



ENFORCEMENT MANUAL

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FOREWORD

This Manual is hereby approved for use by the Civil Aviation Affairs.

This Manual is intended for the use and guidance of BCAA personnel involved in the administration and compliance with the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and Air Navigation Technical Regulations of the Kingdom of Bahrain. All personnel, directly or indirectly concerned with regulatory enforcement activities should employ the applicable procedures contained in this manual.

Mohamed Thamir Al-Kaabi
Undersecretary for Civil Aviation Affairs



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Revision Highlights Sheet

The following pages have been revised to Issue 3 dated September 2024.

Item	Paragraph number	Page(s)	Reason
1.	Revision Highlights	iii	Amendment of the table of contents reflecting changes to appendices.
2.	Record of Amendments	iv	Amendment of Record of Amendments.
3.	LEP	vi	Amendment of list of effective pages.
4.	1.1.2	1-1	Amendment of title of AUATSS.
5.	1.1.5	1-5	Amendment of list of example organisations
6.	1.3	1-7	Correction of the appeal policy
7.	4.2.3	4-4	Correction of form title
8.	5.1	5-1	Amendment of form title
9.	5.5.3	5-5	Delete of reference to BCAA internal documentation
10.	8.5.1	8-5	Addition of reference to show cause notice
11.	9.1.2	9-1	Introducing the methods of payment of monetary penalties
12.	9.2.2	9-2	Amendment of procedures for administrative monetary penalty
13.	9.2.5	9-3 9-4	Amendment of form title and the duration of offenders response.
14.	10.1	10-1	Amendment to reflect new procedure
15.	Attachment	Attachment	Deletion of outdated forms and replacement with new appendices.



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RECORD OF AMENDMENTS

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CHAPTER 1

INTRODUCTION

1.1 GENERAL

1.1.1 Foreword

This Chapter is intended for the use and guidance of BCAA personnel involved in the administration of the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and the Air Navigation Technical Regulations of the Kingdom of Bahrain. The Chapter contains information and instructions on the manner in which delegated duties and responsibilities are to be performed. All personnel, directly or indirectly concerned with regulatory enforcement activities should employ the applicable procedures contained in this manual.

1.1.2 Process for Amendment of the Manual

BCAA Inspectors/ Specialists	<input type="checkbox"/> Suggest changes that would improve the efficiency and effectiveness of enforcement procedures. <input type="checkbox"/> Review the amendment in accordance with Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and the Air Navigation Technical Regulations. <input type="checkbox"/> Forward the draft vetted by supervisor to the Concerned Director.
Concerned Director	<input type="checkbox"/> Reviews the proposed amendment <input type="checkbox"/> Recommend the amendment in their area of responsibility
Legal Advisor	<input type="checkbox"/> Reviews the amendment from Legal perspective. <input type="checkbox"/> Vets the proposed amendment.
Assistant Undersecretary for Air Transportation and Aviation Safety and Security (AUATSS)	<input type="checkbox"/> Reviews the proposed amendment and recommends to USCA, when found satisfactory
Under Secretary for Civil Aviation Affairs (USCA)	<input type="checkbox"/> Considers the suggested amendment <input type="checkbox"/> Takes final decision and approves the amendment when satisfied.

After completion of the above procedure, it will be responsibility of Chief Aviation Safety, Rules and Regulations of the Aeronautical Licensing Directorate to update the Manual.

1.1.3 DEFINITIONS & ABBREVIATIONS

Definitions:

“**The Minister**”: The Minister of Transportation & Telecommunications, or any other Minister designated by a decree.



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“Authority”: The Undersecretary for Civil Aviation (USCA) is the authority as established per the Civil Air Law 14 of 2013

“Administrative Action”: Deterrent action taken by or on behalf of the Minister, including oral counseling, suspension or cancellation of documents of entitlement, and/or imposition of a monetary penalty.

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

- a) within thirty days of the occurrence, a person is fatally or seriously injured, as a result of:
 - i) being in the aircraft; or
 - ii) being in direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or
 - iii) being in direct exposure to jet blast; except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or
- b) the aircraft sustains damage or structural failure which:
 - i) causes harm to its structural strength, performance or flight characteristics; and
 - ii) will normally require major repair or replacement of the affected component; except for engine failure or damage, when the damage is limited to the engine, its cowlings or accessories; or for damage limited to propellers, wing tips, antennas, tires, brakes, fairings, small dents or puncture holes in the aircraft skin; or
- c) the aircraft is missing or is completely inaccessible; the aircraft shall be considered missing once the search is officially terminated without locating its wreckage.

“Aircraft incident”: An occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation.

“Approved by the Authority”: approved by the Authority directly or in accordance with a procedure approved by the Authority;

“Authorized person”: any person authorized by the Authority either generally or in relation to a particular case or class of cases and reference to an authorized person includes references to the holder for the time being of an office designated by the Authority;

“Civil Aviation Law”: Means Law No. 14 of 2013 of the issuance of Civil Aviation Law and its amendment;

“Commercial air transport operation”: an aircraft operation involving the transport of passengers, cargo or mail for remuneration or hire;



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“Compliance: Conformity with the provisions of the regulations.

“Comprehensive Investigation”: The follow-up to the initial violation during which conclusive evidence as to whether or not a violation occurred is obtained so that appropriate deterrent action can be taken.

“Dangerous goods”: articles or substances which are capable of posing a risk to health, safety, property or the environment and which are shown in the list of dangerous goods in the Technical Instructions or which are classified according to those Instructions;

“Deterrent Action”: Administrative or judicial measures taken in response to a violation in order to encourage future compliance.

“Executive Regulations”: Means ministerial Decree no 21 of 2013 of the issuance of the executive regulations of Civil Aviation Law & its amendments;

“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.

“Incident”: an occurrence, other than an accident, associated with the operation of an aircraft which affects or would affect the safety of operation;

“Incompetent”: Lacking the knowledge, ability or fitness necessary for effective action; unable to meet specified requirements; not legally qualified.

“Indictable offence”: Any offence that is considered very serious and that carries with it the possibility of a severe penalty. An indictable offence must be proceeded with by way of indictment.

“Initial enforcement 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 oral counseling or to send the information to the appropriate authority for further investigation.

“Inspection”: the examination of an aircraft or aircraft component to establish conformity with a standard approved by the Authority;

“Inspector”: Any Bahrain BCAA official with appropriate authority.

“Medical examiner”: a physician with training in aviation medicine and practical knowledge and experience of the aviation environment, who is designated by the Authority to conduct medical examinations of fitness of applicants for licences or ratings for which medical requirements are prescribed;

“Negligence”: Conduct falling below the standard required for the protection of others against unreasonable risk of harm.

“Offence-creating provision”: A provision of the civil aviation law that mandates a certain form of conduct or prohibits certain conduct and which, if contravened, can result in judicial or administrative deterrent action.

“Operator”: a person, organisation or enterprise, engaged in or offering to engage in an aircraft organization;



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“Pilot-in-command”: the pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight;

“Problematic use of substances”: the use of one or more psychoactive substances by aviation personnel in a way that:

- a) constitutes a direct hazard to the user or endangers the lives, health, or welfare of others;
- b) causes or worsens an occupational, social, mental, or physical problem or disorder.

“Reasonable grounds to believe”: The knowledge of facts that would lead a reasonable person of ordinary intelligence and prudence to believe that an offence has occurred.

“Recklessness”: Any conduct that shows deliberate disregard of, or indifference to, the consequences of one’s actions under circumstances involving risk of harm to life or property.

“Regulations”: Air Navigation Technical Regulations (all Volumes) & Civil Air Regulations.

“Serious case”: Any case that jeopardizes the safety and/or security of Civil Aviation.

“Supervisor”: A senior Bahrain BCAA official with appropriate authority and who is reported to by the inspector.

“Violation”: The breach of any offence-creating provision of the regulations. The terms *violation* and *contravention* are used interchangeably.

Abbreviations:

ANTR	-	Air Navigation Technical Regulations (all Volumes)
AMO	-	Approved Maintenance Organisation
AOC	-	Air Operator Certificate
ATO	-	Approved Training Organisation
ATS	-	Air Traffic Services
BCAA	-	Civil Aviation Affairs of the Kingdom of Bahrain
CAL	-	Civil Aviation Law
CAR	-	Civil Aviation Regulations
SMS	-	Safety Management System
SSP	-	State Safety Programme

1.1.4 Enforcement Legislation

Aviation Enforcement is the process intended to ensure compliance with the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and Air Navigation Technical Regulations of the Kingdom of Bahrain. This process is mandated to the Civil Aviation Affairs



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(BCAA), as a part of its duty of regulatory oversight of the aviation industry. BCAA, as the competent as well as jurisdictional authority, has the mandate to enforce the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and Air Navigation Technical Regulations by conducting investigations into possible contraventions and, in the event of a proven contravention, taking administrative action or recommending civil action to the appropriate Ministry.

1.1.5 Enforcement Action

Administrative action includes, but is not limited to, suspension, amendment or cancellation of a licence, certificate, permit, or privilege or any other document issued by the BCAA. The BCAA may also ground or detain aircraft and deny takeoff clearance to a departing aircraft. The BCAA may also revoke any approval to a Post holder or refuse to accept management positions. Examples of documents may include the following;

- (a) AOC
- (b) Operations Specification specific authorisation
- (c) Certificate of Registration (C of R)
- (d) Certificate of Airworthiness (C of A)
- (e) Licences and type ratings
- (f) Certificates (e. g. Noise, RVSM, PBN, Airport etc)
- (g) Authorisation of personnel
 - (1) Post holder
 - (2) Examiner, including Medical Examiner
- (h) Approval of Organisation (e.g., AMO, CAMO, TRTO, ATO, AMTO etc.)
- (i) Approval of facility (e.g. Simulator etc)

1.1.6 BCAA Inspector Responsibility

Notwithstanding the above, it is the right and indeed the responsibility of BCAA and Inspector staff to whom regulatory oversight has been delegated, to take action when deemed necessary, in order to prevent an unsafe situation from turning into a disaster. As a result of this statement, Inspectors are instructed to take action immediately upon detecting a real and present threat to aviation safety. A BCAA Inspector may use oral counselling when the alleged offender commits a minor, inadvertent violation, which does not have an immediate safety related impact.

1.1.7 Enforcement Objective

What is the overall mandate of Aviation Enforcement? To merely investigate contraventions and then to punish the perpetrators would actually not achieve the greater goal of Aviation Safety, which is the BCAA's primary objective. Consequently, there are other aspects to this segment of regulatory oversight, which must also be considered. Aside from regulatory investigations and field surveillance, which is the prime enforcement mandate of the Inspector,



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there is also the requirement for promotional and educational activities designed to maximise the industry's compliance with aviation legislation. The guiding principle of the enforcement process is that justice must be done and it must be seen to be done. As such it has to be timely, fair, consistent and without favour or prejudice. In addition, it must be open so that the result of the process is an example to others and consequently has a deterrent component.

1.1.8 Enforcement Priorities

The priorities of enforcement activities are summarized as follows:

- (a) Education of the industry wherever possible;
- (b) Promotion of compliant attitudes within the industry;
- (c) Regulatory investigations and field surveillance, and;
- (d) Enforcement of the Law and Regulations.

1.1.9 Enforcement Process

Inspectors shall conduct planned surveillance for the primary purpose of conducting regulatory investigations, that is where there are grounds to believe that violations are being committed. In the absence of such grounds, field activities of Inspectors should focus on the educational and promotional aspects as opposed to the simple detection of violations. The aviation enforcement process includes the following segments, which are addressed in detail in this Chapter:

- (a) Inspection
- (b) Surveillance
- (c) Detection
- (d) Investigation
- (e) Analysis of Legislative Provisions
- (f) Special Investigative Procedures
- (g) Deterrent Action
- (h) Administrative Action
- (i) Quality Control
- (j) Penalties



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1.2 ENFORCEMENT POLICY

Breaches of aviation regulations may occur for many different reasons, from a genuine misunderstanding of the regulations to disregard for aviation safety. The BCAA has a range of enforcement procedures in order to effectively address safety obligations under the CAL, Executive Regulations, Civil Aviation Regulations and ANTRs in light of different circumstances. These procedures may result in a variety of actions such as:

- (a) counselling;
- (b) remedial training; or
- (c) variation, suspension and cancellation of authorizations.

Enforcement decisions must not be influenced by:

- (a) personal conflict;
- (b) considerations such as gender, race, religion, political views or affiliation; or
- (c) personal, political or financial power of those involved.

Enforcement decisions must be proportional to the identified breaches and the safety risks they underlie, based on two principles:

- (a) The BCAA will take action against those who consistently and deliberately operate outside Civil Aviation Law, Executive Regulations, Civil Aviation Regulations, Civil Aviation Regulations or ANTRs; and
- (b) The BCAA will seek to educate and promote training or supervision of those who show commitment to resolving safety deficiencies.

Enforcement decisions must:

- (a) be fair and follow due process;
- (b) be transparent to those involved;
- (c) take into account the circumstances of the case and the attitude/actions of the service provider when considering action;
- (d) be consistent actions/decisions for like/similar circumstances; and
- (e) be subject to appropriate internal and external review.

1.3 APPEAL POLICY

Any person or organisation has the right of appeal on any administrative or enforcement action taken against a certificate or licence held by that individual or organisation. The appeal must be submitted in writing within 60 days of the final decision, with the reasons for the appeal to the Minister or to a person delegated by the Minister.



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CHAPTER 2

INSPECTION

2.1 GENERAL

2.1.1 Overview

Inspection involves the examination of aviation documents, aircraft, aircraft operators, Aerodrome Operators, ANS service providers, Cargo (Operators, Handlers & Agents), Maintenance Organisations, aviation related activity premises, aeronautical products such as appliances, parts and components and facilities related to aeronautics and aerodromes. The purpose of inspection is to determine whether compliance with regulations and standards is being maintained. It is part of the oversight responsibility of BCAA inspectors and includes activities such as:

- (a) ATS Inspectors conducting inspection on Air Traffic Control (ATC) operators observing aircraft movement;
- (b) Operations Inspectors conducting company inspections, audits and flight tests and monitoring aerodrome airside activities;
- (c) Licensing Inspectors conducting examinations and flight tests of pilot licence applicants and instructors and performing inspections and audits of flying schools and other approved training organisations;
- (d) Airworthiness Inspectors conducting audits, inspecting aircraft, conducting examinations and tests for the issue of engineers' licences;
- (e) Safety and/or Security Inspectors conducting audits and inspections of aerodrome safety and security procedures;
- (f) Dangerous Goods Inspectors conducting audits and inspections of Dangerous Goods Freight Forwarding Agencies, Ground Handling Agencies Operators and Dangerous Goods Training Facilities;
- (g) Aerodrome Regulations and Licensing Officers conducting audits, inspections and licensing of aerodrome facilities;
- (h) All Inspectors being vigilant and observing the Air Transportation System in operation and related commercial activities.

2.1.2 Inspection Authority

An inspection may be conducted by Inspectors pursuant to the Delegation of Authority granted to the BCAA, which states in part that, officials from the BCAA have law enforcement power in respect of contravention of the CAL, ANTRs or of the rules, regulations or decisions relating to the implementation thereof.

An Inspector also has authority to enter, at all times, any location belonging to the operator/organisation for the purpose of inspection and to ensure compliance with the regulations and instructions in force.



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Consequent to the above-mentioned delegated authority, Inspectors are deemed under Civil Aviation Law to inspect aerodromes, aircraft, buildings, equipment used to maintain aircraft, operators facilities, documents pertaining to aeronautical activities and any other thing or place, which would, in the opinion of the Inspector, facilitate the conduct of his delegated authority to conduct regulatory oversight and enforcement of the Civil Aviation Law and Regulations.

In respect to foreign aircraft, any person authorised by the Authority will be permitted at any time, without prior notice, to board any aeroplane operated for commercial air transportation within the Kingdom of Bahrain, to inspect the documents and manuals required by ANTR Part III, Chapter 7 and to perform inspections to ensure compliance with the Regulations.

In addition to Civil Aviation Law, ANTR Part III, Chapter 6 delegates to the BCAA and its designated personnel the right and duty to stop any flight from departing if the conditions for safe operation of the flight fails to meet the required standard. Inspectors may detain or ground any aircraft that 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 or grounding of the aircraft have been removed, the aircraft must be released.

Consequently, any person wilfully obstructing or impeding the Inspector during an inspection contravenes the national law and may be proceeded against with a recommendation to the appropriate Ministry for indictment of the alleged offender. The alleged offender would then be tried under the Bahrain Civil Criminal Law. In addition to this, the legislation empowers designated Inspectors to seize anything found in any place entered for the purpose of inspection if they believe on reasonable grounds the thing seized will afford evidence with respect to a contravention. Anything seized must have been provided voluntarily by a representative of the aircraft or must have been found by the Inspector without resorting to a search (Forced searches may only be conducted by or under the direction of the police).

2.2 INSPECTION PROCEDURE

When conducting routine inspections, Inspectors shall observe the following policies and procedures:

- (a) Inspectors shall not enter any aircraft or premises which are locked or where the owner/operator or his representative is not present;
- (b) An inspection should be conducted at a time that minimises the inconvenience to flight crew, owner/operator and the travelling public;
- (c) The Inspector shall identify himself using his BCAA identification card and Inspector Credential Card;
- (d) The flight crew and/or owner/operator should be informed that an inspection is being conducted;
- (e) A document produced for the purpose of an inspection should not be kept longer than is necessary to determine its validity;



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- (f) Where the validity of the document cannot be determined readily, a photocopy, photograph or other accurate record or facsimile should be made before returning the document;
- (g) Evidence may be seized with respect to a contravention discovered during the course of a routine inspection;
- (h) 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;
- (i) In the event of any obstruction to an inspection, the Inspector should politely inform the individual of the consequence of such obstruction. If the person persists, the inspection should be discontinued, and charges should be laid under the provisions of the national law;
- (j) In the event of there being an immediate threat to aviation safety the Inspector shall take whatever steps necessary to prevent the threat from being carried out. If necessary, the Appropriate Authority or the Police should be requested to participate in the carrying out of such steps. The Inspector shall notify his immediate superior at the earliest opportunity of any such acts.
- (k) If it is proposed to investigate alleged infringements of civil aviation legislation the matter must be referred to the assigned Inspector.

Note: Any wrong step taken in the course of an investigation can jeopardize the success of a prosecution.

- (l) Not all cases of infringement warrant prosecution, however, and rigid enforcement of such a policy would prevent almost any investigative action by inspectors in the field because the moment anyone is cautioned the flow of information usually dries up.
- (m) In this respect, the following procedure gives guidance to Supervisors and Inspectors on the approach to be taken for both Serious and Minor Cases.
 - (i) **Serious Cases.** When a serious case is suspected it is vital that no approach for information is made to the person concerned except by the Inspector. Information given without the benefit of a formal caution (such as would be the case if anyone else made the enquiry) is not acceptable as evidence. Enforcement Officers are fully trained in the appropriate procedures for obtaining evidence and action by anyone else will severely prejudice the chance of a satisfactory outcome. When an apparently serious case emerges, it should be referred immediately to the Undersecretary.
 - (ii) **Minor Cases.** (i. e. those not requiring formal action). Reports are often received which indicate a possible minor breach of the Civil Aviation Law or ANTRs.

If it is concluded that a case falls into this category, a letter may be sent to the person concerned by management or Inspectors asking for information. It is most important that there should be no obvious acceptance by the BCAA that the report is true. The person concerned should be invited to comment on the report, or on the “alleged incident”, but never on “this incident”. The last wording implies that



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something actually happened, which the individual receiving the letter may well deny.

It would be unwise to indicate what provision of the Civil Aviation Law Executive Order, Civil Aviation Regulations or ANTRs would have been contravened assuming the alleged facts were correct. If in doubt consult the Legal Advisor through the applicable Director.

- (n) Inspectors should bear in mind that under certain circumstances BCAA files may be subject to “discovery” or “disclosure” by the person concerned’ lawyer, so it is again important to avoid a presumption of guilt in anything written about a person before conviction, even where the evidence is overwhelming. It is equally important to avoid writing anything pointing to prejudice against a person.

2.3 SEIZURE, RETENTION AND RETURN OF EVIDENCE

Where any evidence is seized, the Inspector shall ensure that the following tasks are carried out:

- (a) The evidence is clearly marked in an identifiable manner;
- (b) The holder is given a receipt;
- (c) Reasonable care is taken to preserve and protect the evidence;
- (d) Continuity of possession is assured;
- (e) Where an aircraft log is seized, a photocopy of the seized log shall be made and certified by the Inspector as a true copy of the original. The photocopy shall be deemed to be a legal substitute of the original logbook since the original will have been returned to the rightful owner;
- (f) Any evidence seized shall be returned to the person from whom it was seized or who has lawful entitlement to it as soon as is practicable when continued retention is not required for the purpose of the investigation, hearing or other such proceeding. Evidence shall be returned within 90 days of seizure if it is not going to be used, if return is not contrary to the public interest and if there is no dispute as to whom it is lawfully entitled.

2.4 DETENTION OR GROUNDING AND RETURN OF AIRCRAFT

2.4.1 Procedure

When Inspectors contemplate the detention or grounding of any aircraft they must, if possible, introduce themselves to the pilot or owner/operator 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 shall:

- (a) Again advise the pilot or owner/operator and specify the unsafe condition or unsafe operation and inform him of the consequence of failing to abide by the Inspector’s advice (e.g. detention and/or enforcement action);



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- (b) Where the pilot or owner/operator is absent or 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 detention/grounding notice specifying the unsafe condition or operation;
- (c) If necessary, restrain the movement of the aircraft by requesting Air Traffic Control to deny start-up clearance. Any such acts shall be notified to the Undersecretary for Civil Aviation Affairs (USCA) through the respective Director as soon as possible.

2.4.2 Other Considerations

Inspectors may detain an aircraft they believe, on reasonable grounds, is unsafe or is likely to be operated in an unsafe manner, and they may take reasonable steps to ensure its continued detention. Once the grounds for detention (e.g., unsafe condition) have been removed, the aircraft may be released. Any such acts shall be notified to the Undersecretary for Civil Aviation Affairs (USCA) through the respective Director as soon as possible.

In such cases all reasonable care shall be taken to protect the aircraft in the condition it was first acquired. The aircraft should be released if it will not be operated or if it will be rendered airworthy before operation, will not be operated in an unsafe manner and only after all fees, charges or monetary penalties resulting from the seizure of the aircraft have been paid.

2.5 ENFORCEMENT PROCEDURES IN AN SMS ENVIRONMENT

2.5.1 General

Under Bahrain's State Safety Programme (SSP), the BCAA is responsible for oversight of certificate holders operating in an SMS environment. Enforcement procedures provide guidance to those responsible for the oversight of service providers operating in an SMS environment, by advising on the appropriate response to acts or omissions to ensure that if enforcement action is taken it will be successful. Enforcement procedures play a supporting function in the process, and the final decision regarding any enforcement issue is the responsibility of the Undersecretary.

Note: All service providers as defined in ANTR Volume III, Part 19-Safety Management are required to establish a SMS.

2.5.2 Applicability

These procedures apply to contraventions that may have been committed by persons or service providers conducting activities under an SMS. Where service providers have demonstrated their willingness to conduct their operations under an SMS, unique SMS enforcement procedures may be used with respect to contraventions by those service providers that, although they do not have an accepted SMS, have some essential core components of an SMS in place and are in the process of full implementation.



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These procedures will not apply SMS enforcement procedures to service providers that, subsequent to the initiation of an investigation of a contravention, arbitrarily claim to be developing an SMS. These procedures will be used for service providers that have been diligently involved in the development of an SMS which would eventually meet the requirements of the SMS regulations, and are following a “phased approach” similar to the one outlined in Appendix 1 to *ANTR Volume III, Part 19-Safety Management*.

Where service providers have not demonstrated they are operating in an SMS environment, the enforcement actions may apply without the advantages of the procedures explained in paragraph 2.5.3.

2.5.3 Procedures

For the purpose of determining whether an investigation should be conducted using SMS enforcement procedures, it will be necessary for aviation enforcement investigators to determine the SMS implementation status of the specific service provider. This determination would initially be made through communication between the investigators and the principal inspector who is responsible for oversight and certification of the service provider under investigation.

The principal inspector will ascertain if the service provider meets the above-mentioned criteria for SMS enforcement procedures.

During the “phased approach” of the service provider’s SMS, the BCAA will apply the SMS enforcement procedures to service providers that do not have a fully implemented SMS, provided that certain conditions are met. The BCAA will require, as a minimum, that the three following conditions be met before SMS enforcement procedures may be applied:

- (a) The service provider has an effective internal hazard reporting programme supported by upper management;
- (b) The service provider has a proactive event analysis process commensurate with the size and complexity of its operations and adequate for determining causal factors and developing corrective measures;
- (c) The information derived from the process referred to in paragraph (b), appropriately protected so as not to endanger safety data collection and processing systems, is communicated, upon request, to the principal inspector assigned to the specific service provider.

2.5.4 Initial report of violation

Aviation enforcement inspectors must conduct a preliminary analysis in all cases where a contravention is detected or where information about a possible contravention is received.

2.5.5 Preliminary analysis

The following questions should be considered based on the information received:

- (a) Are there reasonable grounds to believe that a person or organization conducting activities under an SMS may have committed a contravention?



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- (b) Is the event of such a serious nature that enforcement action should be considered?
- (c) Is there any perishable evidence that should be secured for enforcement action?

2.5.6 Providing effective support

When the three questions are answered in the affirmative, the principal inspector shall be notified. The information shall identify the event and the contravention. When requested, aviation enforcement investigators will provide effective support by advising the appropriate response to the contravention, in order to ensure that if enforcement action is taken, it will be successful. Support includes collecting and securing perishable evidence.

2.5.7 Initiating an enforcement investigation

An enforcement investigation shall be initiated only upon the request of the principal inspector, not the enforcement investigators.

2.5.8 Immunity

No information derived from a safety data collection and processing systems established under an SMS will be used as the basis for enforcement action.

2.6 ENFORCEMENT POLICY IN SMS ENVIRONMENT

2.6.1 Introduction

This enforcement policy is the culmination of a comprehensive review by the BCAA of its capacity and regulations for evaluating safety activities by service providers. In addition to traditional enforcement, the implementation of safety management systems (SMS) requires that the BCAA develop a flexible enforcement approach to this evolving safety framework while at the same time carrying out enforcement functions in an equitable, practical and consistent manner. A flexible enforcement approach in an SMS environment should be based in two general principles.

- (a) The first general principle is to develop enforcement procedures that allow service providers to deal with, and resolve, certain events involving safety deviations, internally, within the context of the service provider's SMS, and to the satisfaction of the authority.
- (b) The second general principle is that no information derived from safety data collection and processing systems established under SMS shall be used as the basis for enforcement action.

Note: Intentional contraventions of the Civil Aviation Law and the ANTRs will be investigated and may be subject to conventional enforcement action if appropriate.

2.6.2 Scope

Within the context of this guidance the term "service provider" refers to any organization providing aviation services. The term includes approved training organizations that are exposed to safety risks during the provision of their services, aircraft operators, approved maintenance organizations, organizations responsible for type design and/or manufacture of aircraft, air traffic service providers and certified aerodromes, as applicable.



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2.6.3 General

Service providers will establish, maintain and adhere to an SMS that is commensurate with the size, nature and complexity of the operations authorized to be conducted under its operations certificate and to the hazards and safety risks related to these operations.

In order to develop an enforcement policy that supports the implementation of SMS, BCAA inspectors will maintain an open communication with service providers. When a service provider operating under an SMS unintentionally contravenes the CAL or ANTRs specific review procedures will be used.

These procedures will allow the BCAA inspector responsible for the oversight of the service provider the opportunity to engage in dialogue with the SMS-governed organization. The objective of this dialogue is to agree on proposed corrective measures and an action plan that adequately addresses the deficiencies that led to the contravention and to afford the service provider a reasonable time to implement them. This approach aims to nurture and sustain effective safety reporting, whereby service providers' employees can report safety deficiencies and hazards without fear of punitive action. A service provider can therefore, without apportioning blame, and without fear of enforcement action, analyse the event and the organizational or individual factors that may have led to it, in order to incorporate remedial measures that will best help prevent recurrence.

2.6.4 Remedial Measures

The BCAA, through the inspector responsible for the oversight of the service provider, will evaluate the corrective measures proposed by the service provider, and/or the systems currently in place to address the event underlying the contravention. If the corrective measures proposed are considered appropriate and likely to prevent recurrence and foster future compliance, the review of the violation will then be concluded with no enforcement action. In cases where either the corrective measures or the systems in place are considered inappropriate, the BCAA will continue to interact with the service provider to find a satisfactory resolution that would prevent enforcement action.

However, in cases where the service provider refuses to address the event and provide effective corrective measures, the BCAA will consider taking enforcement action or other administrative action regarding the certificate.

2.6.5 Exceptions

This policy is not applicable;

- (a) if there is evidence of a deliberate effort to conceal non-compliance; or
- (b) if the service provider fails to provide confidence in its means of hazard identification and safety risk management; or
- (c) if the service provider is a recurrent violator. A recurrent violator is a violator who, in the past year has had the same or closely related violations.

In such circumstances, the penalty matrix (or applicable measurement) of the established enforcement procedures will be applicable.



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CHAPTER 3

SURVEILLANCE

3.1 GENERAL

3.1.1 Purpose

The purpose of surveillance is to provide regulatory presence in order to promote voluntary compliance and to reveal contraventions of the regulations. It is an integral part of the BCAA's regulatory enforcement programme. The probability of being detected is one of the most powerful compliance motivators. When a comprehensive and effective surveillance programme is in place, a higher degree of compliance and flight safety can be expected. In the performance of their normal duties, Inspectors automatically and concurrently engage in routine surveillance. Their mere presence stimulates a positive attitude towards compliance whilst activities commensurate with their duties sometimes lead to enforcement action.

3.1.2 Open Surveillance

Another way to conduct routine surveillance is whereby an Inspector does not hide the fact that he is an Inspector, but at the same time makes no overt effort to identify himself as a BCAA Inspector.

3.1.3 Covert Surveillance

Covert surveillance is an activity whereby the Inspector intentionally represents himself as being someone other than a BCAA Inspector. This, however, is rarely done and only by direct order from the Undersecretary for Civil Aviation Affairs (USCA). The operation would be conducted in a meticulously planned manner, where the objective is to catch the perpetrator in the act of committing a serious offence under the civil aviation laws or other National Statute. This activity is usually directed at specific areas, activities and events and would likely be in coordination and by request of other national authorities.

Note: Refer also to 3.2

3.1.4 Annual Regulatory Surveillance Programme

The annual surveillance programme should be conducted in concert with the Inspector's regular routine audit function. During the in-briefing at the time of an audit, a statement should be made that if during the audit any non-compliance with the Civil Aviation Law or ANTRs were detected and recommended corrective action is not immediately accomplished, the audit would be changed into a regulatory investigation. This does not mean charges would be automatically laid, but merely that the focus of the audit would have changed. At this point the process would change from the audit inspection phase to the investigation procedures of the enforcement process.

3.1.5 Surveillance Objectives

The objective of the surveillance programme is to have a presence in the aviation industry, which promotes voluntary compliance. When such surveillance is conducted openly, fairly, consistently and with compassion towards the industry, surveillance is welcomed.



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Consequently, all persons found to have contravened should be given the chance to explain the cause of the contravention and correct the problem at hand. The person's attitude towards voluntary compliance and the degree of seriousness of the offence should be taken into consideration when making recommendations to the Director as to how the alleged offender should be dealt with.

The following objectives may be considered when planning surveillance activities:

- (a) the promotion of compliance by the establishment of regulatory presence;
- (b) the conduct of investigations;
- (c) the detection of contraventions;
- (d) promotional and educational activities;
- (e) liaison with detection sources;
- (f) information gathering; and
- (g) targeted surveillance.

3.1.6 Programme Responsibility

Each Inspector is responsible to conduct regular surveillance in the area assigned to him by his supervisor and in accordance with BCAA procedures. The respective supervisor shall review any enforcement files produced by the Inspector for content, accuracy and applicability prior to submission to the Director for his decision. Any files relating to an offence under the Civil Aviation Law or ANTRs shall be reviewed by the Director with the objective of determining if the file should be passed to the Undersecretary for Civil Aviation Affairs (USCA) for enforcement action.

3.1.7 Surveillance Procedure

Extensive notes should be kept of all observations. Where appropriate, photographs should also be taken. Inspectors should be prepared to use their authority pursuant to the regulations in detaining aircraft proceeding in a condition unsafe for flight. 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.

3.1.8 Reporting

At the conclusion of the surveillance activity, a detailed report is normally made to the appropriate management. If contraventions of the regulations have been observed, the report shall be forwarded to the Director 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). When a change takes place from an audit or an inspection to a regulatory investigation, the required documentation also changes. In the situation of an audit, the audit is closed with a remark in the audit file of the respective Organisation that the focus of the audit has changed to a regulatory investigation. A Detection Notice is then completed and the focus changes to a preliminary or comprehensive regulatory investigation. As soon as



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practicable the respective supervisor is informed of the changed focus, who will then advise the Director.

Notwithstanding the above, all perishable evidence found at the time of detection should be secured to support a charge. If the decision is made to abandon the investigation a report of the occurrence shall nevertheless be filed and attached to the Detection Notice. A file number shall still be assigned to the case and an entry made in the Regulatory Investigation database.

Note: No further action shall be taken unless instructed to proceed by the Director.

3.2 COVERT OPERATIONS

3.2.1 Introduction

Most surveillance done by BCAA 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.

3.2.2 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 Undersecretary for Civil Aviation Affairs (USCA) under the recommendation of respective Director and based on the justification of those Inspectors involved.

3.2.3 Principles of Covert Operations

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

- (a) all covert operations shall be approved by the Undersecretary for Civil Aviation Affairs (USCA);
- (b) command, control and communications are exercised during each operation;
- (c) where BCAA contemplates involvement in a joint covert operation, the agency in charge of the operation will be identified prior to the start of the operation;
- (d) BCAA may provide technical advice but will not participate actively in a joint covert operation where it is likely to place an inspector in physical danger during the operation;
- (e) during the planning stage of a joint covert operation, a contingency plan shall be developed that will permit Inspectors to withdraw from active participation in the operation if there is a likelihood that the inspectors personal safety may be jeopardized;



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- (f) no inspector shall obtain employment in an aviation company for the purpose of gaining access to information or evidence otherwise unavailable;
- (g) care must be taken to ensure that the associated investigation is not construed as entrapment; and,
- (h) Inspectors must be thoroughly briefed for the covert operation and are aware of the guidelines for inspectors.

3.2.4 Guidelines for Inspectors

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

- (a) in no case shall an inspector counsel or facilitate the commission of an offence;
- (b) if other illegal acts are detected during an operation, the appropriate enforcement agency shall be notified;
- (c) 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;
- (d) Inspectors conducting an operation are to respect the rights of individuals;
- (e) Inspectors conducting covert operations must not allow a flight to take place 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 4

DETECTION

4.1 INTRODUCTION

4.1.1 Overview

Detection is the discovery of a possible contravention. It may result from activities such as inspections, surveillance programmes, ATS monitoring of aircraft movements, regulatory audits, accident investigations, complaints from the public or police reports. When a BCAA Inspector is apprised of, or observes a contravention, he must take action. At the very least he should complete a Detection Notice form and forward it without delay to the appropriate Supervisor for decision. Even when the matter does not normally require further action, as in an oral counselling, the Detection Notice provides the BCAA with an indication of a contravention and of Inspector activity. The information will also be used to compile statistics and will provide an indication if a particular alleged offender has a habit of minor transgressions.

4.1.2 Detection

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 management as soon as possible along with any notes or evidence such as photos, logs, tapes, etc.

4.1.3 Evidence

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 Detection Notice. 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:

- (a) fill out the Detection Notice;
- (b) record all possible contraventions (even borderline offences);
- (c) record date, time and location of the contravention;
- (d) record the identification of the aircraft and the names, addresses and telephone numbers of all persons involved;



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- (e) 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.
- (f) 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.
- (g) take photographs of all objects that cannot be secured or moved;
- (h) take notes on the events immediately preceding and following the contravention;
- (i) 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);
- (j) approach any person you suspect of committing a contravention and seek their account of the occurrence;
- (k) contact the supervisor 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.

4.1.4 Inspectors Flying as Paying Passengers

If Inspectors, whilst flying as paying passengers on an aircraft, detect a contravention which, in their judgment must be brought to the attention of the flight crew, (i.e. a major disregard of the civil aviation legal provisions or an immediate threat to aviation safety) they shall contact the pilot in command of the aircraft.

Note: Due to cockpit security concerns, the Inspector should show his identification to the Purser and advise the Purser of the reason to speak to the Pilot in command.

If the contravention was not an immediate threat to aviation safety, the Inspector may wait until arrival at the destination. If there is an immediate threat to aviation safety, such as an imminent departure with ice, snow or frost adhering to the lifting surfaces of the aircraft, the Inspector shall as soon as possible identify himself to a crew member and demand that the departure be discontinued until such time as the immediate threat to aviation safety has been mitigated. A report of such action and a Detection Notice shall be provided to the Director as soon as possible after the event. It shall contain sufficient information to allow follow-up action to be taken. If the Inspector encounters the above mentioned detection on a foreign aircraft and in foreign airspace or at a foreign aerodrome, he shall certainly be obliged to deal with an immediate threat to aviation safety as described above.

4.1.5 Contraventions of Dangerous Goods Regulations

Within the BCAA, all inspectors are responsible for promoting compliance with and detecting contraventions of the Transportation of Dangerous Goods Regulations. 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 management of the situation. Inspectors should have



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

4.1.6 Inspector's Liability and Off-Duty Actions

The Inspector is held harmless and is protected by the BCAA from liability for any actions he may conduct in the course of his assigned duty. It is recognised that the actions of BCAA Inspectors may have at times financial or other repercussions to the aviation industry. A BCAA Inspector is not relieved of his obligation to act in his capacity and is indeed required to act concerning any contravention to a legal provision of which he becomes aware. He is obliged to act immediately upon becoming aware of any immediate threat to aviation safety, in order to mitigate such threat, wherever he may be.

Note: Inspector's powers must never be abused.

4.2 DETECTION NOTICE

4.2.1 General

A Detection Notice shall be completed in all cases where an Inspector detects a contravention or when he has been apprised of such a contravention by another source. The Detection Notice provides a useful tool to guide the collection of information in the conduct of a Preliminary Investigation. All particulars should be entered in the Detection Notice and a decision should be recorded on the form. The decision to investigate or orally counsel is at the discretion of the Inspector. There are a number of options available to the BCAA in the handling of a Detection Notice. If the contravention is serious, the Inspector must refer the Detection Notice to the appropriate supervisor for further action. The supervisor will then determine if a comprehensive investigation is warranted and will assign an Inspector to the case. In the case of a serious contravention the Inspector who first detected the contravention shall conduct the Preliminary Investigation without delay. This is necessary to preserve any perishable evidence and to gather data and proof to facilitate a comprehensive investigation if required.

The Preliminary Investigation should include as many of the following facts as possible:

- (a) The act or omission constituting the contravention and the relevant provisions of the Act, Order, Directives or Regulations;
- (b) The identification of the aircraft, the names of the people involved and the names and contact details of any possible witnesses;
- (c) The time, date and location of the contravention;
- (d) The events preceding and following the contravention including whether an oral counselling has been given.
- (e) Other pertinent information such as weather reports and a list of all perishable evidence, which has been secured.



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4.2.2 Oral Counselling

Oral counselling provides the alleged offender with immediate counselling on the necessity for regulatory compliance. It is an option for the Inspector 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 considered appropriate. Inspectors should assess all aspects of the contravention and the attitude of the alleged offender to determine whether oral counselling would secure future compliance.

Oral counselling would be most appropriate in cases of ignorance or misinterpretation of the legislative provisions, provided aviation safety was not jeopardized, i.e. a minor contravention having little or no impact on safety or where there was no wilful intent. When oral counselling is determined to be the best course of action, the appropriate box on the Detection Notice shall be checked after counselling the alleged offender. This type of action does not become part of any enforcement record for the alleged offender. However, the details of the completed form shall be entered into enforcement database to maintain a statistical record.

If the alleged offender is an employee of a Kingdom of Bahrain based operator; a copy of the form shall be placed upon the operator's file. If the Inspector has doubts as to the effectiveness of an oral counselling, he shall conduct a preliminary investigation and proceed with the notification to the appropriate supervisor as mentioned previously.

4.2.3 No Further Action (NFA)

Once a Preliminary Investigation has commenced only the Undersecretary for Civil Aviation Affairs (USCA) under the recommendation of respective Director may direct that No Further Action be taken. This must be stated on the Violation Detection Notice.



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CHAPTER 5

INVESTIGATION

5.1 INTRODUCTION

An investigation is a systematic search for 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 regulatory enforcement process since subsequent action that may affect both individual rights and public safety will depend on its thoroughness and adequacy. Consequently, it is important that BCAA Inspectors know their investigative powers and know what constitutes proper evidence. All Inspectors are responsible for conducting preliminary investigations when they detect a violation of the regulations and for recording the information on a Detection Notice.

On completion, the Detection Notice shall be forwarded to the respective Supervisor who will assign an Inspector to the case. Both the reporting Inspector and the assigned Inspector (where a different Inspector has been assigned to the case) shall continue to co-ordinate their work as necessary until the conclusion of the case. Investigators must be prepared to conduct thorough investigations from the initial complaint through the investigation, to the case report conclusion and resultant recommendation. It must be stressed that no investigation is complete without the alleged offender being contacted, preferably by the investigating Inspector. He may supply valuable evidence. Under no circumstance shall the alleged offender first find out that there is a case against him when he receives the Show Cause Notice (Appendix A).

5.2 PRELIMINARY INVESTIGATION

The purpose of the preliminary investigation is to preserve perishable evidence and to determine whether or not the alleged contravention warrants further investigation. The preliminary investigation is carried out as follows:

- (a) Fill out the Detection Notice as completely as possible;
- (b) Record the date, time and location of the contravention;
- (c) Record the identification of the aircraft and the names of all persons involved including witnesses that were present or that may have information relevant to the case;
- (d) Preserve perishable evidence and documents such as log books, load control sheets, damaged aircraft parts engineering records, invoices, etc. Take photographs of all objects that cannot be secured or moved;
- (e) Record all possible contraventions, even those that may only be partially applicable, and attach copies of the relevant sections of the contravened provisions;
- (f) Take careful notes on the events immediately preceding and following the contravention and whether or not an oral warning was given;



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- (g) Obtain weather reports, ATS tapes, flight plans, or any other documents pertaining to the alleged offence;
- (h) Interview all witnesses on hand and record their statements on the witness statement form. Attempt to get signed statements if possible. Do this with all witnesses separately and in private, regardless if they all say the same thing or not. The reason is to freeze the evidence so that it cannot be changed later and so it can be used by the witness to refresh his memory at a future time. Where a written statement is not possible request permission to tape the conversation and later have a transcript made;
- (i) Approach any person you suspect of having committed an offence and attempt to obtain a signed statement;
- (j) Keep an accurate set of notes with appropriate times and dates, setting out in chronological order what you did;
- (k) Obtain help from officials of the appropriate Authorities or the police if necessary;
- (l) Hand over the entire package to the applicable supervisor with your recommendation for follow-up action. Be prepared to justify your recommendation and to testify as witness in any subsequent legal action.

5.3 NO INVESTIGATION CONDUCTED

Sometimes it is evident from the original complaint or the Detection Notice that the case does not warrant a comprehensive investigation because it is a low priority safety item, insufficient evidence, insufficient resources or other consideration. Nevertheless, the relevant information should be recorded in the enforcement database for possible future reference. In this case a note explaining the reason for not investigating further should be attached.

5.4 DEFENCES

5.4.1 General

If, early in an investigation, facts are uncovered which point to the likelihood that an alleged offender could successfully argue that his actions 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 be able to raise a defence based upon necessity or due diligence.

Where the defence of necessity is proven, the alleged offender cannot be found to have contravened the Law, Directive or Regulation because the contravention was necessary to avoid an immediate greater danger, particularly if the situation might have caused damage, injury or death.

Where due diligence is proven, the alleged offender cannot be found in contravention of the Act, Order, Directives or Regulations because all reasonable care to avoid the contravention was made. In all cases where either necessity, due diligence or officially induced error is a consideration, the Director shall be consulted.

The Director shall make a decision and issue a ruling based upon the facts of the case and the recommendation of the applicable supervisor and investigating Inspector.



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5.4.2 The Defence of Necessity

It is the policy of the BCAA to consider all cases upon their own merit. In deciding whether the defence has been established, the Director should carefully examine the facts to determine whether all of the following conditions apply. All of the following conditions must be satisfied in order for the defence of due diligence to be valid:

- (a) The situation must have been so urgent and the dangers from inaction were so imminent that it was unreasonable to delay any action;
- (b) Compliance with the Regulations was demonstrably impossible; 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
- (c) The hazards to flight safety caused by the contravention were less serious than the hazard posed by complying with the Regulations. For example; breaking the CAL or ANTRs is less serious than any accident that might have resulted from complying with it in the particular circumstance.

In addition, it would be prudent for the Director to be satisfied on reasonable grounds that the urgent situation was not brought about by the alleged offender through negligence or another breach of the regulations. In other words, where the alleged offender created the danger, he cannot avoid liability for a contravention committed to escape that danger.

5.4.3 The Defence of Due Diligence

The defence of due diligence is found in a situation where the alleged offender took all reasonable care to avoid committing the contravention. What constitutes due diligence will vary from case to case depending upon the facts. The Director's decision to accept such a defence or not, should be based upon his opinion that the alleged offender did all in his power to avoid the contravention, using good judgement and decision making and in fact exhausted all other options before committing the act.

5.4.4 The Defence of Officially Induced Error

The defence of officially induced error is available where an alleged offender has reasonably relied upon the erroneous opinion or advice of an official who is responsible for the administration or enforcement of laws and regulations. It must be proved that on a balance of probabilities the offender relied upon the erroneous opinion, direction or advice of the official and that his reliance was reasonable.

The defence however is not applicable if the alleged offender failed to ascertain whether the Official had any jurisdiction over the applicable situation, the advice given was reasonable and would not cause any clear and present hazard to aviation safety.

5.4.5 Application of the Defences

The alleged offender during the investigation can raise any of the above-mentioned defences. If the Director is satisfied that a defence has been established, then he must find that no offence has been committed and close the case. When the defence has not been proven, a mitigating circumstance may still exist. In this case a variance from a standard sanction may be applied.



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5.5 COMPREHENSIVE INVESTIGATION

5.5.1 Purpose

If a preliminary investigation reveals that a violation took place and further evidence is necessary to establish the facts, a comprehensive investigation must be conducted. The purpose of the comprehensive investigation is to obtain all the necessary evidence to disclose the truth and to support a charge under the civil aviation legal provisions.

5.5.2 Procedure

The investigator is not just trying to obtain evidence to prove that an alleged offence took place. He must also ensure that all the facts of the case are disclosed so that natural justice will be served. The procedure for conducting a comprehensive investigation shall be as follows:

- (a) Obtain a file number from the Enforcement database, open a file folder and begin the process of record keeping;
- (b) File all documentation already received from the preliminary investigation in the folder;
- (c) Analyse the legislation allegedly contravened;
- (d) Determine the evidence necessary to prove each element of a violation;
- (e) Plan and initiate steps necessary to obtain such evidence, i.e. log books, witness statements, interviews etc.;
- (f) Obtain information from the alleged offender. A letter of investigation to the alleged offender is mandatory, but he should first be contacted by telephone or in person in order to:
 - (1) Advise the alleged offender that an investigation is in progress, and;
 - (2) Give the alleged offender an opportunity to offer voluntary information.
- (g) Co-ordinate the investigation with other branches of the BCAA in order to prevent overlap of responsibilities, confusion and conflict with other branches or BCAA personnel;
- (h) Establish the cause of the contravention i. e. weather, navigation hazard, airworthiness of the aircraft, inadvertent or deliberate action, etc.
- (i) Record all action and information in the enforcement file, including a narrative of the fact and circumstances of the event which lead to the alleged contravention and all persons involved with the case;
- (j) If the case is of such a nature, possibly requiring judicial action, prepare a case report and advise the appropriate Supervisor that the case may have to be notified to the Director.



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5.5.3 Other Considerations

Contraventions, which may have National or Aerodrome Security considerations, shall be notified to the Director or his delegate immediately upon discovery.

Cockpit Voice Recorder/Flight Data Recorder recordings shall not be used by BCAA in any enforcement matters. Their use is limited to aircraft accident investigations to assist in determining the cause of accidents and incidents.

5.5.4 Conduct

Comprehensive investigations shall only be conducted by Inspectors with experience in the applicable discipline. However, a contravention in progress, regardless of what area of competence the case may involve, shall be dealt with by any Inspector available. If no Inspector with detailed competence in the situation is available. The intent of this policy is to ensure that all Inspectors are obliged to stop an unsafe situation to the best of their ability.

5.5.5 Specialized Investigations

When any Inspector becomes aware of a possible contravention concerning the airworthiness or operation of an aircraft, or the safety and security of an aerodrome, he shall advise his supervisor of the allegation and conduct a preliminary investigation. If he believes that there is an immediate threat to aviation safety, he shall undertake steps to mitigate such immediate threat.

5.6 INTERVIEWING

5.6.1 General

Interviews occur routinely during an Inspector's performance of his duties. They range from the informal questioning of a potential witness in an attempt to determine what useful information the individual may possess about a suspected contravention, to the formal interrogation of an alleged offender. Questions may be asked of any person, suspected or not, if it is deemed that useful information may be obtained. Persons to be interviewed are witnesses to an occurrence. An alleged offender himself or any other person who, by having knowledge to any aspect of the investigation may be able to reveal the facts of the case.

An *interview* is the questioning of a person who is believed to possess information relevant to the matter under investigation. Normally in an interview the person being questioned will be cooperative and furnish the desired information without hostility or evasiveness.

An *interrogation* is a form of interview using detailed questioning where the person, who is alleged to have committed an offence, or a witness, is reluctant to make a full and truthful disclosure of the particular information in his possession.

5.6.2 Objectives of the Interview

The purpose of the interview or interrogation is to develop credible information relevant to the investigation and to record it for future reference. Specific objectives vary with the nature of the case, its facts and circumstances, the Inspector is attempting to ascertain. To prevent aimless questioning, the objectives must be formulated carefully and must be fully understood by the interviewer. In seeking the truth, the Inspector must constantly inquire: WHO did



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WHAT, WHEN, WHERE, WHY and HOW.

He must continue to inquire until all the essential facts are assembled. Since questions are the tools of the interviewer, it is essential that questions be clear, communicative and designed to obtain information. The interviewer should always endeavour to ask questions in such a manner that the person being questioned understands what is being asked.

5.6.3 Interview Conduct

If possible, the interviewer should, prior to the interview, have conducted a legislative analysis of the provision allegedly contravened. The analysis may provide the interviewer with the required evidentiary information necessary to obtain a conviction. He then has the ability to tailor the questions used in the interview towards the desired information. As an investigation is a search for the truth, the investigator must utilise all the necessary investigative techniques available to him. The success of the investigation often depends on the proper and effective use of techniques and procedures in conducting the interview. Inspectors have no right to force testimony or admissions from witnesses or alleged offenders. This power is limited to courts and legislative bodies.

The best technique is to systematically persuade the witness or alleged offender in a humane and friendly atmosphere to offer testimony or evidence. Using logic, the interviewer should subdue the interviewee's inhibitions, stimulate his natural inclination to co-operate and encourage a conclusion that truthfulness will benefit him in some manner. However, care must be taken not to utter any promises, which the interviewer may not be able to keep. Likewise the promise or threat of sanction uttered will place in doubt the veracity of any statement obtained under such promise or threat. The entire interview would then be worthless in any judicial proceedings.

To properly conduct the interview, the Inspector should have as intimate as possible knowledge of the facts of the case, thus enabling him to distinguish truth from falsehood and fact from fiction. Knowledge of human nature enables Inspectors to judge character and understand motivations. He must think clearly and without bias, and exercise good judgment, patience and self-control. He must never be angry or become emotionally involved.

He must also realise that what a witness says he saw, may not always be what happened. Eyewitness identification and description is regarded as a most unreliable form of evidence and causes more miscarriages of justice than any other method of proof. This weakness has long been recognised by courts and was aptly described as follows.

“The carelessness or superficiality of observers, the variety of powers of graphic description, and the different force with which peculiarities of form or colour or expression strike different persons, make recognition or identification one of the least reliable facts testified to by even the actual witnesses who have seen the parties in question.”

5.6.4 Other Considerations

A person may be a most cooperative witness and vividly describes in detail what he saw. However, before accepting the information, determine if the witness actually was in a position to see or hear what he is describing. Check the angle of view, look for any obstruction to the line of sight and determine if the information he is giving you could have actually been detected from his position at the time of the occurrence. These precautions are necessary because witnesses tend to augment their observations with what they believe occurred, when there are



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gaps in those observations. In the case of alleged offenders, such verification may also reveal the veracity of their statements. Other considerations are:

- (a) Optical illusions can also lead to misjudgements. Witnesses will often over estimate heights and underestimate breadth and width. Colours may also affect judgment of distance. A red object appears to most people to be larger than a blue one of equal size. Very rarely will two eye witnesses will be able to judge aircraft height, especially in cases of low flying.
- (b) The factor of suggestions must also be considered. Separate the witnesses so that they cannot overhear one another. During the interview do not repeat a statement made by another witness. This precaution must be taken, as there is a tendency for people to conform to the opinion held by the majority. And lastly, do not suggest any particular idea to the interviewee, as people at times will tell you what they have just heard from you in order to please you. Also accept the fact that sometimes people cannot remember at all what they might have seen.
- (c) A witness must be interviewed at the earliest time possible, because people have a tendency to forget, some more rapidly than others. Furthermore, there is a danger that the witness will acquire additional information, which will displace or bias the original information in his mind.

5.6.5 Techniques in the Conduct of an Interview

At the beginning of a session, the Inspector conducting the interview should put the witness at ease by introducing himself and then asking basic identifying data, such as a name, address and telephone number. If there are language difficulties, an interpreter may be used in the conduct of the interview. It is desirable to use a tape recorder during interviews whenever possible. The witness must always be informed if he is being recorded. If no tape recorder is used, notes need to be taken to ensure that a reliable record is created, that will have legal standing. The following guide may be useful in taking witness statements;

- (a) Have the witness describe everything he heard and saw relative to the time, place, person and event in question;
- (b) listen and make brief notes as a memory jogger;
- (c) ask questions to explore specific aspects of the story;
- (d) establish how the witness happened to be in the place where he made the observation and what was his exact physical position in relation to the location of the contravention;
- (e) present exhibits to the witness for identification and marking;
- (f) ask the witness to state any relationship, which may exist between himself and any other person concerned with the contravention or its circumstances

Just prior to concluding the interview, the interviewer should attempt to resolve any minor conflicts, which may appear between the witness' story and the known circumstances of the contravention. To avoid the problem of being suggestive, this should be done in general terms without mention of specifics.



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For example, “What colour did you say the aircraft was?” is better than asking “You said that the aircraft was yellow; are you sure of that?” Also lying to the witness or an alleged offender by introducing fictitious facts will invalidate the statement obtained.

5.6.6 Statement Preparation

In preparing a written statement the following procedures should be adopted.

- (a) Use the statement form whenever possible. If a statement needs to be taken on short or no notice, use plain paper.
- (b) Record the time, place and date of the interview on the top of the 1st sheet of paper.
- (c) Record the witness’ full name, date of birth, address, and telephone number at the beginning of the statement, e.g. “This statement of ._____” and then add the details.
- (d) The narrative of the statement is next. Ask the witness to relate the events in chronological order, beginning far enough back that he feels comfortable by the time he reaches the point in the statement where there is specific interest.
- (e) When the narrative is finished, ask questions to clarify it. Take your time in doing this by first writing the question down, then reading it to the witness. Record the answer exactly as the witness replies.
- (f) When the statement is complete, ask the witness to read it back aloud.
- (g) Make any corrections the witness requires and have the witness initial the changes. Do not correct spelling or grammar in a statement without the witness’ consent and initials.
- (h) Have the witness sign the last page of the statement, but do not pressure him if he is reluctant to do so.
- (i) If the witness was interviewed through an interpreter, ensure that the interpreter’s personal details are also recorded and ask him to initial and sign the statement wherever appropriate.
- (j) At the end of the process the interviewer must sign and date the document and enter the completion time next to the date.



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The following is a comparison of Witness and Alleged Offender interviews:

WITNESS	ALLEGED OFFENDER
<p>Why</p> <p>...to gather information and test its validity in order to determine the particulars of the matter under investigation.</p>	<p>Why</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>Who</p> <p>...witnesses who are willing to provide the Inspector with any information they possess about the matter under investigation.</p>	<p>Who</p> <p>...persons suspected of offences as well as others who may have information but are reluctant to offer it.</p>
<p>When</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 Inspector to prepare for interviewing alleged offenders.</p>	<p>When</p> <p>...interviews of alleged offenders should take place ideally after the Inspector has gathered enough information to enable him to make a judgement on how truthful the subject is. The interview is more fruitful after witness interviews and physical evidence has been located and evaluated.</p>
<p>Where</p> <p>...at a place convenient or 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>Where</p> <p>...an 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>
<p>How</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 details and to jog the witness' memory.</p>	<p>How</p> <p>Basically, the same method as with witnesses is used, but the atmosphere is more formal and the Inspector is working towards the detection of culpability in the alleged contravention.</p>



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5.7 REFERRALS

5.7.1 Referral to a Foreign Authority

In the event that an Inspector is apprised of an alleged offence by a foreign operator, the allegation of the offence should be forwarded to that Civil Aviation Authority where the alleged offender's aircraft is registered. A Preliminary Investigation shall be conducted and any perishable evidence collected. This includes the securing of ATS records and any available aerodrome traffic movement records as well as loading information, etc.

Once the Preliminary Investigation has been conducted the Director shall be apprised of the situation. Any immediate threat to aviation safety shall be dealt with without delay. Once the situation is stabilized and the immediate threat has been mitigated, the Director will apprise the foreign Authority of the aircraft's State of Registry by letter, including copies of the relevant information for their investigation and action.

5.7.2 Referral to the Appropriate Ministry

In the event that the detection resulted from a serious contravention such as one violating a provision of the Civil Aviation Law, the Undersecretary for Civil Aviation Affairs (USCA) may decide to forward the information to the appropriate Ministry (e.g. Ministry of Interior) for further legal action. In this case a complete investigation must be conducted. It shall contain the following items:

- (a) A completed Detection Notice;
- (b) Records of a Preliminary Investigation;
- (c) A decision record by the Undersecretary for Civil Aviation Affairs (USCA) to conduct a comprehensive investigation;
- (d) All details of the comprehensive investigation;
- (e) All evidence obtained during the investigation;
- (f) A record of change of custody and control of any evidence obtained that was passed to another Inspector;
- (g) An analysis of the legislative provision, which is alleged to have been contravened.
- (h) A document recommending an appropriate sanction if the alleged offender is convicted.
- (i) A receipt form for the package, which is to be signed by the receiving member of the Appropriate Ministry to ensure continuity of possession of the evidence.



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CHAPTER 6

ANALYSIS OF LEGISLATIVE PROVISIONS

6.1 INTRODUCTION

This chapter provides a procedure for analysing 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.

6.2 CONSTRUCTION OF LEGISLATIVE PROVISIONS

6.2.1 General

- (a) Types of Legislative Provisions: Legislative provisions may be enabling, administrative, informative or offence creating. Only the latter can be the subject of enforcement actions.
- (1) Enabling provisions are those which confer power on persons to make some other type of standard or policy. Some enabling provisions in the Civil Aviation Law and regulations are those which give powers to make regulations, orders, and publications.
 - (2) Administrative provisions confer a power or impose a duty on the BCAA; for example, to issue licences. They may provide criteria used in discharging these powers or duties. Although these provisions are public notice of what the BCAA can do, their purpose is to provide a statutory basis for administrative procedures or actions.
 - (3) Informative provisions are intended to guide the aviation community and assist individuals in complying with aeronautics legislation. For example: Policy Directives
 - (4) Offence creating provisions can be one of two types, first, those which mandate a certain form of conduct and, second, those which prohibit certain conduct. Non-compliance with these provisions is a violation that can result in judicial or administrative enforcement action.

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”, “the pilot-in- command shall”.

- (b) 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.



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Core elements contain the subjects and verbs while qualifying elements describe or modify core elements. Common elements are those which 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").

6.2.2 Identify Possible Violations

Early during an investigation, the Inspector should list the possible violations but not necessarily in order of importance. All of the listed provisions should be analysed. An early analysis should indicate what evidence is required and available, and provide clues as to what further evidence will be required to successfully prosecute an alleged offender. The analysis may however also reveal that there is no violation.

6.2.3 Analysis of Offence Creating Legislative Provisions (Interpretation)

Analysis for interpretation consists of the following steps:

- (a) Divide the legislation into elements, e.g. (A person shall not) (act as a flight crew member) of a (flight crew) of (an aircraft) (unless) (that person) (is the holder) of a (valid licence) issued...
- (b) Determine the significance of each element. If there are no pertinent regulatory definitions, use dictionary meanings and preferably the Oxford English.
- (c) Determine the modifying effect of the elements.
- (d) Summarize the results to arrive at the interpretation.

6.2.4 Analysis of Offence-creating Legislative Provisions (Evidence)

6.2.4.1 Elements: Where a contravention is suspected, the pertinent legislative provision should be divided into elements and analysed 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.

- (a) Common Elements are those that appear frequently in legislative provisions, e.g. (A person shall not), (aircraft), (Pilot-in-Command), (Certificate of Registration) etc.
- (b) Uncommon Elements are those, which do not appear frequently, e.g., (not less than 1000 feet), (in formation flight) etc.

6.2.4.2 Evidence Considerations: Whilst 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. Standard forms of evidence include witness statements or oral testimony, journey or technical logbooks, business records, tape recordings, photographs, objects and admissions to a contravention. Special forms of evidence include ATC transcripts, radar printouts, x-rays, magnaflux, dye checks, weather records etc.



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6.2.5 Sample Analysis

The following legislative provision is used for the analysis:

A person shall not act as a flight crew member of a civil aeroplane registered in the Kingdom of Bahrain unless that person holds a valid licence and rating complying with the requirements of ANTR–FCL and appropriate to the duties being performed, or an authorisation as set out in ANTR–FCL 1.085 and/or 1.230.

Table 1: Illustrative Analysis of Common Elements

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE
Unless specifically authorised by ...	That there was no authority issued to operate the aircraft without a licence.	Written statement from the licensing branch that no such authority was granted
...no person...	The alleged offender's identity.	Photograph, passport residence visa or any other document, which can establish the identity of the individual.
...of a civil aircraft of the Kingdom of Bahrain registry...	That the aircraft was civil and not military or police and that it was registered in the Kingdom of Bahrain.	Copy of the Certificate of Registry.
...a valid pilot licence issued to him...	That the licence was either not issued at all, or that it was not valid.	Photocopy of the invalid licence, confession that he doesn't have one, written statement by the licensing branch.
...under these regulations.	That these regulations are indeed applicable	Copy of the contravened legislative provision.



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Table 2: Illustrative Analysis of Uncommon Elements

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE
...may act as pilot in command...	That the alleged offender actually operated the aircraft.	Witness statement, logbook entry, confession, photograph or video footage.
...or in any other capacity as a flight crew member...	That the alleged offender operated the aircraft as a first officer or flight engineer.	Witness statement, log entry, confession, photograph, or video footage.
...unless he has in his personal possession...	(The word “he” is accepted to mean “she” also) That the person did in fact not have the licence in his possession at the time when he operated the aircraft.	Statement by the Inspector who checked the alleged offender at the time of the occurrence that he was not in possession of the licence.

When the Inspector conducts the legislative analysis, it is recommended to analyse the provision on one document. However, each provision requires a separate analysis document. This will ensure that the reader of the analysis later has a better flow of information. An experienced Inspector will likely obtain all the required items necessary to prove the common elements very early in the investigation.



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CHAPTER 7

CASE REPORTS

7.1 INTRODUCTION

7.1.1 General

A case report is an abridged relation of the facts of a case drawn up by the investigator. 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 investigator 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 investigator 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.

Note: Appendix to this manual gives example of possible scenario for enforcement action.

7.1.2 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 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 Director 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 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.

An example case report follows.



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7.1.3 SAMPLE CASE REPORT

SCENARIO

In the following sample case report a number of contraventions were detected following a complaint from the public that a small aircraft had been observed buzzing an assembly of persons, who were conducting recreational activities on a local beach near the city. An Inspector was sent to the airport to wait for the aeroplane's arrival and to interview the pilot.

INSPECTOR IMMEDIATE ACTIONS

When the aeroplane arrived, the Inspector approached the aircraft. There were two persons on board.

After having introduced himself to the people, he asked who the Pilot in Command (PIC) of the aircraft was. The pilot in the left seat said that the other person was the PIC, because he is an instructor, the person in the right seat said that the person in the left seat was the PIC, because this was a recreational flight.

The Inspector made notes of the date, time and location and registration markings of the aircraft, and recorded the individual's statements. He then asked them to get out of the aeroplane and demanded personal identification, Pilot licences, Medicals, and the aircraft documentation from the persons on board. (For the purpose of this exercise the persons are identified as "Ace McCool" for the person in the left seat, and "Bob Fairweather" for the one in the right seat. The aircraft was registered as AA-ABC).

During the review of the documentation, it was discovered that McCool's pilot licence had expired 43 days before the incident and Fairweather did not carry his pilot licence with him.

A review of the aircraft documents revealed that the Certificate of Airworthiness had expired three days previously.

The Inspector asked the people to make a log entry in the technical log. After some argument among the pilots, the person in the left seat made the log entry. Then the Inspector then seized all the documents and asked the people to accompany him to the office of the Law. Both persons claimed that they were unable to accompany the Inspector just then and an appointment was made for the next day to meet at the BCAA office in town.

The Inspector took all documents with him and advised the pilots that charges could be laid against them and if they continued to fly, there might be further contraventions. He also told them that the aeroplane was not airworthy and was consequently grounded.

Upon arriving back at his office, the Inspector filled out a Detection Notice, photocopied all documents seized and recorded in red pen the following statement upon each document:

Certified True Copy
Date: December 15, 2002
Signature
Spelling of the Inspector's name



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Then he marked each document as “Exhibit 1,2,3, etc.” giving each a sequential number. Then he put the original documents aside to be returned during next day’s meeting.

Next, he photocopied his notes, and put them together with the documentary evidence into an envelope. He then opened a file, assigning an Enforcement file number to it. He wrote a brief memo providing the details of the complaint, including the witness’s phone name and phone number and gave it to the Director for assignment.

The Director assigned the case to another Inspector and gave him the file with the details and the exhibits.

Later that day the newly assigned Inspector, after having read the brief in the file, visited the site of the alleged offence, and met with the complainant, who had used his mobile phone to contact the authorities.

The complainant was still on the beach with his family. There were also a number of other people on the beach, an ice cream vendor and a jogger who had also observed the incident.

WITNESS INTERVIEW

The Inspector, after having introduced himself took written statements from three people separately. This is what he produced.

Complainant’s witness statement. (1)

Date: 15 December, 2002 1545 local time.
Location: Wonderful Beach,
Name: John Doe
Address: Super Duper Building, Flat 121, P.O. Box 123, Kingdom of Bahrain
Phone No.: 248 123 4567

Narrative:

We were on the beach playing football when this airplane swooped out of the sky and flew directly over us. It was so low that we had to fall down on the ground because we thought it would hit us. The guy came back and did this three times and then I called you on my mobile to complain. After that he flew away really low and did the same to some other people along the beach.

Q What time did this happen?

A About 1030 this morning.

Q Did you see the colour of the airplane?

A Yes, it was white with a blue strip down the middle.

Q How many engines did it have?

A One.

Q Where in relation to the body of the airplane was the wing, top or bottom?

A Top



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Q Did you see any identifying marks on the airplane?

A Yes, there were big letters on the side of the body. It started with "A" something, but it went by so fast I couldn't really see it so well.

Q How high did the airplane fly, in comparison to that little building with the coffee shop in it?

A It was lower than that.

Q Do you wish to add anything else to this statement?

A No.

Signature of the witness, 15 December, 2002 1600 local time.

Witness Statement. (2)

Date: 15 December, 2002; 1610 local time.

Location: Wonderful Beach,

Name: Karim

Address: Very Nice Ice cream company, Muharraq, Bahrain

Phone No.: 248 345 6789

Note: The witness did not speak English, consequently an interpreter was used. His interpretation was not great, and he did not wish to be identified.

Narrative:

I saw an airplane fly over these people. They fell onto the ground. He came back again and one more time, then he left.

Q What time did this happen?

A Today, morning.

Q Did you see the colour of the airplane?

A Yes, it was white.

Q How many engines did it have?

A Don't know

Q Where in relation to the body of the airplane was the wing, top or bottom?

A Top

Q Did you see any identifying marks on the airplane?

A No.

Q How high did the airplane fly, in comparison to that little building with the coffee shop in it?

A About the same height.

Q Do you wish to add anything else to this statement?

A No.



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The witness did not wish to sign the document, 15 December, 2002 1500 local time.

Witness statement. (3)

Date: 15 December, 2002 1545 local time
Location: Wonderful Beach,
Name: Ahmed Al Balooshi
Address: Tall Apartments, Flat 2302, P.O. Box 456, Bahrain
Phone No.: 248 765 4321

Narrative:

I was taking a rest from my jogging on the beach road, when this little airplane came by and flew really low over these people, who were also on the beach. The plane was so low that everybody dived for cover. Then he came around again for another pass. I always keep my little digital camera with me and so I took a picture of the plane when it came around for the third time. It came out really well too. I actually took a short video clip. After that it carried on down the beach to another group of people. Then it disappeared behind the buildings further down the beach.

Q What time did this happen?

A About 1030 this morning.

Q Did you see the colour of the airplane?

A Yes, it was white with a blue strip down the middle.

Q How many engines did it have?

A One.

Q Where in relation to the body of the airplane was the wing, top or bottom?

A Top

Q Did you see any identifying marks on the airplane?

A No, I didn't notice any, but they should show on the pictures if there were any.

Q How high did the airplane fly, in comparison to that little building with the coffee shop in it?

A It was lower than that.

Q Do you wish to add anything else to this statement?

A No.

Signature of the witness, 15 December, 2002 1500 local time.

After the Inspector took the witness statements, he returned to his office. By the time he arrived there the third witness had emailed him the pictures and the video clip he had taken.

The Inspector printed out the pictures and added them with the witness' email to the exhibits, having marked them appropriately.



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ALLEGED OFFENDER INTERVIEW

The following day the two persons in the airplane came to the BCAA's office and were directed to the investigating Inspector. After introductions the Inspector asked the individuals to be interviewed separately. They agreed. He first interviewed the person identified as A. This is statement he provided:

Alleged Offender's. (1)

Date: 16 December, 2002 0800 local time.
Location: BCAA headquarters.
Name: Ace McCool
Address: Excellent Living Place, Flat 602, P.O. Box 829, Bahrain
Phone No.: 248 987 6543

Q Were you the pilot in command of an aircraft bearing the registration A9C-ABC on or about December 15, 2002 at or near Wonderful Beach, Bahrain, at or about 10:30 local time?

A No.

Q Who was the pilot in command at that time?

A My Instructor.

Q Please tell me what happened that day.

A We were flying along the beach on a flight experience mission. Suddenly my instructor said "Simulated Engine failure" So I pulled out the throttle, looked for a place to land and chose the beach as an emergency landing place. After I had the place made, I went around to circuit altitude. Then the instructor took the controls and showed me how I should do it better. I did it one more time and then we left. That's all that happened.

Q How low did you go?

A We never went any less than 200 feet.

Q What happened then?

A Nothing, we went back to the airport.

Q Did you do a pre-flight inspection including the documents prior to the flight?

A No, the instructor did that.

Q Did you know that the C of A was invalid?

A No, I never saw the documents.

Q Is there anything else you wish to add to this statement?

A No

Signature of the alleged offender, 16 December, 2002, 0850 local time.



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Alleged Offender's. (2)

Date: December 16, 2002 0800 local time.
Location: BCAA headquarters
Name: Bob Fairweather
Address: Perfect View Apartments, Flat 804, P.O. Box 543, Bahrain
Phone No.: 248 456 7890

Q Were you the pilot in command of an aircraft bearing the registration A9C-ABC on or about 15 December, 2002 at or near Wonderful Beach, Bahrain, at or about 1030 local time?

A No.

Q Who was the pilot in command at that time?

A Ace McCool.

Q Are you Ace's Instructor?

A No, he is a licensed pilot and invited me to go on a joyride with him.

Q Did you know that the airplane's C of A was not valid?

A No, he was supposed to check that. I was only a passenger on this flight.

Q Did you ever instruct him before?

A Yes, about three years ago.

Q Please tell me what happened that day.

A We went flying about 10 o'clock. We went westbound out of the city. After a while we did a little air work and then suddenly Ace pulled out the throttle and said "Simulated engine failure" He descended towards a beach, where he picked out a place as his target landing spot. He came down a little low and couldn't make the spot. So, he overshot and went around. Then I asked him to let me show him how to do it. I did one and gave the controls back to him. He did one more and this time he made the spot further down the beach. Then we left to go back to the airport.

Q Is there anything else you wish to add?

A No.

Signature of the alleged offender, 16 December, 2002, 09:25 local time.

The Inspector thanked the two persons and advised them that they would be notified of further developments. He returned the seized documents to them and obtained a receipt from Mr. Ace McCool for the documents.

CONTRAVENTIONS

After the two alleged offenders left, the Inspector sorted all the information he had and reviewed the case as it developed so far. He reviewed the Regulations and determined that there may be contraventions under the following sections:



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The Inspector, having familiarized himself thoroughly with all matters concerning the case, advised the Airworthiness section of the investigation in progress and asked them to undertake steps to ground the aircraft pending renewal of the C of A. He then proceeded to conduct a legislative analysis of each of the elements to be proven. The format he used for indicative regulations was as follows.

(a) Pilot Licence (ANTR-FCL 1.010(a))

“A person shall not act as a flight crew member of a civil aeroplane registered in Bahrain unless that person holds a valid licence and rating complying with the requirements of ANTR-FCL and appropriate to the duties being performed, or an authorisation as set out in ANTR-FCL 1.085 and/or 1.230.”

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
...A person...	The alleged offender's identity	Photographs, passports residence visas etc	Copies of Driver's licence and Pilot licence, Passports, and residence visas
...shall not act as a flight crew member...	That the alleged offender was the pilot in command	Admission, witness statements photograph etc	Signed logbook, witness statement of the passenger indicating that Ace McCool flew the aircraft.
.of a civil aeroplane registered in Bahrain ...	That the aircraft is registered in the Bahrain	Certificate of Registration	Copy of the C of R
Unless that person holds a valid licence ...	That he did at the time when he operated the aircraft have a pilot licence	The Licence	Copy of Ace McCool's pilot licence
	That the licence is valid	The licence itself and the validity date	Copy of the licence indicating that it was out of date and consequently, not valid

(b) MINIMUM SAFE HEIGHTS

“Except when necessary for take-off or landing, or when/as authorized by the Authority, no person shall operate an aircraft under VFR below the following heights:

- (a) ANYWHERE. A height allowing, if an engine fails, an emergency landing without hazard to persons or property on the surface.
- (b) OVER CONGESTED AREAS. Over any congested area of a city, town, or settlement, or over any open-air assembly of persons, a height of 1000 feet above the highest obstacle within a horizontal radius of 600 metres (2000 feet) of the aircraft.



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- (c) OVER OTHER THAN CONGESTED AREAS. A height of 500 feet above the surface.”

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
...or when authorized by the Authority	That there was no authority to conduct off-airport landings provided by the	Statement by the Director confirming this.	Memo from the Director, that no such authority was given.
...no person...	The identity of the alleged offender	Passport, driver's licence, pilot licence etc.	Copy of McCool's personal documents.
...shall operate...	That the alleged offender was in fact the operator, pilot in command of the aircraft.	Signed logbook, Witness statement, Statement from the owner of the aircraft	Signed logbook, Witness statement to the effect that Ace was the PIC. Previous log entries directly preceding the current log.
...an aircraft...	That the aircraft was an aircraft.	Type certificate and C of R.	Type certificate and C of R
...under VFR...	That the applicable weather was indeed VFR	Weather reports for the time in Question. ATC strips confirming the time of departure and arrival.	Weather report for December 15, 2002. Tape transcripts of the departure and arrival clearances for AA-ABC.
...A height of 500 feet above the surface.	That the aircraft was less than 500 feet above the surface	A reliable means to determine the aircraft's height at the time of the alleged offence.	Photo and video footage that indicate the relationship of the aircraft to the building and the people on the ground. Construction plan of the building, indicating its height.

- (d) GENERAL

“An aircraft shall not fly in or over the Kingdom of Bahrain territory unless there is in force a Certificate of Airworthiness duly issued or rendered valid under the Regulations of the State in which the aircraft is registered and that any conditions subject to which the certificate was issued or rendered valid are complied with.



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ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
An aircraft...	That the aircraft is an aircraft.	Type Certificate for the aircraft type.	Copy of the Type Certificate
...shall not fly...	That the aircraft did indeed fly.	Witness statements, copy of signed technical log, ATC clearance transcripts	Witness statements, copy of signed technical log, ATC clearance transcripts.
...in or over the Kingdom of Bahrain territory...	That it flew in or over Bahrain	Identifiable photos that show verifiable landmarks. ATC clearance transcripts, Witness statements.	Photos that show the location. ATC transcripts. Witness statements.
...unless there is in force a Certificate of Airworthiness	That it was not in force.	Copy of the C of A, indicating on the expiry date that it was not in force.	Copy of the C of A
...duly issued or rendered valid under the Regulations of the State...	That the C of A had been issued by the State,	Copy of the C of A	Copy of the C of A
...in which the aircraft is registered...	That it applies as the aircraft is registered in the State of Bahrain	C of R	C of R

(e) NEGLIGENT OR RECKLESS OPERATIONS

“No person shall operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
No person shall...	The person's identity	Passport, Residence Visa, driver's licence, pilot licence	Passport, Residence Visa, pilot licence
...operate an aircraft...	That he was the one who operated the aircraft.	Witness statements, photographs, signed technical logbook, Confession.	Witness statement, signed Technical logbook, photos of the aircraft being operated at the time of the offence, ATC tape transcripts
...in a careless...	That he operated the aircraft without regard for the safety of other persons.	That he operated the aircraft not in compliance with normal procedures.	Flying school course curriculum dealing with practice forced approaches.
...or reckless manner...	That he acted wildly impulsive and without care for any possible consequences.	This requires proof that the alleged offender committed the act on the spur of the moment.	Witness statement of the other person, now identified as a passenger) in the aircraft



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...so as to endanger the life or property of another.	That the low over-flight had an element of danger to the people being overflown.	A subjective observation is difficult to prove and depends on the observer' credibility.	Expert's testimony concerning the event. (Inspector)
---	--	--	---

When the Inspector completed the analysis, he had a better picture of what took place, who the guilty person was, and what legislation was actually contravened.

Once he collected all the evidentiary exhibits, the legislative analysis documents and the alleged offender and witness statements, numbered and referenced them. He typed up a list, mentioning each item by assigned reference number in the Case Report. Then he prepared a case report conclusion and recommendation as follows.



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CASE REPORT CONCLUSION

Cessna 172 L, AA-ABC

December 15, 2002, Wonderful

Beach, Bahrain

Investigator, Ahmed Al Rule

On December 15, 2002 the alleged offender, Mr. Ace McCool operated an aircraft, a Cessna 172 L, at or about 10:30 local time, at or near Wonderful Beach, the Kingdom of Bahrain in contravention of the following legislative provisions:

Count 1

That the alleged offender did act as pilot in command of an aircraft without the benefit of having a valid pilot licence. (State CAL/ANTR reference)

Count 2

That the alleged offender did operate an aircraft at a height of less than the legislated 500 feet for the location, where the offence took place. (State CAL/ANTR reference)

Count 3

That the alleged offender did fly a Kingdom of Bahrain registered aircraft without there having been in force, a valid Certificate of Airworthiness (C of A). (State CAL/ANTR reference)

Count 4

That the alleged offender did operate an aircraft in a reckless manner, in that he flew, on an impulsive decision, very low over an assembly of persons, placing the aircraft in a position where there was a chance of striking the persons on the ground with the aircraft. (State CAL/ANTR reference)

Note: Investigation and analysis of the pertinent legislation and evidence collected suggests that it is possible to charge and convict the alleged offender Mr. Ace McCool of all four counts.

During the interview Mr. Mc Cool was evasive and not truthful. Consequently there are no mitigating circumstances that might cause a softening of the recommended sanctions, although charges under the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs are not recommended. This is based upon the opinion that, as this is the alleged offender's first offence, the sanction is recommended to be a combination of an education/punishment nature. The sanctions under the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs are recommended to be reserved for the most notorious re-offenders or the more serious offences.

Recommended sanctions for the four offences are as follows:



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- Count 1 30 day suspension of the alleged offender's Pilot licence.
- Count 2 30 day suspension of the alleged offender's Pilot licence.
- Count 3 45 Day suspension of the alleged offender's Pilot licence.
- Count 4 45 Day suspension of the alleged offender's Pilot licence.

Although all four counts have been proven separately, it is recommended that all counts be combined into a single penalty. Consequently, a five-month suspension of Mr. McCool's pilot licence is recommended.

Respectfully submitted,

Ahmed Al Rule
Investigating Officer / Inspector

Director Recommendation

UNDERSECRETARY DECISION

Attached: List of Exhibits



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CHAPTER 8

DETERRENT ACTION

8.1 INTRODUCTION

8.1.1 General

The most critical decision to be made in the enforcement process is in determining the deterrent action to take when the evidence indicates that a person has violated a provision of the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs. The decision may significantly affect the person's attitude towards compliance and safety in the future. The intent of the procedures in this and other Sections is to promote fairness, firmness and uniformity in the selection of appropriate sanctions.

8.1.2 Objectives of Deterrent Action

The major objectives of deterrent action are:

- (a) Protection of the public and the individual from harm;
- (b) Encouragement for future compliance; and
- (c) Deterrent of others from contravening the legislation.

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

8.1.3 Types of Deterrent Action

There are two types of deterrent actions, judicial and administrative. Judicial action involves the prosecution of an alleged offender in civil court. This is accomplished by the Appropriate Ministry and usually involves contraventions under the various laws. Administrative Action comprise all other deterrent measures taken by the BCAA and is usually applied by the Undersecretary for Civil Aviation Affairs (USCA) or his delegate.

Deterrent action for hybrid offences, those that are dealt with under the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs, shall not be applied in court as well as by administrative action as this would be considered double jeopardy (that is cannot be punished twice).

8.2 ADMINISTRATIVE ACTION

Administrative action may comprise of sanctions taken from the table of recommended sanctions or it may be administered by decision of the Undersecretary for Civil Aviation Affairs (USCA). A subjective judgment needs to be made as to which process to follow. For a first offence a warning letter might be appropriate, whereas an offence conducted twice or more may require a multiple of the recommended sanction or perhaps a revocation of an aviation document. In deciding the degree of deterrent action required, any possible defences or mitigating circumstances should be considered, such as:



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- (a) What was the role of the offender – perpetrator or accomplice?
- (b) Was there any pressure or undue influence exerted by an employer or another employee?
- (c) Were there mitigating circumstances such as weather, improper ATC instructions etc?
- (d) Was there an actual threat to aviation safety?
- (e) Was there any actual harm done?
- (f) Was there carelessness or reckless conduct?
- (g) Was there any premeditation or deliberateness in the offence and/or the attitude of the offender?
- (h) What was the offender's attitude towards future compliance?
- (i) Did the offender have a prior record?
- (j) Is the offender's competence in question?
- (k) What would be the minimum sanction required to achieve compliance?
- (l) Is there an element of punishment required?
- (m) Will public safety be ensured by the application of the sanction?
- (n) Will the sanction act as a deterrent?

In summary, the sanction needs to fit the severity of the offence. It must be applied fairly, consistently and with compassion.

8.3 SELECTION OF APPROPRIATE DETERRENT ACTION

The type of deterrent action permitted in response to an offence depends on the specific offence. To determine which deterrent action is available it is essential to first ascertain whether a particular offence is one of the hybrid offences, summary conviction offences or the designated provisions.

8.3.1 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.



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8.3.2 Hybrid and Summary Conviction Offences

Where a person has contravened a non-designated provision, the BCAA must decide whether to take administrative action by way of suspension or to take judicial action. All alleged contraventions of the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs 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.

8.3.3 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 the regulations relied in part on the fact that the pilot was low flying, the pilot could not also be proceeded against for low flying.

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.

8.4 DETERRENT ACTION - AIR TRANSPORT OPERATORS

8.4.1 General

Different considerations apply regarding deterrent action for contraventions committed by air transport operators than apply to contraventions committed by pilots and others. This is because sanctions imposed in respect of a contravention affect not only the carrier but also the carrier's employees and the public the carrier serves. Safety remains the overriding factor. Deterrent measures must impress upon the carrier that unsafe operation at the risk of public safety will not be tolerated.

8.4.2 Administrative Action

Four types of administrative action which may be taken where there is a contravention of a provision of Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs are:

- (a) oral counselling;



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- (b) a monetary penalty;
- (c) a suspension of an aviation document; or,
- (d) a cancellation of an aviation document.

Suspension or cancellation of an aviation document would be appropriate where the aviation organisation 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.

8.4.3 Judicial Action

Prosecution of an air carrier for a contravention of a non-designated provision is recommended in all cases where, in the opinion of the BCAA, the contravention is such that it would be appropriate to seek a significant fine in court.

8.4.4 Emergency Action

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

- (a) Aircraft Detention 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 the Regulations. The detention shall remain in effect until the unsafe condition is corrected.

- (b) Air Operator Certificate Suspensions for Immediate Threat to Aviation Safety

Where the threat arises from the operations of the carrier (instead of a single aircraft), the BCAA may decide to suspend the Air Operator Certificate under the Regulations. 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 BCAA 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 BCAA of the document to be suspended. The Undersecretary for Civil Aviation (USCA) 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.

8.4.5 Punitive Suspension or Cancellation of an Air Operator Certificate

The authority for cancelling an Air Operator Certificate rests with the Undersecretary for Civil Aviation (USCA).

A punitive suspension of an AOC should only be considered when the carrier has a history of repeat offences (two or more significant offences) and when, in the opinion of the suspending authority other measures (e.g. monetary penalties) would not promote future



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compliance. The suspending authority is responsible for reviewing the factors affecting the choice of sanction before the decision is made to suspend an Air Operator Certificate. The suspending authority should consult with various branches, as appropriate, to discuss:

- (a) the technical accuracy of the evidence and findings;
- (b) the coordination of concurrent regulatory actions, if applicable; and
- (c) the severity of the sanction as a response to the violation;

Once a final decision to suspend has been made, the standard practice is to provide an opportunity for an informal meeting with the carrier. The suspending authority may involve the Director in the meeting with the air carrier representative. The imposition of a punitive cancellation of an AOC should follow the same procedure as that for a suspension.

8.5 SANCTIONS FOR MULTIPLE OR CONTINUING VIOLATIONS

8.5.1 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:

- (a) Administrative Action

For multiple violations of the Designated Provisions, the Show Cause Notice (Appendix A) Shall include Notice of Suspension and / or of Monetary Penalty and 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.

- (b) Prosecution

In the case of a summary conviction offence involving multiple violations, where prosecution is the desirable option, the government shall be advised of BCAA'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.

8.5.2 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 BCAA/Government the following procedures shall apply in the disposition of such cases:



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(a) 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.

(b) Termination of 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 the regulations 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 in addition to any Enforcement action.

8.5.3 Disclosure to Employers

Employers of 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 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 Undersecretary for Civil Aviation Affairs (USCA) will decide if disclosure to the employer is appropriate.

8.5.4 Notification of Detection Source

The BCAA shall ensure that the detection source is advised of the outcome of the case and record this action. The identity of any source should never be divulged as this will discourage persons using the BCAA Voluntary (Confidential) Reporting System.



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CHAPTER 9

ADMINISTRATIVE ACTION

9.1 INTRODUCTION

9.1.1 General

Administrative action comprises all deterrent measures, other than judicial action, taken by the BCAA pursuant to the provisions of the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs. 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 the BCAA are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

9.1.2 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.

(a) Preventive Action

Oral counselling. If a comprehensive investigation is concluded with an oral counselling, that fact is recorded and the file is closed as an NFA.

(b) Administrative Sanctions

(1) Administrative Monetary Penalties

Administrative monetary penalties may be assessed where there has been a contravention of a designated provision. Provisions for the monetary penalty are stipulated in the Law. Monetary penalties must be paid using the methods specified in Appendix B to this document.

(2) Suspension of Aviation Documents

A punitive suspension may be taken in respect of any contravention of a provision of the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs.

9.2 ADMINISTRATIVE ACTION: SELECTION AND PROCESS

9.2.1 General

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 Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs may be taken for different contraventions arising out of the same circumstances, but this is very rare.



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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 BCAA, 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 should be imposed.

9.2.2 Procedures for Administrative Monetary Penalties

When the Director receives a case report from the investigating inspector, he 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.

- (a) The Director shall determine and recommend the amount of the penalty that is appropriate.
- (b) The Director shall complete the Show Cause Notice. 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.
- (c) With the Notice, the Director shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (d) The Director shall serve the Notice on the alleged offender personally, by email, or by registered mail along with the comprehensive investigation / case report. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- (e) Based on the response to the Show Cause Notice and / or nil response as the case may be, the Director shall recommend the final decision (Appendix A) and submit it to Undersecretary for Civil Aviation Affairs (USCA) or the person delegated by the Minister. The final decision 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.
- (f) Undersecretary for Civil Aviation Affairs (USCA) will review the recommendation of respective Director. If he is satisfied with the recommendation, he will sign and issue the final decision.
- (g) The monetary penalty approved may be paid by one of the acceptable methods specified in Appendix B. An official receipt will be issued.
- (h) Should the monetary penalty not paid by the due date (a maximum of 60 days not counting the day the Notice of final decision is served), the Director shall bring this to the knowledge of the USCA within fifteen days following the due date, for further directives to remind the offender and / or suitable action as deemed necessary.

9.2.3 Suspension Procedure

The suspension of an aviation document for contravention of a provision of the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs, is the most severe administrative sanction the Director can impose. Suspension action is taken where a monetary penalty would be an inadequate deterrent or continued use of the document would create a



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hazard to aviation safety and judicial action is either not available or inappropriate.

Where an aviation document has been suspended, the person to whom it was issued shall return it to the BCAA and shall not exercise the privileges attached to that document until it is restored by the BCAA. 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.

- (a) The Director shall determine and recommend the appropriate duration of suspension by considering the recommendation of the investigator.
- (b) The Director shall complete the Notice of Suspension and send it to Undersecretary for Civil Aviation Affairs (USCA) for approval. 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.
- (c) With the Notice, the Director shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (d) The Director shall serve the Notice on the alleged offender personally or send it by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- (e) Where the alleged offender requests a review, the Director shall not oppose the application unless it appears that a threat to aviation safety would result.
- (f) Where the alleged offender does not ask for a review within thirty 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. Prior to laying charges, the document holder should be contacted to confirm the situation.

9.2.4 Revocation/Suspension of a Certificate

Revocation/Suspension 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. To cancel a document for enforcement reasons must be actioned by the Undersecretary for Civil Aviation Affairs (USCA).

9.2.5 Informal Meeting

The informal meeting offers the alleged offender who has received a Show Cause Notice, the opportunity to discuss the sanction. Keeping in mind that the objective of the sanction is to obtain future compliance and provide deterrence to others, the Undersecretary for Civil Aviation Affairs (USCA) may 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 Director obtains the assurance, during the discussion, that the alleged offender will comply in the future.



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The Director may conduct informal meetings with alleged offenders in person, or other electronic medium, or through written submissions. During an informal meeting, the Director, or his delegate, 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 fifteen days from the date the Notice is served or sent to accept the offer.



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CHAPTER 10

PROCESS CONTROL

10.1 PROCESS CONTROL

10.1.1 Guidelines

The process control is as follows:

- (a) The policies are mandatory and the resulting enforcement process of each file shall be verified prior to a sanction being applied.
- (b) Each person responsible for the process shall verify that the process is complete in all respect in accordance with this manual and results concluded.
 - (1) The investigating Inspectors ensures that the process has taken care of all elements of investigation prior to recommendation.
 - (2) If the investigation is performed by a team of designated persons / inspectors, the case will then be reviewed by the team leader to ensure that all necessary steps were complete, the correct legislative provisions were chosen and that the case has legal standing and its process completion before recommending to the Director.
 - (3) The Director conducts the review and agrees with the recommendation(s). Based on the recommendation, the sanction is prepared for submission to the Under Secretary to the Civil Aviation Affairs.
- (c) After ensuring the completion of the process the file with sanctions applied or file closed with no further action, moved to the records section for records keeping.

10.1.2 Forms

The forms referred in Appendix A should be used for the process control verification, making sure that all the element of enforcement is made available against any given case of enforcement.



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CHAPTER 11

PENALTIES

11.1 GENERAL

The penalties, which may be used by the Director when imposing a sanction are usually discretionary. Each case must be judged on its own merits and be a contravention of the Civil Aviation Law, Executive Regulations, Civil Aviation Regulations and ANTRs. This step is crucial in the event the decision is reviewed by the Government or appealed against. To that effect, any penalties should be justified to ensure uniformity in the levying of sanctions.

Note: Care must be taken to ensure that penalty provisions are applied as stated in the applicable legislation. In this regard, definitions of offence as detailed in Article 122 & article 124 of “Civil Aviation Law” will be applicable.

Any deviation from the recommended sanction, given the circumstances of the case, must be justified based on the following factors:

- (a) The penalty may be moderated in light of mitigating circumstances, (events which were inadvertently caused by misunderstanding, misconception or an honest mistake).
- (b) The highest category of document related to the contravention would be the document suspended as a sanction for the contravention.
- (c) 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 BCAA.)
- (d) Penalties for all subsequent contraventions should be raised from previous penalties.

11.2 FACTORS AFFECTING THE CHOICE OF PENALTY

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



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



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11.3 NON-DESIGNATED OFFENCES

Typical violations of the following offences could be handled by prosecution.

To:

- (1) walk, stand, park a vehicle or cause an obstruction at an aerodrome
- (2) tow an aircraft on the maneuvering area without displaying lights
- (3) park an aircraft on the maneuvering area without it being lighted as prescribed
- (4) cause an obstruction on surface of water aerodrome
- (5) knowingly remove, deface, extinguish, etc. any signal/marker etc. used for the navigation of aircraft
- (6) knowingly display a marker/signal/light, etc. to cause someone to believe the place is an aerodrome
- (7) knowingly display a marker/signal/light etc. likely to be hazardous to aircraft safety
- (8) allow an animal to be unrestrained within the boundaries of an aerodrome
- (9) discharge a firearm at an aerodrome
- (10) smoke/display an open flame at an aerodrome without authorization
- (11) operate specified aerodromes without an airport certificate
- (12) use an airport contrary to airport certificate
- (13) walk, stand, park a vehicle or cause an obstruction at an airport
- (14) cause an obstruction on surface of water airport
- (15) tow an aircraft on the maneuvering area of an airport without displaying lights
- (16) park an aircraft on the maneuvering area of an airport without it being lighted as prescribed
- (17) knowingly remove, deface, extinguish, etc. any signal/marker etc. used for the navigation of aircraft
- (18) knowingly display a marker/signal/light etc. likely to be hazardous to aircraft safety
- (19) allow an animal to be unrestrained within the boundaries of an airport
- (20) consume alcoholic beverages that are not provided by operator
- (21) failure of a passenger to comply with instructions of crew member



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- (22) smoke during t/o, landing or as directed
- (23) smoke in lavatory
- (24) tamper with smoke detectors
- (25) use portable electronic devices when not authorized
- (26) operate a non-piloted aircraft without /not in accordance with a special flight operations certificate
- (27) fly model aircraft/kites, launch model rockets into cloud or in a manner likely to endanger aviation safety
- (28) failure of responsible persons to report overdue aircraft and provide all pertinent information to the flight.



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Appendix A

LIST OF FORMS & CHECKLIST

Form No.	Title
ALD-OF-ASR-F141	Violation Detection Notice
ALD-OF-ASR-F142	Statement Form
ALD-OF-ASR-F143	Show Cause Notice
ALD-OF-ASR-F144	Final Decision
ALD-OF-ASR-F145	File Completion and Control



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Appendix B

METHODS OF PAYMENT

Payment Terms:

Payment is due 60 days after date of the final decision.

Methods of Payment:

Local Payments.

Please make your cheque payable to “Civil Aviation Affairs” and post to:
Ministry of Transportation
P. O. Box 10325
Kingdom of Bahrain.

Please quote our invoice reference number when making payment.

Overseas Payments.

Please make payments by:

- 1) **Bank Draft in Bahraini Dinars or US Dollars** payable to Civil Aviation Affairs, Bahrain and post to:

Ministry of Transportation
P. O. Box 10325
Kingdom of Bahrain.

Please quote our invoice number when making payment.

When payment is made in US Dollars, please use the exchange conversion rate of **BHD 1 to US \$2.70.**

- 2) **Direct Bank Credit in Bahraini Dinars or US Dollars:**

- ❖ Please made direct credits in Bahraini Dinars to our Bank -

National Bank of Bahrain
P. O. Box 106
Manama – Bahrain
Account Name : Civil Aviation Affairs
Account Number : 88200604
Swift Reference : NBOBBHBM
IBAN: BH54NBOB00000088200604

- ❖ Please make direct credits in US \$ to our Bank -

National Bank of Bahrain
P. O. Box 106
Manama – Bahrain
Account Name : Civil Aviation Affairs
Account Number : 48009946
Swift Reference : NBOBBHBM
IBAN: BH90NBOB00000048009946

Using exchange conversion rate of BHD 1 to US \$2.70

When paying by direct credit, please instruct your bank to refer to “**Ministry of Transportation**” and quote our invoices numbers.

Please also send to us by email or post, notification of your payment by Direct Credit and quote the invoices numbers paid.

Please Contact Us on: +973 17337724 / +973 17337727 Email: debt.collection@mtt.gov.bh