REPUBLIC OF KENYA

MINISTRY OF ROADS AND TRANPORT

REGULATORY IMPACT ASSESSMENT FOR THE CIVIL AVIATION (LICENSING OF AIR SERVICES) REGULATIONS 2024

NOVEMBER, 2024

This Regulatory Impact Assessment (RIA) has been prepared by the Cabinet Secretary - Ministry of Roads and Transport

Section 6 and 7 of the Statutory Instruments Act, Cap 2A

TABLE OF CONTENTS

CHAPTER ONE: INTRODUCTION

1.1 Regulatory Authority and the Legal Mandate

Kenya Civil Aviation Authority (KCAA) is established under the Civil Aviation Act Cap 394 (the Act) with the primary functions being Regulation and Oversight of Aviation Safety and Security; Economic Regulation and Oversight of air services for sustainable development of Civil Aviation; Provision of Air Navigation Services; and Training of aviation personnel as guided under the provisions of the Convention on International Civil Aviation, related International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs), the Act, and the Civil Aviation Regulations.

The object and purpose for which the Authority was established are, to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act.

Section 82 (1) of the Civil Aviation Act, 2013 empowers the Cabinet Secretary, at the time being responsible for matters relating to civil aviation, to make Regulations to give effect to and for the better carrying out of the objects and purposes of the Act, and to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

Further, Section 82(2) of the Act is more specific and provides that Without prejudice to the generality of Section 82(1), the regulations developed are for:

- (a) regulating, by establishing licensing authorities and a system of licensing and otherwise, the use of aircraft (i) for commercial transport; and (ii) for aerial work;
- (b) providing for the manner and conditions of issue, validation, renewal, extension or variation of any licence required in regulations and for the form, custody, production, cancellation, suspension, endorsement and surrender of such;
- (c) providing for the conditions under which and in particular the aerodromes to or from which, aircraft entering or leaving Kenya may fly and the conditions under which aircraft may fly from one part of Kenya to another;
- (d) providing for the conditions under which passenger and cargo may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- (e) providing for consumer protection and any other related matter;
- (f) requiring any person who owns an aircraft or who carries on the business of operating aircraft for hire or reward to furnish to such authorities as may be prescribed such information relating to the aircraft and the use thereof, the crew, the mail, the passengers and the cargo carried, as may be prescribed;
- (g) controlling and regulating the selling of charters, booking of accommodation and selling of tickets for persons or cargo on flights in any part of the world;

1.2 Requirements of the Statutory Instruments Act

The Statutory Instruments Act, Cap 2A is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a RIA about the instrument. The Act further sets out certain key elements that must be contained in the RIA namely:

(a) a statement of the objectives of the proposed legislation and the reasons;
(b) a statement explaining the effect of the proposed legislation;
(c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
(d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
(e) the reasons why the other means are not appropriate.

Section 5 of the Act requires a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content. The Cabinet Secretary now undertakes public consultations and prepares this Regulatory Impact Assessment (RIA) in partial fulfilment of the requirements of the Statutory Instruments Act.

1.3 What is a Regulatory Impact Assessment (RIA)?

RIA is a systemic approach of critically assessing the positive and negative effects of proposed or existing regulations and non-regulatory alternatives. It is an analytical report to assist decision makers to arrive at an informed policy decision.

As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory option provides the greatest net public benefit.

Typically, the structure of a RIA should contain the following elements: title of the proposal, the objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts distribution, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

RIA promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee. From a societal viewpoint, RIA confirms whether a proposed regulation is welfare enhancing, in that, the benefits will surpass costs.

RIA therefore has an overall objective of not only improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, but also integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental Authority.

CHAPTER TWO: PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS

2.1 Scope of the proposed Regulations

The Civil Aviation (Licensing of Air Services) Regulations applies to a person who intends to provide air services in Kenya; intends to renew a licence for an existing air service; intends to vary the terms or conditions specified on the licence and to provide a framework for economic regulation of air transport and promotion of fair trading practices in the air transport industry in Kenya.

2.2 Objective of the proposed regulations

The proposed Regulations aim to enumerate provisions to give effect to the Licensing of Air Services, the economic regulation of civil aviation and performance of economic oversight of air services, protecting consumer rights, environment and ensuring fair trading practices as stipulated in Section; 7(1)(a), (i) and (y) of the Civil Aviation Act respectively. Specifically, the implementation of the Civil Aviation (Licensing of Air Services) Regulations is intended to:

(a) provide the requirements for licensing of internal and international air services;
(b) specify the categories and types of air services;
(c) specify the categories of aircraft intended to be used for the operations;
(d) provide guidelines for assessment of financial fitness of new applicants for air service licence or existing air carriers;
(e) provide guidelines on what constitutes fair competition between undertakings;
(f) provide guidelines for approval of commercial arrangements between

Airlines

2.3 An Overview of the proposed Regulations

The current Regulations were gazetted in 2018 to address the following regulatory issues:

Part I: Preliminary Provisions – Citation and interpretation of the Regulations

Part II: Licensing of internal air services – Application procedure for a license for domestic air services; issuance of a license; additional requirements for scheduled services; and conditions attached to a license

Part III: Licensing of international air services - Application procedure for a license for international air services; issuance of a license; issuance of an operating authorization; additional requirements for scheduled services; and conditions attached to a license

Part IV: General provisions relating to licenses – Additional conditions for application for a license; public hearing for license applications; procedure for revocation, variation or suspension of a license; short term licenses; temporary licenses; filing of monthly returns; aircraft leasing; and aircraft insurance.

Part V: Franchising – Application for franchise approval; conditions for franchise approval; and revocation, variation or suspension of franchise approval.

Part VI: Appeals from decisions of the Authority – Right to appeal; prohibited agreements, decisions and practices; state aid; tariffs; abuse of dominant position; and cooperation and coordination on competition.

Part VII: Offenses and penalties – Penalties; penalty for false information; presumption in certain cases; and general penalty.

Part VIII: Miscellaneous – Delegation of powers by Director General; appointment of air transport officers; and procedure on detention or recall of aircraft.

Part IX: Revocation, savings and transactional provisions.

Schedules – Categories of air services; particulars to be furnished in connection with an application for a license; categories of aircraft; information for assessment of financial fitness of new applicants for license and existing carriers; format of a business plan; particulars of applicant to be published; particulars on decisions to be published; particulars to be provided in monthly returns; and information to be disclosed for franchises.

2.4 Salient features of the proposed amendments

The Salient features of the proposed amendments to the Civil Aviation (Licensing of Air Services) Regulations are as follows:

(a) Citation and interpretation to refine some of the definitions for clarity.
(b) Licensing of internal air services to delete a suppressive provision.
(c) Licensing of international air services to delete a suppressive provision.
(d) General provisions relating to licenses to remove lapse of license after 6 months, delete requirement to pay for reasons for refusal to issue a license, and increase the duration of wet lease approvals.
(e) Offenses and penalties to prohibit the advertising of air services without an air service license
(f) Schedules to rename an existing license category in line with international best practice i.e. air ambulance service.

CHAPTER THREE: BACKGROUND AND CONTEXT

3.1 Policy Background

3.1.1 International

(a) Sustainable Development Goals

The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. Goal 9 of the SDGs advocates for building resilient infrastructure, promoting inclusive and sustainable industrialization and foste ring innovation. Kenya intends to provide access to safe, affordable, accessible and sustainable *transport* systems for all, improving road safety, notably by expanding public *transport* by 2030.

(b) Convention of International Civil Aviation (Chicago Convention)

Kenya, by virtue of Articles 2 (5) and (6) of the Constitution has ratified and become part of the international participants in the civil aviation space. The International Civil Aviation Authority (ICAO) was established as a specialized United Nations (UN) agency under the Convention of International Civil Aviation (Chicago Convention) which helps 193 States that are signatories to the Chicago Convention to cooperate and share their air transport markets to their mutual benefit. To achieve this, ICAO has provided for the establishment of Policies and Guidelines on Economic Regulation of International Air Transport by States.

3.1.2 Regional

Regionally, Kenya is a member of the African Civil Aviation Commission (AFCAC) which is a specialized body of the African Union (AU) whose mandate is to create a safe, secure, efficient, and sustainable civil aviation industry across Africa that propels development through furthering connectivity. Under these regional arrangements and the aspiration to ensure that the regional air transport industry is appropriately managed, Kenya is obliged to issue these regulations to fulfill the regional obligations to a safe, secure and economically viable air transport system.

3.1.3 Domestic

(a) Kenya vision 2030

Kenya Vision 2030 is a nationwide multi-sectorial document that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement. The 2030 Vision aspires for a country firmly interconnected through a network of roads, railways, ports, air, water and sanitation facilities, and telecommunications. The expansion, modernization and management of the aviation sector continues to enhance air transport safety, security, and connectivity across the country and beyond. Civil aviation is a critical catalyst for global and national development. Air transport in Kenya has continued to grow and has contributed to job creation and increased interaction and trade with other countries. As part of the implantation of the Vision 2030, the Kenya Kwanza administration adopted the Bottom-Up Economic Transformation

Agenda (BETA) that will be implemented over the next five years. The agenda is built on six main pillars, being implemented through five (5) MTP IV sectors that include Infrastructure. One of the aims under infrastructure sector is to enhance transport connectivity and the provisions of the regulations are meant to institutionalize a civil aviation regulatory and oversight framework that promotes a sustainable safe and secure air transport system in Kenya.

(b) Constitution of Kenya 2010

The Constitution recognizes civil aviation as one of the functions under the National Government in the fourth schedule. Chapter 4 of the Constitution provides for the Bill of Rights. Article 46 provides for consumer protection where it applies to goods and services offered by public entities or private persons. Aviation Consumers have rights for services of reasonable quality; information necessary for them to get full benefit from the services; and protection of their economic interests. Chapter 6 of the Constitution provides for leadership and integrity including the conduct of state officers and public officers. Employees and officers of the Authority are public officers hence they are bound by the principles of Chapter 6 of the Constitution. The regulations have largely provided for standardized ways of provision of quality services, information to be used by its consumers for protection of their economic interest, data protection issues, access to information while maintaining technical infrastructure within the aviation sector. Article 94 (6) of the Constitution gives parliament the power to delegate its legislative authority to a State organ, State officer or person to make provision having the force of law in Kenya.

(c) Kenya Aviation Policy

The Policy aims to foster the growth of aviation business in Kenya to support job creation by positioning Kenya as a recognized regional leader in aviation; maximize the contribution of the aviation sector to Kenya's economic growth and development; and enhance Kenya's connectivity at a national and international level by ensuring safe, secure and competitive access which is responsive to the needs of businesses, tourism and the population. The Policy covers the entire aviation sector in Kenya including key air transport challenges related to regulatory framework, safety, security, environmental aspects, economic regulation, institutional framework, air transport market and stakeholders, air transport infrastructure including planning, development, operation, and management, air transport personnel, and air transport statistics.

(d) Civil Aviation Act

The Civil Aviation Act Cap 394 was enacted to provide for the control, regulation and orderly development of civil aviation in Kenya; and for connected purposes. Section 4 of the Act provides that the provisions of the Act and regulations made thereunder unless expressly excluded shall apply to: aerodromes used for civil aviation in Kenya; air services established or operating in Kenya; any aircraft registered by the Authority; any foreign aircraft within the Kenya territory; aviation personnel and training schools certified by the Authority; enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft and aircraft parts or components; and air navigation facilities and services in Kenya. Section 82 provides for the Regulations that can be made by the Cabinet Secretary responsible for aviation matters to give effect to the Act and for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention on aviation ratified by Kenya. The draft Civil Aviation (Licensing of Air Services) Regulations, 2024 have been developed under section 82 of the Civil Aviation Act.

(e) Statutory Instruments Act Cap 2A

This Act provides rules for the making and revocation of Statutory Instruments made directly or indirectly under any Act of Parliament or other written legislation. The object of this Act is to provide a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments by:

(a) requiring regulation-making authorities to undertake appropriate consultation before making Statutory Instruments;
(b) requiring high standards in the drafting of Statutory Instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;
(c) improving public access to Statutory Instruments;
(d) establishing improved mechanisms for parliamentary scrutiny of Statutory Instruments; and
(e) establishing mechanisms to ensure that Statutory Instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed.

The Act also makes provision for the making of regulatory impact statements under section 6 as well as contents of the regulatory impact statement under section 7.

3.2 International Context

The Convention on International Civil Aviation, which, has been ratified by Kenya established the International Civil Aviation Organization (ICAO) with a mandate to support, coordinate and help countries to diplomatically and technically realize a uniquely rapid and dependable network of global air mobility, connecting families, cultures, and businesses all over the world, and promoting sustainable growth and socio-economic prosperity wherever aircraft fly.

As a global forum of States for international civil aviation, ICAO develops policies and Standards, undertakes compliance audits, performs studies and analyses, helps and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.

Article 37 of the Convention on International Civil Aviation provides for Adoption of international standards and procedures requiring each contracting State undertaking to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

The International Civil Aviation Organization adopts and amends international standards and recommended practices and procedures dealing with various aspects of air navigation and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Further, Article 12 of the Convention requires that each contracting State undertakes to adopt measures to ensure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable.

Internationally, each of the 193 contracting States has, in compliance with their national commitments and obligations under the Convention, established national civil aviation regulations with the objective of governing the aviation industry in their jurisdiction.

Article 12 of the Convention relating to scheduled air services provides that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

The lack of an appropriate set of regulations in one contracting state jeopardizes the safety, security and economic status of international air navigation. The Civil Aviation (Licensing of Air Services) Regulations 2024 are therefore proposed to ensure fulfilment of state obligation and alignment of the Kenyan aviation system with international requirements and allow Kenya effectively to explore the potential economic and geopolitical benefits of participating in international air navigation.

3.3 Domestic Context

The Kenya Civil Aviation Authority is established under the Civil Aviation Act with the object and purpose for which the Authority as established shall be, to economically and efficiently plan, develop and manage civil aviation, regulate and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act. Further The Civil Aviation Act require that the Cabinet Secretary shall make regulations to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

The Civil Aviation (Licensing of Air Services) Regulations 2024 enable KCAA to effectively discharge its mandate by establishing operational standards that ensure that the aviation system in Kenya is aligned to the standards established internationally and applicable globally.

The Civil Aviation (Licensing of Air Services) Regulations 2024 therefore are issued in fulfilment of the obligations set forth in the Civil Aviation Act and in support of the mandate of KCAA.

CHAPTER FOUR: EVALUATION OF THE PROBLEM

The current Licensing of Air Services Regulations were gazetted vide the legal notice number 167 of 2018. Given the global trends and the dynamic nature of air transport industry, the Regulations require to be updated to accommodate the emerging trends and the current needs of the industry with a view to improving air connectivity, increasing consumer's benefits and choices and creating more competitive business opportunities in the marketplace.

(a) Sustainability of Air Transport in Kenya

One of the strategic objectives of the Authority is to establish mechanisms for an efficient, sustainable and competitive air transport industry. In order to achieve this objective, the Authority ensures continuous development, review and implementation of Regulations for compliance.

(i) International Obligation

The air transport industry is governed by a system of global regulatory agencies, laws, and regulations. The Authority ensures that the development, review and harmonization of regulations is undertaken in accordance with the ICAO guidelines and policies on the Economic Regulation of International Air Transport. This is achieved by working closely with ICAO at the global level, African Civil Aviation Commission (AFCAC) at the continental level and various aviation agencies within the East African Community. Aligning the regulations with the global best practices is intended to facilitate promotion of air connectivity amongst several city pairs and countries leading to reduction in travel time and cost for the consumers of air transport services.

(ii) Operational rights to other jurisdictions

Airlines access air transport markets of other countries through Bilateral or Multilateral Air Service Agreements (BASAs/MASAs) that States sign with other. Kenya has signed Air Service Agreements (ASAs) with several States thereby allowing our local airlines to access international air transport markets. The Regulations provide for requirements to be met by Airlines operating under Air Service Agreements prior to operating into Kenya. The said requirements are updated from time to time through the review of Regulations to make them current and in line with international air transport practices.

(iii) Reduction of Cost of Doing Business

The current Regulations provide for payment of the same amount of cost for services by airlines regardless of their size and nature of operations. The reviewed Regulations is seeking to ensure airlines pay for the services commensurate with their size and the nature of operations. The Regulations seeks to ensure fairness with respect to costs. Additionally, Regulations seek to extend the leasing approval periods issued to airlines and thereby reducing the associated costs.

CHAPTER FIVE: STAKEHOLDER CONSULTATION

5.1 Legal requirements relating to public participation and consultation

Public participation plays a crucial role in democratic governance by ensuring transparency, inclusivity, and accountability in decision-making processes. The Constitution of Kenya 2010, places emphasis on public participation as a fundamental principle of governance. Article 10 of the Kenya Constitution outlines the values and principles of governance, including public participation, which is crucial for achieving accountability, transparency, and public involvement in decision-making processes.

In addition, Article 118 of the constitution establishes the right to public participation in legislative and other processes of the State, ensuring that the public has an opportunity to participate in matters that affect them directly.

The requirement for public participation applies to regulation making too. As such, before the draft regulations would be forwarded for promulgation, a series of stakeholder/public engagement was conducted.

5.2 The Process of Public Consultation

The first of a series of stakeholder meetings was held physically on 30th April 2019 covering a set of eleven (11) civil aviation regulations.

5.3 Public Notice and awareness

The stakeholders' engagement forum was advertised in one of the major local dailies in accordance with applicable requirements for stakeholder engagement. The sets of regulations that were to be discussed during the public participation forum were well spelt out in the advert. A form to collect stakeholder comments was uploaded with the regulations on the KCAA website www.kcaa.or.ke.

The advert also highlighted how prospective participants would register for the public forum.

5.4 Public participation forum

A physical stakeholder engagement was conducted at the Ole Sereni Hotel in Nairobi on 30th April 2019 and attended by 102 participants. The Stakeholder engagement report, approval memo and copy of signed attendance list are annexures to this report.

5.5 Analysis and Feedback

The matrix of comments received from stakeholders via email submission and during the public participation forums is included as an annexure to this report.

CHAPTER SIX: COST BENEFIT ANALYSIS

6.1 Costs and Benefits analysis

The analysis of the expected costs and benefits of the proposed Regulations in this part seeks to answer the question whether the benefits justify the costs. This will in turn inform the decision makers since the cost of government action should be justified by its benefits before action is taken.

However, given the nature of amendments to the Regulations and the available information, the costing will be both qualitative and quantitative. The task of comparing the benefits and costs associated with the proposed regulatory amendments and determining whether, and to what extent, there would be a net benefit associated with its adoption is a difficult one.

The approach taken in this section is to draw together the discussion of benefits and costs, indicate the relative magnitude of these where possible and draw conclusions as to the likely overall impact of the proposed Regulations where possible.

Table 1: Benefits and Costs of the proposed Civil Aviation (Licensing of Air Services) Regulations, 2024

Problem	Proposed reform	Benefit	Cost
Lack of regulatory provisions for code share marketing arrangements between airlines for the sale of cargo space.	Improvement of definition to incorporate cargo operations in code share arrangements	Regulatory framework for emerging airline operating arrangements	Nil
Lack of regulatory provisions for sub-charter and damp lease operating arrangements	Introduce definitions of sub-charter and damp lease arrangements	Regulatory framework for emerging airline operating arrangements	Nil
Current Regulations provide criteria that should be used by the Authority to decline to license another air carrier on a route for a period of two years.	Deletion of the provision	Promote competition and consumer choice which may lower ticket prices	Nil
Current Regulations have restrictive provisions for issuance of an international scheduled license	Rewording of the provision to remove the restrictive condition	Promote competition and consumer choice which may lower ticket prices	Nil
There is a 6 month approval limit (renewable once) for wet lease operations to enable	Increase the approval limit to 12 months (renewable once) subject to aircraft	Reduced disruptions in airline operations due to temporary	Marginal decline in the Authority's regulatory fees (< USD 1,500 per

Problem	Proposed reform	Benefit	Cost
airline address temporary business requirements but airlines complain that 6 months is too short	capacity limits to avoid abuse of the approval	and exceptional circumstances	year) and reduced costs to airlines
Applicants requesting to be issued with the reason for rejection of their license application are required to make additional payment	Deletion of the wording since the initial application fee paid should cover the cost of explaining reason for rejection	Improved access to information for applicants and upholding of fair administrative action principles	Marginal decline in the Authority's regulatory fee s (< USD 1,500 per year) and zero costs to applicants
License lapses if operations don't commence within 6 months which is unrealistic since it is impossible to get AOC within 6 months	Rewording the provision by removing the 6 months condition and so the license will lapse upon expiry of validity period	Reduced compliance burden for applicants and ASL processing burden for the Authority	Decline in regulatory fees (< USD 10,000 per year) and reduced costs to startup airlines
Lack of regulatory provisions prohibiting advertising of air services without a license	Prohibit anyone from advertising without a license	Protect the public from unscrupulous traders and middlemen by giving the Authority power to prosecute such cases	Nil

6.2 Consideration of Alternatives to the proposed Regulations

This Part considers the question whether the proposed Regulations is the best form of government action. The Statutory Instruments Act requires a regulator to carry out an informed comparison of a variety of regulatory and non-regulatory policy measures, considering relevant issues such as costs, benefits and administrative requirements. The options considered under this part are as indicated in the table below:

Table 2: Regulatory and non-regulatory options

Option	Impact
Option One: Maintenance of the Status Quo	a) Lack of regulatory provisions for code share marketing arrangements between airlines for the sale of cargo space. b) Lack of regulatory provisions for sub-charter and damp lease operating arrangements c) Restrictive provisions for issuance of an international scheduled license

Option	Impact
	d) Approval limit for wet lease operations e) Lack of regulatory provisions prohibiting advertising of air services without a license
Option Two: Administrative measures Issuance of directives and circulars to the various entities and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law.	Use of administrative measures to carry out the Licensing of Air Services Section would be against the letter and spirit of Section 82 (1) of the Civil Aviation Act which requires that the Cabinet Secretary makes Regulations for Licensing of Air Services being the instrument to enable economic Regulation of air transport.
Option Three: Promulgating the Civil Aviation (Licensing of Air Services) Regulations 2024	Implementation of a regulatory framework that will address the various gaps and weaknesses identified in the 2018 Regulations.

6.3 Impact analysis of the regulatory and non-regulatory options on the aviation sector

Table 3:

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative Measures	Option two: Promulgating the Civil Aviation (Licensing of Air Services) Regulations 2024
Airlines	• Challenges in accessing international air transport markets leading to trade imbalance; • Unethical conduct and unfair business practices; • Poor trade facilitation.	• Unethical business practices • Corruption	• Enhanced access to international air transport markets; • Promote ethical conduct and fair trading practices;
State	• Impediment of air connectivity within the country and between	• Unenforceable directives which may be challenged in court	• Increased connectivity within the country and between Kenya and other States

Aviation Sector	Option one: Maintenance of the Status Quo	Option two: Administrative Measures	Option two: Promulgating the Civil Aviation (Licensing of Air Services) Regulations 2024
	Kenya and other States		
Travelling Public	• Availability of Consumers' benefits and choices will be jeopardized • High ticket prices	• Unenforceable directives which may be challenged in court	• Increased consumer choice due to competition and reduced ticket prices

6.4 Preferred Option

Based on the above analysis it is clear that the third option (Promulgating the Civil Aviation (Licensing of Air Services) Regulations 2024 is the preferred option. The benefits and impact of promulgating new and amended Regulations by far outweigh the cost of its implementation. The other two options have little or no impact in addressing the problems outlined above.

CHAPTER SEVEN: COMPLIANCE AND IMPLEMENTATION

As different aspects of the proposed Regulations are evaluated and analyzed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the Regulator to assess the adequacy of the institutional framework and other incentives through which the Regulations will take effect, and design responsive implementation strategies that make the best use of them.

In an ideal situation an institution responsible for enforcement of the Regulations should have the capacity of co-ordination of institutional frameworks from a whole-of-government perspective, independent and sufficient authority, political support at a high political level, and integration into a broad concept of reform. KCAA has been implementing the current Regulations for over 5 years now and has demonstrated capacity to implement the proposed Regulations and has indeed put in place a plan as outlined in the Strategic Plan 2023-2028 of strengthening its institutional capacity to enable it enforce full compliance with the proposed Regulations.

CHAPTER EIGHT: CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

Based on the above analysis, the following conclusions are drawn in respect of the draft Civil Aviation (Licensing of Air Services) Regulations, 2024:

(a) Regulations making mandate: Section 82 of the Civil Aviation Act empowers the Cabinet Secretary in Consultation to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

(b) Provisions of the Statutory Instruments Act: Section 5 requires that a regulation making authority to conduct public consultations and drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that a RIA be prepared where a statutory instrument is likely to impose significant costs on the community. This RIA thus contains certain the following key elements:

- (i) a statement of the objectives of the proposed legislation and the reasons.
- (ii) a statement explaining the effect of the proposed legislation.
- (iii) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options.
- (iv) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (v) the reasons why the other means are not appropriate.

The RIA structure and content requirements established in the Statutory Instruments Act requirements have been fully met. Additionally, public consultation requirements in respect of the Civil Aviation (Licensing of Air Services) Regulations have been fully adhered to.

(c) Other legal frameworks: The draft Civil Aviation (Licensing of Air Services) Regulations 2024 proposes to publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.

The draft Civil Aviation (Licensing of Air Services) Regulations 2024 as drafted are clear, consistent, comprehensible and comprehensive enough to cover all matters and meet the established drafting standards.

8.2 Recommendations

In view of the above conclusions, it is recommended that the draft Civil Aviation (Licensing of Air Services) Regulations 2024 be adopted.

ANNEXURES

The Draft Civil Aviation (Licensing of Air Services) Regulations 2024

Matrix for stakeholder consultations