

Civil Aviation (Reporting, Analysis and Follow-up of Occurrences) Order 2019

1. Title

This Order is the Civil Aviation (Reporting, Analysis and Follow-up of Occurrences) Order 2019.

2. Commencement

If approved by Tynwald, this Order comes into operation on 1 January 2020.

3. Interpretation

(1) In this Order:

“Dangerous goods accident” means an occurrence associated with and related to the transport of dangerous goods by air which results in fatal or serious injury to a person or major property or environmental damage;

“Dangerous Goods by Air Order” means the Civil Aviation (Safe Transport of Dangerous Goods by Air) Order 2019;

“Dangerous goods incident” means an occurrence (other than a dangerous goods accident) that -

(a) is associated with and related to the transport of dangerous goods by air, not necessarily occurring on board an aircraft, which results in injury to a person, property or environmental damage, fire, breakage, spillage, leakage of fluid or radiation or other evidence that the integrity of the packaging has not been maintained; or

(b) relates to the transport of dangerous goods and which seriously jeopardizes the aircraft or its occupants;

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

“occurrence” means any safety-related event which endangers or which, if not corrected or addressed, could endanger an aircraft, its occupants or any other person and includes in particular an accident or serious incident;

“remote pilot”, in relation to a small unmanned aircraft, is an individual who -

(a) operates the flight controls of the small unmanned aircraft by manual use of remote controls, or

(b) when the small unmanned aircraft is flying automatically, monitors its course and is able to intervene and change its course by operating its flight controls; and

“reporter” means a person who reports an occurrence or other safety-related information pursuant to this Order.

(2) A word or expression which is used in this Order and which is defined in the Civil Aviation (Miscellaneous Provisions) Order 2019¹ or Regulation (EU) No 996/2010² has the same meaning given in the relevant Order or Regulation.

4. Amendment of the Civil Aviation (Subordinate Legislation) (Application) Order 2006

In Schedule 2 to the Civil Aviation (Subordinate Legislation) (Application) Order 2006³ –

(a) in Part 10 -

(i) substitute paragraph 9 with the following –

“9. Omit in its entirety the Part numbered “5” and which bears the heading “Mandatory Reporting”.”; and

(ii) omit paragraph 10;

(b) in Part 18 substitute paragraph 5 with the following –

“5. In regulation 9(2)(a)(iii), for “article 57 of the Air Navigation (Isle of Man) Order 2007” substitute “the Civil Aviation (Reporting, Analysis and Follow-up of Occurrences) Order 2019⁴”.

5. Applicability

This Order shall apply to occurrences and safety related information in regard to -

(a) civil aviation activities in the Isle of Man;

(b) Isle of Man registered aircraft wherever they may be.

6. Objective of occurrence reporting

The sole objective of occurrence reporting which is undertaken pursuant to this Order is the prevention of accidents and incidents, without the apportionment of blame or liability.

7. Mandatory reporting

(1) The Department must establish a mandatory safety reporting scheme for occurrences which represent a significant risk to aviation safety and which fall into the categories listed in Schedule 1.

¹ SD xxxx/xxxx

² Regulation (EU) No996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation as applied to the Isle of Man by SD 2019/0267

³ As applied to the Isle of Man by the Civil Aviation (Subordinate Legislation) (Application) Order 2006 SD 909/06

⁴ SD xxxx/xxxx

(2) The persons referred to in Schedule 2 must report such an occurrence through the reporting system within 72 hours of becoming aware of the occurrence or such longer period as the Department may in a particular case permit.

8. Occurrence analysis and follow-up

(1) A report made under article 7 must be investigated and the results submitted to the Department within 30 days of the occurrence or such longer period as the Department may in a particular case permit.

(2) An employer of a person listed in Schedule 2 must establish procedures for the investigation of a report made under article 7.

9. Voluntary reporting

(1) The Department and employers of persons listed in Schedule 2 must establish a voluntary safety reporting scheme to collect safety data and safety information not captured by the mandatory safety reporting scheme in accordance with article 7.

(2) Employers must forward safety data and safety information collected under paragraph (1) to the Department upon request within 14 days or such longer period as the Department may in a particular case permit.

10. Collection, storage and protection of safety related information by the Department

(1) The Department must take such measures as it deems necessary to protect all safety related information obtained by it under the provisions of this Order.

(2) Subject to article 12, the Department must only use safety related information for the purposes of maintaining or improving safety.

(3) The Department may use safety related information to take any preventative, corrective or remedial action that is necessary to maintain or improve aviation safety including revocation, suspension and variation of certificates, licences and other documents.

11. Collection, storage and protection of safety related information by an employer

(1) An employer of a person listed in Schedule 2 must designate one or more persons to be responsible for the collection, evaluation, processing, analysis, storage and protection of details of occurrences reported pursuant to articles 7 and 9.

(2) The employer must take such measures as are deemed necessary to protect all safety related information obtained by them under the provisions of this Order.

(3) Subject to article 12, an employer must only use safety related information for the purposes of maintaining or improving safety.

(4) An employer may use safety related information to take any preventative, corrective or remedial action that is necessary to maintain or improve aviation safety including withdrawing persons from operational duties.

12. Release of safety related information

(1) Where the Department determines that a principle of exception as set out in paragraph (2) applies, safety related information may be:

- (a) used in disciplinary, civil and criminal proceedings against employees, operational personnel or organizations; or
- (b) disclosed to the public.

(2) The Department may determine that a principle of exception applies when there is evidence that there are facts and circumstances reasonably indicating that the occurrence may have been caused by an act or omission considered to be conduct constituting gross negligence, willful misconduct or criminal activity; and after reviewing the safety data or safety related information it is considered that its release is necessary for –

- (a) the proper administration of justice, or
- (b) maintaining or improving safety,

and that the benefits of its release outweigh the adverse domestic and international impact such release is likely to have on the future collection and availability of safety data and safety related information.

(3) An employer of a person listed in Schedule 2 may only disclose safety related information in accordance with an approval issued by the Department and subject to any conditions to which the approval has been granted.

13. Freedom of Information

In accordance with section 27 of the Freedom of Information Act 2015 no safety related or other information collected pursuant to this Order must be disclosed under the provisions of that Act.

14. Safety related information sharing and exchange

- (1) If the Department, in the analysis of the safety related information, identifies safety information considered to be of interest to other States, it must forward such safety information to them as soon as possible.
- (2) Prior to sharing information pursuant to paragraph (1), the Department must agree with the State concerned the level of protection and conditions on which the safety information will be shared.
- (3) The Air Accidents Investigation Branch must have full access to safety data stored by the Department for the purpose of discharging its responsibilities pursuant to the Civil Aviation (Investigation of Air Accidents and Incidents) Order 2019.

15. Exemptions

The Department may exempt from any of the provisions of this Order subject to such conditions as it thinks fit.

16. False reports

A person must not make a report under this Order if the person knows or has reason to believe that the report is false in a material particular.

17. Offences and penalties

(1) Subject to paragraphs (2) and (3), failure to comply with any of the requirements imposed –

- (a) by virtue of articles 8(1) or 9(3) is an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale;
- (b) by virtue of article 7(2), 11 or 16 an offence and liable –
 - (i) on summary conviction, to a fine not exceeding level 5 on the standard scale;
 - (ii) on conviction on information, to a fine or to custody for a term not exceeding 2 years, or to both;

(2) A person will not be taken to have contravened a provision specified in paragraph (1) if the person proves that the contravention occurred without the person's consent or connivance and that the person exercised all due diligence to prevent the contravention.

(3) If it is proved that an act or omission that would otherwise have been a contravention of a provision specified in paragraph (1) was due to any cause not avoidable by the exercise of reasonable care, the act or omission is to be taken not to be a contravention of the provision.

Schedule 1 article 7(1)

Mandatory Reporting Categories

- (1) Occurrences related to the operation of the aircraft, such as:
 - (a) collision-related occurrences;
 - (b) take-off and landing related occurrences;
 - (c) fuel-related occurrences;
 - (d) in-flight occurrences;
 - (e) communication-related occurrences;
 - (f) occurrences related to injury, emergencies and other critical situations;
 - (g) crew incapacitation and other crew related occurrences;
 - (h) meteorological conditions or security-related occurrences;
 - (i) actual or potential wildlife strikes.

- (2) Occurrences related to technical conditions, maintenance and repair of aircraft, such as:
 - (a) structural defects;
 - (b) system malfunctions;
 - (c) maintenance and repair problems;
 - (d) propulsion problems (including engines, propellers and rotor systems) and auxiliary power unit problems.

- (3) Occurrences related to air navigation services and facilities, such as:
 - (a) collisions, near collisions or potential for collisions;
 - (b) specific occurrences of air traffic management and air navigation services (ATM/ANS);
 - (c) ATM/ANS operational occurrences.

(4) Occurrences related to aerodromes and ground services, such as:

- (a) occurrences related to aerodrome activities and facilities;
- (b) occurrences related to handling of passengers, baggage, mail and cargo;
- (c) occurrences related to aircraft ground handling and related services;
- (d) wildlife/habitat management.

(5) Any dangerous goods incident, including:

- (a) the discovery of undeclared or misdirected dangerous good in mail or cargo;
- (b) dangerous goods having been carried when not loaded, segregated, separated or secured in accordance with the Dangerous Goods by Air Order;
- (c) dangerous goods having been carried without information being provided to the pilot in command in accordance with the Dangerous Goods by Air Order;
- (d) the discovery of dangerous goods not permitted by the Dangerous Goods by Air Order either in the baggage or on the person of passengers or crew members.

Schedule 2 article 7(2)

Persons to report an occurrence

The following persons must report an occurrence under article 7 -

- (a) the pilot in command, or in cases where the pilot in command is unable to report the occurrence, any other crew member next in the chain of command of an aircraft registered in the Isle of Man wherever it may be;
- (b) a person who signs a certificate of release to service for an aircraft registered in the Isle of Man;
- (c) a person who performs a function in the Isle of Man as a staff member of an air traffic service provider entrusted with responsibilities related to air navigation services or as a flight information service officer;
- (d) a person who performs a function connected with the safety management of Isle of Man Airport;
- (e) a person employed by or at Isle of Man Airport and performs a function relating to the operation of the aerodrome;
- (f) a person who performs a function connected with the installation, modification, maintenance, repair, overhaul, flight-checking or inspection of air traffic service equipment approved by the Department;
- (g) the remote pilot of an SUA;
- (h) a person who is involved with the carriage of dangerous goods by air.

Explanatory note

This Order makes provision for persons involved in aviation activity in the Isle of Man and with Isle of Man registered aircraft wherever they may be in the world to report occurrences which pose a significant risk to aviation safety to the Department.

Article 4 amends the Civil Aviation (Subordinate Legislation) (Application) Order 2006 to amend references to occurrence reporting.

Article 5 ensures that the order is applicable to civil aviation in the Isle of Man and Isle of Man registered aircraft wherever they may be.

Article 6 provides that the sole objective of occurrence reporting is the prevention of accidents and incidents, without the apportionment of blame or liability.

Article 7 requires the Department to maintain a system to collect details of reported occurrences and their subsequent investigations and that such reports must be made within 72 hours of the reporter becoming aware of the occurrence. This will ensure that the Department is able to take any immediate corrective actions where required. Article 7 introduces Schedule 1 which lists the categories of reportable occurrences and Schedule 2 which lists the persons who are required to report.

Article 8 requires that occurrences reported under this Order are investigated within 30 days and the results be submitted to the Department to ensure appropriate action is taken to prevent similar occurrences from happening in the future. Employers of persons required to report occurrences under this order must establish procedures to conduct such a safety investigation.

Article 9 requires the Department to establish a system to collect reports and safety data submitted other than in accordance with Article 7. Employers of persons required to report occurrences under Article 7 must establish their own voluntary reporting system and must provide data collected through it to the Department upon request and within 14 days.

Article 10 requires the Department to protect safety related information obtained under the provisions of this order from misuse, but ensures that it may be used for improving safety and taking remedial action.

Article 11 requires an organisation employing persons who may be required to make reports under this Order to ensure that the details of any such reports are used only for maintaining safety.

Article 12 provides that safety data collected through the reporting systems are only released for maintaining or improving safety or the proper administration of justice. Organisations employing persons who may be required to make reports under this Order must obtain the approval of the Department before using data so collected for purposes other than maintaining safety.

Article 13 exempts the Department and any other relevant organisation from disclosing safety data collected under this Order in response to a Freedom of Information request.

Article 14 provides for the Department to forward details to another safety regulator where appropriate and for the Department to provide the Air Accidents Investigation Branch full access to safety data to allow them to comply with their obligations under the Civil Aviation (Investigation of Air Accidents and Incidents) Order 2019 (SD2019/0267).

Article 15 enables the Department to exempt from the provisions of this Order as it sees fit.

Article 16 provides that a person must not make a report if they know or have reason to believe that the report is false in a material particular.

Article 17 provides for the failure to comply with articles under the Order and sets out the penalties.