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### Foreword

This fourth edition of Aviation Enforcement Policy and Procedure Manual has been developed by Civil Aviation Authority of Nepal in order to regulate the civil aviation activities in flight standards, air navigation service and aerodrome operation. This edition of manual has been issued by the Director General pursuant to the Rule 82 of Civil Aviation Regulations 2002.

The manual, till its third edition, had provisions of enforcement actions for the activities regulated by the Flight Safety Standards Department. This edition of the manual has provisions of enforcement actions for the activities regulated by the ANS Safety Standards Department and Aerodrome Safety Standards. Furthermore, the provisions related to air transport division of Civil Aviation Safety Regulations Directorate are also under the scope of this manual.

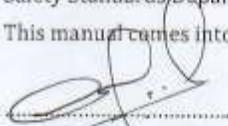
This manual forms guiding policy for the general enforcement actions in Civil Aviation Authority of Nepal classifying the offences in various categories depending on the severity of the offence committed by the individual. The detailed enforcement action for the breach of individual requirement in various requirements of Civil Aviation Authority of Nepal has been removed and offences are now classified in accordance with the severity of outcomes. Adequate procedures are stipulated in the manual to deal with the different offences.

The concept of enforcement panel has been introduced in this edition to ensure that the serious offences are dealt sternly and such semi independent panel investigates and proposes the enforcement action before final decision is taken by the Director General.

The provision of monetary penalty has been revised and additional monetary penalty has been introduced in accordance with the provisions of Civil Aviation Authority of Nepal Act 1996 for the disregard of the instructions and directives issued by Civil Aviation Authority of Nepal.

This manual will be amended when such situations arise. Any suggestion regarding the improvement of this manual are welcome and such suggestions may be forwarded to Flight Safety Standards Department.

This manual comes into effect with immediate effect.



Sanjiv Gautam  
Director General

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## Glossary

AGL	:	Above Ground Level
AIP	:	Aeronautics Enforcement Procedure
ANSSSD	:	Air Navigation Service Safety Standards Department
AOC	:	Air Operators Certificate
AOCR	:	Air Operator Certificate Requirement
ASSD	:	Aerodrome Safety Standards Department
ATS	:	Air Traffic Services
CAA	:	Civil Aviation Authority
CAAN	:	Civil Aviation Authority of Nepal
CAR	:	Civil Aviation Regulation
DGCA	:	Director General of Civil Aviation
DGHR	:	Dangerous Good Handling Requirement
FOR	:	Flight Operation Requirement
FSSD	:	Flight Safety Standards Department
GPS	:	Global Positioning System
ICAO	:	International Civil Aviation Organization
IFR	:	Instrument Flight Rating
IMC	:	Instrumental Metrological Condition
IVP	:	Initial Violation Process
MOCA	:	Ministry of Civil Aviation
NCAR	:	Nepal Civil Airworthiness Requirement
PIC	:	Pilot in Command
SOP	:	Standard Operation Procedure
VFR	:	Visual Flight Rating

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## **CHAPTER 1 POLICY OVERVIEW**

### **1.1 General**

Flight Safety Standards Department (FSSD), ANS Safety Standards Department (ANSSSD) and Aerodrome Safety Standards Department (ASSD) of Civil Aviation Authority of Nepal (CAAN) promote the goal of aviation safety by encouraging compliance with and through the enforcement of Nepal's Civil Aviation Rules and Regulations. When necessary, FSSD, ANSSSD and ASSD investigate alleged violations of the rules and regulations and take necessary enforcement action to maintain aviation safety standards. Deputy Director General (DDG) of Civil Aviation Safety Regulation Directorate (CASRD) has overall responsible towards activities conducted by all safety departments. The directors of safety departments are accountable to DDG CASRD.

### **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 Safety Departments supervise 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 Safety Departments, 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**

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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**

Directors of FSSD, ANSSSD and ASSD or his/her 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**

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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 the DGCA, Flight Safety Standards Department will issue an appropriate amendment to this procedure as soon as practical. The content and format of Aviation Enforcement policy amendments will supersede the related policy and procedures as stated in this document.

## 1.8 Glossary

“Act” -The *Civil Aviation Act 1959 and Nepal Civil Aviation Authority Act of Nepal 1996*

“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 1959, Nepal Civil Aviation Authority Act 1996, Civil Aviation Rules 1995 and Civil Aviation Regulations 2002*, related Civil Aviation Requirements, Manual of Standards and their subsequent amendments.

“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 personnel licensing, airworthiness, flight operations, air navigation safety and aerodrome safety). 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.

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“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.

“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, authorization, approvals or other documents 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 made by the CAAN pursuant to rule 82 of Civil Aviation Regulations, 2002 and not to be contrary to the Act and Civil Aviation

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Regulations for the execution of the rule, manual and standard prescribed by the International Civil Aviation Organization.

“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.

“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.

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## **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, ANSSSD 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 Flight Operations Inspectors conducting operator's inspections, audits and flight tests;
- (2) CAAN Personnel Licensing Inspectors conducting examinations and flight tests of pilot licence applicants and instructors and training organizations and CAAN Flight Operations inspectors performing inspections and audits of air operator;
- (3) CAAN Airworthiness Inspectors conducting audits and inspecting aircraft and maintenance organizations;
- (4) CAAN ANS inspectors conducting audits and inspections of ANS facilities and procedures.
- (5) CAAN aerodrome inspectors inspecting the aerodrome facilities and procedures.
- (6) Any other person authorized by DGCA.

#### **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 as per Section 28 of the Act. Depending upon their particular duties, inspectors may be delegated all or some of the following powers of the Director General CAAN to inspect as per CAAN Civil Aviation Regulation 2002, Rule 84.

##### **(1) Entry for Inspection**

An inspector's authority to enter into aircraft, hangar, training facilities, flight of aircraft and arrangements relating to operation of air services including ANS and aerodrome and the place for overhauling including repairs and examination of aircraft and equipment for the purpose of making inspections.

##### **(2) Inspection**

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Inspection powers are derived from Nepal Civil Aviation Authority Act, 1996 (Section 5, i and 28). Examples of other delegated authorities from the *CAR* 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 DGCA.

(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 84) 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.

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### 2.3 Safety Powers

The 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 Act 1959 Section 6. 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 and 40) 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, ANS facilities, Aerodrome 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, ATC, owner/operator and the travelling public;
- (3) the inspector shall use a credentials card for personal identification;
- (4) the flight crew, ATC and owner/operator of an aircraft or facilities 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;

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- (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 CAAN Act 1996 Section 25 (2) 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 CAAN Act 1996 Section 25 (2);
- (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 DGCA 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 84), 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 or ATC Logbook is seized, a Temporary Logbook 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. 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 5 days 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

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(c) it is no longer required.

## 2.6 Detention and Return of Aircraft

When inspectors contemplate the detention of an aircraft they must, if possible, introduce themselves to the pilot or owner and specify the unsafe condition or unsafe operation which they believe exists or is likely to exist. They should tactfully try to obtain voluntary compliance in correcting the situation. If they are unsuccessful, they should:

- (1) again advise the pilot or owner about the unsafe condition or operation and the consequences of failing to abide by the inspector's advice (e.g. detention and/or enforcement action);
- (2) where the pilot or owner 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;
- (3) if necessary, restrain the movements of the aircraft:
  - (a) by requesting ATS deny taxi and take-off clearances;
  - (b) by blocking it with vehicles;
  - (c) by attaching it to an immovable object; or,
  - (d) 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.

Whenever possible, and in accordance with Civil Aviation Regulations, 2002 (Rule 64), 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 DGCA. In such cases, all reasonable care shall be taken to preserve and protect the aircraft in the condition in which it was first acquired. The aircraft should be released if it will not be operated or if it will be rendered airworthy before operation and will not be operated in an unsafe manner. Details concerning the detention should be forwarded to the appropriate supervisor for a decision on the release of the aircraft from detention.

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## **CHAPTER 3**

### **SURVEILLANCE OPERATIONS**

#### 3.1 Surveillance

The purpose of surveillance is to provide a regulatory presence to promote compliance and reveal contraventions of aviation regulations. The probability of being detected is one of the most powerful compliance motivators. When a comprehensive and effective surveillance program is in place, a higher degree of compliance and flight safety can be expected.

#### 3.2 Field Operations

##### Routine Surveillance

In the performance of their normal duties in the aviation community, Civil Aviation Inspectors automatically and concurrently engage in routine surveillance. Their mere presence stimulates a positive attitude toward compliance while activities commensurate with their duties often lead to enforcement action. The activities comprising routine surveillance are identical to those listed in Section 2.1 of this manual.

##### Discreet Surveillance

Discreet Surveillance is a routine surveillance where an inspector does with an identity card surveillances as a Civil Aviation Inspector. No Special authorization is required for this type of surveillance.

##### Planned Surveillance

Planned surveillance is directed at specific areas, events and activities by Civil Aviation Inspectors.

#### 3.3 Objectives

The following objectives may be considered when planning surveillance activities:

- (1) the promotion of compliance by establishment of regulator presence;
- (2) the conduct of investigations;
- (3) the detection of contraventions;
- (4) promotional and educational activities;
- (5) liaison with detection sources;
- (6) information gathering; and

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(7) targeted surveillance.

### 3.4 Planning Responsibility

The Directors of the FSSD, ANSSD and ASSD are responsible for the development and administration of the surveillance plan in their area of responsibilities and publish in the website and or display at office notice board after getting approval from DGCA.

### 3.5 Implementation

The implementation of surveillance plan is concerned with satisfying the CAA objectives of regulatory presence, investigation, detection of contraventions, compliance promotion and education.

#### (1) Presence

Surveillance should be carried out whenever and wherever aviation activity is most likely, including weekend's morning and evenings.

(a) It should be ensured of that each surveillance team is composed of inspectors whose specialty is pertinent to the type of surveillance activity.

(b) It should be ensured that each surveillance team is qualified and is properly briefed for the operation.

#### (2) Surveillance

Surveillance should generally be carried out overtly. By introducing themselves to the public, inspectors will be able to maximize the promotion of voluntary compliance. Covert operations may be used when there are reasonable grounds to suspect an open presence may not culminate in a successful investigation. (see Chapter 7.)

#### (3) Initial Violation Process

Inspectors shall ensure the initial violation process is completed thoroughly when new infractions are detected.

### 3.6 Monitoring of Special Aviation Events

Attendance of Civil Aviation Authority of Nepal at special aviation events is intended primarily to establish a regulatory presence and, as such, deter any contraventions from taking place. An obvious CAAN presence during air shows, organized fly-ins, parachute-drops and events of similar nature underscore a definite interest in promoting safety in general aviation.

### 3.7 Procedure

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Extensive notes should be kept of all observations. Where appropriate, photographs should also be taken. Inspectors should be prepared to use authority pursuant to Civil Aviation Regulations, 2002, Rule 64 or Rule 84 as applicable.

Watch for any regulatory contraventions and where possible prevent a contravention by dealing with the cause beforehand. Usually, a friendly approach, emphasizing the safety element, can bring about compliance with the regulations.

### **3.8 Reporting**

At the conclusion of the surveillance activity, a detailed report is normally made to the respective Director of FSSD, ANSSD and ASSD. If contraventions of the regulations have been observed, the report shall be forwarded to the DGCA and must include any evidence of contraventions that has been gathered as well as an account of all actions taken (see Chapter 4 for detection procedures).

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## **CHAPTER 4**

### **DETECTION**

#### **4.1 Introduction**

A detection is the discovery of a possible contravention of aviation-related rules and regulations. It may result from activities such as inspections and surveillance programs, and public complaints. A Civil Aviation official must take action on observing a contravention or when apprised of one. At the very least, an inspector should carry out the initial violation process and forward it without delay to the respective Director of FSSD, ANSSSD and ASSD along with all evidence gathered in support of the allegation of a violation. Even when the matter does not require further action, as in the case of an oral counselling, the initial violation process provides the respective Director of FSSD, ANSSSD and ASSD with information which helps to shape the Aviation Enforcement Program.

#### **4.2 Initial Report of violation**

In all cases where an inspector detects a contravention or where information about a possible contravention is received, the inspector should attempt to gather as much information as possible regarding the incident. This is necessary to preserve perishable evidence and to provide sufficient information about the contravention to enable a complete and comprehensive investigation. The initial violation process should simply provide answers to the questions: WHO, WHERE, WHEN, WHAT, WHY and HOW. The information should be recorded and passed to the respective Director of FSSD, ANSSSD and ASSD as soon as possible along with any notes or evidence such as photos, logs, tapes, etc.

The decision to conclude the incident with an oral counselling or to refer the matter for further investigation is entirely at the discretion of the inspector completing the form.

If the contravention is considered minor, the inspector may opt for oral counselling.

If the contravention is of a more serious nature, the inspector must refer the incident without delay to the respective Director of FSSD, ANSSSD and ASSD for further action. The respective Director of FSSD, ANSSSD and ASSD will then determine if a comprehensive investigation should be carried out.

##### **4.2.1 Detection**

###### **(1) Oral Counseling**

Oral counselling provides the document holder with immediate counselling on the necessity for compliance. It is an option for inspectors when the contravention is minor and inadvertent or is a safety-related violation where there is no direct flight safety hazard and the imposition of a sanction is not

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considered appropriate. Refer to the factors affecting choice of sanction in Chapter 12 for guidance on determining whether or not oral counselling is appropriate.

Inspectors should assess all aspects of the contravention and the attitude of the document holder to determine whether oral counselling will secure future compliance. Oral counselling may be most appropriate in cases of ignorance or misinterpretation of the law, provided aviation safety was not jeopardized, i.e. a minor contravention having little or no impact on safety or where there was no indication of a wilful act. Oral counselling is not an option when the alleged offender disputes the allegation.

## **(2) Further Investigation**

If in doubt about the appropriate action to take in a given circumstance, the inspector should refer the matter to the respective Director of FSSD, ANSSSD and ASSD for further investigation.

### **4.3 Contraventions of Dangerous Goods Regulations**

Within Civil Aviation Authority, all inspectors are responsible for promoting compliance with and detecting contraventions of the *Dangerous Goods Handling Requirements*. Because of the possible hazards involved in the transport of dangerous goods, all inspectors, upon detection or receipt of a reported violation, shall apprise the Director of FSSD of the situation.

Inspectors should have a basic familiarization of how to identify dangerous goods and must not place themselves in positions that might jeopardize their safety.

### **4.4 Inspectors Flying as Passengers**

If inspectors, while flying as passengers on an airline, detect a contravention which, in their judgement, must be brought to the attention of the flight crew (e.g. a major disregard of the *CARs*), they shall contact the pilot-in-command after the flight has completed. After identifying themselves, inspectors should indicate to the pilot the nature of the contravention and advise the pilot that they will be making a detailed written report. An initial violation process form shall be forwarded without delay to the Director of FSSD. It shall contain sufficient detail including all available evidence to allow follow-up action.

The policy of post-flight notification does not apply where the contravention compromises flight safety. An example of this would be contravention of *Flight Operations Requirements* which forbids a flight to commence without an inspection for adherence of frost, ice or snow to any critical surface of an aircraft. In such a case, direct and immediate action shall be taken by the inspector.

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### **Expanded Description of the Initial Violation Process**

The purpose of the initial violation process is to gather information in a systematic and thorough manner when it is suspected that a regulation or provision has been violated by an act or omission that warrants further investigation. All inspectors are responsible for gathering pertinent information when they detect a violation of the regulations and for recording that information, preferably in the Initial Violation Process Form. This initial process of collecting information concerning a possible violation is often the only opportunity to preserve perishable evidence.

The initial violation process should simply answer the questions: WHO, WHERE, WHEN, WHAT, WHY & HOW and, depending on the circumstances, may be expanded as follows:

- (1) fill out the Initial Violation records;
- (2) record all possible contraventions (even borderline offences);
- (3) record date, time and location of the contravention;
- (4) record the identification of the aircraft and the names, addresses and telephone numbers of all persons involved;
- (5) preserve perishable evidence and documents such as log books, load control sheets, damaged aircraft parts, engineering records, invoices, etc. Obtain weather reports, etc. if it is suspected they may not be available at a later time. Give the unit manager of an ATS facility a written note requesting that information in the form of flight plans or ATS tapes be secured for later acquisition.
- (6) take photographs of all objects that cannot be secured or moved;
- (7) take notes on the events immediately preceding and following the contravention;
- (8) record the names, addresses and telephone numbers of all witnesses that were present or that may have information and note the information each could provide whether there is duplication or not. (The reason for this is twofold: to freeze evidence so that it cannot be changed later and to enable witnesses to refresh their memory at a later date);
- (9) approach any person you suspect of committing a contravention and seek their account of the occurrence;
- (10) contact the respective Director of FSSD, ANSSSD and ASSD for assistance or direction as required.

**NOTE:**It is important to keep an accurate set of notes detailing in chronological order your actions with appropriate location, dates and times.

Upon detection of a violation and the completion of the Initial Violation Process, an inspector should forward the same to respective Director of FSSD, ANSSSD and ASSD

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who will assign an investigator to the case. Both the reporting inspector and assigned investigator shall continue to coordinate their work as necessary until the conclusion of the case.

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## CHAPTER 5 ANALYSIS OF LEGISLATIVE PROVISIONS

### 5.1 Introduction

This chapter provides a procedure for analyzing offence creating legislative provisions to obtain a precise interpretation and to determine the facts and evidence required for their enforcement. The decision to continue or terminate a case is often based on the results of the analysis of legislation. Investigators will complete an analysis of each provision which has been contravened for each case where a comprehensive investigation is conducted.

### 5.2 Construction of Legislative Provisions

(1) Types of Legislative Provisions: Legislative provisions may be enabling, administrative, informative or offence creating. Only the latter can be the subject of enforcement actions.

(a) Enabling provisions are those which confer power on persons to make some other type of standard or policy. Some enabling provisions in the *Aviation Act* and *CARs* are those which give powers to make regulations, orders and publications. For example: Civil Aviation Regulations, 2002 (Rule 82).

(b) Administrative provisions confer a power or impose a duty on the DGCA; for example, to issue licenses. They may provide criteria used in discharging these powers or duties. Although these provisions are public notice of what the DG CAAN can do, their purpose is to provide a statutory basis for administrative procedures or actions. For example: *CAR Nepal Civil Aviation Authority Act, 1996* (Rule 5).

(c) Informative provisions are intended to guide the aviation community and assist individuals in complying with aeronautics legislation. For example: Civil Aviation Regulations, 2002.

Offence creating provisions can be one of two types, first, those which mandate a certain form of conduct and, second, those which prohibit certain act. Non-compliance with these provisions is a violation that can result in judicial or administrative enforcement action. For example: *Nepal Civil Aviation Authority Act, 1996* (Rule 25).

The legislative provisions of interest in this chapter are the “offence creating provisions” and are often referred to as safety regulations. They are easy to recognize as they contain words such as, “No person shall”, “an operator shall”, “and the pilot-in-command shall”.

(2) A provision is composed of legislative elements. Precise interpretation requires analysis of the various elements of a legislative provision. An element is a segment, either a single word or group of words that expresses a unit of thought. Every element contributes to the total meaning of the legislative provision. Core elements contain the subjects and verbs while qualifying elements describe or modify core elements. Common elements are those which

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appear frequently in the legislative provisions (e.g. “no person”, “shall fly”, “aircraft”, “pilot-in-command”). Uncommon elements are those which do not appear frequently (e.g., “legal custody and control”, “accredited representative”, “influence of alcohol”).

### **5.3 Identify Possible Violations**

During the early stages of a comprehensive investigation, investigators should list all possible violations, not necessarily in order of importance, and then select the corresponding legislation that should be analyzed. A timely analysis will indicate what evidence is available and what further evidence maybe required; it could also determine that there is, in fact, no violation.

### **5.4 Analysis of Offence Creating Legislative Provisions for Interpretation**

Analysis for interpretation consists of the following steps:

- (1) Divide the legislative provision into elements, (e.g., (No person) (shall fly) (a helicopter) (on a Sunday).
- (2) Determine the applicability of each element.
- (3) If a meaning is unclear and there are no pertinent regulatory definitions, use dictionary meanings.
- (4) Determine the modifying effect of the qualifying elements.
- (5) Summarize the results to arrive at the interpretation.

### **5.5 Analysis of Offence Creating Legislative Provisions for Evidence**

Where a contravention is suspected, the pertinent legislative provisions should be divided into elements and analyzed for interpretation. The facts that need to be established to prove a contravention and the forms and sources of evidence which tend to establish those facts must then be determined.

This is done by first classifying the elements as common or uncommon elements. Standard forms of evidence are used to establish the facts concerning common elements. Special forms of evidence may be needed to establish the facts concerning uncommon elements.

#### **5.5.1 Standard forms of evidence**

Standard forms of evidence include witness statements, oral testimony, admissions, tape recordings, photographs, objects and documentary evidence such as journey logs, technical logs and business records.

#### **5.5.2 Special forms of evidence**

Special forms of evidence include voice-prints, x-rays, magnaflux, dyecheck, etc.

### **5.6 Sample Analysis**

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The matrix on the following pages illustrates a method of analyzing the common elements of many legislative provisions and some uncommon elements for relevant evidence.

### 5.6.1 Illustrative Analysis of Common Elements

Elements	Facts To Be Established	Evidence
<p><b>#1</b></p> <p>[no person] -core element -sets out prohibition applying to all persons</p>	<p>What person performed the prohibited act.</p>	<p>“Standard forms” to identify the person: Log book, witness</p> <p>For a corporation, refer to registry office for legal name; obtain Certificate of Incorporation from Registrar of Companies.</p>
<p><b>#2</b></p> <p>[shall fly] -core element -describes the prohibited act</p>	<p>The person acted as pilot-in-command, co-pilot, flight navigator or flight engineer; when and where. NOTE: The duties of these "flight crew members" are not defined. Conclusions must be drawn from expert knowledge.</p>	<p>“Standard forms:” Log book, witness.</p>
<p><b>#3</b></p> <p>[attempt to fly] -core element - describes the prohibited act</p>	<p>The person intended to fly or made an endeavor to fly; when and where.</p>	<p>Evidence of overt acts showing intent or endeavor to fly, e.g. filing of flight plan, request for clearance.</p>
<p><b>#4</b></p> <p>[aircraft] [no aircraft]  -core or qualifying element</p>	<p>The object referred to was an aircraft as defined in <b>FOR</b> of CARs</p> <p>The aircraft must be identified.</p>	<p>“Standard forms:” Log book, C of R; witness. C of A / C of R as required by the CARs -request that certificate indicate status on date of offence</p>
<p>[the pilot-in-command] -defined in <b>FOR</b> of the CARs  -usually a core element</p>	<p>The suspected violator was the "pilot-in-command".</p>	<p>“Standard forms:” Log book, witness.</p>

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<p>[operate] -core element -not defined in CAR <b>FOR</b></p> <p>- "to work or use a machine" (dictionary definition)</p>	<p>The act of operating was performed by the suspected offender.</p> <p>With respect to an aircraft, "operate" includes "fly" as a pilot.</p>	<p>"Standard forms:" Log book; witness; Flight Plan; ATS record</p>
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### 5.6.2 Illustrative Analysis of Uncommon Elements

For common elements see the previous page:

#1 [no person] #2 [shall fly] #3 [or attempt to fly] #4 [an aircraft]

<b>Uncommon Elements</b>	<b>Facts To Be Established</b>	<b>Evidence</b>
<p><b>#5</b></p> <p>[unless a flight authority issued under the CARs is in effect in respect of the aircraft]</p> <p>- qualifying element</p>	<p><b>(a)</b>no such flight authority has been issued.</p> <p><b>(b)</b>if issued, flight authority was not in effect at the time.</p>	<p>For fact (a): use C of A / C of R's Certificate under Rule <b>NCAR</b> of CARs.</p> <p>For fact (b): show that the standard for a flight authority to be in effect was not met at the time.</p>
<p><b>#6</b></p> <p>[or unless a flight authority issued under the laws of the country in which the aircraft is registered is in effect in respect of the aircraft]</p> <p>- qualifying element</p>	<p><b>(a)</b>no such flight authority has been issued.</p> <p><b>(b)</b>if issued, flight authority was not in effect at the time.</p>	<p>For fact (a): Affidavit from the proper authority of the country.</p> <p>For fact (b): Same as (a) and expert testimony.</p>
<p><b>#7</b></p> <p>[and unless all conditions upon which the certificate or permit was issued have been complied with]</p> <p>- qualifying elements</p>	<p>Such conditions were not met at the time.</p> <p>NOTE:Conditions of issue are inscribed on the flight authority.</p>	<p>Produce a true copy of respective flight authority certified by the <b>DG CAAN</b> as required under the CARs.</p>

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### 5.6.3 Analysis Matrix - an example

<b>Elements</b>	<b>Facts To Be Established</b>	<b>Evidence</b>
<b>#1 [no person]</b> - a common element and a core element - the prohibition applies to all persons	What person performed the prohibited act.	"Standard forms" to identify the person.
<b>#2 [shall operate...in flight]</b> - a common element and a core element - specifies the prohibited action	A flight took place	"Standard forms" - journey log, eye witness, ATS record, etc - showing that the aircraft was operated in flight
<b>#3 [an aircraft]</b> - a common element and a core element - augments the prohibited action	The object referred to was an aircraft as defined in FOR.of the <i>CARs</i> . The specific aircraft must be identified.	"Standard forms" - Journey log, C of R, eye witness - to identify the particular aircraft.
<b>#4 [unless a flight authority is in effect in respect of the aircraft]</b> - a common element and a qualifying element	a. Flight authority was not issued. b. Flight authority was not in effect.	a. C of A / C of R as required under <i>CARs</i> - request that certificate indicate status of aircraft on date of offence b. Documents or expert evidence showing why flight authority was not in effect
<b>#5 [and unless the aircraft is operated in accordance with the conditions set out in the flight authority]</b> - an uncommon element and a qualifying element	c. The manner of operation that was not in accordance with the flight authority. b. A manner of operation prescribed by the flight authority that was not carried out.	Standard forms - journey log, eye witness, flight plan. - showing deviance from conditions of the flight authority
<b>#6 [and unless the flight authority is carried on</b>	a. Flight authority was not carried on board the	Standard forms - eye witness - showing the flight

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<b>Elements</b>	<b>Facts To Be Established</b>	<b>Evidence</b>
board the aircraft subject to subsection (3.1.1) and (3.2.3)]- - a common element and a qualifying element	aircraft. b. Show subsections (3.1.1) and (3.2.3) do not apply <i>(the subsections are not addressed in this example)</i>	authority was not carried on board the aircraft.

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## **CHAPTER 6 INVESTIGATIONS**

### **6.1 Introduction**

An investigation is a systematic search for and documentation of the facts relevant to an event from which a decision to take appropriate action can be made. It is the most significant phase of the enforcement process since subsequent action that may affect both individual rights and public safety will depend on its thoroughness and adequacy. In order for investigators to conduct thorough investigations from the initial complaint through to the case report, it is imperative that they have a thorough understanding of their delegation of authority and a sound knowledge of their inspection and investigative powers. Inspectors must also know what constitutes relevant evidence if Civil Aviation Authority of Nepal is to bring an action against an alleged offender because the only means available to prove that the violation has taken place on the basis of obtained evidence.

### **6.2 Priorities for Investigation**

Priority shall be given to violations received from any Government request. For all other violations the Director of relevant Safety Standard Department shall assign an investigation priority level based on safety impact.

### **6.3 Cockpit Voice Recorder (CVR) / Flight Data Recorder (FDR)**

Their use is primarily intended for aircraft accident investigations to assist in determining the cause of accidents and incidents, unless the appropriate authority for the administration of justice in Nepal determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations.

### **6.4 No Investigation Conducted (NIC)**

Sometimes, it is evident from the original complaint or the Initial Violation Process that the case does not warrant a comprehensive investigation because of: lack of evidence; referral to a foreign or Nepalese agency; statutory limitation; low safety item; insufficient resources; etc. Nevertheless, the relevant information should be recorded for the type of action taken.

### **6.5 Defenses - Necessity, Due Diligence, Officially Induced Error**

If early in an investigation, facts are uncovered which point to the likelihood that an alleged offender could successfully argue the actions taken were justified, the investigator may opt to terminate the investigation with a recommendation for no further action. In certain cases where wrongful conduct can be proven or is admitted, the alleged offender may still be able to raise a defence based on necessity,

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due diligence or officially induced error. These defences are available in both judicial and administrative proceedings.

### 6.5.1 The Defense of Necessity

The defence of necessity has its origins in common law and remains available to alleged offender. In deciding whether the defence has been established, the Director of relevant Safety Standard Department should carefully examine the facts to determine whether all of the following conditions apply:

- (1) the situation was so urgent and the dangers from inaction were so imminent that it was unreasonable to delay any action;
- (2) compliance with the law was demonstrably impossible as the violation was inevitable or unavoidable in that there was no opportunity for an alternative course of action that did not involve a contravention of the regulations; and
- (3) the hazards to flight safety caused by the contravention were less serious than the hazard posed by complying with the law (e.g. breaking the law is less serious than any accident that might result from complying with it in the particular circumstances).

In addition, the Director of relevant Safety Standard Department must be satisfied on reasonable grounds that the urgent situation was not brought about by the alleged offender through negligence or a breach of the regulations. In other words, where the alleged offender created the danger, the alleged offender cannot avoid liability for a contravention committed to escape from that danger.

Where the defence of necessity is proven, the alleged offender cannot be found to have contravened the law because the contravention was necessary to avoid an immediate greater danger (in particular, death or injury).

### 6.5.2 The Defence of Due Diligence

CAAN documents and manuals provide for the “defense of due diligence” in an alleged contravention of the *CARs*. In order to establish this defense, the alleged offender must show that due diligence was exercised (all reasonable steps were taken) to avoid committing the contravention. Where due diligence is proven, the alleged offender cannot be found in contravention of the law because all reasonable steps to avoid the contravention were taken. What constitutes due diligence will therefore vary from case to case depending on the facts.

### 6.5.3 Officially Induced Error

The defence of officially induced error is available where an alleged offender has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. It must be proved, on a balance of reasonable doubts, that the alleged offender relied on the erroneous legal opinion or advice of the official and that this reliance was reasonable. The reasonableness will depend on several factors, including the efforts made by the

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alleged offender to ascertain the proper law, the complexity or obscurity of the law, the position of the official and the clarity, definitiveness and reasonableness of the advice given. The defence may at times overlap with the defence of due diligence, but it is separate and distinct.

#### 6.5.4 Application of Defences

Any one of the previously mentioned defences can be raised by the alleged offender during the investigation or at any time before a decision to impose a sanction has been made. If the Director of relevant Safety Standard Department is satisfied that a defence has been established and therefore no offence has been committed, then the case must be closed. When a defence of due diligence or necessity has not been proven, a mitigating circumstance may still exist that may be taken into consideration. If an informal meeting is requested by the document holder, it may be arranged by the investigator and the appropriate Division Director. If the alleged offender insists the defences are valid, the situation becomes a matter for the DGCA or the relevant authority to decide.

#### 6.6 Comprehensive Investigations

If the initial violation process indicates that a contravention took place and further evidence is necessary to establish the facts, a comprehensive investigation must be commenced. The purpose of the comprehensive investigation is to obtain all the evidence necessary to establish the truth. The investigator's objective is not only to obtain sufficient evidence to prove an alleged offence occurred, but also to ensure that all the facts of the incident are disclosed so that natural justice will be served. The procedure for conducting a comprehensive investigation follows:

- (1) identify all provisions that were possibly contravened;
- (2) analyze the regulations allegedly contravened (see Chapter 5);
- (3) determine the evidence necessary to prove each element of a violation;
- (4) plan and initiate the steps necessary to obtain such evidence; e.g. interviews, resource personnel, expert witnesses, log books, records, search warrant, etc.;
- (5) obtain information from the alleged offender. The alleged offender must be contacted in person, by telephone or by mail and be advised **that**:
  - (a) an investigation is in progress; and,
  - (b) there is an opportunity for the document holder to offer voluntary information.

**NOTE 1:** It is mandatory to advise the alleged offender that an investigation is in progress. The case file must be annotated to record the notification. An alleged offender may be able to provide evidence valuable to the investigation. Under no circumstances should the Notice of Assessment of

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Monetary Penalty or the Notice of Suspension be the alleged offender's first indication of an enforcement investigation.

**NOTE 2:** A **warning** shall be given advising the alleged offender that this information may be used as evidence.

- (6) co-ordinate the investigation to prevent overlap or conflict with other personnel;
- (7) establish the cause of the violation. e.g. weather, navigation hazard, equipment, deliberate, inadvertent;
- (8) record the relevant information, including a narrative of the facts and circumstances of the event which lead to the alleged violation; and
- (9) prepare a personnel or company enforcement case file incorporating the results of the foregoing activities and including the Initial Violation Process Form, a legible activity log and a case report.

#### 6.7 Case Closure - No Further Action (NFA)

A case should terminate with no further action if:

- (a) the alleged offender's identity cannot be ascertained;
- (b) the evidence does not provide reasonable grounds to believe the violation took place;
- (c) an uncorrectable technical or other flaw in the case precludes further action;
- (d) an exemption had been granted which negated the contraventions; or
- (e) a defence of necessity, due diligence or officially induced error is established.

Enforcement correspondence relating to a case in which no further action was taken is recorded but the case shall not be considered a contravention.

**Figure 6-1**

<b>COMPARISON OF INTERVIEWS OF WITNESSES AND ALLEGED OFFENDERS</b>	
<b>Witness</b>	<b>Alleged Offender</b>
<p><b>AIM</b></p> <p>...to gather information and test its validity in order to determine the particulars of the matter under investigation.</p>	<p>...to gather information and test its validity in order to determine whether the subject was responsible for or involved in the matter under investigation.</p>
<p><b>WHO</b></p> <p>...witnesses who are willing to provide the investigator with any information they possess about the matter under investigation.</p>	<p>...persons suspected of offences as well as others who may have information but are reluctant to offer it.</p>
<p><b>WHEN</b></p> <p>...interviews should take place as soon as possible after the event has occurred so that statements by witnesses are not affected by memory loss, influence of talking to others, etc. Immediate gathering of information enables the investigator to prepare for interviewing alleged offenders.</p>	<p>...interviews of alleged offenders should take place ideally after the investigator has gathered enough information to make a judgement on how truthful the subject is. An alleged offender interview is more fruitful after witnesses have been interviewed and physical evidence has been located and evaluated.</p>
<p><b>LOCATION</b></p> <p>...at a place convenient and familiar to the subject or in a neutral setting. The subject's home, place of business or any place where privacy is assured is preferred.</p>	<p>...the interview room at the office is best since it enables the inspector to manage the security of the subject and to control other factors which might tend to be distracting.</p>

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<b>COMPARISON OF INTERVIEWS OF WITNESSES AND ALLEGED OFFENDERS</b>	
<b>Witness</b>	<b>Alleged Offender</b>
<p><b>TECHNIQUE</b></p> <p>...a low-pressure, informal atmosphere is preferred to allow the subject to relate his information in narrative style. Specific questions should be used to gather more detail and to jog the witness' memory.</p>	<p>...basically the same method as with witness interviews, but the atmosphere is more formal and the investigator works toward a more specific purpose.</p>

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**Enforcement panel**

Civil Aviation Inspector shall take necessary action on the spot during the inspection as specified in Rule 84 of Civil Aviation Regulations 2002. For minor offences, the administrative procedures like oral counseling, remedial training or monetary penalty may be prescribed by the investigator or inspector as the case may be. However, if the risk associated with the offence is comparatively higher posing the hazard or could pose hazard to the safety of aircraft, its occupants and public and property on ground, the offence should be considered as a serious offence.

Enforcement actions for serious offences and safety violations may include suspension and cancellation of aviation documents on the recommendation of an enforcement panel formed by Director General. The enforcement action will be implemented by the appropriate Safety Department after approval from Director General.

**Conditions for setting up of enforcement panel**

The enforcement panel will be set up for following conditions.

- a. The act committed has direct bearing with the safety of aircraft, occupants and the general public
- b. Previous enforcement action like oral counseling, monetary penalty and remedial training has not prevented the recurrence of similar offence; and
- c. The evidence indicate that it was a deliberate violation

**Composition of panel:**

The panel will be constituted as below:

Chief of concerned department or division or designee	Coordinator
Subject matter inspector(s) of concerned department(s)	Member
Legal and/or administrative official as required	Member

The panel may take services of other experts including from other safety departments as required depending on the complexity of the event.

Example:

If the offense is related with flight operations, the chief of flight operations will lead the panel while lead will be taken by the chief of airworthiness if the offence is related with airworthiness.

**Restriction in use of privileges of aviation documents**

The concerned safety department may instruct the service provider to keep the individual and organization holding the civil aviation document not to utilize the privileges of the documents until such time as it may be deemed necessary for the purpose of completing the investigation related with any occurrences or breach of applicable rules and regulations.

**Suspension of civil aviation documents**

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The Director General may suspend the civil aviation documents based on the recommendation of enforcement panel. The offender will be given an opportunity to clarify his or her position why the civil aviation documents should not be suspended in the interest of safety. If the justification is not satisfactory then the civil aviation document may be suspended by a decision of Director General with recommendation from the panel. However, final decision regarding the suspension of the civil aviation documents rests with the Director General.

### **Revocation of civil aviation documents**

The civil aviation document will be revoked in the interest of safety with due consideration of following factors:

1. Repetitive violations amounting to enforcement action of suspension of civil aviation document. The decision will be taken in case to case basis depending on the severity of violations.
2. Gross negligence or willful violation endangering the safety of aircraft, occupant and general public.

The offender will be given an opportunity to clarify his or her position why the aviation documents should not be revoked in the interest of safety. If the justification is not satisfactory then the civil aviation document may be revoked by a decision of Director General with recommendation from the panel. However, final decision regarding the cancellation/revocation of the civil aviation documents rests with the Director General.

### **Step by step procedure for enforcement action in the event of offence**

1. The contravention is reported to relevant safety standards department.
2. The event is investigated by the inspector to determine if it constitutes immediate threat to the safety of the occupants, aircraft and general public.
3. If the inspector has enough reason to suspect that the use of the privileges attached with the civil aviation document poses danger to the safety of the occupants, aircraft and general public, an immediate instruction will be issued not to exercise the privileges of civil aviation documents.
4. If such instructions are not followed by the holder of civil aviation documents, alternate means can be used like advising the air traffic unit not to permit to take off aircraft, etc.
5. Such instruction may be issued by the respective safety inspector.
6. After obtaining complete report from the inspector on the event, if it is recommended to investigate further for the enforcement purposes in serious offences, an enforcement panel will be formed by the Director General to review the case and recommend a penalty appropriate to the identified risk to safety.

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7. Normally, period of restriction on privileges associated with aviation document will not be more than 30 days from date of first instruction from the inspector or investigator.
8. The panel may, depending on the severity of offence, recommend Director General to prolong the duration of such restriction.
9. In the event of prolonged investigation, instruction can be issued not to use the privileges of civil aviation documents. Such instruction can be issued by the investigators.
10. Depending on the severity of the offences, the enforcement panel will recommend to the Director General the prescribed penalty including but not limited to the suspension of civil aviation document for specified time frame or the cancellation of such documents.
11. The offender will be notified of the decision of Civil Aviation Authority of Nepal by the respective Safety Standards Department with respect to the penalty imposed in relation to the offence committed.
12. If the civil aviation document is cancelled, the offender can re-apply to obtain the same by fulfilling the all relevant requirement of Civil Aviation Authority of Nepal, unless otherwise indicated in the Civil Aviation Authority of Nepal decision.
13. The record of the enforcement action shall be maintained in the personal file of offender in case of individual offender or in office file of approval holder in case of offender being an organization holding civil aviation documents like approval or certificate.
14. The enforcement data will be updated and maintained by the relevant Safety Standards Department unless the case is concluded as not requiring further action. In the latter case, only the investigation file will be kept and no record will appear in the document holder file.

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## CHAPTER 7

### COVERT OPERATIONS

#### 7.1 Introduction

Most surveillance done by Civil Aviation Authority of Nepal officials is of an overt nature, that is, undisguised and designed to encourage compliance through a visible presence, to deter regulatory infractions and to detect infractions. There are however instances where covert operations may be appropriate or necessary in order to gather evidence. Covert operations are surveillance activities during which inspectors intentionally represent themselves as being someone other than a Civil Aviation official.

#### 7.2 Covert Operations Policy

Covert operations may be conducted in order to gather evidence of continuing wilful violations of the aviation safety regulations. Covert operations shall be conducted only when a threat to aviation safety exists and when normal investigative means have been ineffective or are likely to be ineffective to stop the unsafe activity.

The decision to conduct a covert operation shall be made by the DGCA on the advice of the respective Director of FSSD, ANSSSD and ASSD. Should the DGCA be satisfied that a need exists for inspectors to conduct a covert operation, the respective Director of FSSD, ANSSSD and ASSD will be granted the authority by the DGCA.

#### 7.3 Definitions

See Chapter 3 for definitions of surveillance activities.

"Criminal Activity" - is any act that is illegal under the *Criminal laws* of Nepal and is clearly outside the scope of responsibility of CAA of Nepal.

"Joint Covert Operation" - is a covert operation involving Civil Aviation officials in cooperation with another agency.

"Third Party Agents" - are persons employed specifically for the purposes of a covert operation excluding police officers, other agency personnel or Civil Aviation inspectors.

#### 7.4 Principles of Covert Operations

The following principles should be considered when planning or conducting covert operations:

- (1) all covert operations shall be approved by the DGCA or Director of respective safety department;

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- (2) respective safety Directors shall be responsible for the conduct of covert operations in their regions;
- (3) the respective Director of FSSD, ANSSSD and ASSD shall ensure adequate command, control and communications are exercised during each operation;
- (4) where Civil Aviation Authority contemplates involvement in a joint covert operation, the agency in charge of the operation will be identified prior to the start of the operation;
- (5) Civil Aviation Authority may provide technical advice but will not participate actively in a joint covert operation where it is anticipated activity that is likely to place an inspector in physical danger will be encountered during the operation;
- (6) during the planning stage of a joint covert operation, a contingency plan shall be developed that will permit Civil Aviation Inspectors to withdraw from active participation in the operation if there is a likelihood that the inspectors personal safety may be jeopardized;
- (7) no inspector shall obtain employment in an aviation company for the purpose of gaining access to information or evidence otherwise unavailable;
- (8) care must be taken to ensure that the associated investigation is not construed as entrapment; and,
- (9) the respective Director of FSSD, ANSSSD and ASSD shall ensure inspectors are thoroughly briefed for the covert operation and are aware of the guidelines for inspectors.

## 7.5 Guidelines for Inspectors

Inspectors engaged in covert operations shall be bound by the following guidelines:

- (1) in no case shall an inspector counsel or facilitate the commission of an offence;
- (2) if other illegal acts are detected during an operation, the appropriate enforcement agency shall be notified;
- (3) if activity that is likely to place an inspector in physical danger is detected, the operation shall be abandoned rather than place inspectors at risk. In joint covert operations, the contingency plan developed to withdraw the inspectors from the operation will be activated, ensuring the operation or other operatives are not compromised. Inspectors may continue to provide technical advice and support;
- (4) inspectors conducting an operation are to respect the rights of individuals;

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- (5) inspectors conducting covert operations must not allow a flight to take place or to operate equipment if, in the opinion of the inspector, a condition exists that is an immediate threat to the safety of the flight.

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## CHAPTER 8

### SPECIAL INVESTIGATIVE PROCEDURES

#### 8.1 Contraventions by Military Aircraft

The *Nepalese Civil Aviation Regulations* do not apply to:

- (1) Nepalese Military aircraft operating under the authority of the Minister of Defence; and
- (2) foreign military aircraft.

The CAAN shall forward a detection report to Nepal Army Headquarters for any incident involving Nepalesemilitary aircraft or for any incident involving foreign military aircraft operating in Kathmandu FIR.

#### 8.2 Contraventions by Nepalese Aviation service providers

##### 8.2.1 Contraventions Detected during an Audit or Base Inspection

When audit or inspection team members detect an apparent contravention of the regulations, they shall follow the initial violation process including the seizure of relevant evidence. The Audit Manager/team leader shall identify all contraventions of the regulations detected during the audit and will determine whether the related information should be forwarded to the Convening Authority during the audit or held for inclusion in the audit report. If the Audit Manager/team leader is of the opinion that a contravention discovered during an audit requires immediate action, the Audit Manager/team leader shall inform the Director of FSSD/ANSSSD/ASD of the details and request a comprehensive investigation.

On receipt of the audit report, the Convening Authority, Director of FSSD/ANSSSD/ASSD will jointly determine which contraventions require comprehensive investigation and deterrent action. If, at the completion of a comprehensive investigation, suspension of an Air Operators Certificate (AOC) or Approved Maintenance Organization (AMO), license of air navigation service provider or certificate of aerodrome operator or appears to be the most appropriate sanction, the respective safety Director should consult with and get approval from the DG CAAN before actioning the suspension. See Chapter 10 for other deterrent action considerations.

##### 8.2.2 Contraventions Detected by Other Means

A Civil Aviation Inspector detecting a contravention by an air carrier crew member or employee, air navigation service provider and aerodrome operator must follow the initial violation process to record essential facts. A report must then be made to Director of FSSD/ANSSSD/ASD who has responsibility to investigate the matter (and

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the delegated authority to impose a penalty). The inspector or the Director of FSSD/ANSSSD/ASD or DGCA may address immediate operational considerations through the exercise of functional or safety powers under Nepal, e.g. the suspension of an AOC, license of ANSP, aerodrome certificate to avoid an imminent threat to aviation safety but the matter must be referred for investigation and punitive action for the contravention. An investigator must coordinate a comprehensive investigation involving any air carrier contravention or airworthiness elements or ANSP or Aerodrome operator with the specialty functions before making a recommendation on the final case disposition to the Director of FSSD/ANSSSD/ASD.

### 8.3 Contraventions of Foreign Aeronautics Legislation by Nepalese Aviation Document Holders

These procedures apply whenever a Nepalese document holder is alleged to have violated foreign Aviation legislation.

If the allegations concern a regulation having a direct Nepalese equivalent, the investigation should proceed normally.

In cases where allegations relate to a regulation without Nepalese equivalent and where the contravention is confirmed, the Director, Flight Safety Standard Department (FSSD) may proceed administratively or judicially under Civil Aviation Regulations, 2002.

### 8.4 Special Cases Involving Nepalese Registered Aircraft

Where Nepalese operators are involved in contraventions which may have certification implications, the Director, Flight Safety Standard Department (FSSD) shall advise the operational authority for that operator.

### 8.5 **Treatment to airspace violations**

From an Enforcement point of view, any deviation outside the vertical and horizontal limits associated with a clearance may be considered to be a violation, whether due to equipment degradation, to crew error or to another cause. Airspace violations are subject to investigation in the same manner as any other contravention would be investigated.

### 8.6 Contraventions Involving Foreign Civil Aircraft

Where foreign civil operators are involved in contraventions which may have certification implications, the Director, Flight Safety Standard Department (FSSD) shall advise the operational authority for that operator through proper CAA Channels.

International Civil Aviation Organization (ICAO) rules and agreements, various bilateral agreements between Nepal and other countries impact on the manner in

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which CAAN deals with contraventions involving foreign civil aircraft. Timely branch-to-branch consultations are mandatory to ensure expedient and effective enforcement actions.

While in Nepal, pilots and operators from foreign countries are expected to comply with the ICAO Standards.

#### 8.7 Requests from Foreign Civil Aviation Authorities

Requests for assistance from foreign civil aviation authorities are normally received in head office and are relayed to the appropriate department for action. Direct requests from other foreign agencies shall be referred to head office. In any event, full CAAN cooperation is expected in keeping with the intent of Article 12 of the ICAO convention.

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## CHAPTER 9

### CASE REPORTS

#### 9.1 Introduction

A case report is an abridged relation of the facts of a case drawn up by the investigator for use by the respective Director of FSSD, ANSSSD and ASSD. It is inserted as the first section of a case file. The case report provides a method of systematically compiling and summarizing all information pertinent to the case so that the respective Director of FSSD, ANSSSD and ASSD can quickly become as familiar and conversant with the case as possible without the need to review in detail the complete contents of the file. After reading the case report, the respective Director of FSSD, ANSSSD and ASSD should have a sufficient understanding of the case to be able to determine with confidence the appropriateness of the action recommended by the investigator. The case report also serves as a checklist for the investigator to ensure that all necessary investigative steps have been completed and nothing further remains to be done. It should be as accurate and comprehensive as possible.

#### 9.2 Content and Preparation of Case Reports

The cover sheet of the case report should contain the identity of the alleged offender by name and licence number, if appropriate, as well as the alleged contraventions and the name of the investigator. This should be followed by a case synopsis, which could be described as a thumbnail sketch of the case, providing the respective Director of FSSD, ANSSSD and ASSD with a quick overview of the situation. Next is a sheet fully identifying the alleged offender by name, address and date of birth, and setting out licensing details and details of the aircraft involved. An analysis of legislation follows breaking down the alleged contraventions into their elements, listing the facts to be established and identifying the evidence to be used to prove those facts. A list of evidence which may be entered as exhibits if the case were to progress to the DG CAAN should be followed by the exhibits, e.g. copies of statements, diagrams, photographs and Certificates. The exhibits should be flagged with a letter to ensure quick and easy location. Originals of the items can be placed in the case report. If applicable, the alleged offender's enforcement history is indicated next. The package is rounded off with the inspector's recommendation in which any mitigating or aggravating circumstances may be outlined based on section 11.2 of this manual. While preparing a case report demands much work, a case cannot be expediently concluded without a properly prepared case report. In some instances, many man-hours may have been expended in investigating the offence. A successful and thorough investigation should not be jeopardized by the use of a poorly prepared or inadequate case report.

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An example case report follows.

### 9.3 Sample Case Report

File Reference No. \_\_\_\_\_

#### **CASE REPORT**

***(Alleged Offender's Name)***

***(Alleged Offender's License/approval/certificate Number)***

*(List the provisions contravened by section number)*

**Investigating Officer:**

*(Investigator's Name)*

*Date*

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**CASE SYNOPSIS**

*(This summary of the case is intended to provide the respective Director of FSSD, ANSSSD and ASSD with an overview of the situation)*

**IDENTIFICATION OF THE ALLEGED OFFENDER**

Name: *(Offender's Name)*

Address: *(Offender's Address)*

D.O.B.: *(Offender's DOB, if applicable)*

License/Approval: *(Offender's License – Type and number)*

**AIRCRAFT/FACILITY**

Identity: *(Aircraft Type, Model, Registration, facility type)*

Owner: *(Aircraft Owner/facility name)*

Address: *(Aircraft Owner's/facility Address)*

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**ANALYSIS OF LEGISLATION**

ALLEGATION: Contravention of *Nepalese Civil Aviation Regulation*(Regulation Number)

Regulation Text

ELEMENTS	FACTS TO BE ESTABLISHED	EVIDENCE	EXHIBIT
Reg Element	Reg Fact	Evidence	

ANALYSIS:

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**JURISPRUDENCE**

**INVESTIGATOR'S RECOMMENDATION**

Investigator's comments

**SUPERVISOR'S COMMENTS**

**CHIEF, AVIATION SAFETY DEPARTMENT'S DETERMINATION**

**DGCA DECISION**

**LIST OF EXHIBITS**

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## CHAPTER 10

### DETERRENT ACTION

#### 10.1 Introduction

The most important decision in the enforcement process is determining the appropriate deterrent action to impose when the evidence indicates that an individual has contravened a provision of the *Civil Aviation Act 1959/Civil Aviation Authority of Nepal Act 1996* or the *Nepalese civil Aviation Regulations 2002* or *respective requirements*. This decision may significantly affect the individual's attitude towards aviation safety and towards compliance with the rules in the future. The intent of the procedures in this chapter and the other chapters in this part is to promote fairness and uniformity in the selection of the appropriate deterrent action.

#### 10.2 Objectives of Deterrent Action

The major objectives of deterrent action are:

- (1) to protect the individual and the public from possible harm;
- (2) to encourage future compliance; and,
- (3) to deter others from contravening Aviation legislation.

Achieving these objectives will contribute to the advancement of aviation safety which is the primary aim of aviation regulation.

#### 10.3 Types of Deterrent Action

There are two types of deterrent actions: judicial and administrative. Judicial action involves the prosecution of an alleged offender in the tribunals or courts and is only applicable to a few provisions of the *Civil Aviation Act 1959/Civil Aviation Authority of Nepal Act 1996* or the *Nepalese civil Aviation Regulations 2002* or *respective requirements*. Administrative action comprises all other measures taken by the DGCA pursuant to the provisions of the *Civil Aviation Act* and includes oral counselling, the suspension of documents and the assessment of monetary penalties. Administrative action is described in Chapter 11.

#### 10.4 Selection of Appropriate Deterrent Action

The type of deterrent action permitted in response to an offence depends on the specific offence.

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**(1) Designated Provisions**

A designated provision is a regulation that has been listed. Designated provisions may be enforced only by administrative action in the form of a monetary penalty or a suspension; no prosecutions may be commenced in respect of the contravention of a designated provision.

**(2) Hybrid and Summary Conviction Offences**

Where a person has contravened a non-designated provision, the DGCA must decide whether to take administrative action by way of suspension or to take judicial action. All alleged contraventions of the *Civil Aviation Act* or the *CARs* shall be dealt with by taking administrative deterrent action except where the criteria for judicial action are satisfied. The presumption is that a minimum enforcement sanction will be sufficient to achieve compliance. Stringent sanctions for a first offence are more likely to cause resentment than encourage future compliance. Moreover, administrative measures are usually more expeditious than prosecutions. (Criminal procedure is lengthy and expensive and courts are often unfamiliar with the significance of aeronautics offences.) Offenders may wish to have matters resolved with a minimum of delay while retaining the option for a review by a body that has expertise in aeronautics.

Where the alleged offender has been suspended in the past or has seriously jeopardized aviation safety, administrative action may be insufficient. In these cases judicial action may be more appropriate, particularly in light of the heavier sanctions normally imposed.

**10.4.1 Joint Judicial-Administrative Deterrent Action**

Judicial action and administrative action may be taken simultaneously where evidence discloses that a person has contravened two or more different provisions arising from the same incident provided that each provision violated does not rely on the same facts. For example, if a charge of reckless and negligent flying under *Civil Aviation Act 1959 Article 10* referred to the judicial proceeding and in the meantime may be looked after in accordance with the provision of FOR.

A prosecution for one offence may be accompanied by suspension for another offence only where common facts are not relied on. Judicial and administrative deterrent action shall not be taken in respect of the same contravention. Either one or the other shall be selected depending upon the facts of the particular case.

**10.5 Limitation Period**

Civil Aviation Regulations, 2002 of the *Aviation Act/ CARs* which expressly provides calendar limitation period on institution of proceedings under legal Provision of the *Civil Aviation Act 1959/Civil Aviation Authority of Nepal Act 1996* or the *Nepalese civil Aviation Regulations 2002* or by way of summary conviction. The period begins on the date of the infraction.

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- (1) The limitation period only applies to the two following types of proceedings:
  - (a) the imposition of a monetary penalty for contravention of a Designated Provision; and,
  - (b) court action by way of summary proceedings.
- (2) For purposes of calculating the extent of the limitation period, "instituting a proceeding" means:
  - (a) in the case of the imposition of a monetary penalty, the issuance of a Notice of Monetary Penalty; and,
  - (b) in the case of a summary proceeding, the laying of an information.
- (3) The limitation does not apply to proceedings brought by way of indictment or to administrative suspensions which address contravention of any provision. It is normally inappropriate, however, to impose a suspension instead of a monetary penalty on an alleged offender simply because the passage of time has made the limitation period rule applicable. In certain cases where the infraction is discovered long after the event and where the contravention is serious, it is appropriate to take deterrent action even though Calendar Period have passed. For example, Safety Board Investigations are often prolonged and information concerning a contravention may be late in being received by CAAN; contraventions involving airworthiness matters are often not discovered until long after the violation occurred but deterrent action remains appropriate.

## **10.6 Types Of Deterrent Action**

Different considerations apply regarding deterrent action for contraventions committed by air carriers, ANS and aerodrome service providers than apply to contraventions committed by their employees. This is because sanctions imposed in respect of a contravention affect not only the service providers but also the service provider's employees. Safety remains the overriding factor. Deterrent measures must impress upon the service provider that unsafe operation at the risk of public safety will not be tolerated.

### **10.6.1 Administrative Action**

Four types of administrative action which may be taken where an air carrier contravenes a provision or regulation are:

- (1) oral counselling;
- (2) a monetary penalty;
- (3) a suspension of an aviation document; or,
- (4) a cancellation of an aviation document.

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Suspension or cancellation of an aviation document would be appropriate where the service providers or their employees had repeatedly contravened the regulations even though the safety implications were minimal. Cancellation would also be appropriate where suspensions or monetary penalties are not having the desired effect.

#### 10.6.2 Judicial Action

Prosecution of service providers for a contravention of a non-designated provision is recommended in all cases where, in the opinion of the DG CAAN the contravention is such that it would be appropriate to seek a significant fine in court.

#### 10.6.3 Emergency Action

Occasionally, the contravention of a regulation by service provider may pose an immediate threat to aviation safety. Two courses of action are available in such a situation.

##### **(1) Aircraft Detention or stoppage of service for Immediate Threat to Aviation Safety**

Where the threat arises from a particular aircraft that is unsafe or likely to be operated in an unsafe manner, that aircraft may be detained pursuant to Civil Aviation Regulations, 2002 (Rule 64) of the CARs. The detention shall remain in effect until the unsafe condition is corrected. Similarly, the ANS and aerodrome facilities may be stopped with immediate instruction by the inspector and only be resumed once the unsafe condition is alleviated pursuant to Rule 84 (4) of CAR.

##### **(2) Air Operator Certificate and other approvals Suspensions for Immediate Threat to Aviation Safety**

Where the threat arises from the operations of the carrier (instead of a single aircraft), the DG CAAN may decide to suspend the Air Operator Certificate under Civil Aviation Regulations, 2002 (Rule 6) of the CARs. This sort of suspension must be viewed as a last resort to be carried out with extensive consultation among the various branches as appropriate. The DG CAAN must be satisfied that the 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 to be suspended. The DG CAAN would usually be the suspending authority. The AOC suspension shall come into effect immediately and remain in effect until such time as the threat to aviation safety is removed.

Similarly, the licenses of ANS personnel and certificate of aerodrome service provider may be suspended for immediate threat for civil aviation with an immediate effect by an instruction by ANSSSD and ASSD inspectors respectively pursuant to Rule 40 of CAR 2002.

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10.6.4 Refer to Chapter 12.

## 10.7 Sanction Determination in Cases of Multiple or Continuing Violations

### 10.7.1 Multiple Violations

Multiple violations involve a series of distinct and separate contraventions of a particular regulation or regulations over a period of time. Each time, the circumstances of the offence may be different. For example, an aircraft could be operated in an overloaded condition each time it was flown during a certain period. Each time, the amount of overload could be different but there would be a violation every time. The contravention was not caused by something "inherent" in the aircraft, rather by factors present during the preparation of the flight.

In cases of multiple violations, the following procedures shall be used:

#### **(1) Administrative Action**

For multiple violations of the Designated Provisions, the Notice of Suspension or of Monetary Penalty shall state in the statement of offence the particulars of each offence including the dates and times of each flight in violation, and the sanction proposed in respect of each. Evidence to prove each individual infraction shall be secured so that in the case of a review by the Government the evidence can be presented.

#### **(2) Prosecution**

In the case of a summary conviction offence involving multiple violations, where prosecution is the desirable option, the government shall be advised of CAAN's intention to lay charges in respect of each flight conducted in contravention of the regulations, that is, each flight should be set out as a separate count in the information.

### 10.7.2 Continuing Violations

There are a number of offences which could be repeated over a period of time as the result of a continuing condition or state of affairs. These generally relate to aircraft or personnel aviation document requirements, modifications or additions to aircraft equipment outside of airworthiness specifications and entries made in a log.

In view of the fact that separate acts which are successive and cumulative, comprising a continuous series, can be considered as one offence at the discretion of the DGCA the following procedures shall apply in the disposition of such cases:

#### **(1) Administrative Action**

In all cases of suspension or monetary penalty determination, each separate flight conducted in violation of the regulations shall be considered as a separate offence. The Notice shall provide the dates and times of each flight during the period of non-compliance, together with particulars and the sanction in respect of each offence.

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## **(2) Provison for a Continuing Violation**

A continuing violation which was the subject of enforcement action, but has not ceased, may need further action to secure compliance. If the violation was in respect of provisions not affecting airworthiness requirements, detention of an aircraft pursuant to Civil Aviation Regulations, 2002 (Rule 64) may not be possible. When the violations involve an air carrier, a viable option is to suspend the Air Operator Certificate relating to the particular aircraft operation under Civil Aviation Regulations, 2002 (Rule 6) in addition to any Enforcement action.

Similarly, the services of ANS and aerodrome service provider may be suspended or cancelled for immediate threat for civil aviation with an immediate effect by an instruction by ANSSSD and ASSD inspectors respectively pursuant to Rule 84 of CAR 2002.

### **10.7.3 Flights with Intermediate Stops**

Flights involving intermediate stops made on a scheduled or unscheduled basis should, where circumstances warrant, be treated as one flight. Where the facts giving rise to the violation remain the same on a flight with intermediate stops, e.g. a commercial aircraft is operated in violation of FOR on a flight ABC-JKL-XYZ, it is appropriate to lay charges in respect of the entire flight, as opposed to considering the flight as two separate offences. A submission may be made in speaking to sentence, emphasizing the fact that during each segment of the flight there was a decision to operate in violation of the regulations.

### **10.7.4 Assessment of Sanction**

The assessment of the sanction in all administrative cases shall consider each count separately following the guidelines in Chapter 12. A brief reason for sanction shall be recorded for each count. The total amount of monetary penalty or period of suspension shall be the sum total of the sanctions imposed for each count. Where exceptional circumstances warrant, the final sanction may be modified. The DGCA should record the reasons for the modification in the case file.

## **10.8 Disclosure of Deterrent Action**

### **10.8.1 Disclosure to Employers**

Employers of Nepalese Civil aviation document holders should be advised of the deterrent action taken if the contravention took place while the alleged offender was on company business. If the alleged offender was not on company business at the time of the contravention, the disclosure of deterrent action to their employer is prohibited unless an exception under the regulations applies. An exception may exist where the deterrent action taken against a professional pilot affects the pilots employment, e.g. suspension of licence privileges. An exception may also exist where it would definitely be in the public interest, usually in terms of aviation safety, to

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inform the employer, e.g. a pilot who has been detected flying while under the influence of alcohol. The question of whether or not to inform an employer must be addressed on a case-by-case basis. The DGCA will decide if disclosure to the employer is appropriate.

#### 10.8.2 Notification of Detection Source

The Director of FSSD, ANSSSD or ASSD shall ensure that the detection source is advised of the outcome of the case and record this action.

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**Figure 10-1 Table of Judicial and Administrative Action**

Errors/Violations/offences		Enforcement action	
		If created significant hazard to aircraft and its occupants:	If could create significant hazard to aircraft and its occupants:
Errors	Slips/Lapses	Off rostering and Oral counseling	Oral counseling
	Mistakes	Off rostering and Oral counseling	Oral counseling
	Repeated errors	Suspension of civil aviation document and Remedial training	
Violations	Situational Violation	Suspension of Civil aviation document and Remedial training	Off rostering and Oral counseling
	Recurrent Violation	Cancellation of Civil aviation document	Suspension of Civil aviation document and Remedial training
Other Offences	Recklessness/ Gross Negligence	Cancellation of Civil aviation document	Suspension of Civil aviation document and Remedial training
	Willful-misconduct / Illegal activity	Cancellation of civil aviation document and Legal action as per applicable law	Cancellation of civil aviation document

Note – off-rostering refers to the restriction of use of privileges of civil aviation documents.

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## CHAPTER 11

### ADMINISTRATIVE ACTION

#### 11.1 Introduction

Administrative action comprises all deterrent measures, other than judicial action, taken by the DG CAAN pursuant to the provisions of the *Civil Aviation Act and CARs*. Administrative action in the form of a suspension or oral counselling can be used not only for designated provisions offences but also for summary conviction and hybrid offences. Almost all deterrent actions taken by CAAN are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

##### 11.1.1 Administrative Action Options

There are two categories of administrative actions which may be taken when a contravention has occurred. Determination of the appropriate action depends upon policy considerations, the detection source and the circumstances of each contravention.

#### (1) Preventive Action

Oral counselling (see Chapter 3 for details). If a comprehensive investigation is concluded with an oral counselling, that fact is recorded and the file is closed as an NFA.

#### (2) Administrative Sanctions

##### (a) Administrative Monetary Penalties

Administrative monetary penalties may be assessed where there has been a contravention of a designated provision. The monetary penalty procedures are set out in Nepal Civil Aviation Authority Act, 1996 (Rule 25).

##### (b) Suspension of Civil Aviation Documents

A punitive suspension may be taken in respect of any contravention of a provision of Civil Aviation Regulations, 2002 of the *Aviation Act* or the *CAR's*

#### 11.2 Administrative Action: Selection and Process

Contraventions of designated provisions may be dealt with either by suspension or by assessment of an administrative monetary penalty. When contraventions of non-designated provisions are dealt with administratively the only sanction which may be imposed is suspension of an aviation document.

Simultaneous administrative and judicial enforcement action under the *Aviation Act* may be taken for different contraventions arising out of the same circumstances, but

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this is very rare. For the limited number of offences where there is an option, administrative and judicial enforcement action shall not be taken in respect of the same contravention; one or the other shall be selected depending upon the facts of the particular case.

When, in the opinion of the DG CAAN, aviation safety is an issue, or, in the case of an air operator, the violation was associated with the “cost of doing business” or was a way of reducing operating costs, the minimum penalty imposed shall be the penalty recommended in the Table of Sanctions.

#### 11.2.1 Procedures for Administrative Monetary Penalties

When the DG CAAN receives a case report, the DG CAAN may assess an administrative monetary penalty as a sanction, whether or not a monetary penalty is recommended in that report.

The following procedures apply in all cases where an administrative monetary penalty is assessed.

- (1) The Director of FSSD or ANSSSD or ASSD will assign inspector(s) to investigate the issue to determine and recommend the amount of the penalty that is appropriate depending on the nature of offence and frequency of offence.
- (2) The assigned inspector(s) to investigate and such inspector shall complete the Notice of Monetary Penalty. The Notice shall contain a clear description of the offence, and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.
- (3) With the Notice, the inspector(s) shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (4) The inspector/investigator shall serve the Notice on the alleged offender personally or by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- (5) The monetary penalty may be paid by one of the methods acceptable to CAAN by depositing in the bank account specified. An official receipt will be issued.
- (6) Should the monetary penalty not be paid by the due date (a minimum of 30 days not counting the day the Notice is served), the inspector shall send a copy of the Notice to the Director within fifteen days following the due date.

#### 11.2.2 Suspension Procedure

The suspension of a Nepalese Civil aviation document for contravention of a provision of the *Civil Aviation Act* or regulation made under *this Act or requirements, orders, directives, circulars and notices made under prevalent rules and regulations* the most severe administrative sanction the DG CAAN can impose. Suspension action is taken where a monetary penalty would be an inadequate deterrent or continued use

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of the document would create a hazard to aviation safety and judicial action is either not available or inappropriate. Detailed procedure has been set forth in chapter 6.

Where a Nepalese Civilaviation document has been suspended, the person to whom it was issued shall return it to the DGCA and shall not exercise the privileges attached to that document until it is restored by the DGCA. Suspensions for contravention are punitive in nature and are in effect for a specified time period.

**Note:** Suspensions on other grounds may be corrective in nature and may be accompanied by conditions for restoration.

The following paragraphs outline the suspension process.

- (1) The Director of FSSD or ANSSSD or ASSD shall determine and recommend the appropriate duration of suspension by considering the Table of Sanctions in Chapter 10 and the recommendation of the investigator.
- (2) The Director of FSSD or ANSSSD or ASSD shall complete the Notice of Suspension. The Notice shall contain a clear description of the offence, and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.
- (3) With the Notice, the Director of FSSD or ANSSSD or ASSD shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (4) The Director of FSSD or ANSSSD or ASSD shall serve the Notice on the alleged offender personally or send it by registered mail or by any electronic media/devices. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- (5) Where the alleged offender requests a review by the DG CAAN and applies for a stay of suspension pending its decision, the Director of FSSD or ANSSSD or ASSD shall not oppose the application unless it appears that a threat to aviation safety would result. In such a case, the Director of FSSD or ANSSSD or ASSD or his designate shall present the Department's position to the DG CAAN.
- (6) Where the alleged offender does not ask for a review by the DG CAAN within thirty (may vary with States) days and then fails to deliver the suspended document, after giving due consideration for delay in the mail, charges shall be laid against the alleged offender under Civil Aviation Regulations, 2002 (Rule 6). Prior to laying charges, the document holder should be contacted to confirm the situation.

### 11.2.3 Cancellation

Cancellation of a document of entitlement because of incompetence, lapse in qualifications of the document holder or lack of medical fitness is within the purview of licensing and certification authorities. Authority to cancel a document for enforcement reasons under Civil Aviation Regulations, 2002 has been delegated to

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the DG CAAN. The procedure of cancellation of civil aviation documents as per the provisions of chapter 6 will be followed including the setting up of enforcement panel.

### 11.3 Review

The alleged offender who has received a Notice of Monetary Penalty or a Notice of Suspension, may request to review the sanction. Keeping in mind that the objective of the sanction is to obtain future compliance and provide deterrence to others, the DG CAAN may review the decision and can modify or amend the original decision. This may be done when new evidence of a statutory defence or mitigating factors come to light, or when the DG CAAN obtains the assurance, during the discussion, that the alleged offender will comply in the future. DG CAAN may conduct informal meetings with alleged offenders in person, or other electronic medium, or through written submissions. During an informal meeting, DG CAAN may enter into penalty negotiations with a view to reaching a settlement in the case, thereby closing the file. Any discussions during the informal meeting are predicated on the fact that the alleged offender or the alleged offender's representative will not question the finding of the investigation

The alleged offender normally has thirty days from the date the Notice is served or sent to accept the offer and meet with the DG CAAN.

#### 11.3.1 Penalty Negotiation Considerations

The following factors shall be considered in deciding whether to enter into penalty negotiations or not:

- (1) evidence of mitigating factors not previously identified during the investigation;
- (2) the alleged offender's enforcement record;
- (3) the seriousness of the offence;
- (4) the attitude of the offender toward future compliance;
- (5) whether deterrence can still be achieved through a negotiated settlement;
- (6) the financial burden on the alleged offender of costs associated with Legal proceedings; and
- (7) Whether negotiations with a particular alleged offender would bring the enforcement program into disrepute.

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## CHAPTER 12

### SANCTIONS

#### 12.1 General

The list of examples which follows shall be used as a guideline by a Civil Aviation Official when recommending a sanction and by the DGCA when imposing a sanction. Nevertheless, each case must be judged on its own merits and every sanction shall be justified. This step is crucial in the event the decision is reviewed by the Government. To that effect, the examples should be adhered to as closely as possible to ensure uniformity in the levying of sanctions and any deviation from the recommended sanction, given the circumstances of the case, must be justified based on the following factors:

- (1) The sanction may be moderated in light of mitigating circumstances, (events which were inadvertently caused by misunderstanding, misconception or an honest mistake).
- (2) The highest category of document related to the contravention would be the document suspended as a sanction for the contravention.
- (3) A second offence is considered to take place when the record of a previous similar but not necessarily identical offence is still on the offender's file. (i.e within a reasonable period, to be defined by the authority.)
- (4) Sanctions for all subsequent contraventions should be raised from previous sanctions.

#### 12.2 Factors Affecting the Choice of Sanction

- (1) The facts surrounding the commission of the offence
  - (a) what was the role of the offender;
  - (b) was there any pressure or undue influence exerted by an employer or an employee; and
  - (c) were there mitigating circumstances not amounting to a defence?
- (2) The gravity of the offence
  - (a) was a threat to safety posed;
  - (b) was there any actual harm done;
  - (c) did the violation result in an incident or accident;
  - (d) was there careless or reckless conduct; and
  - (e) what is the maximum punishment available?

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- (3) The premeditation or deliberateness of the offence and attitude of the offender
  - (a) while "the mental element" is not relevant to guilt in strict liability offences it may be indicative of the offender's attitude;
  - (b) was recklessness involved or plain negligence;
  - (c) what is the offender's attitude toward safety; and
  - (d) what is the offender's attitude toward future compliance?
- (4) Personal characteristics to be considered - what is the offender's:
  - (a) age;
  - (b) experience level, knowledge and skill in Aviation;
  - (c) training record;
  - (d) employment - is a licence required to hold employment;
  - (e) work in relation to any Nepalese Civilaviation documents; and
  - (f) financial position in regard to the ability to pay a fine or penalty?
- (5) The record of the offender
  - (a) are there any prior sanctions on record;
  - (b) is this an isolated act or is this person a repeat offender;
  - (c) are there any related or similar offences on record; and
  - (d) is there any question of competence or qualification involved?
- (6) Punishment
  - (a) what is the range of sanctions available?
- (7) Deterrence and public safety
  - (a) would the recommended sanction contribute to public safety; and
  - (b) will the sanction act as deterrent to others?
- (8) Rehabilitation
  - (a) will the sanction promote future compliance on the part of the offender?

### 12.3 Suspension of Civil Aviation Documents

According to the current Civil Aviation Regulations the DGCA has the authority to suspend/cancel a civil aviation document as a punitive measure in extreme case.

**NOTE:**

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*The sanctions table that follows have described the number of days and monetary amount to be indicated based on CAAN rules and regulations . CAAN officials has to bear in mind that the heftiness of the amount would be indicative of the gravity of the offence, while recommending a sanction.*

## **12.4 Judicial process**

Any person

- a) Knowingly making any false representation for the purpose of obtaining an aviation document or any privilege accorded thereby;
- b) Wilfully destroying any document required to be kept;
- c) Making or cause to be made any false entry in a record required to be kept with intent to mislead or wilfully omit to make any entry in any such record;
- d) Wilfully obstructing any person who is performing duties under the authority of CAAN Director General;
- e) except as authorized under the applicable regulations, wilfully operating or otherwise dealing with an aircraft that has been detained under the national regulations;
- f) wilfully doing any act or thing in respect of which a Nepalese aviation document is required except under and in accordance with the required document; or
- g) wilfully doing any act or thing in respect of which a Nepalese aviation document is required where
  - (i) the document that has been issued in respect of that act or thing is suspended, or
  - (ii) an order issued by the authority prohibits the person from doing that act or thing.

shall be prosecuted through the applicable law.

## **12.5 Administrative process**

### **12.5.1 Oral counseling**

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Oral counseling is primarily used when a Civil Aviation Document holder commits a minor inadvertent violation where the imposition of a sanction is not considered appropriate. It provides the document holder with immediate counselling on the necessity for compliance. All Civil Aviation inspectors can provide oral counselling relevant to their respective delegation of authority.

Examples of minor inadvertent violations:

- a. not carrying specified valid documents in flight as stipulated by the regulation
- b. inadvertent omission to close a flight plan within the prescribes time period
- c. inadvertent omission of making a required log book entry
- d. error causing loss of separation where desired safety margin was not attained (separation less than the standard, but not less than half of it)

### **12.5.2 Remedial training**

Remedial training is primarily used when a Civil Aviation Document holder commits a minor inadvertent violation due to incompetence or lack of knowledge and where the imposition of a sanction is not considered appropriate. It provides the document holder with the opportunity to acquire the necessary knowledge or skill to ensure future compliance. All Civil Aviation inspectors can recommend remedial training relevant to their respective delegation of authority.

Examples of minor inadvertent violations

- a. not reporting the mandatory occurrence in the standard format and or within specified timeframe
- b. inadvertent erroneous logbook entry
- c. error causing loss of separation where near collision existed requiring traffic avoidance maneuver (separation less than half the standard separation)
- d. Not adhering to the prescribed traffic pattern in the vicinity of an aerodrome
- e. inadvertent entry on an active runway without authorization when there is no other traffic
- f. flying with expired or invalid license/ratings

### **12.5.3 Administrative monetary penalty**

Administrative monetary penalties may be assessed where there has been a violation of a regulatory provision or requirement which may have an impact on safety.

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The monetary penalties are set out as follows:

Monetary penalties		
	Individual	Organization
1 <sup>st</sup> offence	NRs 5, 000.00	NRs 5, 000.00
2 <sup>nd</sup> offence	NRs 7, 500.00	NRs 7, 500.00
3 <sup>rd</sup> offence	NRs 10, 000.00	NRs 10, 000.00
Violation of instruction of CAAN	NRs 25,000.00	NRs 25, 000.00

### Examples of offences for monetary penalty

- a. when same violations are repeated after oral counseling or remedial training
- b. violating flight and duty time limitation knowingly
- c. repeated omissions if making required log book entries
- d. operating a VFR flight in weather conditions below the prescribed VMC weather minima but still with visual references to the ground
- e. operating an aircraft below the prescribed minimum altitude
- f. Deviate from a flight plan without informing ATC
- g. Repeated Omission to make a mandatory position report
- h. Repeated Omission to contact ATC prior to entry in Controlled airspace

### 12.5.4 Suspension of a civil aviation document

Where violations may have an impact on safety, alleged offenders found in contravention of a regulatory provision shall be dealt with either by suspension of their Civil Aviation Document or by assessment of a monetary penalty. Such conditions are warranted by the acts that could endanger the safety of the aircraft, occupant and general public.

Examples:

- a. Conducting a VFR flight in IMC condition.
- b. Cause to operate or operate flight with overloaded condition like exceeding maximum takeoff mass
- c. Operating a flight over populated areas at an altitude below the minimum prescribed by regulations or requirements
- d. Performing non authorized aerobatic maneuvers
- e. Reckless aircraft operations
- f. Performing assigned duties like Flight Operations, Maintenance or ANS Operations duties while under the influence of a psychoactive substance
- g. Unsafe acts like altercation in cockpit during flight
- h. 3 violations resulting in imposition of monetary penalty

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### **12.5.5 Cancellation of civil aviation document**

Cancellation of the Civil Aviation Document is the appropriate action when:

- a) a monetary penalty would be inadequate to achieve compliance; or
- b) the document holder is a repeat offender against whom monetary penalties have previously been assessed
- c) the suspension of civil aviation document is inadequate and risk still persists

Examples for cases inviting the cancellation of civil aviation documents:

- a. operating flight with lesser number of flight crew than required by regulations
- b. conducting or cause to conduct repeated flight with overloaded condition like exceeding maximum takeoff mass
- c. flying or cause an aircraft to fly with expired certificate of airworthiness
- d. commercial operation of aircraft with expired AOC
- e. 3 violations resulting in imposition of suspension of license in past