepalese air transportation system.

"Manual" – Manuals, requirements and directives made by the authority pursuant to rule 82 of Civil Aviation Regulations, 2002 and not to be contrary to the ACT and Civil Aviation Regulations for the execution of the rule, manual and standard prescribed by the International Civil Aviation Organization.

"Night Time" - For the purpose of an investigation, official "night time" will be as per AIP Nepal.

"Non-Designated Provisions" - The CARs that have not been designated under CAR and therefore, if contravened, must be addressed by document suspension or through judicial action.

"Offence-Creating Provisions" - Provisions of the civil aviation rules that mandate a certain form of conduct or prohibit certain conduct and which, if contravened, can result in judicial or administrative deterrent action.

"Reasonable Grounds to Believe" - The knowledge of facts that would lead a reasonable person of ordinary intelligence and prudence to believe.

"Recklessness" - Conduct that shows deliberate disregard of, or indifference to, the consequences of one's actions under circumstances involving risk of harm to life or property.

"Regulations" - The Nepalese *Civil Aviation Regulations*.

"Summary Conviction Offence" - An offence that is considered to be less serious than an indictable one and accordingly carries with it a less severe penalty.

"Summary Conviction Procedure" - There is no choice of court - the trial procedure takes place in a court or tribunal under the law of Nepal.

"Violation" - The breach of any offence-creating provision of the Regulations. The terms "violation" and "contravention" are used interchangeably.