

CHAPTER 2. INSPECTION

2.1 Inspection - General

Inspection involves the examination of Nepalese civil aviation documents, aircraft, cargo, premises, aeronautical products such as appliances, parts and components and facilities relating to aeronautics including the ANS services and aerodrome facilities encompassing all activities of three regulatory departments of CAAN; FSSD, ANSSD and ASSD. The purpose of inspection is to determine whether compliance with regulations and standards is being maintained. It is a part of the daily routine of a Nepalese civil aviation official and includes activities such as:

- (1) CAAN Aviation Inspectors conducting operator's inspections, audits and flight tests;
- (2) CAAN Flight Operations Inspectors conducting examinations and flight tests of pilot licence applicants and instructors and performing inspections and audits of air operator, flying schools and clubs;
- (3) CAAN Airworthiness Inspectors conducting audits and inspecting aircraft; and
- (4) other CAAN authorised inspectors carrying out their respective duties examining compliance with regulations and standards.

2.2 Inspection Authority

An inspection may be conducted by inspectors pursuant to the authority allowed by Nepal Civil Aviation Authority Act, 1996 (Section 5, i) and defined by the Delegation of Authority. Depending upon their particular duties, inspectors may be delegated all or some of the following powers of the DG CAAN to inspect.

(1) Entry for Inspection

An inspector's authority to enter into aircraft, hangar, flight of aircraft and arrangements relating to operation of air services and the place for overhauling including repairs and examination of aircraft for the purpose of making inspections is found in Nepal Civil Aviation Authority Act, 1996 (Section 5, i). This is not only the authority to enter, but is also deemed to be authority for conducting an inspection.

(2) Inspection

Inspection powers are derived from Nepal Civil Aviation Authority Act, 1996 (Section 5, i). Examples of other delegated authorities from the CAR's which assist inspection are:

- (a) Civil Aviation Regulations, 2002 (Rule 84) - to require an owner or operator to make an aircraft, document, facilities and premises available for inspection; and
- (b) Civil Aviation Regulations, 2002 (Rule 64) - to issue an order for not to enter, depart, making flight and land any aircraft to the area and place in a condition that such area and place shall not be appropriate to fly and land the aircraft due to security or any other reason.

(3) Production of Documents

The authority to demand the production of documents is derived from Nepal Civil Aviation Authority Act, 1996 (Section 5, v).

(4) Obstruction

Any person wilfully obstructing or impeding an inspector during an inspection contravenes Nepal Civil Aviation Authority Act 1996 (Section 25). This is a hybrid offence and may be proceeded with by Indictment or by way of Summary Conviction at the discretion of the DG CAAN /Government.

(5) Entry to a Dwelling-house

If it is necessary to enter into a dwelling-house and land in the surrounding area of aerodrome or under air route in connection with any work of the Authority, an officer specified by the Authority may, after giving prior notice to the person using and enjoying a house and land, may enter there. In order to avert any accident or to make necessary repairing of any instruments installed at such a house or land, or if there be any other justifiable reason, any employee of the Authority may enter into such house and land at any time even without giving prior notice. Nepal Civil Aviation Authority Act, 1996 (Section 8)

(6) Seizure of Evidence

Civil Aviation Regulations, 2002 (Rule 80) of the CARs which gives inspectors the power to seize anything found in any place entered for the purposes of inspection if they believe on reasonable grounds the thing seized will afford evidence with respect to a contravention. Anything seized must have been found by the inspector without resorting to a search or must have been provided voluntarily by a representative of the premises or aircraft being inspected. Items seized are usually those items which would be the subject of a normal inspection.

2.3 Safety Powers

All inspectors are delegated the authority to exercise the following safety powers when encountering a situation where there is an imminent concern for aviation safety:

(1) Detention

The authority for detention is found in Civil Aviation Regulations, 2002 (Rule 64) of the CARs. Inspectors may detain any aircraft which they believe on reasonable grounds is unsafe or is likely to be operated in an unsafe manner, and take reasonable steps to ensure its continued detention. Once the grounds for detention (e.g. unsafe condition) have been removed, the aircraft must be released.

(2) Suspend Nepalese Civil Aviation Documents on the Grounds of an Immediate Threat

On the basis of report made available from the inspection, pursuant to Civil Aviation Regulations, 2002 (Rule 84) DG CAAN may suspend a Aviation Document on the grounds that an immediate threat to aviation safety exists

or is likely to occur as a result of an act or thing having been, being or proposed to be done under the authority of the document. The authority for this type of suspension is found in Civil Aviation Regulations, 2002 (Rule 6) of the *CARs*. When a document is suspended, details of the suspension should be forwarded to the appropriate functional authority for inclusion in the document holder's file and for consideration by the functional authority when contemplating re-instatement of the document.

2.4 Inspection Procedure

When conducting routine inspections, inspectors shall observe the following procedures:

- (1) inspectors shall not enter aircraft or premises which are locked or where the owner/operator or appointed representative is not present;
- (2) an inspection should be conducted at a time that minimizes the inconvenience to flight crew, owner/operator and the travelling public;
- (3) the inspector shall use a credentials card for personal identification;
- (4) the flight crew and owner/operator of an aircraft should be informed that an inspection is being conducted;
- (5) a document produced for the purpose of inspection should be kept no longer than is necessary to determine its validity;
- (6) where the validity of a document cannot be determined readily, a photocopy, photograph, accurate record or facsimile of the entries or endorsement on both sides of the document should be made before returning the document;
- (7) inspectors may seize evidence with respect to a contravention discovered during the course of a routine inspection. See Section 2.5 below;
- (8) if an unsafe situation is discovered, the aircraft representative shall be informed and the inspector shall decide whether or not immediate detention of the aircraft is required. See Section 2.6 below;
- (9) in the event of any obstruction to an inspection, the inspector should politely inform the individual that a charge could be laid under the *CARs* for the offence of obstructing an inspection. Should the individual continue to obstruct the inspection, the inspection should be abandoned and Enforcement assistance sought for the laying of charges under Civil Aviation Regulations, 2002 (Rule 84) of the *CARs*;
- (10) where an inspector believes on reasonable and probable grounds that entry, search and seizure will be required to obtain evidence, the matter must be referred to the DG CAAN for acquisition of a Search Warrant and for conduct of an investigation. Under such circumstances, the inspector ceases the act of inspection and commences the act of investigation (see Chapter 5); and
- (11) inspections should be completely documented with notes including dates and times.

2.5 Seizure, Retention and Return of Evidence

In accordance with Civil Aviation Regulations, 2002 (Rule 80), where evidence is seized, the inspector shall ensure:

- (1) the holder is given a receipt;
- (2) the evidence is clearly marked in an identifiable manner;
- (3) reasonable care is taken to preserve and protect the evidence;
- (4) continuity of possession of evidence can be assured;
- (5) where an Aircraft Journey Log is seized, a Temporary Aircraft Journey Log can be issued. The temporary log must contain a statement that the original has been seized. Alternately, a photocopy of the log book properly identified as a certified true copy and signed by the owner, the inspector or the investigator is acceptable. The original is preferred in a court of law but a certified photocopy may be acceptable. Before making a photocopy, the original should be marked in a uniquely identifiable manner to preclude alteration or substitution; and
- (6) the evidence is returned to the person from whom it was seized or who has lawful entitlement to it as soon as practicable when continued retention is not required for the purposes of any investigation, hearing or other similar proceeding. Evidence must be returned within **3** days (Insert Number of days as per your legal requirement) of seizure if:
 - (a) there is no dispute as to who is lawfully entitled to it;
 - (b) return is not likely to affect aviation safety; and
 - (c) it is no longer required.

2.6 Detention and Return of Aircraft

2.6.1. Authority for Detention

2.6.1.1 Section 6 of the Civil Aviation Act, 2015 empowers the Government of Nepal (GoN) to detain the aircraft in following conditions:

- a) having regard to the nature of an intended flight, the flight of such aircraft is likely to endanger the safety of persons therein or any other persons or any body's property, or
- (b) In so far as it deems to be expedient to ensure compliance with any of the provisions of this Act or the Rules applicable to such aircraft, or to prevent violations of any Rule made under Clause (b) of Sub-section (2) of Section 3.

2.6.1.2 GoN has through the decision of the Council of Minister dated 2070/03/27 (11th July 2013) delegated the power under Section 6 of the Civil Aviation Act, 2015 to the Director General of Civil Aviation Authority of Nepal.

2.6.1.3 This SOP will come into effect immediately after the approval from the GoN.

2.6.2 Power of Inspector

2.6.2.1 Sub-rule (2) of Rule 84 of CAAN, Civil Aviation Regulation, 2058 has made provision that the Director General may designate an expert in relevant field as an Inspector and delegate necessary authority for the inspection and investigation pursuant to sub-rule (1).

2.6.2.2 Sub-Rule 3 of Rule 84 of Civil Aviation Regulations 2058 empowers the CAAN Inspectors with unrestricted access to the aircraft, aerodromes or facilities and places relating to the aviation services for inspection.

2.6.2.3 Sub-rule 4 of Rule 84 of the Regulation also empowers CAAN Inspectors to stop the operations aircraft, equipment, services, facilities and places with immediate effect in case of the operations of such aircraft, equipment, services and facilities not being safe.

2.6.3. Exercise of aircraft detention authority by Director General

Director General of CAAN may exercise the power to detain aircraft through the designated Inspectors as outlined in Clause 2.1 in following conditions:

- a) if the nature of an intended flight, the flight of such aircraft would involve danger to persons in the aircraft or to any other person or property; or
- b) if it is necessary to ensure the compliance with any of the provisions of the prevailing Acts, Regulations , Requirements relating to the civil aviation or the rules applicable to such aircraft; or
- c) if it is necessary to prevent a contravention of any rules specified in paragraph (b) or
- d) to implement any order made by the appropriate authority of GoN.

2.6.4. Procedure for Detention of Aircraft

As stipulated in clause 2.3, inspector or any authorized official of the CAAN should follow following procedure to carryout detention action.

2.6.4.1 Inspectors or authorized person must introduce themselves to the Pilot-in-Command or owner/operator of the aircraft and specify the unsafe condition or unsafe operation which they believe is exist or is likely to exist. They should tactfully try to obtain voluntary compliance in correcting the situation. If unsuccessful, the Officials/Inspectors shall -

a) again advise the Pilot-in-Command or owner/operator of the unsafe condition or operation and the consequences of failing to abide by the inspector's advice (e.g. detention and/or enforcement action);

b) where the Pilot-in-Command or owner/operator is unavailable or indicates an unwillingness to comply with the inspector's advice, attach to that part of the aircraft most likely to be seen by the flight crew a written notice of detention specifying the unsafe condition or operation;

c) if necessary, restrain the movements of the aircraft-

- i. by requesting ATS Unit to deny taxi and take-off clearances; or
- ii. by blocking it with vehicles; or
- iii. by attaching it to an immovable object; or

- iv. in extreme cases, and with the assistance of a licensed Aircraft Maintenance Engineer, by judicious and temporary disablement, a record of which must be made in the aircraft log.

2.6.4.2 Whenever possible, an aircraft shall be detained without removing it from the custody of its owners or operators. This will permit such persons to make repairs or otherwise remedy the unsafe situation. However, if no other measures have been or are likely to be effective in alleviating the unsafe condition or operation, the aircraft may be taken into the custody of the CAAN. In such cases, all reasonable care shall be taken to preserve and protect the aircraft in the condition in which it was first acquired.

2.6.4.3 The information regarding serious safety concern and detention of aircraft should be immediately reported to the Director General by a suitable means of communication e.g. text message, telephone call etc.

2.6.4.4 The inspector should make a written notification to the Operator informing him of the serious safety concern noticed and detention of aircraft. A copy of notification will be forwarded to the Director General.

2.6.5. Carry out the Necessary Investigation

2.6.5.1 If an Inspector or authorized official of CAAN issues a detention notice, CAAN should carry out the necessary investigation as quickly as possible.

2.6.5.2 The officer should initiate an office memo along with the evidence they have collected and a report on serious safety concern they have observed and in case of violation recommendation on Enforcement action as per Aviation Enforcement Manual to the Director General. The decision taken by the Director General should be informed to the operator through a letter.

2.6.5.3 Operations of an aircraft which has been detained is an offence unless CAAN is satisfied that the regulations are being complied with and approves the use of the aircraft, or until such alterations or repairs as CAAN considers necessary to render the aircraft fit for flight have been made.

2.6.6. Release of Aircraft

2.6.6.1 The Inspector or authorized official of CAAN will recommend for release of aircraft if

- a) the serious safety concern is satisfactorily resolved by the aircraft owner or operator
- b) the reasons for detention no longer exists

2.6.6.2 The decision to release the aircraft shall be taken by authorized official higher in rank to the one who had detained the aircraft.

2.6.6.3 The release of the aircraft should be reported to the Director General as soon as possible.

2.6.7. Notification to the Ministry of Culture, Tourism and Civil Aviation

Director General of CAAN should immediately notify the Ministry of Culture, Tourism and Civil Aviation about the detention and release of an aircraft is made.

Inspection Procedure

When conducting routine inspections for the purpose of determining compliance, Officers/Inspectors shall observe the following:–

- i) Inspection should be conducted at a time that minimizes inconvenience to flight crew, owner/operator and the travelling public;
- ii) Officers/Inspectors shall not enter aircraft or premises which are locked or where the owner/operator or appointed representative is not present;
- iii) They shall use credentials card for personal identification. They should also wear the airport entry permit, if required;
- iv) The flight crew and owner/operator of an aircraft shall be informed about the inspection. Notifying the Pilot-in-Command or Station Manager is considered sufficient for this purpose. This can be done either by phone or by having met them in the aircraft;
- v) A document produced for the purpose of inspection should be kept no longer than is necessary to determine its validity;
- vi) Where the validity of a document cannot be determined readily, a photocopy, photograph, accurate record or facsimile of the entries or endorsement on both sides of the document should be made before returning the document;
- vii) Officers/Inspectors may seize relevant and appropriate evidence with respect to a contravention discovered during the course of a routine inspection;
- viii) If an unsafe situation is discovered, the Pilot-in-Command or aircraft representative shall be informed and the inspector shall decide whether or not immediate detention of the aircraft is required;
- ix) Inspections should be completely documented with notes recorded sequentially in the Inspector's Handbook including dates and times; and
- x) In the event of any obstruction to an inspection, the Officer/Inspector should politely inform the individual of the purpose of the inspection, the authority granted for performing the inspection, and that the individual is obstructing the conduct of this inspection. If this does not gain cooperation, the Officer/Inspector shall explain that obstruction is an offence, and that a charge could be laid under the rules for obstructing an inspection. Should the individual continue to obstruct the inspection, the inspection should be abandoned and charges under Rule 159 of the Aircraft Rules, 1937 may be framed.