



Enforcement Policy and Procedure Manual

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Foreword

This Enforcement Policy and Procedure Manual has been developed by Bhutan Civil Aviation Authority (BCAA) in order to regulate the civil aviation activities in the country.

This manual has been issued by the Head of the Authority (HOA) pursuant to the Civil Aviation Act of Bhutan 2016.

This manual forms the guiding policy for the general enforcement actions in BCAA classifying the violations in various categories depending on the severity of the violation committed by the individual/operator.

This manual shall supersede the earlier issue.



Kinley Wangchuk
Head of Authority

Definition

Act

The Civil Aviation Act of Bhutan 2016

Administrative Action

Deterrent action/corrective action taken by or on behalf of the Government/HoA, including oral counselling, suspension or cancellation of aviation documents and imposition of a monetary penalty.

Act of Unlawful Interference

These are acts or attempted acts such as to jeopardise the safety of civil aviation, including but not limited to:

- unlawful seizure of aircraft,
- destruction of an aircraft in service,
- hostage-taking on board aircraft or on aerodromes,
- forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility,
- introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes,
- use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment,
- communication of false information such as to jeopardise the safety of an aircraft in flight or on the ground, of
- passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility.

Aviation Document

Any licence, permit, accreditation, certificate or other document issued by the Director under of the Civil Aviation Act of Bhutan 2016/BANRs/BCASRs/BCARs to or with respect to any person or in respect of any aeronautical product, aerodrome, facility or service. Aviation document includes virtually any document of entitlement that authorises a person to perform functions on his own behalf.

Criminal Activity

Any act that is illegal under the *Criminal laws* of Bhutan and is clearly outside the scope of responsibility of BCAA.

Compliance

Abiding with the provisions of the Civil Aviation Act of Bhutan 2016 and the existing rules and regulations.

Comprehensive Investigation

The follow-up to the initial violation process to obtain conclusive evidence as to whether or not a violation occurred so that appropriate deterrent action can be taken.

Designated Provisions

Deterrent action is limited to administrative measures; judicial action cannot be taken. The majority of the offence-creating provisions of the BANRs/BCASRs/BCARs have been designated.

Deterrent Action

Administrative and punitive measures or action taken in relation to a violation to encourage future compliance and to prevent future violations.

Enforcement Action

The steps include deterrent action that must be taken from the moment a possible violation of the regulations has been detected until the case is concluded.

Joint Covert Operation

A covert operation involving Civil Aviation officials in cooperation with another agency.

Offence

Any violation or contravention of the provision of BCARs that may be proceeded against by administrative or judicial action including the summary conviction procedure.

Incompetent

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

Initial Violation Process

The immediate actions taken on observing or being apprised of a violation. Information is gathered concerning the occurrence and, if an infraction has occurred, a decision is made to conclude the case with an Oral Counselling or to send the information to Concerned Official for further investigation.

Inspector

Any BCAA official delegated with appropriate authority under the Civil Aviation Act of Bhutan 2016.

Government

The Government of Bhutan delegated authority to act on its behalf in civil aviation matters.

Non-Designated Provisions

The Sanctions/regulations that have not been designated under the rules and regulations and therefore, if contravened, must be addressed by document suspension or through judicial action.

Offence-Creating Provisions

Provisions of the civil aviation rules that mandate a certain form of conduct or prohibit certain conduct and which, if contravened, can result in judicial or administrative deterrent action.

Rules and Regulations

The rules and regulations developed in accordance with the Civil Aviation Act of Bhutan 2016.

Third Party Agents

The persons employed specifically for the purposes of a covert operation excluding police officers, other agency personnel or Civil Aviation inspectors.

Violation

Contravention of or failure to comply with any provisions of the rules and regulations.

Abbreviations

AI - Airworthiness Inspector

AME - Aircraft Maintenance Engineer

AOC - Air Operator Certificate

ATC - Air Traffic Control

ATS - Air Traffic Services

BCAA-Bhutan Civil Aviation Authority

BANRs- Bhutan Air Navigation Regulations

BCASRs- Bhutan Civil Aviation Security Regulations

BCARs-Bhutan Civil Aviation Requirements

HOA – Head of the Authority

NA–Not applicable

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CHAPTER 1: POLICY OVERVIEW

1.1 General

BCAA promotes the goal of aviation safety/security by encouraging compliance with Bhutan's Civil Aviation Rules and Regulations. When necessary, BCAA shall investigate alleged violations of the rules and regulations and take necessary enforcement action to maintain aviation safety/security standards. The Head of the Authority (HOA) shall be overall responsible for all aviation activities and the Division Chiefs are accountable to HOA.

1.2 Our Obligation

As a contracting State of the International Civil Aviation Organization (ICAO), Bhutan has an obligation to oversee the safe and efficient operation of aviation activity for which Bhutan is responsible. Furthermore, as a signatory to the ICAO Convention on International Civil Aviation, Bhutan has agreed to the application of Article 12 of the Convention, "Rules of the air", which states in part:

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or manoeuvring 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 manoeuvre of aircraft there in force. . . . Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.

Accordingly, all Divisions shall supervise and administer the enforcement mandate inherent in the international agreement. Enforcement and sanctioning powers, provided by a legal framework, have been delegated to inspectors of BCAA including the responsibility and authority to conduct investigations.

As a result of international agreement and domestic legislation, enforcement is not an option, it is an obligation. Vigorous enforcement action will be taken with respect to all deliberate breaches of the aviation safety/security rules and regulations.

1.3 Voluntary Compliance

BCAA recognizes that voluntary compliance with the regulations is the most progressive and effective approach to aviation safety/security.

Voluntary compliance is based on the concept that members of the aviation community have a shared interest, commitment, and responsibility to aviation safety/security, and that they will operate on the basis of common sense, personal responsibility, and respect for others.

1.4 Fairness and Firmness

- 1.4.1 BCAA is committed to enforcing the rules and regulations in a fair and firm manner. Concern about potential consequences should not be taken in to consideration when determining the appropriate enforcement action.
- 1.4.2 BCAA shall promote and apply a policy of fairness and firmness by:
- a) Encouraging open communication between alleged offenders and enforcement(enforcing) inspectors, especially in cases where there are mitigating circumstances;
 - b) Providing oral counselling for minor violations where there is no threat to aviation safety/security;
 - c) Informing offenders of their right to have penalties reviewed by the BCAA; and
 - d) Ensuring that repeated offenders and those who willfully disregard aviation safety/security are dealt with firmly and fairly.

1.5 Conflict of Interest

Inspectors must take measures to prevent real, potential, or perceived conflicts of interest in the conduct of their duties.

1.6 Handling of Complaints

Complaints concerning Civil Aviation Authority personnel shall be addressed by BCAA. In this regard, a complaint is a formal expression of dissatisfaction with a Civil Aviation service, procedure, application of policy or staff member.

1.7 Amendment of this Manual

This manual will be amended from time to time when enforcement policies are revised. All proposed revisions will be presented to HOA for approval.

CHAPTER 2: INSPECTION

2.1 General

Inspection involves the examination of civil aviation documents, aircraft, cargo, premises, aeronautical products such as appliances, parts and components and facilities relating to aeronautics including the ANS services and aerodrome facilities encompassing all activities of regulatory safety/security areas. The purpose of inspection is to determine whether compliance with rules and regulations are being maintained. It is a part of the daily routine of a BCAA official and includes activities such as:

- a) Flight Operations Inspectors conducting operator's inspections and flight tests and audits of air operator;
- b) Personnel Licensing Inspectors conducting examinations and flight tests of pilot licence applicants and instructors and training organisations ;
- c) Airworthiness Inspectors conducting audits and inspecting aircraft and inspections and audits of maintenance organisations and air operators ;
- d) ANS inspectors conducting audits and inspections of ANS facilities and procedures.
- e) Aerodrome inspectors inspecting the aerodrome facilities and procedures.
- f) Aviation Security Inspectors conducting audit/inspections of security services, procedures and equipment.
- g) Any other person authorised by BCAA to conduct inspections and audits on service providers and other aviation entities.

2.2 Inspection Authority

An inspection may be conducted by inspectors pursuant to the authority allowed by the Civil Aviation Act of Bhutan 2016. Depending upon their particular duties, inspectors may be delegated all or some of the following powers of the HOA to inspectors as per the Act;

- i. Entry for Inspection

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

- ii. Inspection

Authority to inspect is derived from Section 90- 93 of Civil Aviation Act of Bhutan 2016.

- iii. Production of Documents

The authority to demand the production of documents is derived from Section 81 of the Civil Aviation Act of Bhutan 2016.

iv. Obstruction

Any person wilfully obstructing or impeding an inspector during an inspection contravenes Civil Aviation Act of Bhutan 2016. This is a hybrid offence and may be proceeded with by Indictment or by way of Summary Conviction at the discretion of the BCAA.

v. Seizure of Evidence

Civil Aviation Act of Bhutan 2016 which gives inspectors the power to seize anything found in any place entered for the purposes of inspection if they believe on reasonable grounds the thing seized will afford evidence with respect to a contravention. Anything seized must have been found by the inspector without resorting to a search or must have been provided voluntarily by a representative of the premises or aircraft being inspected. Items seized are usually those items which would be the subject of a normal inspection.

2.3 Safety/Security Authority

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

Detention

Inspectors may detain any aircraft which they believe on reasonable grounds is unsafe or is likely to be operated in an unsafe manner, and take reasonable steps to ensure its continued detention. Once the grounds for detention (e.g. unsafe condition) have been removed, the aircraft must be released.

Suspend Civil Aviation Documents on the Grounds of an Immediate Threat

On the basis of report made available from the inspection, pursuant to Civil Aviation Act may suspend an Aviation Document on the grounds that an immediate threat to aviation safety exists or is likely to occur as a result of an act or thing having been, being or proposed to be done under the authority of the document. The authority for this type of suspension is found in the Civil Aviation Act. When a document is suspended, details of the suspension should be forwarded to the appropriate functional authority for inclusion in the document holder's file and for consideration by the functional authority when contemplating reinstatement of the document.

2.4 Inspection Procedure

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

1. inspectors shall not enter aircraft, ANS facilities, Aerodrome or premises which are locked or where the owner/operator or appointed representative is not present;
2. an inspection should be conducted at a time that minimises the inconvenience to flight crew, ATC, owner/operator and the travelling public;

3. the inspector shall use a credentials card for personal identification;
4. the flight crew, ATC and owner/operator of an aircraft or facilities should be informed that an inspection is being conducted;
5. a document produced for the purpose of inspection should be kept no longer than is necessary to determine its validity;
6. Where the validity of a document cannot be determined readily, a photocopy, photograph, accurate record or facsimile of the entries or endorsement on both sides of the document should be made before returning the document;
7. Inspectors may seize evidence with respect to a contravention discovered during the course of a routine inspection.
8. If an unsafe situation is discovered, the aircraft representative shall be informed and the inspector shall decide whether or not immediate detention of the aircraft is required.
9. In the event of any obstruction to an inspection, the inspector should politely inform the individual that a charge could be laid under Civil Aviation Act for the offence of obstructing an inspection. Should the individual continue to obstruct the inspection, the inspection should be abandoned and enforcement assistance sought for the laying of charges under Civil Aviation Act of Bhutan 2016.
10. Where an inspector believes on reasonable and probable grounds that entry, search and seizure will be required to obtain evidence, the matter must be referred to the BCAA for acquisition of a Search Warrant and for conduct of an investigation. Under such circumstances, the inspector ceases the act of inspection and commences the act of investigation; and
11. Inspections should be completely documented with notes including dates and times.

2.5 Seizure, Retention and Return of Evidence

In accordance with Civil Aviation Act of Bhutan 2016 where evidence is seized, the inspector shall ensure:

1. the holder is given a receipt or written acknowledgement;
2. the evidence is clearly marked in an identifiable manner;
3. reasonable care is taken to preserve and protect the evidence;
4. continuity of possession of evidence can be assured;
5. Where an Aircraft Journey Log or ATC Logbook is seized, a Temporary Logbook can be issued. The temporary log must contain a statement that the original has been seized. Alternatively, a photocopy of the log book properly identified as a certified true copy and signed by the owner, the inspector or the investigator is acceptable. Before making a photocopy, the original should be marked in a uniquely identifiable manner to preclude alteration or substitution; and
6. The evidence is returned to the person from whom it was seized or who has lawful entitlement to it as soon as practicable when continued retention is not required for the purposes of any investigation, hearing or other similar proceeding. Evidence must be returned within 5 days of seizure if:

- a. there is no dispute as to who is lawfully entitled to it;
- b. return is not likely to affect aviation safety; and
- c. it is no longer required.

2.6 Detention and Return of Aircraft

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

- 1) again advise the pilot or owner about the unsafe condition or operation and the consequences of failing to abide by the inspector's advice (e.g. detention and/or enforcement action);
- 2) where the pilot or owner is unavailable or indicates an unwillingness to comply with the inspector's advice, attach to that part of the aircraft most likely to be seen by the flight crew a written notice of detention specifying the unsafe condition or operation;
- 3) if necessary, restrain the movements of the aircraft:
 - a) by requesting ATS deny taxi and take-off clearances;
 - b) by blocking it with vehicles;
 - c) by attaching it to an immovable object; or,
 - d) in extreme cases, and with the assistance of a licensed Aircraft Maintenance Engineer, by judicious and temporary disablement, a record of which must be made in the aircraft log.

2.6.2 Whenever possible, and in accordance with Civil Aviation Act of Bhutan 2016 an aircraft shall be detained without removing it from the custody of its owners or operators. This will permit such persons to make repairs or otherwise remedy the unsafe situation. However, if no other measures have been or are likely to be effective in alleviating the unsafe condition or operation, the aircraft may be taken into the custody of the BCAA. In such cases, all reasonable care shall be taken to preserve and protect the aircraft in the condition in which it was first acquired. The aircraft should be released if it will not be operated or if it will be rendered airworthy before operation and will not be operated in an unsafe manner. Details concerning the detention should be forwarded to the appropriate supervisor for a decision on the release of the aircraft from detention.

CHAPTER 3: SURVEILLANCE OPERATIONS

3.1 Surveillance

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

3.2 Field Operations Routine Surveillance

In the performance of their normal duties in the aviation community, Inspectors automatically and concurrently engage in routine surveillance. Their mere presence stimulates a positive attitude toward compliance while activities commensurate with their duties often lead to enforcement action.

3.3 Discreet Surveillance

Discreet Surveillance is a routine surveillance where an inspector does not publicise or hide the fact that he or she is a Civil Aviation Inspector. No Special authorization is required for this type of surveillance.

3.4 Planned Surveillance

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

3.5 Objectives

The following objectives may be considered when planning surveillance activities:

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

3.6 Planning Responsibility

The Division Chiefs are responsible for the development and administration of the surveillance plan in their area of responsibilities and publish in the website and or display at the office notice board after getting approval from BCAA.

3.7 Implementation

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

Presence

- a) Surveillance should be carried out whenever and wherever aviation activity is most likely, including weekend's morning and evenings.
- b) It should be ensured that each surveillance team is composed of inspectors whose specialty is pertinent to the type of surveillance activity.
- c) It should be ensured that each surveillance team is qualified and is properly briefed for the operation.

Surveillance

Surveillance should generally be carried out openly. By introducing themselves to the public, inspectors will be able to maximize the promotion of voluntary compliance. Covert operations may be used when there are reasonable grounds to suspect an open presence may not culminate in a successful investigation. (See Chapter 6)

Initial Violation Process

Inspectors shall ensure the initial violation process is completed thoroughly when infringements of regulations are detected.

3.8 Monitoring of Special Aviation Events

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

3.9 Procedure

Extensive notes should be kept on all observations. Where appropriate, photographs should also be taken. Inspectors should be prepared to use authority pursuant to BANRs as applicable. Watch for any regulatory contraventions and where possible prevent a

contravention by dealing with the cause beforehand. Usually, a friendly approach, emphasizing the safety element, can bring about compliance with the regulations.

3.10 Reporting

At the conclusion of the surveillance activity, a detailed report is normally made to the operators. If contraventions of the regulations have been observed, the report shall be forwarded to the HOA 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).

3.11 Field Operations (Security)

3.11.1 Fields operations for aviation security are part of the quality control process and consist of Audits, Inspections and Tests. These regulatory quality control activities will be conducted in accordance with the legislative requirements in BCASRs and the policies included in National Civil Aviation Security Programme (NCASP) and National Civil Aviation Quality Control Programme (NCASQCP).

3.11.2 The processes for security Audits, Inspections and Tests are contained in the national programmes.

CHAPTER 4: DETECTION

4.1 Introduction

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

4.2 Initial Detection of Violation

- a) In all cases where an inspector detects a contravention or where information about a possible contravention is received, the inspector should attempt to gather as much information as possible regarding the incident. This is necessary to preserve perishable evidence and to provide sufficient information about the contravention to enable a complete and comprehensive investigation. The initial violation process should simply provide answers to the questions: WHO, WHERE, WHEN, WHAT, WHY and HOW. The information should be recorded and passed to the respective Division Chiefs as soon as possible along with any notes or evidence such as photos, logs, tapes, etc.
- b) The decision to conclude the incident with an oral counselling or to refer the matter for further investigation is entirely at the discretion of the inspector completing the form.
- c) If the contravention is considered minor, the inspector may opt for oral counselling.
- d) If the contravention is of a more serious nature, the inspector must refer the incident without delay to the respective Division Chiefs for further action. The respective Division Chiefs will then determine if a comprehensive investigation should be carried out.

4.3 Detection

- 4.3.1 Oral counselling provides the document holder with immediate counselling on the necessity for compliance. It is an option for inspectors when the contravention is minor and inadvertent or is a safety-related violation where there is no direct flight safety hazard and the imposition of a sanction is not considered appropriate. Refer to the factors affecting choice of sanction in Chapter 10 for guidance on

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

- 4.3.2 If in doubt about the appropriate action to take in a given circumstance, the inspector should refer the matter to the respective Division Chiefs for further investigation.

4.4 Contraventions of Dangerous Goods Regulations

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

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

4.5 Contravention of Aviation Security Regulations

Within Bhutan Civil Aviation Authority, all inspectors are responsible for promoting compliance with and detecting contraventions of the BCASRs. Because of the specialised nature of aviation security any inspector seeing or suspecting an aviation security non-compliance or incident should immediately notify the HOA and seek advice on actions required. Inspectors should have a basic familiarization with aviation security to allow basic surveillance of these activities.

4.6 Inspectors Flying as Passengers

- a) If inspectors, while flying as passengers on an airline, detect a contravention which, in their judgement, must be brought to the attention of the flight crew (e.g. a major disregard of the Act/BANRs/BCASRs), they shall contact the pilot-in-command after the flight has completed. After identifying themselves, inspectors should indicate to the pilot the nature of the contravention and advise the pilot that they will be making a detailed written report. An initial violation process form shall be forwarded without delay to the Division Chiefs. It shall contain sufficient detail including all available evidence to allow follow-up action.
- b) The policy of post-flight notification does not apply where the contravention compromises flight safety. An example of this would be contravention of a regulation

which forbids a flight to commence without an inspection for adherence of frost, ice or snow to any critical surface of an aircraft. In such a case, direct and immediate action shall be taken by the inspector.

4.7 Audit and Inspection Findings

- 4.7.1 The BCAA shall have a system to analyse findings of their safety significance as part of the safety plan.
- 4.7.2 A level 1 finding shall be issued by the BCAA when any significant non-compliance is detected with the applicable Act/BANRs/BCASRs/BCARs, with the approved organisation's procedures and manuals or with the terms of an approval or certificate or with the content of a declaration which lowers safety or seriously hazards flight safety.
- 4.7.3 The level 1 finding shall also include:
- a) failure to give the Aviation Safety Inspectors access to the organisation's facilities as defined in Act during normal operating hours and after two written requests;
 - b) obtaining or maintaining the validity of the organisation certificate by falsification of submitted documentary evidence;
 - c) evidence of malpractice or fraudulent use of the organisation certificate; and
 - d) the lack of an accountable manager.
- 4.7.4 In the case of level 1 findings the BCAA shall take immediate and appropriate action to prohibit or limit activities, and if appropriate, it shall take action to revoke the certificate or specific approval or to limit or suspend it in whole or in part, depending upon the extent of the level 1 finding, until successful corrective action has been taken by the organisation.
- 4.7.5 A level 2 finding shall be issued with the identification of a non-compliance with a regulation where the nature of that non-compliance is such that there is no immediate risk to safety. However there is a need to require the organisation or individual to develop an action plan acceptable to us that will restore compliance within an agreed timescale.
- 4.7.6 In the case of level 2 findings, the BCAA authority shall:
- i. grant the organisation or an individual a corrective action implementation period appropriate to the nature of the finding that in any case initially shall not be more than 30 days. At the end of this period, and subject to the nature of the finding, the BCAA may extend the implementation period as deemed appropriate; and
 - ii. assess the corrective action and implementation plan proposed by the organisations and, if the assessment concludes that they are sufficient to

address the non-compliance(s), accept these.

4.8 On Notice Process

- 4.8.1 An organisation fails to submit an acceptable corrective action plan, or to perform the corrective action within the time period accepted or extended by the BCAA the finding shall be on notice to a possible level 1 finding, and raised to a level 1 finding if corrective action is still not taken.
- 4.8.2 When an organisation has repeatedly failed to address level 2 findings in the agreed timescale or does not have an effective Safety Management System, the organisation will be subject to increased monitoring and will need to provide an acceptable corrective action plan. BCAA would expect an improvement in safety performance as the organisation continues to be monitored. The 'on notice' notification may be lifted if the organisation's actions address the safety concerns. However, if the situation continues to deteriorate, action may be taken to vary, suspend or revoke the approval of the organisation.
- 4.8.3 The 'on notice' notifications may also be used on individuals, for example Authorised Medical Examiners.
- 4.8.4 The BCAA shall record all findings it has raised or that have been communicated to it and, where applicable, the enforcement measures it has applied, as well as all corrective actions and date of action closure for findings.
- 4.8.5 The on notice process includes:
- a) Formal notification to the organisation or individual detailing the concerns or adverse trends
 - b) Require the submission of an acceptable action plan to remedy the adverse trend within a given timescale
 - c) BCAA will agree with the action plan if deemed acceptable or require amendments
 - d) After acceptance, the agreed action plan is to be completed within the agreed timescales
 - e) Successful completion of the plan may result in the on notice being lifted
 - f) If the action plan is not completed within the given timescales, or is completed unsatisfactorily, the BCAA may raise the finding to a level 1 finding and assess the appropriate limiting measures.
 - g) Organisation/individual must be communicated through a formal medium at all stages.

4.9 Findings and Enforcement Measures

- 4.9.1 If, during oversight or by any other means, evidence is found by the BCAA responsible for oversight in accordance with BCARs that shows a non-compliance with the applicable requirements by a person holding a licence, certificate, rating or attestation issued in accordance with Act, the BCAA shall raise a finding, record it and communicate it in writing to the licence, certificate, rating or attestation holder.
- 4.9.2 When such a finding is raised, the BCAA shall carry out an investigation. If the finding is confirmed, it shall:
1. take any further enforcement measures necessary to prevent the continuation of the non-compliance; or
 2. limit, suspend or revoke the licence, certificate, or rating, when a safety issue has been identified , as appropriate. Where applicable, the BCAA shall inform the person or organisation that issued the certificate.
- 4.9.3 Without prejudice to any additional enforcement measures, when a foreign CAA acting under the provisions of Act finds evidence showing a non-compliance with the applicable requirements by a person holding a licence, certificate, or rating issued by the foreign CAA, it shall inform that competent authority.
- 4.9.4 If, during oversight or by any other means, evidence is found showing a non-compliance with the applicable laws by a person and not holding a licence, certificate, or rating issued in accordance with that BCAR Personnel Licensing, the BCAA shall take any enforcement measures necessary to prevent the continuation of that non-compliance.

4.10 Expanded Description of the Initial Violation Process

- 4.10.1 The purpose of the initial violation process is to gather information in a systematic and thorough manner when it is suspected that a regulation or provision has been violated by an act or omission that warrants further investigation. All inspectors are responsible for gathering pertinent information when they detect a violation of the regulations and for recording that information, preferably in the Initial Violation Process Form. This initial process of collecting information concerning a possible violation is often the only opportunity to preserve perishable evidence.
- 4.10.2 The initial violation process should simply answer the questions: WHO, WHERE, WHEN, WHAT, WHY & HOW and, depending on the circumstances, may be expanded as follows:
1. fill out the Initial Violation records;
 2. record all possible contraventions (even borderline offences);
 3. record date, time and location of the contravention;
 4. record the identification of the aircraft and the names, addresses and

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

- 4.10.3. Upon detection of a violation and the completion of the Initial Violation Process, an inspector should forward the same to respective Division Chiefs who will assign an investigator to the case. Both the reporting inspector and assigned investigator shall continue to coordinate their work as necessary until the conclusion of the case.

CHAPTER 5: ANALYSIS OF LEGISLATIVE PROVISIONS

5.1 Introduction

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

5.2 Construction of Legislative Provisions

5.2.1 Types of Legislative Provisions:

5.2.1.1 Legislative provisions may be enabling, administrative, informative or offence creating. Only the latter can be the subject of enforcement actions.

- a) **Enabling provisions** are those which confer power on persons to make some other type of standard or policy. Some enabling provisions in the Act are those which give powers to make rules and regulations, directives, circulars, orders and publications.
- b) **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 HoA can do, their purpose is to provide a statutory basis for administrative procedures or actions.
- c) **Informative provisions** are intended to guide the aviation community and assist individuals in complying with civil aviation legislation.

5.2.1.2 Offence creating provisions can be one of two types; first, those which mandate a certain form of conduct and, second, those which prohibit certain acts. Non-compliance with these provisions is a violation that can result in judicial or administrative enforcement action.

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

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

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

5.3 Identify Possible Violations

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

5.4 Analysis of Offence Creating Legislative Provisions for Interpretation

5.4.1 Analysis for interpretation consists of the following steps:

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

5.5 Analysis of Offence Creating Legislative Provisions for Evidence

Where a contravention is suspected, the pertinent legislative provisions should be divided into elements and 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. Standard forms of evidence are used to establish the facts concerning common elements. Special forms of evidence may be needed to establish the facts concerning uncommon elements.

5.5.1 Standards forms of Evidence

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

5.5.2 Special forms of Evidence

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

5.6 Sample Analysis

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

5.6.1 Illustrative Analysis of Common Elements

Elements	Facts To Be Established	Evidence
<p>#1 [no person] - A common element and a core element - Sets out prohibition applying to all persons</p>	<p>What person performed the prohibited act</p>	<p>“standard forms” to identify the person: log book, witnesses</p> <p>For a corporation, refer to registry office for legal name; obtain Certificate of Incorporation from Registrar of Companies</p>
<p>#2 [shall fly] - Core element - Describes the prohibited act</p>	<p>The person acted as pilot- in-command, co-pilot, flight navigator or flight engineer; when and where. Note: The duties of these “flight crew members” are not defined. Conclusions must be drawn from expert knowledge</p>	<p>“standard forms” – log book, witnesses</p>
<p>#3 [attempt to fly] - Core element - Describes the prohibited act</p>	<p>The person intended to fly or made an endeavour to fly; when and where.</p>	<p>Evidence of overt acts showing intent or endeavour to fly, e.g. filing of flight plan, request for clearance</p>

<p>#4 [aircraft] [no aircraft] - Core or qualifying element</p>	<p>The object referred to was an aircraft defined in CA rules and regulations. The aircraft must be identified.</p>	<p>“standard forms” – log book, CoR/CoA, witnesses as required by CA rules and regulations</p> <p>Request that certificate indicate status on date of offence</p>
<p>[the pilot-in-command] - Defined in CA rules and regulations - Usually a core element</p>	<p>The suspected violator was the “pilot-in-command”</p>	<p>“standard forms” – log book, witnesses</p>
<p>[operate] - Core element - Not defined in BCAR- “to work or use a machine” (dictionary reference)</p>	<p>The act of operating was performed by the suspected offender. With respect to an aircraft, “operate” includes “fly” as a pilot</p>	<p>“standard forms” – log book, witnesses, flight plans, ATS record</p>

5.6.2 Illustrative Analysis of Uncommon Elements

Uncommon Elements	Facts to be Established	Evidence
<p>#5 [unless a flight authority issued under the CA rules and regulations is in effect in respect of the aircraft] - Qualifying element</p>	<p>a) no such flight authority has been issued b) if issued, flight authority was not in effect at the time</p>	<p>For fact a) use CoA/CoR under CA rules and regulations</p> <p>For fact b) show that the standard for a flight authority to be in effect was not met at the time</p>

<p>#6 [or unless a flight authority issued under the laws of the country in which the aircraft is registered is in effect in respect of the aircraft] - Qualifying element</p>	<p>a) no such flight authority has been issued b) if issued, flight authority was not in effect at the time</p>	<p>For fact a) affidavit from the proper authority of the country For fact b) same as a. and expert testimony</p>
<p>#7 [and unless all conditions upon which the certificate or permit was issued have been complied with] - Qualifying elements</p>	<p>Such conditions were not met at the time. Note: conditions of issue are inscribed on the flight authority</p>	<p>Produce a true copy of respective flight authority certified by the BCAA as required under the Civil Aviation rules and regulations.</p>

5.6.3 Analysis Matrix – an example

Elements	Facts To Be Established	Evidence
<p>#1 [no person] - A common element and a core element - The prohibition applies to all persons</p>	<p>What person performed the prohibited act</p>	<p>“standard forms” to identify the person</p>
<p>#2 [shall operate... in flight] - A common element and a core element - Specifies the prohibited action</p>	<p>A flight took place</p>	<p>“standard forms” – journey log, eye witnesses, ATS record, etc – showing that the aircraft was operated in flight</p>

<p>#3 [an aircraft] - A common element and a core element - Augments the prohibited action</p>	<p>The object referred to was an aircraft as defined in the CA rules and regulations. The specific aircraft must be identified.</p>	<p>“standard forms” – journey log, CoR, eye witnesses – to identify the particular aircraft</p>
<p>#4 [unless a flight authority is in effect in respect of the aircraft] - A common element and a qualifying element</p>	<p>a) flight authority was not issued b) flight authority was not in effect</p>	<p>a) CoA/CoR as required under CA rules and regulations – request that certificate indicate status of aircraft on date of offence b) documents or expert evidence showing why flight authority was not in effect</p>
<p>#5 [and unless the aircraft is operated in accordance with the conditions set out in the flight authority] - An uncommon element and a qualifying element</p>	<p>a) the manner of operation that was not in accordance with the flight authority b) a manner of operation prescribed by the flight authority that was not carried out</p>	<p>“standard forms” – journey log, eye witness, flight plan – showing deviance from conditions of the flight authority</p>
<p>#6 [and unless the flight authority is carried on board the aircraft subject to subsection (3.1.1) and (3.2.3)] - A common element and a qualifying element</p>	<p>a) flight authority was not carried on board the aircraft b) show that subsections (3.1.1) and (3.2.3) do not apply (the subsections are not addressed in this example)</p>	<p>“standard forms” – eyewitness – showing the flight authority was not carried on board the aircraft</p>

CHAPTER 6- INVESTIGATIONS

6.1 Introduction

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

6.2 Priorities for Investigation

Priority shall be given to violations based on level of safety impact.

6.3 No Investigation Conducted (NIC)

Sometimes, it is evident from the original complaint or the Initial Violation Process that the case does not warrant a comprehensive investigation because of:

- a) lack of evidence;
- b) statutory limitation;
- c) low safety levels;
- d) Insufficient resources; etc.

Nevertheless, the relevant information should be recorded for the type of action taken.

6.4 The rights of the alleged offender

6.4.1 When the inspectors detected any alleged violations, he/she shall report the alleged violations to their respective Division Chief. The respective Chief shall designate the inspector to conduct comprehensive investigation and the inspector is responsible for investigating the facts and places as well as collecting the relevant evidence to determine if there is any violation of the provision of Act. A designated inspector shall inform an alleged offender the details of the offences and advise them the rights to defend the allegation with supporting evidence before concluding a case report to their respective Divisions.

6.5 Defences – Necessity, Due Diligence, Officially Induced Error

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

6.6 The Defence of Necessity

6.6.1 The defence of necessity has its origins in common law and remains available to alleged offenders. In deciding whether the defence has been established, Division Chief should carefully examine the facts to determine whether all of the following conditions apply:

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

6.6.2 In addition, the Division Chiefs must be satisfied on reasonable grounds that the urgent situation was not brought about by the alleged offender through negligence or a breach of the regulations. In other words, where the alleged offender created the danger, the alleged offender cannot avoid liability for a contravention committed to escape from that danger. Where the defence of necessity is proven, the alleged offender cannot be found to have contravened the law because the contravention was necessary to avoid an immediate greater danger (in particular, death or injury).

6.7 The Defence of Due Diligence

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

6.8 Officially Induced Error

The defence of officially induced error is available where an alleged offender has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. It must be proved, on a balance of reasonable doubts, that the alleged offender relied on the erroneous legal opinion or advice of the official and that this reliance was reasonable. The reasonableness will depend on several factors, including the efforts made by the alleged offender to ascertain the proper law, the complexity or obscurity of the law, the position of the official and the clarity, definitiveness and reasonableness of the advice given. The defence may at times overlap with the defence of due diligence, but it is separate and distinct.

6.9 Application of Defences

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

6.10 Comprehensive Investigations

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

The procedure for conducting a comprehensive investigation follows:

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

information.

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

6.11 Case Closure – No Further Action (NFA)

6.11.1 A case should terminate with no further action if:

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

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

6.12 Interviews

6.12.1 Interviews conducted with individuals may not be reliable as they may not portray absolute reality or may be subject to a person's point of view.

6.12.2 Interviewees/witnesses may also provide possible distortion due to loss of memories or possible omission of details. Nevertheless, interviews are still an important source of evidence. Information gleaned from such interviews may still be used to confirm, clarify, or supplement information learned from other sources. In the absence of measurable data, interviews become the single source of information, and investigators need to be well acquainted with the techniques required to ensure effective interviews. Interviews are often the only way to answer the important “why” questions which, in turn, can facilitate correct and effective safety action.

6.12.3 An effective interviewer remains objective and avoids making evaluations early in the interview. Even when faced with conflicting evidence, the investigator should listen to what a interviewee has to relate and should suspend judgment of that information until all facts have been gathered and an assessment can be made: the pilot who has been fired may be a disgruntled employee with a desire to sully the

- company's reputation or he may be a credible interviewee with very real truths to relate.
- 6.12.4 Before conducting an interview, the investigator should try to obtain as much information about factors such as the interviewee's culture, view point/perspective, anxiety, reluctance and hostility and the time between the occurrence and the interview. For example, an interviewee may withhold information due to fear of consequences as the procedures that were in effect (allows comparison to what was done in actuality), the crew (scanning pilot records will tell, for example, whether the pilot was required to wear glasses, and, during subsequent interviews, the investigator can attempt to establish if the pilot wore glasses during the flight), etc.
- 6.12.5 Interviews should be conducted as soon as possible after the occurrence to prevent loss of perishable information as a result of fading memory or rationalisation.
- 6.12.6 Interviewees should be made to feel at ease, and to this end the investigator should choose a location that is quiet, reasonably comfortable, and free from interruption.
- 6.12.7 During interviews, investigators should minimise their input and instead concentrate on active listening — an investigator who is talking isn't listening. Certainly, the investigator must direct the interview and keep it moving, but, generally, the less active the interviewer, the more productive the result. By listening to what is being said, the investigator will be able to reformulate questions appropriate to the situation, note discrepancies and sudden changes in conversation, perceive innuendoes and observe an interviewee's gestures and behaviour.
- 6.12.8 Co-operation, which is essential to the success of the interview, is often determined by the impression the investigator makes on the person being interviewed. A friendly approach that treats the interviewee as an equal and is as unobtrusive as possible is preferable to one that is effusive or bureaucratic. With an interviewee, the investigator is more assured of a free flow of information, ideas and opinions.
- 6.12.9 A tape recorder is a valuable tool. It allows the investigator to focus full attention on what the interviewee has to say; it provides a complete and accurate record of what was said; and it allows the statement to be played back.
- 6.12.10 None of the information gained in an interview should be accepted at face value. Issues such as health can be verified against medical records; fatigue against work schedules; attitudes toward management, training and maintenance against interviews with family members, friends and colleagues, etc. By comparing the information gathered during interviews to information gleaned from other sources, the investigator will be able to piece together the puzzle more accurately and establish the credibility of various interviewees.

6.13 Enforcement Committee

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

Enforcement actions for serious offences and safety violations may include suspension and cancellation of aviation documents on the recommendation of an enforcement Committee formed by Division Chief. The enforcement action will be implemented by the respective Division after approval from HoA.

6.14 Composition of Committee:

The committee will be constituted as below:

Chief of concerned Division	Coordinator
Subject matter inspector(s) of concerned section(s)	Member
Legal officer	Member

The committee may take services of other experts including from other Divisions as required depending on the complexity of the event.

6.15 Restriction in use of privileges of aviation documents

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

6.16 Suspension of civil aviation documents

The HoA may suspend the civil aviation documents based on the recommendation of the enforcement Committee. The offender will be given an opportunity to clarify his or her position why the civil aviation documents should not be suspended in the interest of safety/security. If the justification is not satisfactory then the civil aviation document may be suspended by a decision of HoA with recommendation from the Committee.

6.17 Revocation of civil aviation documents

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

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

The offender will be given an opportunity to clarify his or her position why the aviation documents should not be revoked in the interest of safety/security. If the justification is not satisfactory then the civil aviation document may be revoked by a decision of the HoA with recommendation from the Committee.

6.18 Step by step procedure for enforcement action in the event of an offence

1. The contravention is reported to the relevant Division.
2. The event is investigated by the inspector to determine if it constitutes an immediate threat to the safety of the occupants, aircraft and general public.
3. If the inspector has enough reason to suspect that the use of the privileges attached with the civil aviation document poses danger to the safety of the occupants, aircraft and general public, an immediate instruction will be issued not to exercise the privileges of civil aviation documents.
4. If such instructions are not followed by the holder of civil aviation documents, alternate means can be used like advising the air traffic unit not to permit to take off aircraft, etc.
5. Such instruction may be issued by the respective safety inspector.
6. After obtaining a complete report from the inspector on the event, if it is recommended to investigate further for the enforcement purposes in serious offences, an enforcement committee will be formed by the Division Chief to review the case and recommend a penalty appropriate to the identified risk to safety.
7. Normally, the period of restriction on privileges associated with aviation documents will not be more than 30 days from the date of first instruction from the inspector or investigator.
8. The committee may, depending on the severity of offence, recommend HOA to prolong the duration of such restriction.
9. In the event of prolonged investigation, instruction can be issued not to use the privileges of civil aviation documents. Such instruction can be issued by the investigators.
10. Depending on the severity of the offences, the enforcement committee will recommend to the HoA the prescribed penalty including but not limited to the suspension of civil aviation documents for a specified time frame or the cancellation of such documents.

11. The offender will be notified of the decision of BCAA by the respective Division Chief with respect to the penalty imposed in relation to the offence committed.
12. If the civil aviation document is cancelled, the offender can re-apply to obtain the same by fulfilling the all relevant requirement of BCAA, unless otherwise indicated in the enforcement committee's decision.
13. The record of the enforcement action shall be maintained in the personal file of the offender in case of individual offender or in the office file of the approval holder in case of the offender being an organisation holding civil aviation documents like approval or certificate.
14. The enforcement data will be updated and maintained by the relevant sections unless the case is concluded as not requiring further action. In the latter case, only the investigation file will be kept and no records will appear in the document holder file.

CHAPTER 7: COVERT OPERATIONS

7.1 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.

7.2 Covert Operations Policy

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

The decision to conduct a covert operation shall be made by the BCAA on the advice of the respective Division. Should the BCAA be satisfied that a need exists for inspectors to conduct covert operations, the respective Division will be granted the authority by the BCAA.

7.3 Principles of Covert Operations

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

1. all covert operations shall be approved by the HOA;
2. respective Division shall be responsible for the conduct of covert operations;
3. the respective Division shall ensure adequate command, control and communications are exercised during each operation;
4. where Civil Aviation Authority contemplates involvement in a joint covert operation, the agency in charge of the operation will be identified prior to the start of the operation;
5. Civil Aviation Authority may provide technical advice but will not participate actively in a joint covert operation;
6. care must be taken to ensure that the associated investigation is not construed as entrapment; and,
7. the respective Division shall ensure inspectors are thoroughly briefed for the covert operation and are aware of the guidelines for inspectors.

7.4 Guidelines for Inspectors

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

- i. In no case shall an inspector counsel or facilitate the commission of an offence;
- ii. If other illegal acts are detected during an operation, the appropriate enforcement agency shall be notified;
- iii. Inspectors may continue to provide technical advice and support;
- iv. Inspectors conducting an operation are to respect the rights of individuals;
- v. Inspectors conducting covert operations must not allow a flight to take place or to operate equipment if, in the opinion of the inspector, a condition exists that is an immediate threat to the safety of the flight.

CHAPTER 8: SPECIAL INVESTIGATIVE PROCEDURES

8.1 Contraventions by Military Aircraft

The Civil Aviation Rules and Regulations do not apply to:

1. Military aircraft operating under the authority of the Royal Bhutan Army; and
2. Foreign military aircraft.

The BCAA shall forward a detection report to Royal Bhutan Army Headquarters for any incident involving Bhutan's military aircraft or for any incident involving foreign military aircraft operating in Bhutan.

8.2 Contraventions by Aviation service providers

8.2.1 Contraventions Detected during an Audit or Inspection:

1. When audit or inspection team members detect an apparent violation of the regulations, they shall follow the initial violation process including the seizure of relevant evidence. The Auditor shall identify all contraventions of the regulations detected during the audit and will determine whether the related information should be forwarded to the HOA during the audit or held for inclusion in the audit report.
2. On receipt of the audit report, the Division Chief will jointly determine if the alleged violation requires comprehensive investigation and deterrent action. If, at the completion of a comprehensive investigation, suspension of an Air Operators Certificate (AOC) or Continuing Airworthiness Management Organisation (CAMO) or Approved Maintenance Organization (AMO), licence of air navigation service provider or certificate of aerodrome operator or appears to be the most appropriate sanction, the respective Division should consult with and get approval from the HOA before implementing the suspension. See Chapter 10 for other deterrent action considerations.

8.3 Contraventions Detected by Other Means

A Civil Aviation Inspector detecting a contravention by an air carrier crew member or employee, air navigation service provider and aerodrome operator must follow the initial violation process to record essential facts. A report must then be made to HOA who has responsibility to investigate the matter (and the delegated authority to impose a penalty). The inspector or the Division Chief may address immediate operational considerations through the exercise of functional or safety powers e.g. the suspension of an AOC, licence of ANSP, aerodrome certificate to avoid an imminent threat to aviation safety but the matter must be

referred for investigation and punitive action for the violation. An investigator must coordinate a comprehensive investigation involving any air carrier violation or airworthiness elements or ANSP or Aerodrome operator with the specialty functions before making a recommendation on the final case disposition to the Division Chief.

8.4 Violations of Foreign Aviation Legislation by Aviation Document Holders

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

In case of violation of foreign aviation legislation, investigation shall be conducted and impose penalty as deemed appropriate.

8.5 Treatment to airspace violations

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

8.6 Contraventions Involving Foreign Civil Aircraft

Where foreign civil operators are involved in contraventions which may have certification implications, the Authority shall notify the CAA of that operator.

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

8.7 Requests from foreign Civil Aviation Authorities

Requests for assistance from foreign civil aviation authorities are normally received and are related to the appropriate department for action. In any event, full BCAA cooperation is expected in keeping with the intent of Article 12 of the ICAO Convention.

CHAPTER 9 - DETERMINING A COURSE OF ACTION FOR ENFORCEMENT

9.1 Purpose

This chapter describes the process to determine the appropriate enforcement action for violations of statutory or regulatory safety/security requirements.

9.2 Corrective Action and Determining an Appropriate Response

In addressing non-compliance with statutory or regulatory safety requirements, Aviation Safety Inspectors not only must determine an appropriate enforcement response, but also must ensure that appropriate corrective action has been taken to address the non-compliance. Aviation Safety Inspectors must ensure that a regulated individual or organisation in non-compliance with safety requirements has taken appropriate steps to cease any continuing non-compliance. Aviation Safety Inspectors also work collaboratively with regulated parties to improve systems and processes to guard against future non-compliance. A fundamental responsibility of Aviation Safety Inspectors is educating regulated persons about statutory and regulatory safety requirements and improving and enhancing their ability to satisfy those requirements.

A distinction is made in the type of unsafe behaviour when determining an appropriate response. For errors and minor non-compliances, routine corrective action is more appropriate. For violations, gross negligence and criminal activity, harsher enforcement actions would be more appropriate. The flowchart below is used to classify the type of non-compliance, from which a decision for which enforcement action to use is based on.

Human Error

Human errors are defined as “a failure of a planned action to achieve a desired outcome”. It is unintentional and blameless on the part of the person. Enforcement actions are not an appropriate response to this type of unsafe behaviour.

Negligent Conduct

When a person fails to use the reasonable level of skill expected of him/her in that particular activity by either omitting to do something a reasonable person would have done, or doing something a reasonable person would not have done. It is a duty of care a person is responsible for and the person would be liable for any damages.

Gross Negligence

When there was a significant risk present that would have been obvious to any reasonable person. It involves taking a conscious and unjustified risk knowing that harm would possibly result from it, and foreseeing the harm, he/she took it anyway.

Intentional Violations

When a person knew or foresaw the result of an action that is in violation of rules, regulations or deviation from approved processes, but proceeded to carry out the action anyway.

9.3 Evaluation of Evidence

In determining an appropriate enforcement response, Aviation Safety Inspectors must first review the evidence compiled during an investigation to determine whether a violation of the regulations has been committed. If Aviation Safety Inspectors determine there is insufficient evidence to support a violation, to establish a lack of qualification of a certificate holder, or to raise a question concerning the qualification of a certificate holder, then no enforcement action is appropriate. To determine the appropriate response when evidence of statutory or regulatory non-compliance exists, Aviation Safety Inspectors use the Enforcement Decision Process described in this chapter. Enforcement personnel use the applicable sanction guidance policy outlined in Chapter 11 only in those cases where they determine that legal enforcement action is warranted.

9.4 Enforcement Decision Process

The aim of the Enforcement Decision Process is to enable the Inspector in determining the most appropriate type of enforcement action to take considering all the facts and circumstances of each case. Under this process, Aviation Safety Inspectors evaluate the apparent violator's conduct and compliance attitude, history of compliance with aviation safety requirements, and if necessary, assess the risk imposed by the violator's non-compliance. The process guides Aviation Safety Inspectors in using stronger enforcement actions (e.g. legal actions including civil penalties and administrative certificate actions) to address aggravated violations or those violations imposing a high risk to safety and using lesser enforcement response i.e. informal actions (oral or written counselling) or administrative actions (such as warning notices or remedial training) to address violations.

9.5 Applicability

Aviation Safety Inspectors apply the enforcement decision process to all violations for which there is sufficient evidence to establish that a violation occurred. After analysing the facts and circumstances of the violation under the enforcement decision process, the BCAA will take either counselling action recorded in a BCAA database, administrative action in the form of a warning letter, or legal civil enforcement action (for example, fine or licence action) in a case, except in those types of cases that are categorically excluded under the process.

9.6 Applying the Enforcement Decision Process

Aviation Safety Inspectors apply the enforcement decision process after they have completed their investigation and gathered sufficient evidence and other relevant information to analyse the facts and circumstances of the apparent violation. Aviation Safety Inspectors take the

steps indicated in the flowchart below and analyse in each step the facts and circumstances indicated by the enforcement investigation or inspection results.

9.7 Multiple Violations

When Aviation Safety Inspectors find during a single investigation or inspection, multiple apparent violations by the same person, they prepare only one Enforcement Investigation Report (EIR) and complete only one enforcement decision process (EDP) worksheet for all apparent violations committed by that person. In the EIR and on the worksheet, Aviation Safety Inspectors recommend one type of enforcement action to address all such violations. If the investigation or inspection reveals violations by multiple violators, then Aviation Safety Inspectors prepare one EIR and one EDP worksheet for each violator. To determine the appropriate enforcement action that will be taken for multiple apparent violations discovered and addressed in an EIR, Aviation Safety Inspectors apply the enforcement decision process to the apparent violation they determine is the most extreme among all the violations found. All apparent violations reported in the EIR will be addressed with the type of enforcement action determined appropriate for the most extreme of the multiple violations.

9.8 Steps of the Process

a) Exclusions. The following matters might be excluded from the enforcement decision process:

1. An issue involving lack of qualification, or question of qualification. These cases warrant either revocation of the certificate or a suspension of the certificate until the holder demonstrates qualifications. The following are examples of conduct indicating a lack of qualification:
 - a) Failing to successfully complete a re-examination.
 - b) Failing to possess the skills and competency required for the certificate held
 - c) Refusing to permit and/or submit to an inspection, re-examination, or drug/alcohol test
 - d) Intentionally falsifying a record or application
 - e) Cheating on a written examination

Further guidance on qualification for personnel licensing can be found in appendix B.

2. Actions that warrant criminal sanctions. Matters involving criminal conduct must be referred to the appropriate office responsible for criminal investigations and prosecution.
3. Special emphasis enforcement programs.
4. Person operating without having been issued a required certificate, rating or other required authorization.

5. Violations involving military pilots that are referred to the appropriate Military Department.
6. Actions by Foreign Airmen. Matter is referred for appropriate action to the licensing State of the airman.
7. Legal action is required by law.
8. If the organisation introduces and implements a satisfactory SMS

b) Evaluate the Violator’s Conduct, Attitude, and Compliance History.

1. General.

If a case is not excluded from analysis under the enforcement decision process, then Aviation Safety Inspectors analyse the case by asking the questions below. If the Aviation Safety Inspector determines that the answer to each question is the response indicated in the table of questions, then the Aviation Safety Inspector evaluates the risk associated with the violation to determine the appropriate enforcement response. If the Aviation Safety Inspector determines that the answer to one or more of the questions is not the response provided in the Table, then the Aviation Safety Inspector recommends that legal enforcement action be taken and prepares an enforcement investigation report in accordance with the guidance in chapter 6.

Question	Response to Use Counselling or issue a Warning Letter
Was the violation inadvertent?	Yes
Does the violator have a constructive attitude toward complying with the regulations?	Yes
Was the violator’s conduct a substantial disregard for safety?	No
Is the violation part of a trend of non-compliance by the violator?	No

2. Evaluating Attitude.

The apparent violator has a constructive attitude toward complying with the regulations, that is, an apparent violator that commits a significant number of unrelated violations, particularly of the same part of the regulations over a relatively short period of time would ordinarily be regarded as having a poor compliance disposition; and

3. Evaluating a Trend of Non-compliance.

The apparent violation does not indicate a trend of non-compliance with, or a disregard for, regulations in a particular part of the BCAA's regulations because of a previous instance(s) of non-compliance with that part of the BCAA's regulations. This determination must be based reasonably on the circumstances in each case, considering various factors, including whether the apparent violator is an individual or entity, and the size and scope of the apparent violator's operations.

With regard to an individual or a small company (for example, a local repair station with two or three employees) that has one previous apparent violation or finding of violation of a particular part of the BCAA regulations, a subsequent apparent violation of that part might not indicate a disregard for the regulations or trend of non-compliance if they occurred for different reasons. In this case, administrative action may be appropriate for the subsequent apparent violation, provided all other criteria are met.

On the other hand, if the apparent violations resulted from the same conduct by an individual or by the same part of a small entity's organisation, then the subsequent apparent violation might suggest a disregard for the regulations and the beginning of a trend of non-compliance. In this case, administrative action would not be appropriate. For entities conducting larger operations (for example, air carriers or aircraft manufacturers), a single, previous apparent violation or finding of violation by one part of the entity's organisation would not likely preclude administrative action for a subsequent apparent violation committed by another part of the organisation. In a large organisation, two isolated apparent violations or findings of violation of the same part of the BCAA regulations by different divisions within that organisation would not necessarily indicate a trend of non-compliance with, or indicate a disregard for, the regulations in a particular part of the BCAA's regulations by the entity's management. Administrative action, however, would not be appropriate where a review of the apparent violator's compliance background reveals a pattern of several, similar apparent violations or findings of violation of the same part of the BCAA's regulations throughout the entity's organisation that have gone undeterred by the use of administrative or legal enforcement action.

4. Analysing Risk

Aviation Safety Inspectors analyse the risk of an apparent violation(s), if they determine that the answers to the questions in the table above are the response indicated. To determine the level of risk, Aviation Safety Inspectors categorise the severity and likelihood of the hazard, that is, the dangerous condition, created by the apparent violation(s). They then apply the Risk Assessment and Enforcement Matrix ("the Matrix") to determine the level of risk for an apparent violation(s) and the corresponding enforcement action that should be taken.

5. Determining Severity

Severity is the worst type of injury or damage that could realistically occur from a generic violation of this type. A generic violation refers to the basic act or failure to act without considering any specific facts or circumstances. To determine severity, BCAA enforcement panels do not consider the specific facts of the case; the specific facts of the case are considered only when determining likelihood. Severity and likelihood are determined separately. Severity must be determined without considering the likelihood of that severity being realised. For example, if a plausible argument can be made that a hazard could under circumstances result in death or severe damage, the severity is catastrophic, in spite of the fact that such an outcome from the hazard might be extremely rare. The most common error in determining severity is prematurely considering likelihood. Likelihood must be considered and determined after severity is determined. Severity can be one of the following:

- Insignificant – no significance to aircraft-related operational safety
- Minor – Degrades or affects normal aircraft operational procedures or performance
- Moderate – Partial loss of significant/major aircraft systems or results in abnormal application of flight operations procedures
- Major – Complete failure of significant/major aircraft systems or results in emergency application of flight operations procedures
- Catastrophic – loss of aircraft or lives

In assessing the severity of an act as one part of determining safety risk, BCAA considers the potential outcome, not the actual outcome that resulted from the act. The potential severity can be catastrophic, critical, marginal, or negligible regardless of whether actual injury or property damage occurred or nearly occurred. For example, a 1,000-foot altitude deviation from an ATC clearance has the same potential outcome regardless of whether there was actually another aircraft that came into conflict or not. Similarly, a fuel exhaustion occurrence has the same potential outcome irrespective of whether an actual accident resulted. In these examples, the absence of another aircraft coming into conflict or the existence of suitable forced landing sites are fortuitous (by chance) circumstances not considered in the determination of severity, since other aircraft could have been in conflict (by chance) or there could have been a lack of suitable forced landing sites (by chance). In determining the severity, the existence of fortuitous circumstances is not considered.

6. Determining Likelihood

Likelihood is the probability of the worst type of injury or damage realistically occurring, considering the specific facts of the case. In other words, Aviation Safety Inspectors determine how likely it is that the severity level would actually be realized, given the facts and circumstances involved. Likelihood can be one of the following:

- Frequent – likely to occur many times or has occurred frequently
- Occasional – likely to occur sometimes or has occurred infrequently
- Remote – unlikely to occur, but possible or has occurred rarely

- Improbable – very unlikely to occur or not known to have occurred
- Extremely improbable – almost inconceivable that the event will occur

7. Determine the Safety Risk and the Appropriate Enforcement Action.

BCAA enforcement personnel determine the safety risk (high, moderate, or low) and the appropriate enforcement action using the following matrix:

8. Deviations from the Enforcement Decision Process

The facts and circumstances surrounding an apparent violation may warrant either a more serious action (legal enforcement) or less serious action (warning letter) than application of the enforcement decision process indicates. Aviation Safety Inspectors and other enforcement personnel must use good judgment and sound reasoning when exercising their discretion to address an apparent violation with the appropriate enforcement response even if it means taking an action other than what is indicated by the enforcement decision process. Aviation Safety Inspectors may determine a case warrants a deviation from the enforcement action indicated by the steps in the enforcement decision process. If Aviation Safety Inspectors select a type of action other than that indicated by application of the process, then they must provide a justification and have approval of BCAA. The following apply the Risk Assessment and Enforcement Matrix (“the Matrix”) to determine the level of risk for an apparent violation(s) and the corresponding enforcement action that should be taken. The following are examples of where a deviation from the type of action indicated by the Matrix might be justified:

1. In certain cases, where a business commits an apparent violation that qualifies for warning letter or counselling but presents a high safety risk, a warning letter together with corrective action may be more appropriate to improve the operator’s system for system safety benefits, even though the Matrix directs legal action. For these cases, the potential safety benefits of a structured corrective action process that incorporates a corrective action plan might be preferable to respond to the high safety risk.
2. In certain cases, where a violation does not qualify for warning letter or counselling because an individual’s apparent violation was not inadvertent, there is negligible safety risk involved. For example, an apparent violation by a pilot who operates an aircraft without a pilot certificate in his or her possession but is qualified and current to operate aircraft, may be more appropriately addressed with a warning letter.

9.9 Documentation

1. Enforcement Decision Process - Aviation Safety Inspectors should document their decision making process.
2. Enforcement Decision Process in EIR - Aviation Safety Inspectors include the completed documentation in the EIR.

3. Entry in Tracking Systems - Counselling, warning letters, and legal enforcement actions are recorded in a BCAA database. For counselling, which may not involve a written submission to the apparent violator, Aviation Safety Inspectors must record the following data in the database:
 - a) Name of the individual or business
 - b) Certificate type and number of the individual or business (as applicable)
 - c) Regulations involved (include section, paragraph and subparagraph)
 - d) Date of counselling
 - e) Type of counselling (oral or written)
 - f) For businesses, name and title of person counselled
 - g) Brief description of the apparent non-compliance

9.10 Review of Enforcement Decision Process in each Case

BCAA shall review the inspector's recommendation and complete a worksheet for each case. If they concur with the inspector's recommendation, then the BCAA proceeds with the recommended action. If they do not concur with the inspector's recommendation, then BCAA discusses the facts and circumstances of the case with the inspector, and BCAA and the inspector reach a mutually agreeable resolution for how to proceed with the case and what if any enforcement action should be taken.

CHAPTER 10 ADMINISTRATIVE ACTION

10.1 Introduction

Administrative action comprises all deterrent measures, other than legal action, taken by the BCAA pursuant to the provisions of the Civil Aviation Act of Bhutan 2016 and rules and regulations.

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 BCAA are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

10.2 Objectives of Administrative Action

The major objectives of administrative action are:

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

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

10.3 Types of Deterrent Action

There are two types of deterrent actions: legal and administrative.

Legal action involves the prosecution of an alleged offender in the tribunals or courts and is only applicable to a few provisions of the Civil Aviation Act of Bhutan 2016 or the rules and regulations.

Administrative action comprises all other measures taken by the HOA pursuant to the provisions of the Civil Aviation Act of Bhutan 2016 and includes oral counselling, the suspension of documents and the assessment of monetary penalties.

10.4 Selection of Appropriate Deterrent Action

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

1. Designated Provisions

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

2. Hybrid and Summary Conviction Offences

Where a person has contravened a non-designated provision, the BCAA must decide whether to take administrative action by way of suspension or to take legal action. All alleged contraventions of the Bhutan Civil Aviation Act of Bhutan 2016 or BANRs 2021 or the BCARs shall be dealt with by taking administrative deterrent action except where the criteria for legal 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 legal action may be more appropriate, particularly in light of the heavier sanctions normally imposed.

10.5 Administrative Action

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

- a) oral counselling;
- 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 service providers or their employees had repeatedly contravened the regulations even though the safety implications were minimal. Cancellation would also be appropriate where suspensions or monetary penalties are not having the desired effect.

10.6 Special Administrative Processes

10.6.1 Joint Legal-Administrative Deterrent Action

Legal action and administrative action may be taken simultaneously where evidence discloses that a person has contravened two or more different provisions arising from the same incident provided that each provision violated does not rely on the same facts. For example, if a charge of reckless and negligent flying under Civil Aviation Act of Bhutan 2016 relied in part on the fact that the pilot was low flying, the pilot could not also be proceeded for low flying under the BANRs 2021.

A prosecution for one offence may be accompanied by suspension for another offence only where common facts are not relied on. Legal and administrative

deterrent action shall not be taken in respect of the same contravention. Either one or the other shall be selected depending upon the facts of the particular case.

10.6.2 **Emergency Action**

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

1. Aircraft Detention or stoppage of service for Immediate Threat to Aviation Safety

Where the threat arises from a particular aircraft that is unsafe or likely to be operated in an unsafe manner, that aircraft may be detained pursuant to Section 101 of the Civil Aviation Act of Bhutan 2016. The detention shall remain in effect until the unsafe condition is corrected. Similarly, the ANS and aerodrome facilities may be stopped with immediate instruction by the inspector and only be resumed once the unsafe condition is alleviated pursuant to section 100 of the Civil Aviation Act of Bhutan 2016.

2. Air Operator Certificate and other approvals Suspensions for Immediate Threat to Aviation Safety

Where the threat arises from the operations of the carrier (instead of a single aircraft), the HOA may decide to suspend the Air Operator Certificate under Section 104 of the Act. This sort of suspension must be viewed as a last resort to be carried out with extensive consultation among the Divisions as appropriate. The HOA must be satisfied that the immediate threat to aviation safety exists or is likely to occur as a result of an act or thing having been, being or proposed to be done under the authority of the document to be suspended.

The HOA would usually be the suspending authority. The AOC suspension shall come into effect immediately and remain in effect until such time as the threat to aviation safety is removed.

Similarly, the licences of ANS personnel and certificate of aerodrome service provider may be suspended for immediate threat for civil aviation with an immediate effect by an instruction by ANS /Aerodrome inspectors respectively pursuant to 14.3.8 of Section 14 of BANRs 2021.

10.6.3 **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:

Administrative Action

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

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.

10.6.4 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 HOA the following procedures shall apply in the disposition of such cases:

- 1. Administrative Action**

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

- 2. Provision for a Continuing Violation**

A continuing violation which was the subject of enforcement action, but

has not ceased, may need further action to secure compliance. If the violation was in respect of provisions not affecting airworthiness requirements, detention of an aircraft 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 in addition to any Enforcement action.

Similarly, the services of ANS and aerodrome service provider may be suspended or cancelled for immediate threat to civil aviation with an immediate effect by an instruction by ANS/Aerodrome inspectors respectively.

10.6.5 **Flights with Intermediate Stops**

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

10.7 Disclosure of Deterrent Actions

10.7.1 **Disclosure to employers**

Employers of Civil aviation document holders should be advised of the deterrent action taken if the contravention took place while the alleged offender was on company business. If the alleged offender was not on company business at the time of the contravention, the disclosure of deterrent action to their employer is prohibited unless an exception under the regulations applies. An exception may exist where the deterrent action taken against a professional pilot affects the pilot's 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 HOA will decide if disclosure to the employer is appropriate.

10.7.2 **Notification of Detection Source**

The Division Chiefs shall ensure that the detection source is advised of the outcome of the case and record this action.

10.8 Personnel Licensing

Guidelines for actions on personnel licences, certificates or approvals can be found in appendix A.

10.9 Oral Counselling

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

Examples of minor inadvertent violations:

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

10.10 Remedial Training

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

Examples of inadvertent violations

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

Figure 10-1: Table of Legal and Administrative Action

Errors/Violations/Offences		Enforcement Action	
		Created significant hazard to aircraft and its occupants	May create significant hazard to aircraft and its occupants
Errors	Slips/Lapses	Restriction of Civil Aviation document/ Warning letter	Oral/written counselling or warning letter
	Mistakes	Restriction of Civil Aviation document/ Warning letter	Oral/written counselling or warning letter
	Repeated errors	Restriction of Civil Aviation document and /or Remove individual or organisation from the task	
Violations	Violation	Refer to EDP flowchart	Refer to EDP flowchart
	Recurrent violation	Suspension/ Cancellation of Civil Aviation document	Suspension/ Cancellation of Civil Aviation document

Errors/Violations/Offences		Enforcement Action	
		Created significant hazard to aircraft and its occupants	May create significant hazard to aircraft and its occupants
Lack of Qualification	Lack of qualification / Competency	Legal Enforcement Action*	Legal Enforcement Action*
	Recklessness / Gross Negligence	Legal Enforcement Action*	Legal Enforcement Action*
	Wilful-misconduct / illegal activity	Legal Enforcement Action*	Legal Enforcement Action*

Note: * Legal Enforcement Action to be handled by relevant legal authorities for prosecution. However HOA sanction actions covering civil penalties, suspension or cancellation of an aviation may complement Legal Enforcement Action.

CHAPTER 11 SANCTIONS

11.1 General

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

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

11.2 Factors Affecting Choice of Sanction

1. The facts surrounding the commission of the offence
 - a) What was the role of the offender;
 - b) Was there any pressure or undue influence exerted by an employer or an employee; and
 - c) Were there mitigating circumstances not amounting to a defence?
2. The gravity of the offence
 - a) Was a threat to safety posed;
 - b) Was there any actual harm done;
 - c) Did the violation result in an incident or accident;
 - d) Was there careless or reckless conduct; and
 - e) Was the maximum punishment available?
3. The premeditation or deliberateness of the offence and attitude of the offender
 - a) while "the mental element" is not relevant to guilt in strict liability offences it may be indicative of the offender's attitude;
 - b) was recklessness involved or plain negligence;
 - c) what is the offender's attitude toward safety; and
 - d) what is the offender's attitude toward future compliance?

4. Personal characteristics to be considered – what is the offender’s:
 - a) age;
 - b) experience level, knowledge and skill in Aviation;
 - c) training record;
 - d) employment - is a licence required to hold employment;
 - e) work in relation to any Civil aviation documents; and
 - f) financial position in regard to the ability to pay a fine or penalty?

5. The record of the offender
 - a) are there any prior sanctions on record;
 - b) is this an isolated act or is this person a repeat offender;
 - c) are there any related or similar offences on record; and
 - d) is there any question of competence or qualification involved?

6. Punishment
 - a) What is the range of sanctions available?

7. Deterrence and public safety
 - a) would the recommended sanction contribute to public safety; and
 - b) Will the sanction act as a deterrent to others?

8. Rehabilitation
 - a) Will the sanction promote future compliance on the part of the offender?

11.3 Procedures for Administrative Monetary Penalties

When the BCAA receives a case report, the BCAA may use an administrative monetary penalty as a sanction as part of legal enforcement action. The following procedures apply in all cases where an administrative monetary penalty is assessed.

1. The Division Chiefs will assign inspector(s) to investigate the issue to determine and recommend the amount of the penalty that is appropriate depending on the nature of offence and frequency of offence.
2. The assigned inspector(s) to investigate and such inspector shall complete the Notice of Monetary Penalty. The Notice shall contain a clear description of the offence and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.
3. With the Notice, the inspector(s) shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.

4. The inspector/investigator shall serve the Notice on the alleged offender personally or by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
5. The monetary penalty may be paid by one of the methods acceptable to BCAA by depositing in the bank account specified. An official receipt will be issued.
6. Should the monetary penalty not be paid by the due date (a minimum of 30 days not counting the day the Notice is served), the inspector shall send a copy of the Notice to the HOA within fifteen days following the due date.

11.4 Suspension of Civil Aviation Documents

According to the Civil Aviation Act of Bhutan 2016, the HOA has the authority to suspend/cancel a civil aviation document as a punitive measure in extreme cases.

NOTE: The sanction table in the appendix C has described the number of days and monetary amount to be indicated based on BCAA rules and regulations. BCAA officials had to bear in mind that the heftiness of the amount would be indicative of the gravity of the offence, while recommending a sanction.

11.4.1 Suspension Procedure

The suspension of a Civil aviation document for contravention of a provision of the Civil Aviation Act or regulation made under this Act or requirements, orders, directives, circulars and notices made under prevalent rules and regulations is a severe administrative sanction that can be imposed by HOA. Suspension action is taken where a monetary penalty would be an inadequate deterrent or continued use of the document would create a hazard to aviation safety and legal action is either not available or inappropriate. Detailed procedure has been set forth in chapter 6.

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

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

The following paragraphs outline the suspension process.

1. The Division Chiefs shall determine and recommend the appropriate duration of suspension by considering the Table of Sanctions in Chapter 12 and the recommendation of the investigator.
2. The Division Chiefs shall complete the Notice of Suspension. The Notice shall contain a clear description of the offence and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.

3. With the Notice, the Division Chiefs shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
4. The Division Chiefs shall serve the Notice on the alleged offender personally or send it by registered mail or by any electronic media/devices. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
5. Where the alleged offender requests a review by the HOA and applies for a stay of suspension pending its decision, the Division Chiefs shall not oppose the application unless it appears that a threat to aviation safety would result. In such a case, the Division Chiefs or his designate shall present the Authority's position to the HOA.

Where the alleged offender does not ask for a review by the HOA 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 under BANRs. Prior to laying charges, the document holder should be contacted to confirm the situation.

11.5 Cancellation

Cancellation of a document of entitlement because of incompetence, lapse in qualifications of the document holder or lack of medical fitness is within the purview of licensing and certification authorities. The procedure of cancellation of civil aviation documents as per the provisions of chapter 6 will be followed including the setting up of the enforcement panel.

11.6 Appeal of Sanction

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

The alleged offender normally has thirty (30) days from the date the Notice is served or sent to accept the offer and meet with the HOA.

11.6.1 **Appeal Hearings**

There are two levels of hearings:

A Review Board is the first level of hearing conducted by a Division Chief with another Senior Officer (nominated by HOA) to review the decision or enforcement action. The Review Hearing also reviews BCAA's action based on grounds if there has been a breach of any regulations warranting appeals against the enforcement action or decision.

The second level of hearing is an Appeal Board chaired by HOA who will nominate another Division Chief and a senior officer to look into the Review Hearing Board's recommendation to review or reject the appeal.

Note: The members who conducted the first hearing will not be involved in the second hearing. This appeal is based on the arguments, evidence and exhibits contained in the minutes recorded in the Review Hearing. Only evidence not previously available may be presented at the Appeal Hearing.

11.6.2 **Review Hearing Application**

The appellant must submit a written request for review within thirty (30) days of being given notice by the BCAA. (The BCAA's notice sent to the appellant person must state clearly the availability of the opportunity to appeal enforcement actions or decisions that affect their licenses, certificates, approvals or application). The appeal must be sent by email or delivered.

The appeal may be in the form of a letter and should contain the following information:

- a) Appellant's name, address and telephone numbers
- b) Name and telephone number of the organization if any;
- c) Enclose a copy of the BCAA's letter or notice of enforcement actions

If the 30 day period for submitting an appeal has expired, a written request for an extension of time is required to set out the reason why the appeal was not filed within the 30 days.

Filing an appeal for a Review Hearing does not automatically implement a stay of a suspension or cancellation of the decision or enforcement action. A request for stay may be made to the BCAA where the enforcement action or decision has been issued. Such a request may be granted by the BCAA for a reasonable time, provided that no threat to aviation safety exists.

11.6.3 **Review Hearing Procedure**

The Division Chief handling the appeal will set a date, time and place for a Review Hearing as soon as possible upon receipt of a written request for review from a person affected by the BCAA's enforcement action or decision.

Parties must appear personally or a representative, a relative, a friend, etc. Witnesses may be requested to appear at the hearing.

All relevant evidence should be presented at the Review Hearing. At the subsequent Appeal Hearing, the only evidence which was not available at the time of the Review Hearing will be accepted and then only if the Appeal panel finds it necessary for purposes of the Appeal Hearing.

Evidence is usually in the form of testimony being provided. Documents and other forms of evidence may also be used. Minutes of the Review Board are recorded to ensure that an adequate record or transcript is available for use at any subsequent Appeal Hearing.

11.6.4 **Review Determination**

The Review Board shall render a determination in writing following the proceeding. The Review Board will provide written reasons together with the determination. In making its determination, the Review Board may confirm the earlier BCAA decision or substitute its own, except where the original decision was based on medical grounds, incompetence, lack of qualifications or involved a suspension or cancellation in the public interest. In these cases, the Review Board is limited to confirming the decision or, if it is found that the decision was unjustified, referring the matter back to the relevant Division Chief for reconsidering. If the matter is referred back to the relevant Division Chief for reconsideration, the decision is final and no further appeal to the members of the Review Board is available.

11.6.5 **Medicals**

When BCAA recommends the suspension or cancellation of a licence on medical grounds, an Evaluating Medical Examiner will usually be a member of the Review Hearing. To renew a licence for medical reasons, however, the burden of proving that such a decision is unjustified is on the person requesting the review. In the event the licence holder in a medical case is uncertain as to the basis for the BCAA medical assessment, a preliminary meeting can be arranged. Any additional medical evidence should be brought to the attention of BCAA for reassessment before a review hearing.

11.6.6 **Appeal Hearing Procedures**

The determination rendered by a Review Board may be appealed by applying, in writing, within ten days after the determination was served on the appellant personally or by registered mail. The written Request for Appeal shall include a concise statement of the grounds on which the appeal is based. The Appeal Board will subsequently give notice to the appellant of the date, time and place of the hearing. Appeals are based on the record of proceeding of the Review Hearing. A copy of the review proceedings will be provided to the Review Board. New evidence may be accepted at the Appeal Hearing ONLY if the

Appeal Panel is satisfied that the evidence was not available for the Review Board and is necessary for purposes of the appeal. The members of the Review Board whose determination is appealed will not be a member of the Appeal Panel. Appeal panels usually consist of three members and are usually chaired by the HOA.

The appellant has the right to proceed by way of oral presentation. The Appeal Panel may request that applicants submit additional written arguments before rendering its determination. The applicant may also request that the Appeal be conducted by written submission.

11.6.7 **Appeal Determination**

The Appeal panel will render a written determination based on the record of the Review Hearing and either oral or written as applicable. The Appeal Determination with written reasons will be served following the proceeding. The Appeal Determination is final and binding.

11.6.8 **Penalty Negotiation Considerations**

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

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

11.7 Legal Action

Prosecution of service providers for a contravention of a non-designated provision is recommended in all cases where, in the opinion of the HOA if the contravention is such that it would be appropriate to seek a significant. Any person

- a) Knowingly making any false representation to obtain an aviation document or any privilege accorded thereby;
- b) Wilfully destroying any document required to be kept;
- c) Making or cause to be made any false entry in a record required to be kept with intent to mislead or wilfully omit to make any entry in any such record;

- d) Wilfully obstructing any person who is performing duties under the authority of the HOA;
- e) except as authorised under the applicable regulations, wilfully operating or otherwise dealing with an aircraft that has been detained under the national regulations;
- f) wilfully doing any act or thing in respect of which an aviation document is required except under and in accordance with the required document, or
- g) wilfully doing any act or thing in respect of which an aviation document is required where
 - i. the document that has been issued in respect of that act or thing is suspended, or
 - ii. an order issued by the authority prohibits the person from doing that act or thing shall be prosecuted through the applicable law.

11.8 Administrative Process

11.8.1 Administrative Monetary Penalty

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

The monetary penalties are set out in Appendix A

Examples of Offences Warranting Monetary Penalties

- Failure to comply with Airworthiness Directives
- Operations contrary to operations specifications – technical non-compliance
- Failure to maintain training programme
- Failure to make a required entry in aircraft log
- Violation of flight dispatch and release
- Maintenance performed by a person without a certificate
- Deviate from a flight plan without informing ATC

11.8.2 Suspension of Civil Aviation Document

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

Examples:

- Releasing aircraft for service without required equipment
- Failure to make entries in aircraft log
- Take-off against instruction or clearance
- Approach below weather minimums

- Deviating from clearance or instruction
- Failure to perform or improper performance of maintenance
- Operation for compensation or hire without commercial pilot certificate
- Failure to comply with special conditions of medical certificate

11.8.3 **Cancellation of Civil Aviation Document**

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

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

Examples for cases inviting the cancellation of civil aviation documents:

- Intentional false or fraudulent entry, reproduction, or alteration in record or report
- Operation without valid medical certificate when not medically qualified
- Intentional falsification of any entry, reproduction, or alteration in any record or report
- Falsification of maintenance records
- Operation while pilot licence is suspended
- Acting, or attempting to act, as flight crew member while under the influence of liquor.

CHAPTER 12: ENFORCEMENT FOR SAFETY MANAGEMENT SYSTEMS

12.1 Enforcement Policy

Enforcement procedures shall allow service providers to deal with and resolve certain safety issues internally, within the context of the service provider's SMS, and to the satisfaction of BCAA.

Intentional contraventions of regulations will be investigated and appropriate enforcement measures will be assessed.

No information obtained from the collection of safety data established under the context of the service provider's SMS shall be used as the basis for enforcement action unless contravention is deemed as severe or intentional.

12.2 Applicability

The term "service provider" refers to any organisation providing aviation services. An SMS is mandatory for the following types of service providers:

- a) Aircraft Operators
- b) Aircraft Maintenance Organisations
- c) Air Navigation Service Providers
- d) Airport Operators
- e) Training Organisations
- f) Aircraft Manufacturers

Service providers must maintain an SMS that is acceptable to BCAA for them to deal with contraventions of regulations internally. Under certain conditions will BCAA step in to deal with contraventions. The conditions are as follows:

- a) Occurrences involving gross negligence, intentional violations or criminal activity
- b) Seriously biased/deficient investigations or corrective actions taken by service provider
- c) Inadequate/ineffective safety investigation/resolution process by service provider
- d) Failure to fully cooperate or provide required safety information to BCAA
- e) Unsatisfactory SMS performance and failure to meet an acceptable level of safety performance
- f) Service provider is a recurrent violator

12.3 Enforcement Principles

1. Enforcement decisions must be fair, impartial, consistent, transparent, and available for use at the discretion of the service provider.
2. Intentional contraventions of the Civil Aviation Act of Bhutan 2016 and regulations will be investigated by BCAA and be subject to conventional enforcement action where necessary.
3. Clear provisions should be present in the service provider's SMS framework for due consideration to distinguish between premeditated violations and unintentional errors or deviations.
4. Aviation safety inspectors should at all available opportunities promote compliance with regulations through their actions and decisions.

12.4 Surveillance

Service providers will be subject to inspections, including unannounced inspections, and audits to assess the degree of compliance with the safety regulatory requirements.

Assessments of service providers' SMS are done in the following areas:

1. Structure of the SMS and adequacy of staffing levels
2. Compliance with approved procedures and instructions
3. Achievement of the required level of personnel competency and recurrent training
4. Adequate equipment performance for the safety level of service provided
5. Effective promotion of safety, monitoring of safety performance and processing safety issues
6. Adequate arrangements to handle foreseeable emergencies

Inspections, audits and other surveillance activity can be scaled down if a safety provider maintains an effective SMS and low safety risk. This lowers the amount of strain of resources on both the BCAA and the service provider. However, surveillance activity should continue regardless of performance.

12.5 Collection of Safety Data

As part of a SMS, service providers should develop and maintain a system for collecting, reporting, acting on and generating feedback about the hazards in operation. This system should cover both proactive and reactive safety reporting.

The reports BCAA receives should be confidential and not be used for the basis of enforcement action unless the violation involved gross negligence, intentional violations or criminal activity.

CHAPTER 13: TECHNICAL INFORMATION

13.1 Records Management

13.1.1 Removal of Notation of Sanction

Any notation of a suspension of a Civil Aviation Document or a monetary penalty imposed by the BCAA shall, on request from the person affected by the suspension or penalty, be removed from the record if:

- a) At least two years have passed since the date the suspension expired or the penalty has been paid;
- b) No additional suspension or penalty has been recorded against that person after that date, and
- c) The removal of the record would not be contrary to the interest of aviation safety or security and if that person is not subject to an investigation under the Act or the Regulations.

A denied request cannot be resubmitted until an additional two years have passed from the date of the original application.

The decision to remove the record shall be made by the HOA.

Removal of a notation of sanction means destroying the enforcement file that refers to the sanction, as well as all documents referring to the notation of sanction, from any other record. The circumstances of the infraction will remain in the enforcement database for statistical purposes.

13.1.2 Retention of Records

Aviation enforcement files shall be retained for the minimum time required by Law.

13.1.3 Destruction of Files

The HOA and the Division chiefs and Legal Service shall review each file slated for destruction. Destruction of the file shall be accomplished by shredding the documents.

13.1.4 Control of Enforcement Records

All aviation enforcement records and Civil Aviation Documents shall be treated as controlled documents. Enforcement and Legal Service personnel shall ensure that these documents and records are secured when work areas are left unattended.

13.2 Miscellaneous

13.2.1 Communications with the Media

In instances where communications with the public and news media arise, inspectors/investigators shall refer to the current policy.

13.2.2 Access to Information

Alleged offenders have the right to any information concerning their own person or the allegations against them. This information shall be freely given to them by the BCAA. Any other request must be made in writing to the HOA.

13.2.3 Matters before the Courts

Matters before the courts shall not be discussed with the public until the conclusion of the case and then only concerning matters that are considered of public interest.

13.2.4 Criticism of the BCAA

When the BCAA comes under criticism during an Inspector's duties, the Inspector should calmly acknowledge the comments and pass them along to his or her supervisor.

APPENDIX

Legal Enforcement Actions

- a) These sample sanction guidance tables provide a recommended approach to assessment of sanctions for violations of these aviation regulations.
- b) These tables describe civil penalties as minimum, moderate, or maximum for a single violation of a particular rule and regulation. These terms are defined in the following tables.

Table 1: Range of Civil Penalties

Party Committing Violation	Amount of Civil Penalty (in Nu.)
General provisions	Maximum: Nu. 20000 Moderate: Nu.10000 Minimum: Nu.5000
Aircraft Registration	Maximum: Nu. 50000 Moderate: Nu.20000 Minimum: Nu. 5000
AME Licensing & Rating	Maximum: Nu. 50000 Moderate: Nu. 25000 Minimum: Nu.10000
Approved Maintenance Organisations	Maximum: Nu.100000 Moderate: Nu.50000 Minimum: Nu.25000
Aviation Fuel Station	Maximum: Nu.20000 Moderate: Nu.10000 Minimum: Nu.5000
Security	Maximum: Nu. 20000 Moderate: Nu.10000 Minimum: Nu.5000
Aerodrome Operators	Maximum Moderate Minimum

Aviation document holder	Maximum: Nu. 40000 Moderate: Nu.20000 Minimum: Nu.10000
General Aviation	Maximum: Nu. 50000 Moderate: Nu. 30000 Minimum: Nu. 15000
Flight Operations	Maximum: Nu. 800000 Moderate: Nu. 40000 Minimum: Nu. 20000
Transport of Dangerous goods	Maximum: Nu. 50000 Moderate: Nu. 30000 Minimum: Nu. 15000

Table 2: Sanctions

1. General Provision

Violations	Action	Certification Action
Failure to submit CAP on time after a reminder.	Minimum	
Failure to implement CAP on time	Moderate	
Falsification of information/evidence	Maximum	
Failure to grant access for inspection of facilities, equipment, personnel, records, or certificate (Section 81 of the Act).	Maximum	

2. Flight Operations

Violations	Action	Certification Action
To conduct over-flight / tech stops without BCAA authorization	Minimum	
To operate a foreign registered aircraft without BCAA authorization	Maximum	barred Operator from operating in Bhutan
Operate aircraft in Bhutan beyond sunset and sunrise limitations.	Maximum	suspends PIC licence for 1month
Operation of flights without BCAA Clearance.	Maximum	revoke ATC controller privilege.
Assignment of incompetent personnel on duty.	Maximum	Suspension of Post holder authorization
Operation of aircraft beyond the scope of approved operation specifications	Maximum	Suspend AOC
Failure of a person to conduct flight training in accordance with requirements	Moderate	Revoke privilege.
Conduct flight training without possessing authorization.	Maximum	bar for future application.

Failure of a person to conduct ground training in accordance with requirements	Moderate	Revoke privilege
Conduct ground training without possessing valid authorization.	Maximum	bar for future application
Working as a crew member when: a) Suffering or likely to suffer from fatigue; or b) Unfit to properly perform duties.	Maximum	suspend a licence for 1 month.
Working as a crew member: within 8 hours of consuming alcohol.	Maximum	NA
Exercise crew licence/attestation privileges under the influence of psychoactive substances.		
a) Observed during the test carried out	Nu. 1 million for licence holders and Nu. 1.5 m for employer(reference)	Suspension of licence for 6 months
b) Test carried out by employer but not reported to BCAA.	Nu. 0.3 m for the employer of the licence holder. The licence holder shall be liable for penalty specified in(a)	Suspension of licence for 6 months

<p>Operating an aircraft outside operating limitations described:</p> <ul style="list-style-type: none">a) in the flight manual;b) in another manual if such document exists and are applicablec) on placards/markings; ord) by the authority of the state of registry.	Maximum	
<p>Fuel aircraft with engines running and passengers on board, embarking or disembarking unless in compliance with laid down requirements.</p>	Maximum	
<p>Start an aircraft engine when</p> <ul style="list-style-type: none">a) a competent person is not seated in a pilot seat;b) precautions have not been taken to prevent the aircraft from moving;c) an aircraft is in a location where movement would endanger persons/property.	Maximum	
<p>Leave an aircraft engine running when:</p> <ul style="list-style-type: none">a) the pilot's seat is not occupied by a person competent to control the aircraft, orb) the aircraft is not prevented from moving and is left unattended.	Maximum	

<p>Overfly built-up areas/open-air assemblies of persons during take-off, approach & landing from areas other than airports or military aerodromes at an altitude from which it would be impossible to land an aircraft without creating a hazard.</p>	<p>Maximum</p>	
<p>Take-off, approach & land within a built-up area.</p>	<p>Maximum</p>	
<p>Operate an aircraft: a) over the built-up area/open-air assembly of people at less than the specified; or b) elsewhere at a distance of less than 500 feet from an object/person.</p>	<p>Maximum</p>	
<p>Operate a helicopter over open-air assemblies of persons with external load.</p>	<p>Maximum</p>	
<p>Operate a helicopter over a built-up area with an external load.</p>	<p>Maximum</p>	
<p>Operate helicopter with external loads or aircraft involved in aerial application or inspection below 500 feet with passengers on board.</p>	<p>Maximum</p>	

3. Transport of Dangerous Goods by Air

Violations	Action	Certification Action
To load a package containing dangerous goods on the flight deck of an aircraft or in a passenger compartment.	Maximum	
To stow in an aircraft, packages containing substances which are capable of producing a dangerous reaction when they are in contact with each other.	Maximum	
To carry packages of radioactive materials on aircraft unless they are stowed on board in accordance with the appropriate separation distances specified in the technical instructions to separate from persons.	Maximum	
Failure of an operator to provide the PIC of an aircraft in which dangerous goods are to be carried with written information as specified in the Technical Instructions.	Maximum	
Failure of an air operator to secure dangerous goods in an aircraft, in a manner which will prevent any movement during the flight which wouldn't change the orientation of the packages.	Maximum	

to carry dangerous goods in an aircraft without complying with the applicable Technical Instructions	Maximum	
To carry in an aircraft unless specifically authorised by HOA, BCAA: a) articles and substances that are identified as being forbidden in the dangerous goods list in the Technical Instruction. b) radioactive materials that are explosive c) infected live animals or d) weapons or parts thereof, or ammunition or constituents thereof, which are designed for use in warfare or against a person.	Maximum	

4. Personnel Licensing and Training

Violations	Action	Certification Action
to act as a crew member without holding or being able to produce a valid flight crew permit, valid licence or rating on the spot;	Maximum	
to act as a crew member of an aircraft registered in Bhutan a) without a Bhutanese valid flight crew document or b) valid validation issued by BCAA	Maximum	

<p>to exercise privileges of a flight crew document</p> <p>a) without having acted as PIC or SIC within 90 days or</p> <p>b) without having completed a flight review within the 3 months preceding the flight</p>	<p>Maximum</p>	
<p>to exercise privileges of a flight crew document</p> <p>a) without having successfully completed a recurrent flight training program within 3 months and</p>	<p>Maximum</p>	
<p>to exercise privileges of an instrument rating without having:</p> <p>a) successfully completed a flight check within 12 months;</p>	<p>Maximum</p>	
<p>to exercise privileges of a flight engineer licence without</p> <p>a) having acted as one within 3 years or successfully completed a written examination within 6 months of the flight and,</p> <p>b) where a passenger is carried, having acted as one in the same type of aircraft or simulator within the 6 months preceding the flight.</p>	<p>Maximum</p>	
<p>to make an unauthorized entry in a personal log</p>	<p>Moderate</p>	

<p>attempt to exercise privileges of a personnel document without having the appropriate valid medical certificate.</p>	<p>Moderate</p>	
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5. Aircraft Registration

<p>Violations</p>	<p>Action</p>	<p>Certification Action</p>
<p>Operation of an aircraft that has never been registered/without a COA/Special flight permit.</p>	<p>Maximum</p>	
<p>Operation of an aircraft with an invalid, suspended, or revoked registration/COA/special flight permit.</p>	<p>Moderate</p>	

6. AME Licence and Rating

Violations	Action	Certification Action
Unfair or fraudulent means during the qualification process for obtaining a licence or rating or authorisation	Maximum	
Holder has obtained the certification privileges by adopting fraudulent means	Maximum	
the holder has failed to carry out required maintenance resulting from own inspection combined with a failure to report such fact to the organisation or person for whom the maintenance was intended to be carried out	Maximum	
the holder has performed work or granted a certificate in respect of work which has not been performed carefully and competently or was responsible in any manner that Compromised airworthiness of the aircraft	Moderate	
the holder has signed a certificate without meeting the recency requirements	Moderate	

the holder has issued a certificate of release to service knowing that the maintenance specified on the certificate of release to service has not been carried out or without verifying that such maintenance has been carried out	Maximum	
the holder has falsified the maintenance records	Maximum	
the holder has signed a certificate beyond the scope of privilege of his licence/ authorization.	Moderate	

7. Approved Maintenance Organisation

Violations	Action	Certification Action
Failure to maintain record of supervisory or inspection personnel	Moderate	
Failure to maintain record	Moderate	
Failure to ensure correct calibration of inspection and test equipment at prescribed intervals	Moderate	

Making improper or incomplete entry in maintenance record	Moderate	
Failure to make entry in maintenance record	Moderate	
Failure to make entry in record or report	Moderate	
Failure to sign or complete maintenance release	Moderate	
Performance of maintenance or approval for return to service by unauthorised person	Maximum	
Maintaining or altering an airframe, powerplant, propeller, instrument, radio, or accessory for which the maintenance organisation is not approved	Maximum	
Maintaining or altering an article for which the maintenance organisation is not approved without using required technical data, equipment, or facilities	Maximum	
Failure to report defect or unairworthy condition to BCAA in a timely manner	Moderate	
Failure to have adequate infrastructure	Moderate	

Failure to provide qualified personnel who can perform, supervise, and inspect work for which the station is rated	Maximum	
Failure to meet equipment, materials, and data requirements	Moderate	
Change of location, housing, or facilities without written approval	Moderate	
Failure to follow Exposition – technical non-compliance	Minimum	
Failure to follow Exposition – potential effect on safety	Moderate	
Failure to follow Exposition – likely effect on safety	Maximum	
Failure to maintain training program	Moderate	
Failure to train personnel adequately	Moderate	

8. Aviation Fuel Stations (Fuelling)

Violations	Action	Certification Action
Failure to establish record	Maximum	
Failure to maintain current and accurate record	Moderate	
Failure to retain record	Moderate	
Failure to maintain the capability for which the organisation has been approved	Moderate	

9. Security

Violations	Action	Certification Action
A person/operator commits an offence when, without reasonable excuse, fails to comply with any of the obligations, or with any requirements of the Authority.	Maximum	
Intentionally obstruct or impede an Aviation Security Inspector.	Moderate	

Failure or refusal by operators to provide the information requested by an Aviation Security Inspector.	Maximum	
Provide false or misleading information to an Aviation Security Inspector.	Moderate	
Pretend to be an Aviation Security Inspector.	Maximum	
Failure to cooperate with Inspectors or to rectify findings	Maximum	

10. Aerodrome Section

The administrative action to be enforced on the aerodrome operator shall be in line with chapter 10. The table detailed below shall be used for determining the enforcement action against aerodrome operators for violation of section 14 of BANRS and Bhutan Aerodrome Standards.

The determination of the quantum of enforcement to be taken shall be in accordance with the following severity levels:

Violation/offence is categorized into three Levels -

- Severity Level 1 represents the minimum
- Severity Level 2 represents the moderate
- Severity Level 3 represents the maximum

SL#	Violations	Severity Level	Action
1	Failure to permit inspection of facilities, equipment, personnel, records, or certificate.	1	Minimum
2	Failure to comply with an approved Aerodrome manual.	1	Minimum
3	Failure to include all required information in the Aerodrome Manual.	1	Minimum
4	Failure to maintain the aerodrome manual and regulations drone manual current on the airport.	1	Minimum
5	Failure to maintain sufficient qualified personnel to comply with requirements.	1	Minimum
6	Failure to maintain and repair each pavement including runway, taxiway, apron, equipment staging areas, service road, shoulder and strips on the airport.	2	Moderate
7	Failure to provide and maintain required marking, signs and other visual aids.	2	Minimum
8	Violation of any regulation concerning rescue, fire fighting, and/or emergency response.	2	Moderate
9	Non-closure of findings within the prescribed period.	2	Moderate
10	Non-submission of corrective action plans within the	2	Moderate

	prescribed time.		
11	<p>Suspension of an aerodrome certificate shall be warranted if the aerodrome operator:</p> <p>a) has demonstrated a lack of responsibility, such as deliberate acts of non-compliance or falsification of records jeopardising aviation safety,</p> <p>Or</p> <p>b) has made it convincingly clear that the continued operation of the aerodrome will be detrimental to the public safety, such as -</p> <ul style="list-style-type: none"> • ambiguous aerodrome data • lack of evaluated record of required pavement bearing strength for the safe operation of aircraft • contradicting information reporting between AIP and aerodrome manual • lack of required dimensions/safety margins or lack of appropriate mitigation measures and strategies to address such limitations. <p>Or</p> <p>c) safety management system (SMS) is found to be inadequate including SMS manual, safety reporting system, internal audits and investigation, risk assessment and mitigation strategies and management dilemma.</p>	3	Maximum
12	<p>Training programmes</p> <p>a) Failure to have or maintain an effective training programme.</p> <p>b) Failure to maintain training records.</p> <p>c) Failure to train personnel adequately.</p>	2	Moderate

Interpretation of actions

Minimum	Moderate	Maximum
<ul style="list-style-type: none"> ✓ Oral Counselling ✓ Warning 	<ul style="list-style-type: none"> ✓ Restrictions of usage for operations specific to pavements including runway, taxiway, apron, equipment staging areas, service road, shoulder, strips, marking and other visual aids until such facility/facilities are restored back to required standard and specifications. ✓ Restrictions of usage for operations specific to facility/facilities for non-submission of corrective action plan(s) and non-closure of the findings generated from the audit within the prescribed period. ✓ Restriction on personnel/manager/engineer to exercise privilege(s) of the official position when technical competency and qualification to perform the duties to meet the critical safety requirements are found inadequate. ✓ Notify the Ministry and other stakeholders operating at the airport concerning specific violations. 	<ul style="list-style-type: none"> ✓ Suspension of the aerodrome certificate ✓ In the event, the operator remedies the unsafe situation or conditions, the suspension will be lifted upon review by the BCAA. ✓ Notify Ministry and other stakeholders operating at the airport concerning specific violations.

11. Violations handled by Prosecution

To:

- a) walk, stand, park a vehicle or cause an obstruction at an aerodrome.
- b) knowingly remove, deface, extinguish, etc. any signal/marker etc. used for the navigation of aircraft.
- c) knowingly display a marker/signal/light, etc. to cause someone to believe the place is an aerodrome.
- d) knowingly display a marker/signal/light etc. likely to be hazardous to aircraft safety.
- e) allow an animal to be unrestrained within the boundaries of an aerodrome.
- f) discharge a firearm at an aerodrome.
- g) operate specified aerodromes without an airport certificate.
- h) use an airport contrary to airport certificate.
- i) walk, stand, park a vehicle or cause an obstruction at an airport.

To:

- a) smoke/display an open flame at an airport without authorization.
- b) consume alcoholic beverages that are not provided by the operator.
- c) failure of a passenger to comply with instructions of a crew member.
- d) smoke in the lavatory.
- e) tamper with smoke detectors
- f) use portable electronic devices when not authorised
- g) assault and commit other acts of interference against a crew member on Board a civil Aircraft
- h) destroy an aircraft in service or cause damage such aircraft which renders it incapable of flight or which is likely to endanger its safety in flight
- i) communicate information relating to the safety of any aircraft which he knows to be false thereby endangering the safety of an aircraft in flight
- j) destroy or damage any air navigation installation, vital installation or facility or to interfere with any such operations, if any such act is likely to endanger the safety of any aircraft in flight
- k) direct a laser beam at the cockpit of an aircraft with the intention of disrupting flight crew during taxiing, take-off and landing

To:

- a) operate a non-piloted aircraft without /not in accordance with a special flight operations certificate
- b) fly model aircraft/kites, UAS drones, launch model rockets into cloud or in a manner likely to endanger aviation safety
- c) failure of responsible persons to report overdue aircraft and provide all pertinent information to the flight
- d) failure of a passenger to use seat belts/restraints as directed.

____END____